

**AGENDA
OURAY CITY COUNCIL**

Monday, April 3, 2023 - 6:00 PM

**Ouray Community Center
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. 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. APPROVAL OF MINUTES - March 20, 2023
5. CITIZENS' COMMUNICATION
6. CITY COUNCIL REPORTS/INFORMATION - Tamara Gulde, Peggy Lindsey, John Wood, Josh Smith, and Ethan Funk
7. DEPARTMENT REPORTS
 - a. City Administrator
 - b. Police Chief
 - c. Public Works Director
 - d. City Resources Director
 - e. Tourism and Destination Marketing Director
8. CONSENT AGENDA - Resignation of Sarah Gray from the Beautification Committee
9. ACTION ITEMS
 - a. Emergency Ordinance Regarding SMPA Franchise
 - b. Water Treatment Plant Construction Agreement with Aslan Construction
 - c. Water Treatment Plant Construction Oversight Agreement with Element Engineering
 - d. Consideration of Application for Beautification Committee Membership - Gerardo Tarango-Martha
 - e. Consideration of Fellin Park Restroom Design
 - f. Request from Home Trust of Ouray County to Waive Remodel Permit Fees for 734 4th Street
 - g. Consideration of Agreement with CDOT for Ouray Main Street Safety Improvements Project and Authorize the City Administrator's Signature
10. DISCUSSION ITEMS
 - a. Request from John & Virginia Ast for Additional Handicapped Parking in the City
 - b. Mayor and Council Compensation
 - c. Future Agenda Items
11. ADJOURNMENT



Ouray City Council Regular Meeting

Monday, March 20, 2023 6:00 PM
Ouray Community Center, 320 6th Ave, Ouray, CO 81427

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

Also present were: City Administrator Silas Clarke, Finance and Administration Director Melissa Drake, Public Works Director Joe Coleman, City Resources Director Rick Noll, Police Chief Jeff Wood, Community Development Director Lily Oswald, and IT Director Rich Willis (via Zoom).

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. APPROVAL OF MINUTES - March 6, 2023

Motion to approve minutes as presented. 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

5. CITIZENS' COMMUNICATION

Mayor Funk opened the floor for public comment. Since there were no comments, Mayor Funk closed the floor.

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

- *Councilor Gulde - OEDC held their regular meeting on March 9th. Micro-grant program will be held in the spring, accepting applications between April 17th to May 8th and a decision will be made on May 11th. Roundtable on April 27th from 6:30-8:30 pm, the topic is "The State of the Region" with many guest presenters. The next regular meeting will be on April 13th. IPAT breakout group will be meeting on March 23rd. The next IPAT meeting will be on April 5th from 5:30-7:30 pm in the Community Center.*
- *Councilor Lindsey - Next Beautification Committee meeting will be April 5th at 8 am in the Community Center. Flower pots have been delivered to the nursery in Vernal, Utah.*
- *Councilor Wood - OIPI meeting last week. Doing a phased closure of the Ice Park. Friends of the Ouray Via Ferrata met, unable to attend. They are scheduling a public board meeting in May. A wayfinding update*

meeting was held last week, a final proposal will be ready soon and a community meeting will be held. A branding meeting is scheduled for March 27th at 4 pm. The TAC meeting will be held tomorrow, March 21st, and they will be discussing the vacation packages concept. EQR meeting will also be on March 21st.

- Mayor Pro Tem Smith - PARC met, coming up with new events. Flyers for softball will go up soon. The Parks Master Plan group held a kickoff meeting. The transportation operating agreement is on the agenda tonight. Councilor Wood said the 150th celebration committee would like to help enhance existing events for 2025 and 2026, such as the PARC events, and other committees.
- Mayor Funk - High Alpine Roadmap 9.5 group met and has been turned down for two grants, looking at another grant in the fall for an infrastructure needs study, such as camping, parking, restrooms, etc. Some of their completed projects will be live soon. Alpineloop.info website is almost ready to be launched, as well as an OHV educational video, which was the result of a grant, will be released soon to promote the Alpine Loop.

7. DEPARTMENT REPORTS

a. City Administrator

Mr. Clarke announced that Ms. Rhoten wanted to invite anyone interested to the International Tourism meeting on Wednesday, March 22nd at 4 pm, which is open to the public. Mr. Clarke gave an overview of his report.

b. Director of Finance and Administration

Ms. Drake presented the financial reports.

c. Community Development Director

Ms. Oswald gave an overview of her report.

d. Information Technology Director

Mr. Willis highlighted a few items on his report.

8. CONSENT AGENDA

- Special Event Permit - Friends of the Ouray Library Luncheon on April 22, 2023

- Liquor License Renewal - The Gray Tavern LLC

Motion to approve the Library Luncheon Special Events Permit and The Gray Liquor License Renewal in the Consent Agenda. This motion, made by Peggy Lindsey and seconded by Tamara Gulde, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Abstain (With Conflict)

Councilor Lindsey requested that Mountain View Winery be removed from the Consent Agenda.

9. ACTION ITEMS

a. Wine Sales Room Permit - Mountain View Winery at Ouray Manor B&B

Motion to approve Mountain View Winery Sales Room Permit. This motion, made by K. John Wood and seconded by Josh Smith, Carried.

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

Councilor Lindsey asked about the zoning regulations regarding liquor licenses, and if the license had previously been approved by council. Ms. Drake said the business is allowed to operate in a residential zone because it is in a Bed and Breakfast, and they used to operate under a sales room permit until Ouray

Manor got their own license, but Ouray Manor's liquor license has since expired, so Mountain View Winery is pursuing the sales room permit again.

b. Direct City Administrator to Develop an Agreement for Fire Mitigation Planning for Amphitheater Area with Ouray County and Spring Branch Forestry LLC

Motion to direct City Administrator to develop an agreement for fire mitigation planning with Spring Branch Forestry LLC, contingent on the County also approving the agreement. 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

Mayor Funk and Mr. Clarke introduced the project. Austin Shelby of Spring Branch Forestry spoke about the fire mitigation project planning process.

c. Opioid Settlement Participation Forms

Motion to approve the Opioid Settlement Participation Form. This motion, made by K. John Wood and seconded by Josh Smith, Carried.

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

d. Direct City Administrator to Negotiate with Ouray County for the Purchase of RIO-MS1965 (Ice Park)

Motion to direct City Administrator to negotiate with the County for purchase of Rio M.S. 1965, and possible purchase of Nellie Mack M.S. 17584. This motion, made by K. John Wood and seconded by Peggy Lindsey, Carried.

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

e. Multimodal Transportation and Mitigation Options Fund Agreement

Motion to approve the multi-agency transportation agreement. 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

f. Tourism Advisory Committee Application - Retail Seat - Sandra Woodman

Motion to approve Sandra Woodman's application for the TAC Retail Seat. This motion, made by K. John Wood and seconded by Josh Smith, Carried.

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

g. Tourism Advisory Committee Application - Event Planning/Coordination Seat - Brooke Easley

Motion to approve Brooke Easley's application for the TAC Event Planning/Coordination Seat. This motion, made by Tamara Gulde and seconded by Peggy Lindsey, Carried.

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

h. VisitOuray Airport Display Advertisement Agreement per TAC Recommendation

Motion to approve proposal for the Montrose Airport Display Advertisement. This motion, made by Peggy Lindsey and seconded by Tamara Gulde, Carried.

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

10. DISCUSSION ITEM - Future Agenda Items

Councilor Gulde wanted to add Council compensation back to a future agenda as a discussion item.

11. ADJOURNMENT

Motion to adjourn at 7:44 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

Ethan Funk, Mayor

ATTEST:

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, March 20, 2023. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this Monday, March 20, 2023.

Melissa M. Drake, City Clerk

P.O. Box 468
320 Sixth Avenue
Ouray, Colorado 81427



970.325.7211
Fax 970.325.7212
www.cityofouray.com

City Administrator
Report for April 3, 2023
City Council March 20 - 31, 2023:

Human Resources:

Rebecca Fritz retired on March 31, 2023. Thank you for Rebecca for her years of service and dedication to the City.

OIPI Agreement:

The OIPI Board of Directors has accepted the new draft Ice Park Management Agreement. We are now working on the updated agreement with Mr. Jacobson and the new water agreement for the Canyon Creek pump. We plan to have this agreement completed by the middle of May for Council and OIPI approval.

Geothermal Update (Box Canyon Line):

Weather depending, the Box Canyon geothermal collection box will be dug up for an inspection within the next three weeks. We are still losing hot water (+-30 gallons/minute) into the river and want to collect as much water as possible from this source. The goal is to identify if there is a flow restriction and how a future pump can be installed.

Water Treatment Facility:

Thank you to Aslan Construction, Element Engineering, and Joe Coleman. Through value added engineering we have a Guaranteed Maximum Price (GMP) that is within our Water Treatment Plant budget.

Parks & Trails Master Plan:

First community meeting is scheduled for April 13th at 6:00 pm.

City of Ouray Police Department

March 2023

For the month March 2023 OUPD ran approximately 129 dispatched calls for service (as of 1700 hours [5pm] on 03/30/2023.)

Last month we ran 168 dispatched calls for service and 257 in March 2022.

These included:

- 16 Parking complaints (last month was 40)
- 3 Bar checks
- 2 Traffic Stops
- 3 VIN inspections
- 5 Property damage accidents
- 1 Report of a violation of a protection order
- 1 call of vagrancy

Additionally we performed 248 Patrol checks (includes directed patrols and security checks)

Recent Events:

Local law enforcement from both Ouray city and county worked with the Ouray School to perform a lock down drill at the school. The school has made some changes based on a review and assessment of the last lock down drill and this one went very smoothly. The school will be doing reunification drills in the near future.

Upcoming Events:

Within the next month or so we will have completed all of our mandatory training in perishable skills. Training will continue in specialized topics. We will be sending one officer to driving instructor training, the only perishable skill that we currently do not have an in-house instructor for. With the acquisition of the enclosed trailer we now have a place to store cones for the driving course so we will no longer have to borrow them from Montrose.

As Ouray transitions (slowly) to spring we will begin a focus on safety videos for backcountry activities and also bear awareness.

Public Works March 2023 Update

Water

- Water Usage Numbers for **February:**
 - Influent (Water from spring) – 22,688,832 Gallons
 - Effluent (Water to town) – 12,779,092 Gallons
 - Ice Park – 1,311,360 Gallons
 - Mineral Farms – 133,000 Gallons
- 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.
- Repaired a leak on a PRV on Box Canyon Road.
- Continue to work with Element Engineering and Aslan Construction on the new Water Treatment Facility. We have had several productive meetings in March, all of them focused on value engineering ideas from the entire team. The original 90% Guaranteed Maximum Price (GMP) that was submitted was \$14,184,275. The most recent 90 % GMP that has been submitted is \$12,630,965.. The team was able to come up with a total value engineering savings of \$1,553,310.

Sewer

- Continued to clean head works two to three times daily.
- Continued to skim lagoons of debris as needed.
- Repaired an aerator that had debris stuck in the impeller.
- Aslan Construction continues to make progress on the new Wastewater Treatment Facility. City staff continues to have weekly meetings with the contractor, engineers and architect making progress on some of the finer details of the construction. We are also still looking at ways to save money if possible. The crew is currently working on forming the walls for the digester walls. The concrete pour for the walls is scheduled for the first week of April.

Streets

- Repaired multiple signs and streetlights in the 500 block of Main St due to an independent truck driver.
- Widened the road on Elk Horn Dr.
- Plowed snow in town as needed.
- Sanded alleys and streets as needed.
- Hauled snow piles throughout town as needed.
- Worked on clearing parking spaces of snow throughout town.
- Weekly training sessions for our new asset management software IWorQ. We have gone through fleet maintenance, work orders and will start training on the sewer and water asset management next.
- Did trash rounds on Main St and in the City Parks while the Parks and Maintenance Department was on vacation.
- Equipment maintenance on all vehicles and heavy equipment.

City Resources Department

April 3 2023

- The final day of operation of the rope tow at Lee's Ski Hill will be Sunday April 2nd.
- Electrical components at the Ski Hill that failed in February have been replaced. At that same time the counterweights were adjusted to maintain proper tension of the rope.
- Hot Springs Pool staff have held recruitment events at three regional high schools. Six applicants are taking swim assessments this week. The next lifeguard certification class will take place the week of April 10th. Lifeguard certification classes are also scheduled in May and June. Additional recruitment activities will take place throughout the spring season.
- Shade sails have been ordered to replace the shade covers over the geothermal pools. These are being custom made in Grand Junction to withstand the high winds at the Hot Springs Pool location. It is expected they will be completed and installed by early May.
- The bathhouse lobby has been repainted. The women's locker room will be painted in early April. The painting is being completed prior to floor resurfacing in the lobby and locker rooms that will occur while the Hot Springs Pool is closed April 17-22.
- Geothermal pools will be drained and power washed during the April shut down. Cracks in the pool shells will be repaired at this time.
- Landscape improvements are scheduled during the April shut down. These improvements include removing trees that obstruct line of sight vision between pools and raising the level of grass areas where the sod has sunk.
- The flag pole at the Hot Springs Pool has been repaired.
- Swim suits, towels, and other concession items have been ordered for the Hot Springs Pool summer season. The IT staff is assisting with the point-of-sale station for the Snack Shack.
- Reduced geothermal flows coming to the pumphouse continue to hamper staff's ability to keep the geothermal pools at temperature.
- City Resources and Hot Springs Pool staff participated in work sessions with City Council to express their safety and staffing concerns with serving alcohol at the Hot Springs Pool and to discuss reduced geothermal water availability.
- Customer service training modules have been identified for Hot Springs and Box Canon Falls front line staff. These will be presented during orientation in late April or early May when seasonal staff has been hired.
- The Wolf Pack swim team had their first practice of the season on March 24. The team will have weekly practices through the middle of June.
- The flow valve controlling the commercial dishwasher in the Community Center kitchen failed causing the machine to overflow hot water. Staff responded quickly to the problem preventing any damage to the floor or structure. The failed valve has been replaced.
- The 2nd floor call button for the Community Center elevator is not functioning properly. The Otis technician is attempting to locate the necessary electrical component. This part, originally manufactured in 1982, is no longer in production. The elevator has been checked by Otis and is safe for operation.
- The header dividing the San Juan Room and the new City Council chambers has been installed. The movable dividers are ordered.
- The clocks in the clock tower at City Hall were reset with the time change to daylight savings time.
- The restroom at Rotary Park had been closed for two weeks with a frozen drain line. That line has been thawed by Public Works and the facility is back in service.

- The full time Parks and Facilities Operator position remains open. Other members of this crew have been out on leave for several weeks. This crew remains down two positions. Even with interruptions and absences they have been maintaining restrooms, addressing facility needs, emptying public trash, and other daily rounds, including snow removal after storms.
- A tow truck was called to assist a motorist who had tried driving into the Box Canon Falls along the entrance road. The entrance road is closed in winter and the City installed two gates on this road in the past 12 months but apparently Ice Park staff had left both gates open. Cost for the tow service was paid by the motorist.
- City Resources is working with the Ouray Trail Group, Volunteers for Outdoor Colorado, and US Forest Service for planning and scoping work on the Perimeter Trail this summer and early autumn.
- Miscellaneous repairs have been completed and are ongoing at the Visitor Center as staff prepare for the summer season.



April 3, 2023

TOURISM & DESTINATION MARKETING REPORT

Visitor Center

- Revamped and reorganized gift shop - New shelving was hung, merchandise was reorganized, displays were set up, price lists made, new merchandise was purchased and input into inventory system
- A physical inventory of all merchandise in the gift shop was done. All staff participated
- A celebration pizza party was held for all Visitor Center staff in appreciation of positive feedback from Ouray local businesses
- Three Ipads were purchased for in-house guest use of the VisitOuray website
- A new AI voicemail system was installed in the Visitor Center
- Staff gathered wedding planning information, for the Director of Tourism, to be input into the VisitOuray.com website
- Staff assisted guests in the planning of their weddings to take place in Ouray this summer
- Completed the itinerary for the donation project, “Campaign 1 @ a Time”, for Delilah Love and family
- Compiled a listing of all restaurant closures in the city of Ouray, for off-season, and distributed them to all the Ouray hotels and interested area businesses
- Contacted all Ouray Jeep Tour companies, Guiding Services and Horseback Riding establishments for new rack cards for the Visitor Center. Ordered area Vacation Guides to replenish dwindling guide stock.
- Met with Logan Tyler of Basecamp Ouray and Mountain Trip Guide Service for overviews of their businesses and to organize a staff trip in May for the Ouray and Gold Mountain Via Ferratas
- Visitor Center staff, in conjunction with the Pool staff, participated in the Skill-Up team development meeting on the topic of communication & active listening
- Patty Pitts and Lou Hart attended the International Tourism presentation
- Patty Pitts updated and maintained the “events” page on the VisitOuray website and answered all general emails out of the VisitOuray email account
- Staff continued to write itineraries for the VisitOuray website
- Met with local law enforcement several times, regarding problems with vagrants in the Visitor Center
- There has been an uptick in guests coming into the Visitor Center and calling for information. Total Visitation for the month of March was 297 Visitors and 114 phone inquiries for a total of 411 guests helped
- Total Sales for the month were \$406.96 (3/1/23-3/29/23)



TOURISM & DESTINATION MARKETING REPORT

Visit Ouray

Media Partnerships:

- Thirst Colorado article for Box Cañon Falls Park story
- Working with Grand Design RV for photoshoot/ media promotions for early June
- Helping movie producers scout areas around Ouray for a potential film starting in December (2nd week of April)
- Participated in locations and photoshoot with Tubb Snowshoes, will gain access to their photos and videos once completed
- Inquired about nominating Ouray, Colorado to Bachelor Nation

Social Media:

- Did a promotional post for people to sign up for our newsletter
- Pushed nominated Ouray, Colorado for "Best of Travel" on our stories with links
- Got Localhood started
 - Made a 10 Free Things To Do Localhood Story
 - Made a 2-Day Winter Itinerary
 - Made a St. Elmo Hote
 - Made a Budget Friendly Things To Do
- Finally got access into Crowdriff to work

- March business spot lights (You can see the results on the "Businesses Advertised" document)
 - Filmed Ouray Riverside Resort
 - The Wright Opera House - Eric Elison
 - Filmed Skin Alchemy
 - Ouray Ice House

- Facebook Insights for Last 28 Days | 172,725 page reaches
- Instagram Insights for Last 28 Days | 37,643 reaches
- 3001 followers on TikTok (grew by 190 followers)



TOURISM & DESTINATION MARKETING REPORT

Visit Ouray Continued

Newsletters:

- 4/1/23 Visit & Local
- See results and mentions in attached document "Business's Advertised"
- Sign up for local newsletter at TinyURL.com/OurayTourismNews

Visitor Guide:

- Text almost 100% complete
- Started to finalize beginning pages
- Working with printing on final costs/ negotiations

Wayfinding:

- Narrowed down to two designs that will get reworked, then reviewed by the committee before having an open house for the community to vote
- Were presented with two ideas on the gateway signage

Branding:

- Were presented with the current logo simply refreshed
- From there they worked on different styles, changing one element at a time for a total of six design ideas
- The committee agreed with two concepts being the direction we would like Tangram Design to move forward with
- Will have another presentation in April with next round of designs based on feedback

Meetings Attended:

- ORRCA Meeting 3.2.23
- Localhood Training 3.13.23
- Strategic Planning 3.13.23
- CTO Webinar: Concierge Destination Learning Lab Pilot 3.14.23
- Collaboration Opportunities with San Juan Mountain Association 3.16.23
- CADMO Meeting 3.17.23
- Wayfinding Meeting 3.17.23
- Denver 7 News - Lifestyle advertising opportunity 3.21.23



TOURISM & DESTINATION MARKETING REPORT

Visit Ouray Continued

Meetings Continued:

- TAC 3.21.23
 - Discussed finalizing the airport design
 - Moved our meeting time to 4:30 - 6:30pm
 - Discussed social media etiquette and City Policy with representatives of the City
 - Discussed an opportunity with Denver 7 (\$3,000/year) and another video opportunity through OEDIT (\$35,000 for project)
 - A small team will be working together on creating a follow up grant reporting document for those who received LOT Grant funding
 - Approval to move forward with doing regional cross promotion/ itinerary building with other towns in Colorado
 - Discussed and finalized details of the Partners Package Workshop that will be held April 12, from 2-4pm
 - TAC members requested that the Tourism and Destination Marketing Director host a workshop to go through all the opportunities that the Tourism Department has to offer business
 - For our next meeting we will be discussing a filming fee structure and making a decision on if we want to move forward with any filming opportunities with Denver 7 or the OEDIT project
- International Tourism 3.22.23
 - Thank you to the Colorado Tourism Office for their presentation on international tourism. Thank you to: Twin Peaks, Ouray Chamber, Mountain Fever, Ouray Ice House Coffee Shop, Kamis Samis, The Western Hotel, City Council, City Staff, Ouray Ice Park, Quality Inn, and members of the Tourism Advisory Committee for attending.
- Meet and Greet with Ouray Ice House Coffee Shop 3.22.23
- Branding Meeting 3.27.23



TOURISM & DESTINATION MARKETING REPORT

Visit Ouray Continued

Website updates:

- Updated Museum Page to add The Alchemist Museum
- Updated the Wedding Page
- Updated the History Page
- Updated the Events Page to include city and country calendar
- Created a Scenic Drives page
- Created a Waterfalls page
- Created a Remote Working page
- Created a Wildflower page
- Created a Fall Colors page
- Created a Relax/ Spa page
- Created a Mine Tour page
- Created a Camping page
- Created a Million Dollar Highway page
- Created a Horseback Riding page
- Created an Entertainment page
- Created a blog post about Free Things To Do In Ouray
- Created a Meeting/ Conference page
- Created a Biking Page
- Embedded Localhood Gallery to homepage

Media Mentions (last page of the Businesses Advertised document)

Tourism and Destination Marketing Director partnered with Pool Manager for Team Development trainings. March's meeting was based on active listening and communication.

Applied for Ouray to be one of the towns to do their pilot program for Destination Learning Labs through the Colorado Tourism Office



TOURISM & DESTINATION MARKETING REPORT

Visit Ouray Continued

Workshops

- Ouray Partners Package Workshop | April 12 | 2-4pm
 - This workshop is for those who are looking to increase revenue bookings, and foot traffic. How? By partnering with other local businesses to create unique promotions to help not just you, but them too!
 - If you would like the full workshop details email Kailey Rhoten at KRhoten@CityofOuray.com or see document attached called, "Partner Packages.pdf"
- Business Tips and Tools Workshop | April 19 | 2-4pm
 - Join the City of Ouray's Tourism department for a two hour workshop on ways to collaborate with Visit Ouray. You will learn ways you can get free marketing, free opportunities for advertising your business, and understand what resources you have available to you.

A RISING TIDE RAISES ALL BOATS

OURAY PARTNERS PACKAGE WORKSHOP

CALLING ALL LOCAL BUSINESSES!
This workshop is for those who are looking to increase revenue bookings, and foot traffic. How? By partnering with other local businesses to create unique promotions to help not just you, but them too!
If you would like the full workshop details email Kailey Rhoten at KRhoten@CityofOuray.com.

REGISTER YOUR BUSINESS HERE
If you have not yet registered your business, please scan this QR Code to take you to the business registration page.

APRIL 12 2023 2-4 PM MASSARD ROOM

FREE MARKETING PROGRAMS AD OPPORTUNITIES RESOURCES

VISIT OURAY PRESENTS BUSINESS TIPS & TOOLS

APRIL 19, 2023 | 2 - 4PM

Join the City of Ouray's Tourism department for a two hour workshop on ways to collaborate with Visit Ouray. You will learn ways you can get free marketing, free opportunities for advertising your business, and understand what resources you have available to you.

LEARNING
Understanding what tools are available

RESEARCH
See what data we gather and how we collect

STRATEGY
Use ideas / promotions we do to benefit your business

HOSTED BY
Kailey Rhoten
Tourism and Destination Marketing Director
City of Ouray

LOCATION
Massard Room
320 6th Avenue
Ouray, Colorado 81427

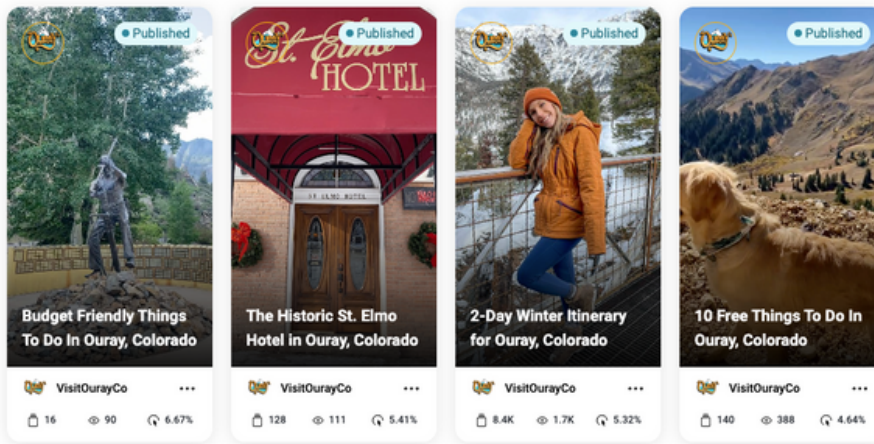
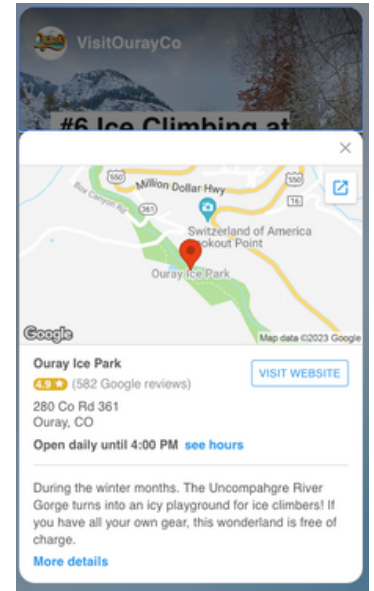
REGISTER YOUR BUSINESS HERE
If you have not yet registered your business, please scan this QR Code to take you to the business registration page.



TOURISM & DESTINATION MARKETING REPORT

Visit Ouray Continued

- Localhood
 - Created four stories thus far
 - Embedded a gallery to VisitOuray.com homepage
 - Takes Google 1-2 weeks to index (recognize the Search Engine Optimization)
 - See report attached called, "March Localhood Report"
 - Ability to see what people search on Google that pulls up our story
 - Downloaded each reel and put into the Community Shared Drive Folder to share



search_query

- ouray colorado
- what to do in ouray colorado
- ouray inn
- things to do ouray colorado
- things to do ouray
- ouray things to do
- things to do in ouray co
- ouray weather
- ouray colorado things to do
- things to do.in ouray

Performance Summary

Last updated at: Mar 28, 2023

Data filters:

Feb 27, 2023 - Mar 28, 2023

Story Engagement | Which sources are driving traffic?

[View More on Stories →](#)

Story Views

2,122

No data

Total number of times someone opened a Story to view in full screen.

Click Through Rate (CTR)

5.28%

No data

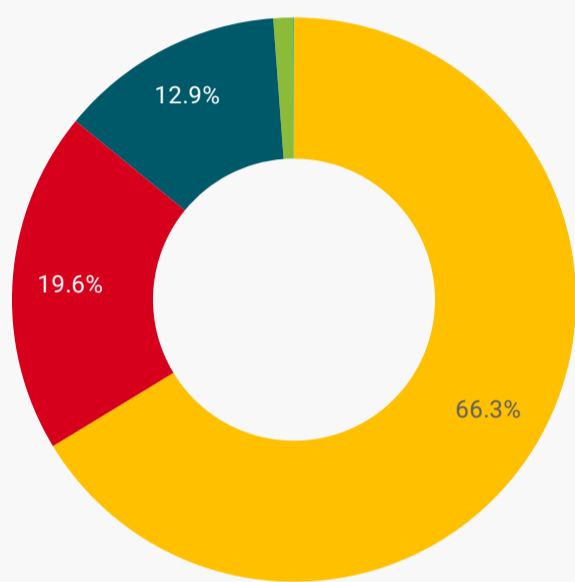
Average CTR of Visit Website and Learn More clicks.

Completion Rate

48%

No data

Average completion rate on all Stories. A completion is counted when all pages in the Story are viewed.



Story Views by Source

- Search**
Views from Google search results
- Localhood**
Views from Localhood galleries
- Other**
Views from other search engines or social channels
- Direct**
Views from direct URL or Instagram
- Social**
Views from Facebook

Google Performance | How are Stories performing in Google Discover and search results?

[View More on Search →](#)

Google Impressions

8,734

No data

Number of times your Stories appeared in Google Discover and search results

Google Clicks

218

No data

Average CTR from views originating in Google Discover and search results

Google CTR

2.50%

No data

Average interaction rate on Stories viewed from search.

Gallery Engagement | How are Stories performing in Localhood galleries?

[View More on Galleries →](#)

Gallery Impressions

826

No data

Number of times your Stories appeared in Localhood galleries

Gallery CTR

30.12%

No data

Average CTR from views originating in Localhood galleries

Gallery Interaction Rate

57.30%

No data

Average interaction rate on Stories viewed from Localhood galleries



Data filters:

Feb 27, 2023 - Mar 28, 2023

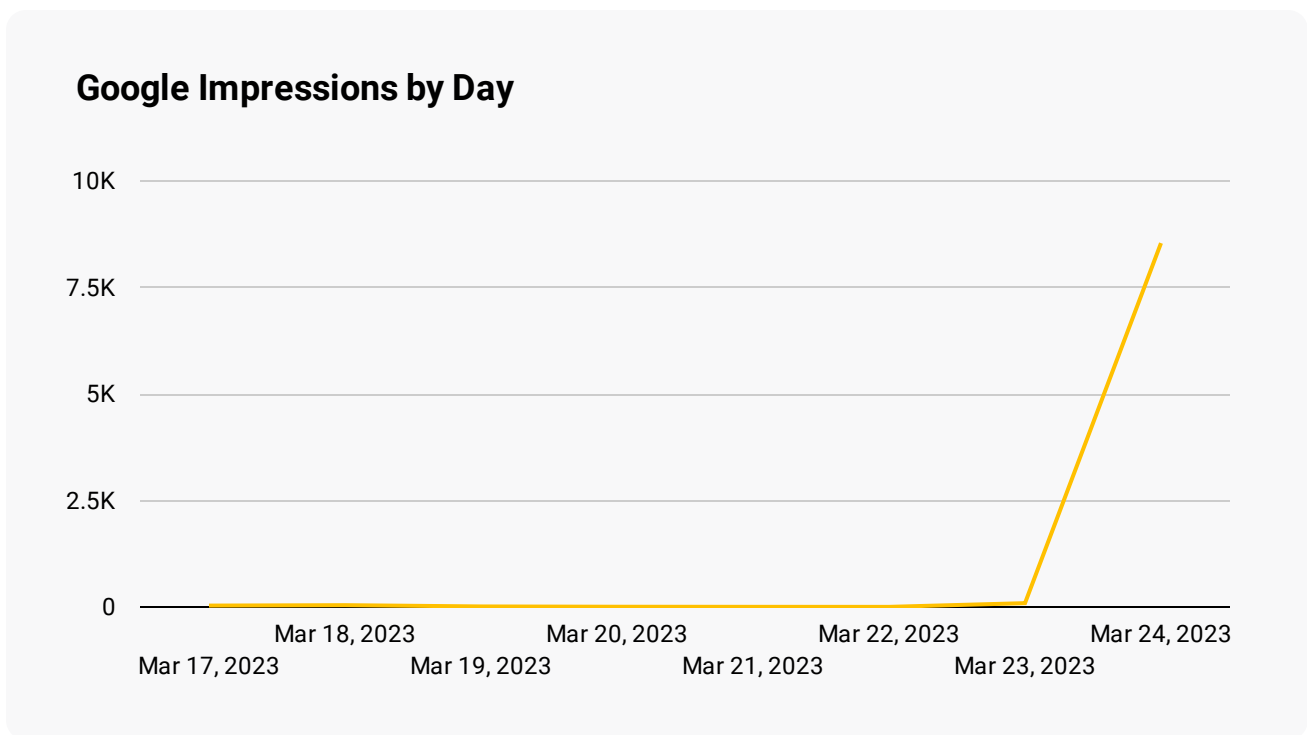
Story Title

Google Performance Overview

Google Impressions
8,734
 No data

Discover Impressions: **8.5K** Search Impressions: **230.0**

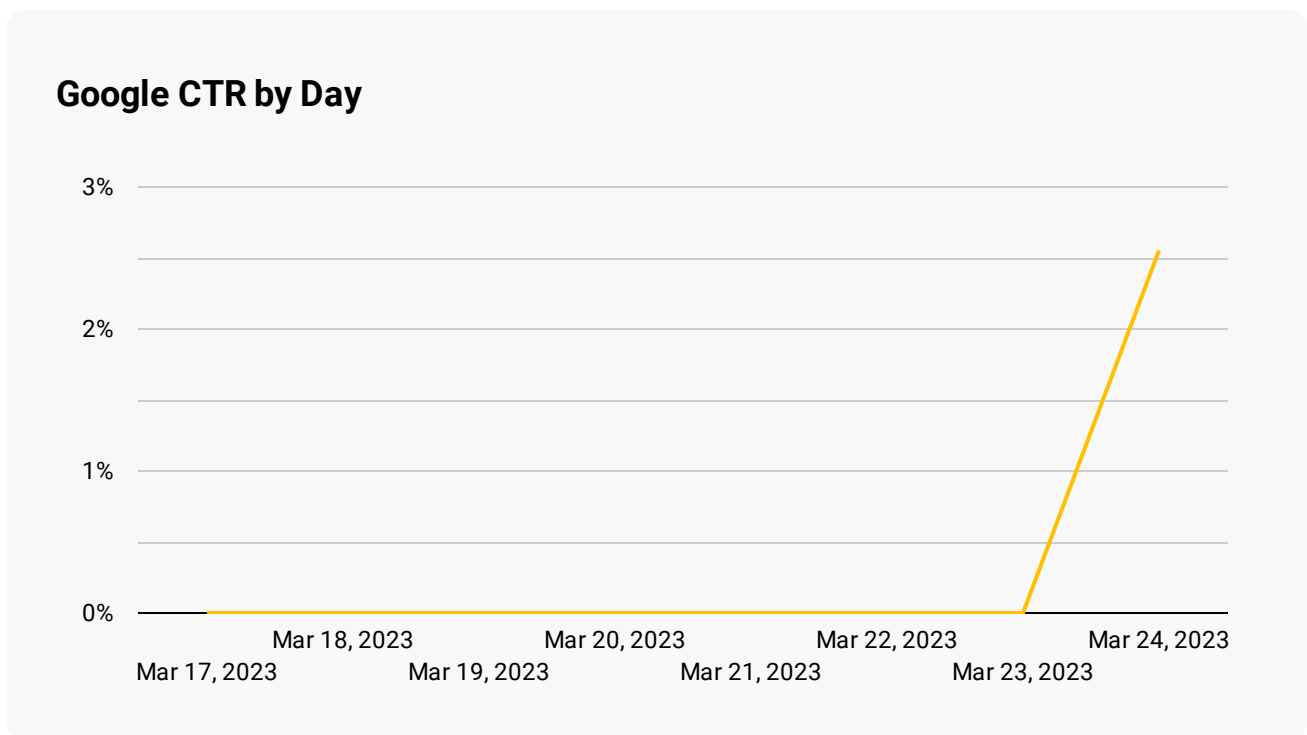
Number of times your Stories appeared in Google Discover or in Google search results



Google CTR
2.50%
 No data

Discovery CTR: **2.56%** Search CTR: **0.00%**

Average CTR from views originating from Google Discover or Google search results



Top Search Queries | What search queries do your stories show up for?

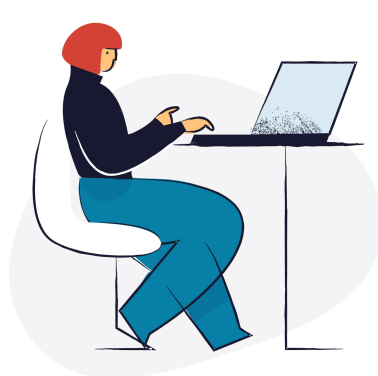
search_query	Google Impressions	Google CTR
ouray colorado	16	0%
what to do in ouray colorado	15	0%
ouray inn	13	0%
things to do ouray colorado	11	0%
things to do ouray	9	0%
ouray things to do	9	0%
things to do in ouray co	8	0%
ouray weather	8	0%
ouray colorado things to do	8	0%
things to do.in ouray	6	0%

1 - 10 / 83 < >

Stories in Google Results | Which stories showed up most often?

Story	Google Impressions	Google CTR
2-Day Winter Itinerary for Ouray, Colorado	8,450	2.53%
10 Free Things To Do In Ouray, Colorado	140	0%
The Historic St. Elmo Hotel in Ouray, Colorado	128	3.13%
Budget Friendly Things To Do In Ouray, Colorado	16	0%

1 - 4 / 4 < >



Data filters:

Feb 27, 2023 - Mar 28, 2023

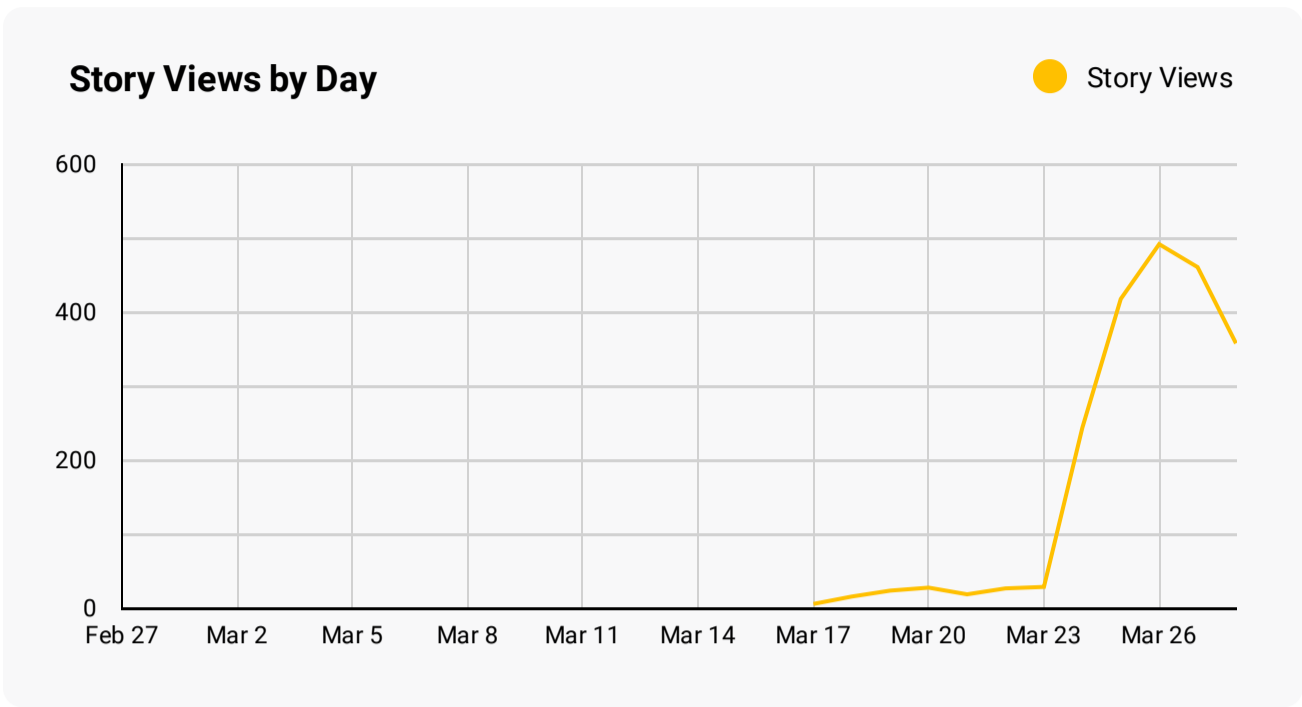
Story Title

Engagement Overview

Total Story Views
2,122
No data

Story Views from Search
1,407
No data

Story Views from Galleries
274
No data



Number of times someone opened a Story to view in full screen. Story Views from Search come from Google search results. Story Views from Galleries come from Localhood galleries.

Completion Rate
47.8%
No data

Total Completions
1.0K

Interaction Rate
63.5%
No data

Total Interactions
1.3K

Click Through Rate (CTR)
5.28%
No data

Visit Website Clicks: **24.0**
Learn More Clicks: **88.0**

Average completion rate on all Stories. A Story is complete when all pages are viewed.

Average interaction rate on all Stories. Interactions include swipe ups, Story completions, and sessions where someone spends 5 seconds on a single page and taps to the next page.

Average CTR of Visit Website and Learn More clicks on all Stories.

Engagement Breakdown by Story

Cover Image	Story	Published	Views	Interactions	Interaction Rate	Total Clicks	CTR	Completion Rate
	2-Day Winter Itinerary for Ouray, Colorado	Mar 2023	1,564	906	57.93%	82	5.24%	41.24%
	10 Free Things To Do In Ouray, Colorado	Mar 2023	366	290	79.23%	19	5.19%	68.31%
	The Historic St. Elmo Hotel in Ouray, Colorado	Mar 2023	108	82	75.93%	5	4.63%	57.41%
	Budget Friendly Things To Do In Ouray, Colorado	Mar 2023	84	70	83.33%	6	7.14%	69.05%

1 - 4 / 4 < >



Galleries

Last updated at: Mar 28, 2023

Data filters:

Feb 27, 2023 - Mar 28, 2023

Gallery Overview | How your Stories are performing in Localhood galleries

Story Impressions from Galleries

826

No data

Number of times your Stories have appeared in Localhood galleries.

Story Views from Galleries

254

No data

Number of views originating from a Localhood gallery

Gallery CTR

30.12%

No data

Average CTR from views originating from Localhood galleries

Breakdown by Gallery

Gallery Name	Gallery Impressions	Gallery Views	Gallery CTR
Visit Ouray Website	826	254	30.75%

1 - 1 / 1 < >





Kailey Rhoten | Tourism and Destination Marketing Director | 970.596.7837 | KRhoten@CityofOuray.com

Ouray's Partner Packages Program/ Workshop

For Local Businesses | April 12, 2023 | 2-4pm

Goal

Utilizing our own extraordinary businesses within Ouray, Colorado to create packages and bundles. With these partnerships and options, the goal is to influence guests to Ouray, Colorado to engage with multiple businesses during their stay or planning their trip. If we are able to create these partnerships between one another, we could do more cross promotion across the town. Overall, the more we push patrons to multiple businesses, the greater chance of increased revenue, knowledge of things to do, and word-of-mouth advertising.

Why It Is Important

If we are able to form these bonds between our businesses within Ouray it could potentially help generate more business across the board. If we are able to all work together, support one another, and promote one another it will show across town. A rising tide raises all ships' mentality. As an outsider to Ouray, if a guest is getting ideas of all the other things to see, do, eat, drink, and create, the opportunity to increase revenue for multiple businesses is heightened.

Benefits

As businesses create specialized deals or packages, it entices guests to further explore Ouray. People in general like to feel special, find a deal, or learn something unique that would make their vacation even more spectacular. If we can make it easier for them to figure out what to do and where to go, that is an additional enticement factor.

If we are able to even get a 3-5% increase in business, bookings, or revenue that would be a success. Especially in the off-season.



Kailey Rhoten | Tourism and Destination Marketing Director | 970.596.7837 | KRhoten@CityofOuray.com

How

We would host a workshop in April to get all businesses who are willing to participate together. Each would come with a deal or offering in mind to share or partner with other businesses.

At the workshop, we will begin with an introduction to what the goals of this workshop is. Talk about how it is important, ways it can be beneficial to their business, and give examples on what bundles or packages may/ could look like. We will have tables and chairs set up around the room for people to utilize for discussions. Each person will have a name tag in which they include their business they are representing to help with easy connections.

Once a package is formed, the goal is for them to make adjustments on their end B2B. Then once they are ready to do the promoting, the TDM Director will be able to create a packages page/ add to the itinerary page on VisitOuray.com.

Examples

Non-Monetary Exchanges:

- Offering a pick up service (ie: Jeep tour picking up at a lodging property)
- Offering a deliver/ drop-off service (ie: dropping off people who just finished a guided activity at a restaurant of their choice)
- Making a personalized experience (ie: helping with engagements, including photos of their adventure for them to have, specializing rooms for birthdays)
- Mentions on each others website
- Social media posts mentioning other businesses on your channel



Kailey Rhoten | Tourism and Destination Marketing Director | 970.596.7837 | KRhoten@CityofOuray.com

Small Purchases/ Big Impact:

- Offering champagne to bring for a surprise (ie: someone is planning to propose at Twin Falls, they got a guide to bring them there, they include champagne in that trip)
- Birthday celebrations (ie: someone booked a dinner reservation for a birthday, maybe have a rose at the table for them)

Unique Deals:

- Free beer, wine, or distilled drink coupons for businesses like shops to give out with a purchase over \$50
- Save \$25 off per person for ___ guide/ rental
- With a booking of x amount of people, get t-shirts
- When you make a purchase of \$20 or more get a free Ouray Sticker

Monetary Exchanges:

- % off
- Buy One Get One Free
- Buy One Get One Half Off
- Free ___ with the purchase of _____

Will you have BLACKOUT DATES?



Kailey Rhoten | Tourism and Destination Marketing Director | 970.596.7837 | KRhoten@CityofOuray.com

Visit Ouray Partnership:

TDM Director will present in the introduction about the FAM Tours, influencer, and content creator program. In exchange for trips, stay, food, etc. we will expose their business to a wider audience. If businesses are interested in this, they can come talk to the TDM Director during the workshop.

ROI can be, but are not limited to:

- New photo/ video content for the business to utilize
- Post/ reels on TikTok, Instagram, and/ or Facebook
- Blog posts
- Articles in magazines
- Articles in online publications
- Itinerary built into VisitOuray.com
- Report to businesses via TDM Director of results or where published

Interested in working with Tour Operators?

- Work with the international market
- Visit Ouray would be your representative
- This would be built up into a program for 2024

<i>Business/ Events Highlighted</i>			<i>Business/ Events Highlighted</i>	
The Wright Opera House	14		St. Elmo Hotel	
Eric Elison	1		Ouray Ice House Coffee Shop	
Book Signing	3		Basecamp Ouray	
Trivia Night			Canyoning Colorado	
River Run Cabins	41		San Juan Mountain Guides	
Ouray Cafe	4		Alpine Scenic Tours	
Ouray Bookshop	2		Altitude Adventures	
			Canyon Creek Jeep	
<i>Links</i>			Colorado West Jeeps	
Ouray Bookshop	2		Ouray Riverside Resort Jeeps	
Ouray Hardware & Mercentile			Ride-N Adventures	
			San Juan Scenic Jeep	
			Switzerland of America	
			Mountain Trip	
			<i>Links</i>	
			The Wright	
			The Tavern	

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	10.3.22	Highlights, TT, IG, FB	4,349	1,121	112		
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	12.19.22	Highlights, TT, IG, FB	5,271	1,468	389		
Color and Quil		Highlights					
Mountain Fever		Highlights					
Ouray Hardware & Mercantile	12.16.22	IG, FB, TT, Highlights	12.2 K	1646	611		
The Burning Ass Trading Company	12.28.22	IG, FB, TT, Highlights, Youtube	17.4K	2411	712		
	12.29.22	IG, FB, TT, Highlights	16.8K	1217	1167		
	12.30.22	IG, FB, TT, Highlights	10.2K	1023	350		
	1.3.23	IG, FB, TT, 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	1.11.23	Highlights, IG, FB, TT, youtub	13,400	3,739	747		
Basecamp Ouray		Highlights					*Results are after 7 days
	3.1.23	TT					
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					
Mountain Trip		Highlights					
Moxie Mountain Guides	1.26.23	Highlights, IG, FB, TT	5071	1586	251	71 views on Youtube	

ART							
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY	
Mountain Dog Arts	9.12.22	Highlights, IG, FB, TT	9,289	8,282	100	TT = TikTok	
The Wright Opera House	10.4.22	Highlights, IG, FB	5,472	1,632		IG= Instagram	
Ouray Glassart and Pottery	8.8.18	Highlights, IG, FB, TT	13,700	2,044	81	FB= Facebook	
Mike Simpson's Gallery & Studio	11.14.22	Highlights, IG, FB, TT	8,163	1245	343		
Eric Elison @The Wright	3.17.23	Highlights, IG, FB, TT	6030	2396	256	*Results are after 7 days	

LODGING							
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY	
Box Canyon	11.3.22	Highlights Visit Colorado Takeover	135 K	192 shares	79.1 K	TT = TikTok	
Imogene Hotel		Highlights				IG= Instagram	
Ouray Riverside Resort		Highlights				FB= Facebook	
	1.25.23	IG via @IceClimbing	19K			YT= YouTube	
	2.3.23	IG via @IceClimbing FB					
Wiesbaden	11.3.22	Highlights Visit Colorado Takeover	135 K	192 shares	79.1 K		
	11.17.22	TT, IG, FB	19.8K	1,889	818		
	12.20.22	TT, IG, FB	17K	2,549	653		
Twin Peaks Lodge	9.8.22	Highlights, IG, FB, TT	11,611	4,848	385	*Results are after 7 days	
	11.3.22	Highlights Visit Colorado Takeover	135 K	192 shares	79.1 K		
Hotel Ouray		Highlights					
Alpily Inn		Highlights					
Beaumont Hotel & Spa		Highlights					
China Clipper Inn		Highlights					
River Run Cabins		Highlights					
	2.23.23	Highlights, IG, FB, TT, YT	10,300	2,674	1109		
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	12.14.22	Highlights, IG, FB, TT	10,701	11,605	305		

RESTAURANTS						
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY
Ouray Brewery		Highlights				TT = TikTok
Goldbelt		Highlights				IG= Instagram
Sauvage Spectrum	11.18.22	Highlights, IG, TT, FB	6,052	711	170	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	10.17.22	Highlights, IG, TT, FB	13,781	2,113	287	
Ouray Liquors		Highlights				
Maggies Kitchen		Highlights				
Artisan Bakery & Cafe		Highlights				
	2.10.23	IG, TT, FB, YT	8,146	1,256	728	
The Gray Upstairs Tavern	11.7.22	Highlights, IG, TT, FB	11,900	3,289	813	
Brown Chicken Brown Cow Icecream	11.7.22	Highlights				
Ouray Cafe and Steakhouse	2.24.23	IG, TT, FB	8,375	1,930	889	
The Brickhouse	3.15.23	IG	14,100			
Ouray Ice House Coffee Shop	3.20.23	IG, TT,	6471	2859	335	

HEALTH						
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY
Elevate Day Spa		Highlights				TT = TikTok
Salon Envy		Highlights				IG= Instagram
Wiesbaden Hot Springs		Highlights				FB= Facebook
Ouray Hot Springs Pool	11.3.22	Highlights Visit Colorado Takeover	135 K	192 shares	79.1 K	
						*Results are after 7 days

NAME	DATE	LOCATION	LINK	AUDIENCE	MENTIONS	HOST
THE BEST RESTAURANTS IN CO	3.2.23	TownSquare NoCo	https://townsquarenoco.com/colorado-best-vegetarian-restaurants/		Brickhouse 737	
Hot Springs in the World to Soak	3.2.23	MensJournal	https://www.mensjournal.com/travel/best-hot-springs-world		Ouray Hot Springs	
Most Underrated Cities In Colorad	3.10.23	Word Atlas	https://www.worldatlas.com/cities/11-most-underrated-cities-in-colorado.html		All Ouray Activities	
Video: Trips on a Tankful—Ouray, C	3.20.23	RoadTrippers.com	https://roadtrippers.com/magazine/trips-on-a-tankful-ouray/		Ouray Hot Springs, Apline Scenic Jeep Tours, Million Dollar Highway, Perimeter Trail	
Hot Springs Hopping: A Guide To	3.20.23	The Travel	https://www.thetravel.com/is-steamboat-springs-a-fun-town/		Ouray Hot Springs	

A RISING TIDE
RAISES ALL
BOATS

@travelingbitners

HOSTED BY: CITY OF OURAY | OURAY CHAMBER | OURAY ECONOMIC DEVELOPMENT COMMITTEE | OURAY MAIN STREETS PROGRAM

OURAY PARTNERS PACKAGE WORKSHOP

CALLING ALL LOCAL BUSINESSES!

This workshop is for those who are looking to increase revenue bookings, and foot traffic. How? By partnering with other local businesses to create unique promotions to help not just you, but them too!

If you would like the full workshop details email Kailey Rhoten at KRhoten@CityofOuray.com.



REGISTER YOUR BUSINESS HERE

If you have not yet registered your business, please scan this QR Code to take you to the business registration page.

APRIL
12
2023

2-4 PM
MASSARD ROOM





Silas Clarke <sclarke@cityofouray.com>

Sarah is gonna go ahead and step down from the beautification committee.

1 message

Sarah Gray <sarahthegray@gmail.com>
To: Silas Clarke <clarkes@cityofouray.com>

Thu, Mar 23, 2023 at 6:07 PM

Dear Mayor and Council,

I regret to inform you that I will no longer be on the beautification committee. Thank you for the opportunity to help out on the committee. I look forward to future opportunities to serve the community and wish the committee members success with all of their projects.

Sarah Gray

ORDINANCE NO. 04 (SERIES 2023)

AN EMERGENCY ORDINANCE OF THE CITY OF OURAY COLORADO, GRANTING A FRANCHISE TO SAN MIGUEL POWER ASSOCIATION, INC., TO OPERATE AN ELECTRIC POWER UTILITY WITHIN THE CITY OF OURAY, AND FIXING THE TERMS AND CONDITIONS THEREOF

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

ARTICLE 1 TITLE AND DEFINITIONS

- 1.1 This Ordinance is adopted pursuant to The City of Ouray Home Rule Charter, adopted May 9, 2009, Section 3.6. as an emergency because the current franchise agreement between the City of Ouray and San Miguel Power Association, Inc. dated May 5, 2008, expires on April 20, 2023, and any expiration could affect the citizens of the City of Ouray. The council determines that this emergency ordinance is necessary to the immediate preservation of the public peace, health and safety.
- 1.2 This Ordinance shall be known and may be cited as the “San Miguel Power Association Franchise Ordinance”. It is sometimes herein referred to as this Ordinance or Franchise.
- 1.3 For this Franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent, the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.
- 1.4 “City” refers to and is the municipal corporation designated as the City of Ouray, Ouray County, Colorado, and is the grantor of rights under this Franchise.
- 1.5 “Company” refers to and is San Miguel Power Association, Inc. and is the grantee of rights under this Franchise.
- 1.6 “City Council” refers to and is the legislative body of the City.
- 1.7 “Facilities” refer to and are all facilities reasonably necessary to provide electric service into, within and through the City, including but not limited to substations, transmission and distribution structures, lines, wires, electrical equipment, transformers, underground lines, meters, meter reading devices, control equipment, streetlights, wires, cables and poles.
- 1.8 “Public Utilities Commission” or “PUC” or “Commission” refers to and is the Public Utilities Commission of the State of Colorado or other governmental body succeeding to the regulatory powers of the Public Utilities Commission.

- 1.9 “Residents” refer to and include all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be located, in whole or in part, within the territorial boundaries of the City.
- 1.10 “Revenues” refer to and mean those gross revenues which the Company receives from sale of electricity to Residents.
- 1.11 “Streets” refer to and are the rights of way of streets, alleys, viaducts, bridges, roads, lanes, public utility easements, and other public rights-of-way in the City, excluding any such property which is not legally available for the use thereof by the Company. “Within the Streets” shall mean upon, above, under, across, along and within said Streets.
- 1.12 “Public Utility Easement” is any easement dedicated on a subdivision plat, dedicated to, or owned or controlled by the City or dedicated to the public, which is legally available for Facilities, by its terms.
- 1.12 “Franchise Fee” is defined in Section 4.1(B) of Article 4.

ARTICLE 2 GRANT OF FRANCHISE

2.1 Grant of Franchise.

- (A) The City hereby grants to the Company, for the period specified, subject to the conditions, terms, and provisions contained in this Franchise, a non-exclusive right, and the Company hereby assumes the obligation to furnish, sell, and distribute electricity to the City and to all Residents of the City. Subject to the conditions, terms, and provisions contained in this Franchise, the City also hereby grants to the Company a non-exclusive right, and the Company hereby assumes the obligation, to acquire, construct, install, locate, maintain, operate, and extend into, within and through the City all Facilities reasonably necessary to furnish, sell, and distribute electricity within and through the City. The City also hereby grants to the Company a non-exclusive right, and the Company hereby assumes the obligation, to make reasonable use of the Streets as may be necessary to carry out the terms of this Franchise subject to the City’s prior right of usage for municipal purposes and subject to applicable laws, ordinances, and regulations. These rights and obligations shall extend to all areas of the City as it is now or hereafter constituted.
- (B) The rights granted by this Franchise are not, and shall not be deemed to be granted exclusively to the Company, and the City reserves the right to make or grant a similar franchise to any other person, firm, or corporation as allowed by law.
- (C) The City retains the right to use, control, and regulate, through the exercise of its police power, the use of the Streets; and the City retains the right to impose such

other regulations as may be determined by the City to be necessary in the exercise of the police power to protect the health, safety, and welfare of the City.

- (D) Neither the City nor the Company waives any rights under the constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.
- (E) This Franchise constitutes a valid and binding contract between the Company and the City. In the event that the Franchise Fee specified herein is declared illegal, unconstitutional, or void for any reason by any court or other proper authority, the Company shall be contractually bound to collect and pay monthly rental fees to the City in an aggregate amount that would be, as nearly as practical, equivalent to the amount which would have been paid by the Company as the Franchise Fee hereunder as consideration for use of the City's Streets.
- (F) The rights and obligations provided for in this Franchise encompass street lighting service to the City, and the provisions of this Franchise apply with full and equal force to the street lighting service provided by the Company.

ARTICLE 3 TERM OF FRANCHISE

- 3.1 Term of Franchise. This Franchise shall take effect upon its adoption and shall supersede the prior Franchise. Unless terminated prior to 15 years in accordance with other provisions as contained herein, the term of this Franchise shall be for 15 years.

ARTICLE 4 FRANCHISE FEE

- 4.1 Franchise Fee.

- (A) In consideration for the Franchise rights granted herein, which provide, among other things, for the Company's use of the Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of those Streets, and of the right to provide service to the City's Residents, are valuable rights, the Company shall collect and pay the City the sums provided in this Section. Except as specified in this Franchise, payment of the Franchise Fee shall not exempt the Company from any other lawful taxes or fees; however, the Franchise Fee provided for herein shall constitute the exclusive monetary payment by the Company to the City for the Company's use and occupancy of the Streets except as specifically provided herein.
- (B) The Company shall collect and pay to the City a sum of two percent (2%) of Revenues.

- (C) A transaction or arrangement between the Company and any third party which has the effect of circumventing payment of the Franchise Fee or evasion of payment of Franchise Fee by non-collection, non-reporting, or any other means which evade the actual collection of Revenues by the Company is prohibited.
 - (D) No acceptance of payment by the City from the Company shall be construed as an agreement that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim of which the City may have for additional sums due and payable under this Franchise.
- 4.2 Remittance Schedule. The Company shall remit the Franchise Fee to the City quarterly within 60 days of each calendar quarter. All payments shall be made to the City. In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise Fee, the error shall be corrected in the next quarterly payment; except that, in the event an error by the Company results in an overpayment of the Franchise Fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is less than Five Thousand Dollars (\$5,000), credit shall be taken against the next payments. In no event shall the City be required to refund any overpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error. Underpayments shall be subject to 1 ½ % interest per month until paid in full.
- 4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by the Company is accepted by the City in lieu of any utility occupation tax or any rental fee, for the Company's use or occupation of City Streets, or for the installation, operation and maintenance of Company Facilities. Payment of the Franchise Fee does not exempt the Company from any other lawful tax or fee, including any fee for an excavation permit, street cut permit, or similar requirement, or sales and use taxes and general *ad valorem* property taxes.

ARTICLE 5 MODIFICATION OF FRANCHISE FEE

- 5.1 Change of Franchise Fee and Other Terms. In recognition of the length of the term of the Franchise, and in further recognition of the possibility of legislative regulatory amendments which may allow for the wheeling of electricity through the Facilities, the parties agree that in the event of such regulatory amendments, or in any unexpected event which would result in a significant decrease in the Franchise Fees the Company and the City agree to modify the computation of the Franchise Fee in accordance with Section 16.2 of Article 16.
- 5.2 Change of Franchise Fee. Once during each calendar year of the Franchise term, the City, upon giving ninety (90) days notice to the Company of its intention to so do, may review and change the Franchise Fee the City may be entitled to receive as a part of the Franchise.

The Company shall report to the City within 60 days of the execution of a subsequent franchise or of any change of an existing franchise, which increases the franchise fee in any other municipality to which the Company supplies electric service. If the City decides the fee shall be changed within the City, it shall provide for such change by ordinance.

ARTICLE 6 DISCLOSURE OF RECORDS

6.1 City Information Rights.

- (A) The City or its designated representative or agent shall have access to the books and records of the Company during normal business hours upon reasonable notice for the purpose of ascertaining compliance with the terms of this Franchise. The City may use such information for the purposes of enforcing its laws, ordinances, and regulations. Nothing herein shall exempt the Company from any other requirements regarding the production of information as provided in the laws, ordinances and regulations of the City.

- (B) To the extent allowable by law, the Company shall supply the City with all of the following information annually without cost to the City:
 - (1) Annual reports, including but not limited to, its annual report to its consumers; and

 - (2) Annual financial summaries of the Revenues during the previous year; and

 - (3) The Company shall prepare and submit to the City a map showing the location of its system, showing location, size and depth of lines, incident to the distribution system, so far as such Facilities can reasonably be projected. The map shall be updated annually and shall be delivered to the City Clerk's office within ten (10) days of written request by the City. If the Company fails to keep such a map current and provide the required information, the City can cause such work to be done and charge all costs thereof to the Company. The Company shall also submit the map on digital media. Such a map may not be used for facility engineering or design purposes, and shall not take the place of formal line locates which shall be provided by the Company upon request.

- (C) To the extent allowable by law, the Company shall supply the City with all of the following information upon written request:
 - (1) Copies of the official minutes of Board of Directors meetings for the previous year; and

- (2) A summary of conversions and replacements within the City which have been accomplished or are underway by the Company, if applicable; and
- (3) The Company's plans for additional conversions and replacements within the City, if applicable; and
- (4) Copies of tariffs including but not limited to all tariffs, rules, regulations, and policies relating to service by the Company to the City and its Residents; and
- (5) Copies of supporting documentation for the calculation of the Franchise Fee; and
- (6) An inventory of the Company's Facilities within the City; and
- (7) Annual and long-term reports for capital improvements planned within the City.

6.2 Enforcement of City Ordinances. The City may use the meter information obtained from audits for the purposes of enforcing its laws, ordinances, and regulations.

ARTICLE 7 RATES

- 7.1 General Provisions. Rates charged by the Company for service hereunder shall be fair and reasonable. The Company agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable, and compensatory electric rates. The Company further agrees that the system shall be so designed, constructed, and sources of electricity utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of electricity, economics, load profiles, and other pertinent conditions.
- 7.2 Comparable rates. For each rate category within the Company's service area, rates charged to customers within the City shall be no higher than the lowest rates charged to the Company's customers in the same rate category, excluding franchise fees and other taxes, if applicable.
- 7.3 Rates applicable to City Street Lighting and City-owned facilities. Rates charged to the City by the Company for street lighting and City-owned facilities shall be no higher than the lowest rates charged to the Company's customers for the same rate category, excluding franchise fees and other taxes, if applicable.

ARTICLE 8 CONSTRUCTION AND DESIGN

8.1 Reliability.

- (A) The Company shall at all times take all reasonable and necessary steps to assure the adequate distribution of electricity to the City and its Residents at the lowest reasonable cost consistent with the terms of this Franchise. In addition, the Company shall operate its Facilities pursuant to the highest practicable level of service quality and reliability in providing electricity to the City and its Residents. The Company recognizes that maintaining service reliability is a substantial obligation under this Franchise. Upon the City's request, the Company will provide the City with copies of service reliability reports.
- (B) If the distribution of electricity to the City or any resident of the City is interrupted, the Company shall take all necessary and reasonable actions to restore such distribution in the shortest practicable time. If the distribution of electricity is to be interrupted due to a planned outage, except in cases of emergency outage repair, the Company shall take adequate reasonable efforts to notify its customers and the City in advance. The Company shall keep on file in its local office copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect or filed with the PUC or other competent authority having jurisdiction in the premises, which copies shall be made available to the City and its Residents.
- (C) The Company shall provide to the City telephone numbers of the Company's dispatch center that will permit the City to obtain status reports from the Company on a twenty-four hour basis concerning interruptions of the distribution of electricity in any portion of the City.

8.2 Obligations Regarding Company Facilities.

- (A) All work by the Company shall be done in accordance with standards set by the Rural Utilities Service, United States Department of Agriculture.
- (B) The installation, repair, or maintenance of Company Facilities shall not interfere with water facilities, sanitary or storm sewer facilities, communication facilities, or other uses of the Streets. Interference with landscaping and other natural features shall be minimized.
- (C) The Company shall promptly repair all damage to non-Company property caused by Company activities or Facilities. If such damage poses a threat to the health, safety, or welfare of the public or individuals, the City may cause repairs to be made, and the Company shall promptly reimburse the City for the cost of such repairs.
- (D) All non-electrical work is subject to inspection by the City and a determination by the City that said work has been performed in accordance with all applicable laws, ordinances, and regulations of the City. The Company shall promptly perform reasonable remedial action required by the City pursuant to any such inspection. It

shall be a condition of the City's approval that, for any Facility installed, renovated, or replaced after the effective date of this Franchise, the Company shall provide the City with as-built drawings of each such Facility in such formats and providing such details as reasonably requested by the City. Such drawings may not be used for facility engineering or design purposes and shall not take the place of formal line locates which shall be provided by the Company upon request. Qualified City personnel may inspect electrical work.

- (E) The installation, renovation, and replacement of any Facilities in the Streets by or on behalf of the Company shall be subject to inspection and approval by the City as to location. Such inspection and approval may include, but not be limited to, the following matters: location of Facilities in Streets; cutting and trimming of trees and shrubs; disturbance of pavements, sidewalks, and surfaces of Streets.
- (F) The Company and all of its contractors shall comply with all applicable City laws, ordinances, and regulations. The Company shall require its contractors working in the Streets to hold the necessary licenses and permits required by the City and other entities having jurisdiction.
- (G) The Company shall provide, when available, as-built drawings in digital formats and providing such details as reasonably requested by the City, of each Company Facility. Such drawings may not be used for facility engineering or design purposes and shall not take the place of formal line locates which shall be provided by the Company upon request.

8.3 Excavation and Construction. The Company shall be responsible for obtaining all applicable permits, including any excavation, encroachment, or street cut permits, in the manner required by the laws, ordinances, and regulations of the City. All public and private property whose use conforms to restrictions in public easements disturbed by Company construction or excavation activities shall be restored by the Company at its expense to substantially its former condition according to then existing City laws, ordinances, and regulations.

8.4 Location and Relocation of Company Facilities.

- (A) Except as located as of the date of this Franchise, the location of the Company's Facilities shall be subject to the prior approval of the City, shall be located to maximize the potential use of the right of way, minimize interference with the City's use and facilities, and conform to requirements of City standards and specifications.
- (B) If at any time the City requests the Company to relocate its Facilities, in order to allow the City to make any use of Streets, or if at any time it shall become necessary or convenient, because of a change in the grade, by reason of the improving, repairing, constructing, or maintaining of any Streets, by reason of traffic conditions, or public safety, or by reason of installation of any type of City utility facilities, project or other improvement, to move or change the Company's Facilities within or adjacent to Streets in any manner, either temporarily or permanently, the City shall

endeavor to notify the Company at least 90 days in advance, except when impractical or in the case of emergencies, of the City's intention to perform or have such work performed. The Company shall thereupon, at its cost, accomplish the necessary relocation, removal or change within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the City has notified the Company that it intends to commence its work or immediately in the case of emergencies. Upon the Company's failure to accomplish such work, the City may perform such work at the Company's expense and the Company shall reimburse the City within 30 days after receipt of a written invoice, therefore. Following relocation, all property negatively impacted by the activities of the Company shall be restored to, at a minimum, the condition which existed prior to construction by the Company at the Company's expense and revised as-built plans submitted to the City.

- (C) The City may require the relocation of Facilities which are improperly installed in a location different from that approved by the City following the procedures set out in (B) above.
- (D) When requested by the City or the Company, representatives of the City and the Company shall meet to share information regarding anticipated City projects that will require relocation of Company Facilities. Such meetings shall be for the purpose of providing both parties the opportunity to, in good faith, evaluate reasonable alternatives and/or cost saving measures in an attempt to minimize the fiscal impact upon the Company from the proposed relocation, and establish timetables with anticipated commencement and completion dates.
- (E) Following relocation, all property negatively impacted by the activities of the Company shall be restored to substantially its former condition by the Company at its expense, in accordance with then existing City laws, ordinances, and regulations.
- (F) Relocated Facilities shall be underground, unless exempted pursuant to Article 12. The City will not require relocation solely to cause the undergrounding of Facilities.
- (G) The Company may recover costs it incurs for relocation or undergrounding of facilities when the work was ordered by the City pursuant to paragraphs 8.4(B) or 12.1(B)(3), through an increase in the franchise fee that is retained by the Company instead of being paid to the City ("Recovery"). The Recovery shall be amortized over five years without interest, or a longer or shorter period as is appropriate to avoid increases in excess of 10% of electric bills. The Company shall consult with the City concerning an appropriate Recovery schedule, but the final decision shall be the Company's. When the remaining term of this Franchise is insufficient to accommodate a reasonable amortization period, collection of the surcharge shall be automatically extended to encompass the Recovery schedule. The Company shall provide the necessary financial records to the City to allow it to monitor such recovery. Upon receipt of an order from the City to relocate or underground facilities, the Company shall provide a good faith estimate of the cost of such

relocation or undergrounding (“Cost”). If the estimated Cost, plus the outstanding balance of any prior Recoveries, exceeds \$150,000, the City agrees to pay the amount in excess of \$150,000. If the actual Cost causes the balance of total Recoveries to exceed \$150,000, the City shall not be responsible for such excess, and the Recovery shall include such excess.

- (H) The Company shall report to the City within sixty (60) days of the execution of a subsequent franchise or of any change of an existing franchise which includes terms that are more favorable to the City than this Section 8.4.

8.5 Service to New Areas. If the boundaries of the City are expanded during the term of this Franchise, the Company shall extend service to Residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this Franchise, including payment of Franchise Fees.

8.6 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its Facilities to provide electric service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits, and within the Company certificated service area, without requiring the City to advance funds prior to construction. Upon completion, the City shall pay the invoice within 30 days of receipt.

8.7 Technological Improvements.

- (A) The Company shall generally introduce and install, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.
- (B) While maintaining flexibility in the provision of services, the Company's system shall, at all times, be no less advanced than any other system operated by the Company within the Company's service area, taking into account deliverability of electricity, economics, load profiles, and other pertinent conditions; provided, however, should an upgrade of the utility services provided to customers within the City be requested by the City Council, the Company shall have the right to meet, confer, and negotiate with the City concerning the economic practicality of such an upgrade, giving due consideration to the remaining term of the Franchise and other reasonable incentives. The Company shall submit to the City related information upon the City Council's request, including, but not limited to a plan for provision of such services, or a justification indicating the reason such services are not feasible for the Company's customers within the City. The company retains the right to make the final decision as to the technological improvements or upgrades made by the Company.

(C) Scope of Activities Authorized by Franchise. The provisions of this Franchise apply specifically to electric services. Nothing in this Franchise precludes the Company from engaging in any other lawful activities that are not subject to franchise ordinances.

8.8 Renewable Power. The Company will continue with its efforts to promote power from renewable sources within the City and will make power from renewable sources available for purchase to City and its Residents, to the extent power from renewable sources is available to the Company.

ARTICLE 9 COMPLIANCE

9.1 City Regulation. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such laws, ordinances, and regulations deemed necessary by the City in the exercise of its police power for the protection of the health, safety, and welfare. The Company shall comply with all applicable laws, ordinances, and regulations of the City, including but not limited to all City building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities.

9.2 City Review of Plans. Prior to construction of any significant Facilities such as transmission lines and substations within the City, or of a building or other structure within the City, the Company shall furnish to the City the plans and a description of the proposed location of such Facilities, building, or structure. In addition, upon request by the City, the Company shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure that all applicable laws, including building and zoning codes and air and water pollution requirements, are met, that aesthetic and good planning principles have been given due consideration, and that adverse impact on the environment has been minimized. The Company shall comply with all regulatory requirements of the City.

9.3 Inspection. The City shall have the right to inspect, at all reasonable times, any portion of the Company's electric system used to serve the City and its Residents. The Company agrees to cooperate with the City in conducting the inspection to correct any safety issues affecting the City's interest in a prompt and efficient manner. Said inspection shall be performed only by qualified inspectors working under a professional engineer's license.

ARTICLE 10 USE OF COMPANY FACILITIES

10.1 City Use. The City shall be permitted to make all reasonable use of the Company's underground conduits, distribution poles and street lighting poles for any City purpose so

long as such use complies with appropriate safety codes including the Company's safety regulations. Said use shall be without cost to the City so long as such use does not unreasonably interfere with the Company's use or future use of its Facilities or create a hazard. The City shall be responsible for all costs, including maintenance costs, associated with any modifications to the Company's Facilities to accommodate the City's use of such Facilities.

- 10.2 Non-Competitor's Use. The Company shall allow telecommunications companies and/or cable companies who hold a franchise or encroachment permit from the City to utilize the Company's distribution poles and other suitable overhead structures or underground conduits for the placement of their facilities based upon the Company's joint use agreements, so long as such terms and conditions are not inconsistent with the Company's obligations under this Franchise. The Company shall not be required to assume any liability nor to be put on any additional expense in connection with any such use; nor be required to permit any such use for the distribution of electricity. No such use shall be required if it constitutes a safety hazard or would unreasonably interfere with the Company's use of the same.
- 10.3 Competitor's Use. If the Company chooses, or is required by law, to transport electricity supplied by other entities over the Company's Facilities to City Residents, such transportation shall not be prohibited under this Franchise. The Company shall periodically report to the City a list of all entities for which the Company is providing such transport services, and to the extent allowable by law the names and addresses of each such entity and each City resident to whom electricity is transported, and the amount of electricity transported by the Company for each such entity. Nothing in this Franchise shall preclude the City from collecting from such entities or Residents all applicable taxes and fees required by the City's laws, ordinances, and regulations.
- 10.4 Emergency Use. In the case of any emergency or disaster, the Company shall, upon reasonable request of the City, cooperate and upon mutual consent, make available its Facilities for emergency use. For purposes of this section, the terms "emergency" or "disaster" shall be defined as any period of time declared an emergency or disaster by appropriate Federal or State agencies. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of its Facilities occasioned by such emergency or disaster. Such use of Company Facilities shall comply with all safety rules and regulations of the Company. Notwithstanding the terms of Section 11.1 (B), the City agrees to indemnify and hold harmless the Company, its officers, employees, and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily 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 such use, 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 City, any subcontractor or the City, or any officer, employee, representative of the City, or which arise out of any worker's compensation claim of any employee or the City or of any employee of any subcontractor of the City. The City 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 City, or at the option of the Company, agrees to pay the Company or reimburse the Company for the reasonable defense costs incurred by the Company in connection with any such liability claims or demands. The City 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. The obligation of this section shall not extend to any injury, loss, or damage to the extent it is caused solely by the act, omission, error, professional error, mistake, negligence, or other fault of the Company, its officers, or its employees.

- 10.5 Trenches Available for City Use. The City and Company agree that it is in the best interest of the community to share and combine facilities in common trenches, ductways, or conduits. The Company and City hereby agree to work together to see that facilities are combined to minimize impacts to the community.
- 10.6 Underground Conduit. If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice of such activity to permit additional installation of similar conduit and pull wire for the City and other overhead users at their cost. If the City desires to have additional similar conduit and pull wire for its use, it will notify the Company and provide similar conduit and pull wire to the Company at the City's expense. The Company agrees to install such conduit and pull wire for the City, and the City shall pay the prorated amount of the Company's actual cost attributable to installing the City's conduit and pull wire. "Actual cost" shall not include the Company's cost of opening and closing the trench. The Company shall not be liable for any damage to this conduit and pull wire subsequent to successful installation.

ARTICLE 11 INDEMNIFICATION OF THE CITY

- 11.1 City Held Harmless.
- (A) The Company agrees to indemnify and hold harmless the City, 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, 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 Franchise, 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 Company, any subcontractor or the Company, or any officer, employee, representative of the Company, or which arise out of any worker's compensation claim of any employee or the Company or of any employee of any subcontractor of the Company. The Company 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 Company, or at the option of the City, agrees to pay the City or reimburse the City

for the reasonable defense costs incurred by the City in connection with any such liability claims or demands. The Company 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. The obligation of this Paragraph (A) shall not extend to any injury, loss, or damage to the extent it is caused solely by the act, omission, error, professional error, mistake, negligence, or other fault of the City, its officers, or its employees.

- (B) Company hereby waives any claim for damages to its Facilities against the City, its officers and employees, except for damages caused by the negligence, recklessness, or the specific intent of the City, its officers, employees, representatives or contractors.
- (C) The Company agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Company pursuant to Paragraph (A). Such insurance shall be in addition to any other insurance requirements imposed by this Franchise or by law. Evidence of qualified self-insurance status may be substituted for the insurance required by this paragraph. The Company shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Paragraph (A) by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- (D) Company shall procure and maintain the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover liability claims, demands, and other obligations assumed by the Company pursuant to Paragraph (A). In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
 - (1) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Franchise, and employers' liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) disease-policy limit, and five hundred thousand dollars (\$500,000) disease-each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.
 - (2) Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to premises and operations. the policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy

shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

- (3) Comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of the Company's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interest provision. If the Company has no owned automobiles, the requirements of this paragraph (3) shall be met by each employee of the Company providing services to the City under this Franchise.
- (E) The policy required by Paragraphs (D)(2) and (3) above shall be endorsed to include the City and the City's officers and employees as additional insurers. Every policy required above shall be primary insurance and any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by the Company. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Company shall be solely responsible for any deductible losses under any policy required above.
- (F) The certificate of insurance provided to the City shall be completed by the Company's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to any commencement of the Franchise. No other form of certificate shall be used. The certificate shall identify this Franchise and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The completed certificate of insurance shall be sent to the City.
- (G) Failure on the part of the Company to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Franchise after the City has provided Company written notice of the failure, and 60 days thereafter to cure any failure to procure or maintain policies. Thereafter, if Company has failed to cure, the City may terminate this Franchise, 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 Company to the City upon demand, or the City may offset the cost of the premiums against any monies due to the Company from the City. Termination of this Agreement will not affect the collection of applicable surcharges imposed pursuant to the provisions of Section 8.4(G).

- (H) The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Franchise, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., as from time to time amended, or otherwise available to the City, its officers, or its employees.
- (I) The indemnification hereby extended shall include delay damages as that term is used in C.R.S. § 24-91-103.5 *et seq.*, as amended from time to time, or any successor law thereto, awarded against the City in favor of contractors for damages incurred by contractors for delays experienced in the performance of public works contracts entered into with the City; provided, however, that said indemnification shall extend only to those delays in performance of public works contracts for which the Company either agrees it is responsible or which were caused as the result, in whole or in part, of the acts or omissions of the Company in the performance of its obligations under this Franchise. Unless the Company otherwise agrees in writing, in no event shall the Company be required to indemnify the City for any delay damages awarded against the City unless and until a final determination has been made by a court of competent jurisdiction that the delay damages suffered by a contractor were the result of the acts or omissions of the Company acting on behalf of or within the City's control. Nothing herein shall be construed as an acknowledgment by the parties that the Company, in exercising its rights and obligations under this Franchise, is an entity controlled by, subject to the control of or acting on behalf of the City for the purposes of C.R.S. § 24-91-103.5, *et seq.*
- (J) In the event of litigation for a breach of this Franchise or for an interpretation of this Franchise, the prevailing party shall be reimbursed for all costs related thereto, including reasonable attorney's fees by the non-prevailing party.

11.2 Financial Responsibility. At the time of approval of this Franchise by the City, and from time to time at the City's request, but not more frequently than annually, the Company shall submit to the City, as a confidential document, proof of its ability to meet its obligations under this Franchise, including its ability to indemnify the City as required by this article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage, but not levels of insurance. Said list shall be kept current by annual revisions as of January 1 during the term of Franchise. The City may require, from time to time, and the Company agrees to provide, additional reasonable funding of the Company's indemnification obligations as self-insured, if the Company is acting as a self-insurer. The City, its officers, and its employees, shall be included as additional insureds as respects this Franchise on each liability or excess liability policy maintained by the Company.

ARTICLE 12

UNDERGROUNDING OF OVERHEAD FACILITIES

12.1 Undergrounding of Facilities.

(A) (1) All new or relocated Facilities, other than minor relocation of one or two poles, involving the use of poles or above ground wires are hereby prohibited within the City, including within highway rights of way controlled by the Colorado Department of Transportation. All such Facilities shall be installed underground. This provision shall not apply to transmission lines when the City Council after notice and hearing, as appropriate in its sole discretion, has approved a new or relocated route, with or without conditions.

(2) Existing above ground electric lines, wires and cables may be repaired or replaced overhead on existing poles, but additional wires, lines or cables shall be placed underground.

(3) Existing poles may be repaired or replaced with poles of a similar or smaller size, unless three or more poles in a line are to be replaced or relocated in which case all related Facilities shall be constructed substantially underground.

(4) These provisions shall apply to public or private property. The Company is encouraged, but not required, to install conduit with space available for rental to other parties, or to rent available conduit space from the City or others rather than construct new excavations.

(B) Existing overhead Facilities may be converted to underground locations in any of the following alternative manners:

(1) Pursuant to the procedures of C.R.S. § 29-8-101 *et seq.*

(2) When ordered by the City where the City is willing to pay and assume the cost of conversion.

(3) When ordered by the City in connection with incidental and episodic conversions associated with public improvements, such as street widening, sidewalk construction and utility construction, at the cost of Company subject to the provisions of ¶8.4.G above.

(C) The City Council may grant a variance from the undergrounding requirements of subsection (A) above if it finds, following a hearing with published notice thereof, that the following criteria are met:

(1) (a) The relocation of existing poles and overhead wires was ordered by the City pursuant to Subsection 8.4(B), but the City has not ordered undergrounding pursuant to subsection (B)(3) above, and the new location is not substantially different than the existing location; or

(b) An existing 44kv or larger electrical transmission line is being relocated to mitigate a significant safety hazard; or

(c) Undergrounding is impractical because of technical issues or

unreasonable interference posed by other existing underground utilities and structures in the available ROW;

and

(2) The location of the Facilities is consistent with Subsection 8.4 and will be consistent with the public health, safety and welfare.

12.2 Cooperation with Other Utilities. When undertaking a project of undergrounding, the City and the Company shall coordinate with other utilities or companies which have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where feasible. All parties shall pay their own costs associated with such projects.

12.3 Review and Planning for Undergrounding Projects. The City and the Company shall mutually plan the scheduling of approved undergrounding projects to be undertaken according to this Article as a part of the review and planning for other Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current underground projects and to review planned future underground projects. The Company agrees to use due diligence to see that approved undergrounding projects are, to the extent reasonably practicable, completed prior to the expiration of this Franchise.

ARTICLE 13 TRANSFER OF FRANCHISE

13.1 Consent of City Required. The Company shall not sell, re-sell, transfer, assign or convey any rights under this Franchise, or the assets held by the Company for use under this Franchise which are in the public rights-of-way, to any third party, including any merger with such third party, nor undergo any corporate reorganization or other change which would result in any modification of the Company's obligations under this Franchise, without first obtaining written approval of the City; provided, however, that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures, or other evidence of indebtedness, or the issuance of additional stock, needed or useful for the purpose of financing the system or any portion thereof. Should the Company sell, assign, transfer, convey, or otherwise dispose of its rights or interests under this Franchise, including the Company's system or capacity on its system, or attempt to do so, without the proper approval, the City may revoke this Franchise. Upon revocation, all rights and interests of the Company under this Franchise shall cease. In addition, any sale, re-sale, transfer, assignment, or conveyance in violation of this Section shall be null and void and unenforceable.

ARTICLE 14

MUNICIPALIZATION

14.1 City's Right to Purchase or Condemn.

- (A) The right of the City to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, is hereby expressly reserved, and may be exercised by the City in accordance with such statutes.
- (B) The Company understands and agrees that the right of the City to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of the Company in connection therewith, as provided by the Colorado Constitution and the City's home rule charter, are hereby expressly reserved, and that such right may be exercised at any time by the City.
- (C) In the event the City exercises its option to purchase or condemn, the Company agrees that it will continue to maintain its Facilities and to supply any service it supplies under this Franchise, in whole or in part, at the City's request, and at the City's cost, for up to a twenty-four month period after the City has either purchased or condemned the Company's Facilities or alternative arrangements have been made. Both parties will exercise due diligence to wind up the affairs as soon as practical.
- (D) The Company shall cooperate with the City by making available such records as will enable the City to evaluate the feasibility of acquisition of Company Facilities. The Company shall not be required to conduct studies or accrue data without reimbursement by the City but shall make such studies if reimbursed its costs for the same. The Company shall take no action, which could inhibit the City's ability to use the acquired Facilities effectively or efficiently.

14.2 Negotiated Purchase Price or Condemnation Award. If the City desires to purchase Company Facilities and if the Company desires to sell such Facilities, the parties shall negotiate in good faith to determine a mutually acceptable purchase price for up to ninety (90) days; said purchase price shall exclude the value of this Franchise. If agreement is not reached, the City and the Company reserve all rights to assert their respective positions with respect to the steps the City would need to take to condemn Company Facilities; however, no award shall be made for the value of the Franchise.

14.3 City-Produced Electricity. The Company understands and agrees that the City expressly reserves the right to obtain or produce electricity for its own purposes and wholesale transactions, and the City may exercise that such right at any time. The Company shall not curtail wholesale purchases of City-generated electricity. The City expressly reserves the right to engage in the production of electricity. If the City does so, the Company agrees to negotiate in good faith for the purchase thereof in accordance with its tariffs and applicable PUC rules and regulations, but only within the limits of its then-existing contractual limitations. Alternatively, the Company agrees to transmit the City-generated power between the generation unit and designated end point to the extent that such transmission is

feasible within the then-existing system of the Company. The Company may charge for such transmission a just and reasonable rate calculated on the basis of the Facilities actually used by it to provide this service.

- 14.4 Purchase of Real Property of Company by City. If at any time during the term of this Franchise, the Company proposes to sell or dispose of any of its real property located in whole or in part in the City, it shall grant to the City the right of first negotiation to purchase the same. Nothing in this provision shall preclude the Company from disposing of its real property in a timely fashion.
- 14.5 Purchase or Condemnation of Street Lighting System. The provisions of this Article apply with full and equal force to the purchase or condemnation by the City of all or a portion of the street lighting service provided by the Company, including all or a portion of any Company owned street lighting facilities, equipment, system, and plant. The Company understands and agrees that the City may choose to purchase or condemn such street lighting service at any time.

ARTICLE 15 BREACH

15.1 Breach

- (A) If the Company fails to perform any of the terms and conditions of this Franchise and such failure is within the Company's control, the City may require the Company to show cause, at a hearing before the City Council, the reasons its rights and privileges under this Franchise should not be forfeited, or other penalties imposed as provided by this Franchise or by law. No such hearing shall be held unless the Company has first been given notice of its failure and a reasonable time, not to exceed ninety days, in which to remedy the failures. If the Company does not remedy the failures, the City council may determine, at such a hearing, whether such failure to perform and the Company's failure to remedy the same occurred, and if so, whether such failure to perform is substantial. The City council may impose one or more of the following remedies or penalties for a substantial failure to perform:
- (1) A civil penalty of \$500 for each day or portion thereof that the failure was committed or continued. The Company understands and agrees that such liquidated damages are intended to compensate the City for the additional efforts of the City in administering and enforcing the Franchise, for inconvenience to City operations and to the Residents, and loss of confidence in government and morale of the City and its Residents when Franchise obligations are not met. Such damages are uncertain in amount and difficult to measure and prove accurately. By this Franchise, the Company agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages;

- (2) Forfeiture of all rights under this Franchise; or
 - (3) Any other remedies available to the City by law.
- (B) The City may take action to correct the failure, and the Company shall promptly reimburse the City for the cost of such action.
- (C) In the event of judicial action taken by either party to enforce any of the terms or conditions of this Franchise, each party shall be responsible for its own attorney fees and costs associated with such action.
- 15.2 Judicial Review. Any declaration of forfeiture by the City Council shall be subject to de novo judicial review.
- 15.3 Other Legal Remedies. Nothing herein shall limit or restrict any legal rights or remedies that the City may possess arising from any alleged violation of this Franchise.
- 15.4 Continued Obligations. Upon forfeiture, the Company shall continue to provide a service to the City and its Residents until the City makes alternative arrangements for such service.

ARTICLE 16 APPROVAL; AMENDMENTS

- 16.1 Approval of Franchise. The Company shall promptly file, in writing, its acceptance of this Franchise and the Franchise shall become effective.
- 16.2 Terms Impacted by Legislative and Regulatory Changes. The City and the Company recognize that the electric utility industry is the subject of numerous restructuring initiatives by legislative and regulatory authorities. Some of the initiatives and changes may have an effect upon the terms that would be averse to the customers within the City or the Company. In the event of such regulatory changes, the City and the Company may need to amend various provisions of this Franchise and agree to negotiate in good faith in reaching such amendments.

ARTICLE 17 MISCELLANEOUS

- 17.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.
- 17.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the

Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company.

17.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights or remedies to third parties.

17.4 Representatives. The Company and the City shall designate the persons to whom notices shall be sent regarding any action to be taken under this Franchise. All Notice shall be in writing and forwarded by mail or hand delivery to the persons and addresses as stated below, unless changed by written notice given to the other. Until change is made, notices shall be sent as follows:

To the City:
City Administrator
PO Box 468
320 6th Avenue
Ouray, CO 81427

To the Company:
CEO/General Manager
PO Box 1150
720 N. Railroad St.
Ridgway, CO 81432

17.5 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall enter into good faith negotiations and proceed with due diligence to draft a substitute term which will achieve the original intent of the parties.

17.6 Entire Agreement. This Franchise constitutes the entire agreement of the parties with respect to the matters contained herein and supersedes any and all prior written or oral negotiations, correspondence, understandings and communications with respect to this Franchise.

17.7 Construction and Enforcement. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that the venue for any litigation arising out of this Franchise shall be in the District Court of Ouray County.

17.8 Other Franchises. In the event the Company becomes subject to Franchise or ordinance terms of another municipality or regulations of a county significantly more advantageous to the municipality or county, the City may enact similar provisions by ordinance.

CITY OF OURAY, COLORADO

By _____
Ethan Funk, Mayor

ATTEST:

Melissa M. Drake, City Clerk

CERTIFICATE OF CITY CLERK

The foregoing Ordinance was introduced and adopted at a meeting of the Ouray City Council on April 3, 2023, as an emergency ordinance under The City of Ouray Home Rule Charter, Section 3.6, by an affirmative vote at least four council members, is effective immediately and ordered to be published by title and summary thereafter.

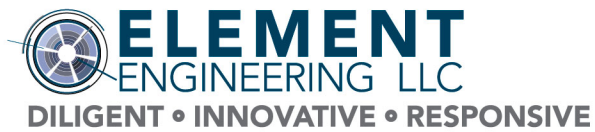
Melissa M. Drake, City Clerk

Project Manual

Water Treatment Plant Improvements
City of Ouray
Ouray County, Colorado

April 2023

Prepared by:



EE Job No.: 0111.0001

**SECTION 00 01 01
Table of Contents****Contract Documents**

Section	Title
00 01 01	Table of Contents
00 52 13	Owner Contractor Agreement: Stipulated Price (EJCDC C-520)
00 55 00	Notice to Proceed (EJCDC C-550)
00 61 13.13	Performance Bond (EJCDC C-610)
00 61 13.16	Payment Bond (EJCDC C-615)
00 62 76	Application for Payment (EJCDC C-620)
00 63 63	Change Order (EJCDC C-941)
00 65 16	Certificate of Substantial Completion (EJCDC C-625)
00 65 18	Notice of Acceptability of Work (EJCDC C-626)
00 65 20	Field Order (EJCDC C-942)
00 70 00	State Revolving Fund Required Specifications
00 70 10	Davis Bacon Certification Form
00 70 20	Davis Bacon Wage Rate Determination
00 72 43	General Conditions of the Construction Contract (EJCDC C-700)
00 73 00	Supplementary Conditions of the Construction Contract (EJCDC C-800)

Technical Specifications

See Technical Specification Table of Contents

Attachments

- A. Contractor's 90% GMP Cost Estimate
- B. Geotechnical Report (*Geotechnical Evaluation – Ouray Water Treatment Plant Improvements, Ground Engineering, October 21, 2022*)
- C. Stormwater Management Plan (SWMP)
- D. CDPHE Design and Construction Approval and Record of Approved Waterworks (RAW)

Construction Plan Index

See Sheet C1 for Construction Plan Sheet Index

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

This Agreement is by and between **City of Ouray** (“Owner”) and **Aslan Construction, Inc.** (“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 material for construction of a new ultra-filtration water treatment facility including treatment process equipment, water storage tank, treatment building, civil site work, process piping, yard piping, controls, and ancillary valves, fittings, and electrical components for a fully functional treatment facility.**

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **All necessary labor, supervision, equipment, tools, and material for construction of a new ultra-filtration water treatment facility including treatment process equipment, water storage tank, treatment building, civil site work, process piping, yard piping, controls, and ancillary valves, fittings, and electrical components for a fully functional treatment facility.**

ARTICLE 3—ENGINEER

3.01 The Owner has retained **Element Engineering, LLC** (“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, which is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.**

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 **380** 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 **420** days after the date when the Contract Times commence to run.

4.05 *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 and Milestones not achieved 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 **\$1,500** 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 **\$1,500** for each day that expires after such time until the Work is completed and ready for 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.

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:

Lump Sum Amount 90% GMP:	\$12,630,965.47
Owner Contingency (2%):	\$252,619.31
Total Lump Sum Contract Price:	\$12,883,584.78

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.
- B. Owner may refuse to make payment of the full amount recommended by Engineer in accordance with Article 14 of the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor’s Applications for Payment on or about the **last** day 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 **of the entire construction to be provided under the construction Contract Documents**, 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, 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 **0** 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.

6. Drawings (not attached but incorporated by reference) consisting of **85** sheets with each sheet bearing the following general title: **Water Treatment Plant Improvements**.
 7. Exhibits to this Agreement (enumerated as follows):
 - a. **Contractor's 90% GMP proposal. Said 90% GMP shall include an additional \$252,619.31 in owner contingency that is not shown in the 90% GMP.**
 - b. **Geotechnical Report by Ground Engineering Entitled *Geotechnical Evaluation Ouray Water Treatment Plant Improvements, Dated October 21, 2022.***
 - c. **Stormwater Management Plan**
 - d. **Colorado Department of Public Health and Environment (CDPHE) State Revolving Fund (SRF) Contract Document Riders.**
 - e. **Davis Bacon Wage Rate Determination(s)**
 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.
- 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.
 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.

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

This Agreement will be effective on **April 3, 2023** (which is the Effective Date of the Contract).

Owner:

City of Ouray

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

City of Ouray City Hall

PO Box 468

Ouray, CO 81427

Designated Representative:

Name: **Nicholaus P. Marcotte, P.E.**

(typed or printed)

Title: **Engineering Project Manager**

(typed or printed)

Address:

Element Engineering, LLC

12687 W. Cedar Drive, Suite 300

Lakewood, CO 80228

Phone: **303.378.2969**

Email: **nmarcotte@elementengineering.net**

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

Contractor:

Aslan Construction, Inc.

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If Aslan Construction, Inc. is a corporation, a partnership, or a joint venture, attach evidence of

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

120 Bunyan Avenue

#200

Berthoud, CO 80513

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

SECTION 00 55 00
NOTICE TO PROCEED

Owner: City of Ouray Owner's Project No.: N/A
 Engineer: Element Engineering, LLC Engineer's Project No.: 0111.0001
 Contractor: Aslan Construction, Inc. Contractor's Project No.: _____
 Project: City of Ouray WTP Improvements
 Contract Name: See project name.
 Effective Date of Contract: April 3, 2023

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to Paragraph 4.01 of the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The number of days to achieve Substantial Completion is **380 days** from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of **[date, calculated from commencement date above]**; and the number of days to achieve readiness for final payment is **420 days** from the commencement date of the Contract Times, resulting in a date for readiness for final payment of **[date, calculated from commencement date above]**.

Before starting any Work at the Site, Contractor must comply with the following:

Owner: City of Ouray
 By (signature): _____
 Name (printed): _____
 Title: _____
 Date Issued: _____
 Copy: Engineer

**SECTION 00 61 13.13
PERFORMANCE BOND**

<p>Contractor Name: Aslan Construction, Inc. Address <i>(principal place of business)</i>: 120 Bunyan Avenue #200 Berthoud, CO 80513</p>	<p>Surety Name: Address <i>(principal place of business)</i>:</p>
<p>Owner Name: City of Ouray Mailing address <i>(principal place of business)</i>: PO Box 468 Ouray, CO 81427</p>	<p>Contract Description <i>(name and location)</i>: Water Treatment Plant Improvements, City of Ouray, Colorado Contract Price: \$12,883,584.78 Effective Date of Contract: April 3, 2023</p>
<p>Bond Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**

**SECTION 00 61 13.16
PAYMENT BOND**

<p>Contractor Name: Aslan Construction, Inc. Address <i>(principal place of business)</i>: 120 Bunyan Avenue #200 Berthoud, CO 80513</p>	<p>Surety Name: Address <i>(principal place of business)</i>:</p>
<p>Owner Name: [Full formal name of Owner] Mailing address <i>(principal place of business)</i>: PO Box 468 Ouray, CO 81427</p>	<p>Contract Description <i>(name and location)</i>: Water Treatment Plant Improvements, City of Ouray, Colorado Contract Price: \$12,883,584.78 Effective Date of Contract: April 3, 2023</p>
<p>Bond Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**

Contractor's Application for Payment

Owner: _____	Owner's Project No.: _____
Engineer: _____	Engineer's Project No.: _____
Contractor: _____	Contractor's Project No.: _____
Project: _____	
Contract: _____	

Application No.: _____ **Application Date:** _____

Application Period: From _____ to _____

1. Original Contract Price	\$	-
2. Net change by Change Orders	\$	-
3. Current Contract Price (Line 1 + Line 2)	\$	-
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$	-
5. Retainage		
a. _____ X \$ _____ - Work Completed	\$	-
b. _____ X \$ _____ - Stored Materials	\$	-
c. Total Retainage (Line 5.a + Line 5.b)	\$	-
6. Amount eligible to date (Line 4 - Line 5.c)	\$	-
7. Less previous payments (Line 6 from prior application)		
8. Amount due this application	\$	-
9. Balance to finish, including retainage (Line 3 - Line 4)	\$	-

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: _____

Signature: _____ **Date:** _____

Recommended by Engineer	Approved by Owner
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Approved by Funding Agency	
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Progress Estimate - Lump Sum Work

Contractor's Application for Payment

Owner: _____	Owner's Project No.: _____
Engineer: _____	Engineer's Project No.: _____
Contractor: _____	Contractor's Project No.: _____
Project: _____	
Contract: _____	

Application No.: _____ Application Period: From _____ to _____ Application Date: _____

A	B	C	D		E	F	G	H	I
Item No.	Description	Scheduled Value (\$)	Work Completed		Materials Currently Stored (not in D or E) (\$)	Work Completed and Materials Stored to Date (D + E + F) (\$)	% of Scheduled Value (G / C) (%)	Balance to Finish (C - G) (\$)	
			(D + E) From Previous Application (\$)	This Period (\$)					
Change Orders									
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
							-		-
Change Order Totals		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -
Original Contract and Change Orders									
Project Totals		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -

SECTION 00 63 63

CHANGE ORDER NO.: [Number of Change Order]

Owner:	Cit of Ouray	Owner's Project No.:	N/A
Engineer:	Element Engineering, LLC	Engineer's Project No.:	0111.0001
Contractor:	Aslan Construction, Inc.	Contractor's Project No.:	
Project:	City of Ouray WTP Improvements Project		
Contract Name:	See project name.		
Date Issued:		Effective Date of Change Order:	

The Contract is modified as follows upon execution of this Change Order:

Description: **[Description of the change]**

Attachments: **[List documents related to the change]**

Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] : \$ _____	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] : Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] this Change Order: \$ _____	[Increase] [Decrease] this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

<p>Recommended by Engineer</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Accepted by Contractor</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Authorized by Owner</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Approved by Funding Agency</p> <p>_____</p> <p>_____</p> <p>_____</p>

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:	City of Ouray	Owner's Project No.:	N/A
Engineer:	Element Engineering, LLC	Engineer's Project No.:	0111.0001
Contractor:	Aslan Construction, Inc.	Contractor's Project No.:	
Project:	City of Ouray WTP Improvements		
Contract Name:	See project name.		

This Preliminary Final Certificate of Substantial Completion applies to:

All Work The following specified portions of the Work:

[Describe the portion of the work for which Certificate of Substantial Completion is issued]

Date of Substantial Completion: **[Enter date, as determined by Engineer]**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities: None As follows:

[List amendments to Owner's Responsibilities]

Amendments to Contractor's Responsibilities: None As follows:

[List amendments to Contractor's Responsibilities]

The following documents are attached to and made a part of this Certificate:

[List attachments such as punch list; other documents]

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Engineer

By *(signature)*: _____

Name *(printed)*: _____

Title: _____

SECTION 00 65 18
NOTICE OF ACCEPTABILITY OF WORK

Owner:	City of Ouray	Owner's Project No.:	N/A
Engineer:	Element Engineering, LLC	Engineer's Project No.:	0111.0001
Contractor:	Aslan Construction, Inc.	Contractor's Project No.:	
Project:	City of Ouray WTP Improvements		
Contract Name:	See project name.		
Notice Date:		Effective Date of the Construction Contract:	April 3, 2023

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **April 27, 2021** ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer By (*signature*): _____
Name (*printed*): _____
Title: _____

SECTION 00 65 20

FIELD ORDER NO.: [Number of Field Order]

Owner:	City of Ouray	Owner's Project No.:	N/A
Engineer:	Element Engineering, LLC	Engineer's Project No.:	0111.0001
Contractor:	Aslan Construction, Inc.	Contractor's Project No.:	
Project:	City of Ouray WTP Improvements		
Contract Name:	See project name.		
Date Issued:		Effective Date of Field Order:	

Contractor is hereby directed to promptly perform the Work described in this Field Order, issued in accordance with Paragraph 11.04 of the General Conditions, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference:

Specification Section(s):

Drawing(s) / Details (s):

Description:

[Description of the change to the Work]

Attachments:

[List documents supporting change]

Issued by Engineer

By: _____

Title: _____

Date: _____



State Revolving Fund Required Specifications

Table of Contents

[Section 1: Davis-Bacon Prevailing Wage Requirements](#)

[Section 2: American Iron and Steel](#)

[Section 3: National Term on Suspension and Debarment](#)

[Section 4: Equal Employment Opportunity and Affirmative Action Requirements on Federally Assisted Construction Contracts](#)

[Section 5: Williams-Steiger Occupational Safety and Health Act of 1970](#)

[Section 6: Discovery of Archaeological and Other Historical Items](#)

[Section 7: Disadvantaged Business Enterprise \(DBE\) - SRF Program Grant Agreement Information and Requirements](#)

[Section 8: Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment](#)

[Section 9: Signage Requirements](#)

[Section 10: SRF Required Forms by Section](#)

Section 1

Davis Bacon Prevailing Wage Requirements

This contract is governed by the Davis Bacon and Related Acts and is subject to General Decision Number CO20230003 dated 02/24/2023.

A copy of this General Decision Number is attached as Section 007020 to this document.

The SRF Program is subject to Davis Bacon and Related Acts, which extends the requirements of the Davis-Bacon Act. Compliance with the Davis-Bacon Act is required for any project funded by the Drinking Water Revolving Fund (DWRF) or Water Pollution Control Revolving Fund (WPCRF) programs. Non-Compliance with the Davis-Bacon Act may result in debarment and suspension from working on future projects funded with federal dollars for up to three years and/or loss of funding for the current project.

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub-grants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I - 5.

Attachment 1

Wage Rate Requirements under:

- The Consolidated Appropriations Act, 2016 (P.L 114-133), or
- The Water Resources Reform and Redevelopment Act of 2014 (WRRDA):

I. For Subrecipients that Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis - Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under The 2014 Act with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. The recipient or subrecipient may also obtain additional guidance from US Department of Labor (DOL) web site at <https://www.dol.gov/agencies/whd/government-contracts/construction>

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

Under The Consolidate Appropriations Act, 2016, or The Water Resources Reform and Redevelopment Act of 2014, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - (1) While the solicitation remains open, the subrecipient shall monitor <https://sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
 - (2) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment works under the Clean Water State Revolving Fund (CWSRF) or a construction project under the Drinking Water State Revolving Fund (DWSRF) financed in whole or in part from Federal funds or in accordance with guarantees of a Federal

agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or The 2014 Act, the following clauses:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <https://sam.gov/>

- (ii) (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the

local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the request to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

- (i) The subrecipient(s) shall, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and

mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
 - (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees--
- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship

program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U .S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above, or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section, the contractor and any subcontractor responsible, therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor

shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

- (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Federal Agency, State, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of non-compliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage

requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at:

<https://www.dol.gov/agencies/whd/contact/local-offices>

Section 2

American Iron and Steel

The State Revolving Fund Program is subject to, and requires compliance with, the American Iron and Steel requirement (AIS). American Iron and Steel requires Water Pollution Control State Revolving Fund (WPCRF) and Drinking Water Revolving Fund (DWRf) assistance recipients use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed on or after January 17, 2014.

In providing bids, proposals, or services, the Contractor represents and warrants to and for the benefit of the borrower and the State that:

- a. The Contractor has reviewed and understands the American Iron and Steel requirement.
- b. All of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved.
- c. The Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the borrower or the State.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the borrower or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the borrower or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the borrower). While the Contractor has no direct contractual privity with the State, as a lender to the borrower for the funding of its project, the borrower and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

For purposes of the WPCRF and DWRf projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings;
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel;
- Reinforced precast concrete; and
- Construction materials.

If the subrecipient can justify a claim made under one of the categories below, a waiver may be granted. Until a waiver is granted by the EPA, the AIS requirement must be adhered to as described in the act.

A waiver may be provided if EPA determines that:

1. Applying these requirements would be inconsistent with the public interest.
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

All waiver requests must be routed through the Grants and Loans Unit project manager or compliance specialist.

EPA's guidance on AIS requirements, available at http://water.epa.gov/grants_funding/aisrequirement.cfm includes specific instructions for communities interested in applying for a waiver. After receiving a completed application for a waiver from the Grants and Loans Unit, EPA will publish the waiver request and all material submitted with the application on this website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to the EPA.

Approved National Waivers available for borrowers and contractors include:

- April 15, 2014 De Minimis Waiver:

“The EPA is hereby granting a nationwide waiver pursuant to the American Iron and Steel requirements of P.L. 113-76 CAA 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of five percent of the total cost of the material used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of materials used in and incorporated into a project.”

Section 3

National Term on Suspension and Debarment

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

The status of prospective individuals or organizations can be checked at the System for Award Management at <https://sam.gov/>

It is the prime contractor's responsibility to verify that subcontractors, vendors, suppliers and manufacturers are not on the excluded parties list.

Section 4

Equal Employment Opportunity and Affirmative Action Requirements on Federally Assisted Construction Contracts

A. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

This notice shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts.

- (1) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- (2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

County	Minority Participation in Each Trade ¹	Female Participation in Each Trade ¹
Fort Collins, Larimer	6.9%	6.9%
Archuleta, Delta, Dolores, Eagle, Garfield, Grand Junction, Gunnison, Hinsdale, Jackson, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	10.2%	6.9%
Colorado Springs, El Paso, Teller	10.9%	6.9%
Chaffee, Cheyenne, Clear Creek, Grand, Elbert, Kit Cason, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington, Yuma	12.8%	6.9%
Greeley, Weld	13.1%	6.9%
Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Gilpin, Jefferson	13.8%	6.9%
Alamosa, Baca, Bent, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Rio Grande, Saguache	19.0%	6.9%
Pueblo	27.5%	6.9%

1) Source: FR Vol.45 No. 194 / Friday, October 3, 1980

These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- (3) The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number for the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed (See Form C).
- (4) As used in this Notice, and in the contract resulting from this solicitation, the covered area is Ouray County.

B. EQUAL OPPORTUNITY CLAUSES

- (1) The Equal Opportunity Clause published at 41 CFR Part 60-1.4(b) is required to be included in, and is part of, all nonexempt federally assisted construction contracts and subcontracts. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated.
- (2) In addition to the clauses described above, all federal contracting officers, all applicants, and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 41 CFR 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

A. DEFINITIONS AS USED IN SPECIFICATIONS

- (1) "Covered Area" means the geographical area described in solicitation from which this contract resulted;

- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asian, the Indian Subcontinent, or the Pacific Islands);
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. DETAILED SPECIFICATIONS

- (1) Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$25,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- (2) If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan (Plan) approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area, (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the Equal Employment Opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- (3) The contractor shall implement the specific affirmative action standards provided in paragraphs (6)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- (4) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

- (5) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (6) The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations where the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - (c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.
 - (d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - (e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.
 - (f) Disseminate the contractor's EEO policy by providing notice of the policy to

unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations servicing the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (m) Ensure that seniority practices, job classification, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations are followed.

- (n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.
- (7) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (6)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (6)(a) through (p) of the specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
- (8) A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the order if a specific minority group of women is under-utilized).
- (9) The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (10) The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.
- (11) The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (12) The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (6) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.3.

- (13) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- (14) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 5

Williams-Steiger Occupational Safety and Health Act of 1970

A. Authority

- (1) The contractor is subject to the provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.
- (2) These construction documents and the joint and several phases of construction hereby contemplated are to be governed, at all times, by applicable provisions of the Federal law(s), including but not limited to the latest amendment of the following:
 - (a) Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 94-596;
 - (b) art 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;
 - (c) Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations.

B. Safety and Health Program Requirements

- (1) This project, its prime contractor and its subcontractors, shall at all times be governed by Chapter XVII of Title 29, Code of Federal Regulations, Part 1926 - Safety and Health Regulations for Construction (29 CFR 22801), as amended to date.
- (2) To implement the program and to provide safe and healthful working conditions for all persons, general project safety meetings will be conducted at the site at least once each month during the course of construction, by the construction superintendent or his/her designated safety officer. Notice of such meeting shall be issued not less than three (3) days prior, stating the exact time, location, and agenda to be included. Attendance by the owner, architect, general foreman, shop steward(s), and trades, or their designated representatives, witnessed in writing as such, shall be mandatory.
- (3) To further implement the program, each trade shall conduct a short gang meeting, not less than once a week, to review project safety requirements mandatory for all persons during the coming week. The gang foreman shall report the agenda and specific items covered to the project superintendent, who shall incorporate these items in his/her daily log or report.
- (4) The prime contractor and all subcontractors shall immediately report all accidents, injuries, or health hazards to the owner and architect, or their designated representatives, in writing. This shall not obviate any mandatory reporting under the provisions of the Occupational Safety and Health Act of 1970.
- (5) This program shall become a part of the contract documents and the contract between the owner and prime contractor, prime contractor and all subcontractors, as though fully written therein.

Section 6

Discovery of Archaeological and Other Historical Items

A. Construction Procedures

In the event of an archaeological or more recent historical find (e.g., artifacts, housing sites) during any phase of construction, the following procedure should be followed:

- (1) Construction shall be halted, with as little disruption to the archaeological site possible.
- (2) The Contractor shall notify the Owner who shall contact the State Historical Preservation Officer.
- (3) The State Historical Preservation Officer may decide to have an archaeologist inspect the site and make recommendations about the steps needed to protect the site, before construction is resumed.
- (4) The entire event should be handled as expediently as possible in order to hold the loss in construction time to a minimum while still protecting archaeological finds.

B. National Register Status

In the event archaeological/historical data are evaluated to meet National Register criteria, the Advisory Council on Historic Preservation may be notified and asked to comment by the Water Quality Control Division.

Section 7

Disadvantaged Business Enterprise (DBE) - SRF Program Grant Agreement Information and Requirements

OVERVIEW OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The Environmental Protection Agency's (EPA) new Disadvantaged Business Enterprise (DBE) rule became effective on May 27, 2008. The new DBE rule sets forth an EPA program that serves the compelling government interest of remedying past and current racial discrimination through agency-wide procurement objectives. The new DBE rule revises and replaces EPA's Minority and Women Business Enterprise (MBE/WBE) Program for funding received after May 27, 2008.

Note that the loan recipient is not a passive conduit of the contractor's DBE information. By submitting the proposed contractor's DBE documentation to the SRF Loan Program for review, the loan recipient is asserting that it has found the proposed contractor's documentation of good faith efforts adequate.

In order to be counted as a MBE/WBE under the new EPA DBE rule, MBE/WBEs must be certified by a federal agency (e.g., EPA, Small Business Administration, and Department of Transportation) or by a State, locality, Indian Tribe, or independent private organization that meets the certification requirements of the new EPA DBE rule. Under the new EPA DBE rule an individual claiming economic disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

Locating potential DBE sub-contractors is the responsibility of the bidder/contractor. The following is a list of resources that may be used to locate potential DBEs:

- The Colorado Department of Transportation maintains a listing of certified DBE'S on its website at: <http://coloradodbe.org/>
- The EPA maintains a searchable list by EPA region for the OSBP Registry at: <https://cfpub.epa.gov/sbvps/index.cfm?fuseaction=app.search>

Applications for certification by EPA can be found on EPA's Small Business Programs website at http://www.epa.gov/osbp/dbe_fair.htm

Each procurement contract signed by a loan participant must include the following term and condition:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract."
(Appendix A to Part 33—Term and Condition)

GUIDANCE FOR UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS OF 40 CFR PART 33

A. REQUIREMENTS

1. Each procurement contract signed by a loan recipient must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract

which may result in the termination of this contract or other legally available remedies.

2. The recipient and prime contractor will create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:
 - (a) Entity's name with point of contact;
 - (b) Entity's mailing address, telephone number, and e-mail address;
 - (c) The procurement on which the entity bid or quoted, and when; and
 - (d) Entity's status as an MBE/WBE or non-MBE/WBE.
3. The recipient and prime contractor will exercise good faith efforts to attract and utilize small, minority, and women's business enterprises primarily through outreach, recruitment, and race/gender neutral activities.
 - (a) At a minimum, fulfillment of six affirmative steps (good faith efforts) is required as set forth below:
 1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian, Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
 3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian, Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
 4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
 5. Use the services of the SBA and the Minority Business Development Agency of the Department of Commerce.
 6. If the prime contractor awards subcontract, require the prime contractor to take the affirmative Steps 1 through 5 listed above.

4. The prime contractor must pay its subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
5. The prime contractor must notify the owner in writing prior to any termination of a DBE subcontractor for convenience.
6. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the good faith efforts of soliciting a replacement subcontractor, even if the fair share objectives have already been achieved.

B. FAIR SHARE OBJECTIVES

1. The Colorado SRF project goals are:

SRF Project	%MBE	%WBE
Construction	6.1%	6.6%

C. DEFINITIONS

1. Disadvantaged Business Enterprise (DBE) is a business concern which meets the qualifications of a Minority Business Enterprise (MBE), Women's Business Enterprise (WBE)
2. Minority Business Enterprise (MBE) is a business concern which is:
 - (a) Certified as socially and economically disadvantaged by the Small Business Administration;
 - i. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.
 - ii. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans), are to be considered socially and economically disadvantaged. Economically and socially disadvantaged individuals are deemed to include women.
 - (b) Certified as a minority business enterprise by a State or Federal agency; and
 - (c) An independent business concern which is at least 51 percent owned and controlled by minority group member(s).

- i. A minority group member is an individual who is a citizen of the United States and one of the following:
 1. Black American;
 2. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America)
 3. Native American (American Indian, Eskimo, Aleut, native Hawaiian); or
 4. Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).
 - ii. In order to satisfy this third criteria of the MBE definition, the minority ownership's interest must be real, substantial and continuing. Such interest is characterized by:
 1. Risk of loss/share of profit commensurate with the proportional ownership; and
 2. Receipt of the customary incidents of ownership, such as compensation (i.e., salary and other personnel compensation).
 - iii. A minority owner must have and exercise control of the business decisions. Characteristics of control include, but are not limited to:
 1. Authority to sign bids and contracts;
 2. Decisions in price negotiations;
 3. Incurring liabilities for the firm;
 4. Final staffing decisions;
 5. Policy-making; and
 6. General company management decisions.
 - iv. Only those firms performing a useful business function according to custom and practice in the industry, are qualified as MBEs. Acting merely as a passive conduit of funds to some other firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry." The purpose of this approach is to discourage the use of MBE "fronts" and limit the creation of an artificial supplier and broker marketplace.
3. Women's Business Enterprise (WBE) is a business which is certified as such by a State or Federal agency, or which meets the following definition:

"A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women, who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or otherwise qualified WBE which is 51 percent owned by a married woman in a community property State will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a

business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business."

As in the case of a MBE, only United States citizens will be deemed to be WBEs. Similar to the MBE criteria, WBE should meet the criteria cited in subparagraphs C.2.a., C.2.b, and C.2.c(2), (3), and (4).

4. Fair Share or Fair Share Objective: A fair share or a fair share objective is an amount of funds reasonably commensurate with the total project funding and the availability of qualified MBEs and WBEs, taking into account experience on EPA-funded projects and other comparable projects in the area. A fair share objective does not constitute an absolute requirement, but a commitment on the part of the bidder to exercise good faith efforts as defined in this section to use MBEs and WBEs to achieve the fair share objective.
5. Recipient: A party receiving SRF financial assistance.
6. Project: The scope of work for which an SRF loan is awarded.
7. Bidder: A party seeking to obtain a contract with a recipient through a competitive, advertised, sealed bid process.
8. Offeror: A party seeking to obtain a contract with a recipient through a negotiative procurement process.
9. Prime Contractor: A party that has obtained a contract with a recipient through a competitive, advertised, sealed bid process.
10. Good Faith Efforts: Good faith efforts by a recipient, prime contractor, and/or bidder/offeror means efforts to attract and utilize DBEs primarily through outreach, recruitment, and race/gender neutral activities. The following are examples of activities to assist recipients, prime contractors and/or bidders/offerors to comply with good faith efforts.
 - (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian, Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 - i. Maintain and update a listing of qualified MBE/WBEs that can be solicited for construction, equipment, services and/or supplies.
 - ii. Provide listings to all interested parties who request copies of the bidding or proposing documents.
 - iii. Contact appropriate sources within your geographic area and state to identify qualified MBE/WBE for placement on your MBE/WBE business listings.
 - iv. Utilize other MBE/WBE listings such as those of the state's minority business

office, the Small Business administration, Minority Business Development Agency (MBDA) of the Department of Commerce, EPA OSDBU, and DOT.

- v. Have state environment agency personnel review solicitation lists.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- i. Develop realistic delivery schedules which may provide for greater MBE/WBE participation.
 - ii. Advertise through the minority media in order to facilitate MBE/WBE utilization. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and employment, or any other matter related to the project.
 - iii. Advertise in general circulation publications, trade publications, state agency publications and minority and women's business focused media concerning contracting opportunities on your projects. Maintain a list of minority and/or women's business-focused publications that may be utilized to solicit MBE/WBEs.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian, Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- i. Perform an analysis to identify portions of work that can be divided and performed by qualified MBE/WBEs.
 - ii. Scrutinize the elements of the total project to develop economical units of work that are within the bonding range of MBE/WBEs.
 - iii. Conduct meetings, conferences, and follow-ups with MBE/WBE associations and minority media to inform these groups of opportunities to provide construction, equipment, services and supplies.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- i. Notify MBE/WBEs of future procurement opportunities so they may establish bidding solicitations and procurement plans.
 - ii. Provide MBE/WBE trade organizations with succinct summaries of solicitations.
 - iii. Provide interested MBE/WBEs with adequate information about plans, specifications, timing and other requirements of the proposed projects.
- (e) Use the services of the SBA and the Minority Business Development Agency (MBDA) of the Department of Commerce.

- i. Use the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidders lists to assist these firms in the development of bid packaging.
 - ii. Seek out Minority Business Development Centers (MBDC) to assist recipients and prime contractors in identifying MBE/WBEs for potential work opportunities on projects.
- (f) If the prime contract awards subcontracts, require the prime contractor to take steps in Paragraphs (a) through (e) of this section.

D. REPORTING

1. The recipient must submit “DBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements,” to the Project Administrator beginning with the Federal Fiscal year quarter the bid is awarded and continuing until the project is completed. These reports must be submitted within 5 days of the end of the Federal fiscal quarter or by January 5, April 5, July 5, and October 5. Please e- mail reports to:

CDPHE_grantsandloans@state.co.us

2. Bidders/offerors shall demonstrate compliance with good faith efforts in order to be deemed responsible.
3. The prime contractor must distribute DBE Program Subcontractor Participation Form (EPA Form 6100-2) to all of its DBE subcontractors. The subcontractors can submit completed forms to the State of Colorado, Water Quality Control Division, Grants and Loans Unit.
4. The prime contractor must have its DBE subcontractors complete DBE Program Subcontractor Performance Form (Form 6100-3).
5. The prime contractor must complete DBE Program Subcontractor Utilization Form (Form 6100-4).
6. Form 6100-3 and Form 6100-4 must be submitted by the apparent low-bidder within ten calendar days of the bid opening. Failure to submit this information will be viewed as a non-responsive bid.

Section 8

Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

The following requirements including terms and conditions apply to this contract and expenditures submitted for reimbursement through the state revolving fund loan covering the work to be completed in this contract.

- A. This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.
- B. As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- C. Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:
 1. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - a) Procure or obtain, extend or renew a contract to procure or obtain;
 - b) Enter into a contract (or extend or renew a contract) to procure; or
 - c) Obtain the equipment, services, or systems.

2. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list at <https://sam.gov/>
- D. There is no exhaustive list of components and services that fall under the prohibition. Exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

Section 9

Signage Requirements

The following signage guidelines present a number of options which communities can explore to implement EPA's signage policy. The option selected should meet all of the above basic requirements while remaining cost-effective and accessible to a broad audience. The guidelines describe the following strategies as acceptable options for communities to follow:

- Standard signage;
- Posters or wall signage in a public building or location;
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility;
- Online signage placed on community website or social media outlet;
- Press release.

Each of these options is described in more detail in the sections below.

Implementation Option: Standard Signage

EPA recommends that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades. Some facilities will not find this an appropriate or cost-effective solution. For example, investing in a large road sign for a facility that is located in a rural area or where access is limited to a smaller service road would likely not be an optimal solution.

Signs can also be located away from the project site if there is another reasonable alternative. For example, a community may elect to place a sign advertising the project near a body of water that receives discharge from a particular facility.

States selecting projects that will implement this requirement through use of a traditional sign should ensure the following are included:

- The name of the facility, project and community;
- Project cost;
- The State Agency/SRF administering the program;
- The EPA and State Agency logos (EPA logo may only be used on a sign).

If the EPA logo is displayed along with logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from the EPA Office of Public Affairs (OPA), the EPA logo is the identifier for assistance agreement projects. States are required to ensure that recipients comply with the sign specifications provided by the OPA, available at http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf. To obtain the appropriate EPA logo graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication.

Implementation Option: Posters or Brochures

Smaller projects, projects located in rural areas, and other efforts may find that it is more cost effective and practical to advertise efforts through creation of a poster or smaller sign. If the project involves nonpoint source or green infrastructure components, those can be described at the discretion of the state or community.

The poster or brochure and acknowledgement should be visible, as well as a website or other source of information for individuals that may be curious about the SRF program. The community could also implement this option as a short pamphlet or brochure that is placed in one of these locations for community members to read.

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members. This can include, but is not limited to:

- Town or City Hall;
- Community Center;
- Locally owned or operated park or recreational facility;
- Public Library;
- County/municipal government facilities;
- Court house or other public meeting space.

Given the low cost for producing multiple copies of the same poster, pamphlet, or brochure, communities can explore options for displaying these posters in several locations simultaneously. This would achieve the overall objective of reaching a broad audience and publicizing the project.

States have the option of creating a template verbiage and layout to provide to borrowers, particularly smaller or disadvantaged communities. This could reduce the burden on small municipalities which may or may not have the staffing capacity to meet signage requirements on their own.

States selecting projects that will implement this requirement through use of posters or brochures should ensure the following are included:

- Name of facility, project and community;
- State SRF administering the program;
- Project is wholly or partially funded with EPA funding;
- Brief description of project;
- Brief description of the water quality benefits the project will achieve.

Implementation Option: Newsletter, Periodical or Press Release

For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, projects can be advertised in a community newsletter or similar periodical. States can use guidelines from their standard public notice practices. For new construction, if a groundbreaking ceremony is to be held, an announcement could publicize or accompany publicity for this event.

In some cases, it may be appropriate for the state agency to issue a formal press release announcing construction of a new facility. Distributing a single prepared statement concisely summarizing the project purpose and the joint funding from EPA and state resources can reach a wide audience as the statement goes through multiple news outlets. Programs should consider whether or not this is an option that is likely to effectively publicize the CWSRF or DWSRF program in local news sources.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction as a result of EPA support, EPA must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate in the event.

States selecting projects that will implement this requirement through use of a newsletter, periodical or press release should ensure the following are included:

- Name of facility, project and community;
- State SRF administering the program;
- Project is wholly or partially funded with EPA funding;
- Brief description of the project;
- Brief listing of water quality benefits to be achieved.

Implementation Option: Insert or Pamphlet in Water/Sewer Bill

Utilities can consider including a single-page insert within water and sewer bills that are mailed to residents and users in the area. This approach would effectively publicize the project to those individuals directly benefitting from the project. The flyer or insert could emphasize the interest rate and financial savings that the community achieved by taking advantage of SRF funds as well as the environmental and public health benefits to the community.

States selecting projects that will implement this requirement through use of an insert or pamphlet in water/sewer bill should ensure the following are included:

- Name of facility, project and community;
- State SRF administering the program;
- Project is wholly or partially funded with EPA funding;
- Brief description of the project;
- Brief listing of water quality benefits to be achieved.

Implementation Option: Online & Social Media Publicity

Many communities are increasingly finding that the online forum is the most cost-effective approach to publicizing their SRF programs and reaching a broad audience of stakeholders. Online "signage" should follow the minimum information guidelines above and may appear on the town, community or facility website if available. In some cases, communities may be active on social media sites such as Facebook or Twitter. These can be used as an opportunity for publicizing projects and information about how SRF funds are being used in the community. These online announcements/notices may be appropriate for settings where physical signage would not be visible to a wide audience. They can be a more cost-effective option than traditional signs or

publicity in print media outlets. This option may be most useful where the community's website is a well-recognized source of information for its residents.

In the case of some projects, such as non-point source or sponsorship projects, there might be additional opportunities for online publicity through partner agencies or organizations. This could take place either on the organization's website or again through social media outlets.

States selecting projects that will implement this requirement through use of online & social media publicity should ensure the following are included:

- Name of facility, project and community;
- State SRF administering the program;
- Project was wholly or partially funded with EPA funding;
- Brief description of the project;
- Brief listing of water quality benefits to be achieved.

Suggested Language for Alternate Options

For any of the alternate implementation options listed above, SRF programs have discretion to structure their signage as they see appropriate. The language below is offered as an option for use in posters, pamphlets, brochures, press releases, or online materials. States may consider using the following:

"Construction of upgrades and improvements to the [Name of Facility, Project Location, or WWTP] were financed by the [Clean Water/Drinking Water] State Revolving Fund. The [CWSRF/DWSRF] program is administered by [State Agency] with joint funding from the U.S. Environmental Protection Agency and [State Name]. This project will [description of project] and will provide water quality benefits [details specifying particular benefits] for community residents and businesses in and near [name of town, city, and/or water body or watershed to benefit from project.] [CWSRF/DWSRF] programs operate around the country to provide states and communities the resources necessary to maintain and improve the infrastructure that protects our valuable water resources nationwide."

For projects in certain areas, states should consider whether or not it is appropriate to include additional details about the projects. Specific benefits, such as reduction of combined sewer overflow (CSO) events, lessening of nutrient pollution, reducing contaminant levels or water pumping costs, or improvements to a particular water body, may be of interest to community residents. In these cases, including them would further serve to showcase positive efforts financed by the SRF programs. Additionally, for projects with components that meet Green Project Reserve (GPR) criteria, States may elect to detail these particular improvements. For example, the state could include quantitative improvements in energy efficiency or water conservation achieved by project upgrades. If the project includes green infrastructure components such as rain gardens and green roofs that have environmental and aesthetic benefits to the community, these can be described briefly as well. Again, this additional information can be included at the discretion of the state when it is appropriate, given the project type, location, and the type of signage or publicity effort selected.

Section 10

SRF Required Forms by Section

SRF forms can be found on this webpage: <https://cdphe.colorado.gov/water-quality/drinking-water-info-for-public-water-systems/grants-and-loans/loans-srf/water-quality>

Section 1 - Davis Bacon Prevailing Wages

- Davis Bacon Certification Form (SRF form);
- WH - 347 - Contractors Payroll Form;
- Standard Form 1444 - Request for Authorization of Additional Classification and Rate;
- Standard Form 1445 - Labor Standards Interview Form.

Section 2 - American Iron and Steel

- American Iron and Steel Certification Form (SRF Form);
- American Iron and Steel Product Spreadsheet (SRF Form).

Section 3 - National Term on Suspension and Debarment

- No applicable forms.

Section 4 - Equal Employment Opportunity and Affirmative Action Requirements

- No applicable forms.

Section 5 - Williams-Steiger Occupational Safety and Health Act of 1970

- No applicable forms.

Section 6 - Discovery of Archaeological and Other Historical Items

- No applicable forms.

Section 7 - Disadvantaged Business Enterprise (DBE)

- Form 6100-2 provided by prime contractor completed by DBE subcontractor and submitted to the CDPHE GLU project manager;
- Form 6100-3 provided by prime contractor completed by DBE subcontractor and submitted CDPHE GLU project manager;
- Form 6100-4 provided by subrecipient completed by prime contractor as part of bid package;
- Form B provided by subrecipient completed by prime contractor submitted to the Compliance Specialist or at cdphe_grantsandloans@state.co.us.

Section 8 - Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

- No applicable forms.

Section 9 - Signage Requirements

- No applicable forms.



COLORADO

**Department of Public
Health & Environment**

Dedicated to protecting and improving the health and environment of the people of Colorado

Project Name: _____

Period From: _____ **To:** _____

Davis-Bacon Act CERTIFICATION

I certify to the best of my knowledge and belief that the above referenced project:

Complies with Davis-Bacon and Related Acts and that all laborers and mechanics employed by contractors and subcontractors during the above referenced period were paid wages at rates not less than those listed on the prevailing wage rate contained in the contract documents and that all applicable provisions of the Davis-Bacon and Related Acts have been met.

Name of Loan Recipient

Date

Signature of Authorized Official

Print Name and Title of Authorized Official



SECTION 007020

"General Decision Number: C020230003 02/24/2023

Superseded General Decision Number: C020220003

State: Colorado

Construction Type: Heavy

Counties: Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington and Yuma Counties in Colorado.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or	. Executive Order 13658 generally applies to the contract. . The contractor must pay all

extended on or after January 30, 2022:	covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.
--	---

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	02/24/2023

ELEC0012-002 09/01/2021

ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CONEJOS, COSTILLA, CROWLEY, CUSTER, FREMONT, HUERFANO, KIOWA, LAS ANIMAS, MINERAL, OTERO, PROWERS, RIO GRANDE AND SAGUACHE COUNTIES

	Rates	Fringes
Electricians:		
Electrical contract over \$1,000,000.....	\$ 29.80	13.00+3%
Electrical contract under \$1,000,000.....	\$ 24.85	13.00+3%

ELEC0068-011 06/01/2022

CLEAR CREEK, EAGLE, GILPIN, GRAND, JACKSON, LAKE, LOGAN, MORGAN, PHILLIPS, SEDGWICK, SUMMIT, WASHINGTON AND YUMA COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 41.30	17.87

ELEC0111-002 09/01/2022

	Rates	Fringes
Line Construction:		
Groundmen.....	\$ 23.89	21.25%+7.35
Line Equipment Operator.....	\$ 38.61	21.25%+7.35
Lineman and Welder.....	\$ 53.61	24.25%+7.35

ELEC0113-004 06/01/2022

CHEYENNE, ELBERT, KIT CARSON, LINCOLN, PARK AND TELLER COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 34.90	17.25

ELEC0969-003 06/01/2019

DOLORES, GARFIELD, GUNNISON, HINSDALE, LA PLATA, MOFFAT,
MONTEZUMA, RIO BLANCO, AND ROUTT COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 25.20	10.06

ELEC0969-006 01/01/2019

OURAY, PITKIN, SAN JUAN AND SAN MIGUEL COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 30.80	10.92

ELEC0969-010 06/01/2019

DELTA AND MONTROSE COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 25.20	10.06

* ENGI0009-004 05/01/2022

	Rates	Fringes
Power equipment operators:		
Mechanic.....	\$ 33.65	13.30
Motor Grader: Blade-finish..	\$ 33.65	13.30

Motor Grader: Blade-rough...\$ 33.14	13.30
Roller: self-propelled, all types over 5 tons.....\$ 33.14	13.30
Roller: self-propelled, rubber tires under 5 tons...\$ 32.73	13.30
Trackhoe.....\$ 33.30	13.30

 PLUM0003-003 06/01/2022

CLEAR CREEK, GILPIN, GRAND, JACKSON, LAKE, LOGAN, MORGAN,
 PHILLIPS, SEDGWICK, SUMMIT, WASHINGTON, AND YUMA. PARTS OF
 ELBERT, EAGLE, KIT CARSON, LINCOLN, AND PARK COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 46.58	19.29

 PLUM0058-010 07/01/2022

ALAMOSA, BACA, BENT, CHAFFEE, CHEYENNE, CONEJOS, COSTILLA,
 CROWLEY, CUSTER, ELBERT (Southern portion including towns of
 Elbert, Matherson and Simla), FREMONT, HUERFANO, KIOWA, KIT
 CARSON (Including towns of Dfalgler, Siebert, Vona, Stratton
 and Bethune), LAS ANIMAS, LINCOLN (Including towns of Geona and
 Arriba in the southern portion of the county), MINERAL, OTERO,
 PARK (Including towns of Fauplay, Hartsel and Lake George),
 PROWERS, PUEBLO, RIO GRANDE, AND SAGUACHE COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 42.20	16.69

 PLUM0058-012 07/01/2022

TELLER COUNTY

	Rates	Fringes
PLUMBER Includes HVAC Work.....	\$ 42.20	16.69

 PLUM0145-004 07/01/2022

ARCHULETA, DELTA, DOLORES, EAGLE (Eagle County is divided from
 where Pitkin and Lake Counties join on the north, and in a
 straight line to and including the town of Edwards and
 northerly to the south east corner of Routt County), GARFIELD,
 GUNNISON, HINSDALE, LA PLATA, MOFFAT, MONTEZUMA, MONTROSE,

OURAY, PITKIN, RIO BLANCO, ROUTT, SAN JUAN AND SAN MIGUEL
COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 36.47	14.82

* SUC02001-005 12/20/2001

	Rates	Fringes
Carpenters:		
Form Building and Setting...	\$ 16.16 **	.82
All Other Work.....	\$ 15.72 **	
Cement Mason/Concrete Finisher...	\$ 14.76 **	2.28
Laborer, common.....	\$ 11.11 **	3.80
PIPEFITTER.....	\$ 18.13	1.84
Power equipment operators:		
Backhoe.....	\$ 15.93 **	3.58
Bobcat/Skid Loader.....	\$ 20.22	4.41
Bulldozer.....	\$ 15.08 **	4.44
Excavator.....	\$ 15.39 **	
Front End Loader.....	\$ 15.86 **	3.59

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$16.20) or 13658
(\$12.15). Please see the Note at the top of the wage
determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is

like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that

no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests

for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

SECTION 00 72 43

**STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology.....	6
Article 2—Preliminary Matters.....	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	7
2.02 Copies of Documents.....	7
2.03 Before Starting Construction.....	8
2.04 Preconstruction Conference; Designation of Authorized Representatives.....	8
2.05 Acceptance of Schedules.....	8
2.06 Electronic Transmittals.....	9
Article 3—Contract Documents: Intent, Requirements, Reuse.....	9
3.01 Intent.....	9
3.02 Reference Standards.....	10
3.03 Reporting and Resolving Discrepancies.....	10
3.04 Requirements of the Contract Documents.....	11
3.05 Reuse of Documents.....	11
Article 4—Commencement and Progress of the Work.....	12
4.01 Commencement of Contract Times; Notice to Proceed.....	12
4.02 Starting the Work.....	12
4.03 Reference Points.....	12
4.04 Progress Schedule.....	12
4.05 Delays in Contractor’s Progress.....	12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions.....	14
5.01 Availability of Lands.....	14
5.02 Use of Site and Other Areas.....	14
5.03 Subsurface and Physical Conditions.....	15

5.04	Differing Subsurface or Physical Conditions	16
5.05	Underground Facilities	18
5.06	Hazardous Environmental Conditions at Site	20
Article 6—Bonds and Insurance.....		22
6.01	Performance, Payment, and Other Bonds	22
6.02	Insurance—General Provisions	23
6.03	Contractor’s Insurance.....	24
6.04	Builder’s Risk and Other Property Insurance	25
6.05	Property Losses; Subrogation	26
6.06	Receipt and Application of Property Insurance Proceeds	27
Article 7—Contractor’s Responsibilities		28
7.01	Contractor’s Means and Methods of Construction	28
7.02	Supervision and Superintendence	28
7.03	Labor; Working Hours	28
7.04	Services, Materials, and Equipment	28
7.05	“Or Equals”	29
7.06	Substitutes	30
7.07	Concerning Subcontractors and Suppliers.....	31
7.08	Patent Fees and Royalties	33
7.09	Permits	33
7.10	Taxes	33
7.11	Laws and Regulations.....	34
7.12	Record Documents.....	34
7.13	Safety and Protection.....	34
7.14	Hazard Communication Programs	35
7.15	Emergencies	36
7.16	Submittals	36
7.17	Contractor’s General Warranty and Guarantee	38
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	40
Article 8—Other Work at the Site.....		41
8.01	Other Work	41
8.02	Coordination	42

8.03	Legal Relationships.....	42
Article 9—Owner’s Responsibilities.....		43
9.01	Communications to Contractor	43
9.02	Replacement of Engineer.....	43
9.03	Furnish Data	43
9.04	Pay When Due.....	43
9.05	Lands and Easements; Reports, Tests, and Drawings.....	43
9.06	Insurance.....	44
9.07	Change Orders	44
9.08	Inspections, Tests, and Approvals.....	44
9.09	Limitations on Owner’s Responsibilities	44
9.10	Undisclosed Hazardous Environmental Condition.....	44
9.11	Evidence of Financial Arrangements.....	44
9.12	Safety Programs	44
Article 10—Engineer’s Status During Construction		44
10.01	Owner’s Representative.....	44
10.02	Visits to Site.....	44
10.03	Resident Project Representative.....	45
10.04	Engineer’s Authority	45
10.05	Determinations for Unit Price Work	45
10.06	Decisions on Requirements of Contract Documents and Acceptability of Work	45
10.07	Limitations on Engineer’s Authority and Responsibilities	46
10.08	Compliance with Safety Program.....	46
Article 11—Changes to the Contract		46
11.01	Amending and Supplementing the Contract	46
11.02	Change Orders	47
11.03	Work Change Directives.....	47
11.04	Field Orders.....	47
11.05	Owner-Authorized Changes in the Work.....	48
11.06	Unauthorized Changes in the Work.....	48
11.07	Change of Contract Price	48
11.08	Change of Contract Times.....	49
11.09	Change Proposals.....	50

11.10	Notification to Surety.....	51
Article 12—Claims.....		51
12.01	Claims.....	51
Article 13—Cost of the Work; Allowances; Unit Price Work.....		52
13.01	Cost of the Work.....	52
13.02	Allowances.....	56
13.03	Unit Price Work.....	56
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work.....		57
14.01	Access to Work.....	57
14.02	Tests, Inspections, and Approvals.....	57
14.03	Defective Work.....	58
14.04	Acceptance of Defective Work.....	59
14.05	Uncovering Work.....	59
14.06	Owner May Stop the Work.....	60
14.07	Owner May Correct Defective Work.....	60
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period.....		60
15.01	Progress Payments.....	60
15.02	Contractor’s Warranty of Title.....	64
15.03	Substantial Completion.....	64
15.04	Partial Use or Occupancy.....	65
15.05	Final Inspection.....	65
15.06	Final Payment.....	65
15.07	Waiver of Claims.....	67
15.08	Correction Period.....	67
Article 16—Suspension of Work and Termination.....		68
16.01	Owner May Suspend Work.....	68
16.02	Owner May Terminate for Cause.....	68
16.03	Owner May Terminate for Convenience.....	69
16.04	Contractor May Stop Work or Terminate.....	70
Article 17—Final Resolution of Disputes.....		70
17.01	Methods and Procedures.....	70
Article 18—Miscellaneous.....		71
18.01	Giving Notice.....	71

18.02	Computation of Times	71
18.03	Cumulative Remedies	71
18.04	Limitation of Damages	71
18.05	No Waiver	71
18.06	Survival of Obligations	71
18.07	Controlling Law	71
18.08	Assignment of Contract	72
18.09	Successors and Assigns	72
18.10	Headings.....	72

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
TABLE OF CONTENTS**

	Page
Article 1— Definitions and Terminology.....	1
Article 2— Preliminary Matters	1
Article 3— Contract Documents: Intent, Requirements, Reuse	1
Article 4— Commencement and Progress of the Work	1
Article 5— Site, Subsurface and Physical Conditions, Hazardous Environmental Conditions.....	2
Article 6— Bonds and Insurance.....	2
Article 7— Contractor’s Responsibilities	6
Article 8— Other Work at the Site	7
Article 9— Owner’s Responsibilities	7
Article 10— Engineer’s Status During Construction	7
Article 11— Changes to the Contract	9
Article 12— Claims.....	10
Article 13— Cost of Work; Allowances, Unit Price Work.....	10
Article 14— Tests and Inspections; Correction, Removal, or Acceptance of Defective Work.....	11
Article 15— Payments to Contractor, Set Offs; Completions; Correction Period	11
Article 16— Suspension of Work and Termination	12
Article 17— Final Resolutions of Disputes.....	12
Article 18— Miscellaneous	14
Article 19— Statutory Requirements.....	14

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-1.01.A.16 – Add the following at the end of the Paragraph:

The term "Contractor" as used in all of the Contract Documents shall refer to the "Construction Manager".

SC-1.01.A.16 – Add the following at the end of the Paragraph:

The term "Cost of the Work" used in all of the Contract Documents shall refer to the "Guaranteed Maximum Price (GMP)"

ARTICLE 2—PRELIMINARY MATTERS

2.02 Copies of Documents

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor two (2) printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and one (1) in electronic portable document format (PDF).

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

No Supplementary Conditions in this Article.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.01.A – Delete the last sentence of paragraph.

4.01A *Commencement of Contract Time; Notice to Proceed*

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

5.03 *Subsurface and Physical Conditions*

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 Evaluation	October 21, 2022	Geotechnical Engineering Evaluation

- 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
Water Tank and Infrastructure	October 22, 2022	Raw water and distribution system improvement as-built plans.

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at the offices of **Element Engineering, LLC (12687 West Cedar Drive, Suite 100, Lakewood, CO 80228)** during regular business hours, or may request copies from Engineer.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Delete Paragraph 5.06A and 5.06B in their entirety and insert the following in its place:

1. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to the owner.
2. Not Used.

ARTICLE 6—BONDS AND INSURANCE

6.1 Performance, Payment, and Other Bonds

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be 2 years after Substantial Completion.

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 (from available sources,

notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Employer's Liability	
Each accident	\$ 100,000
Each employee	\$ 100,000
Policy limit	\$ 500,000

- 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*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$3,000,000
Products—Completed Operations Aggregate	\$3,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

- 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.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Occurrence	\$1,000,000
Aggregate	\$3,000,000

- 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.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$[specify amount] after accounting for partial attribution of its limits to underlying policies, as allowed above.

6.04 *Builder’s Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:

- A. Owner 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.

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 the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
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."

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 Labor; Working Hours

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be 7 AM to 7 PM.
2. Owner's legal holidays are Federally Recognized Holidays.

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

- D. Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular workday. Overtime will be paid by the Contractor for any workday over 10-hours per day or

Exhibit C—Geotechnical Baseline Report Supplement to the Supplementary Conditions.

EJCDC® C-800, Supplementary Conditions of the Construction Contract.

Copyright© 2018 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

any workweek over 50 hours. Overtime will be paid on Saturday, Sunday, or any legal holiday regardless of the hours worked in that week. Overtime for the RPR shall be paid at the rate of 1.5 x the hourly rate in the Owner-Engineer agreement for the RPR. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

SC-7.03 Add the following new subparagraph immediately after Paragraph SC-7.03.D:

1. For purposes of administering the foregoing requirement, additional overtime costs are defined as 1.5 x Engineer's Hourly Rates.

SC-7.03 Add the following new paragraphs immediately after Paragraph 7.03.D:

- E. If the Contractor wishes to work on weekends, more than 10-hours per day, or on a legal holiday, a request must be provided in writing to the Owner and Engineer 7-days prior to the workday requested. The Engineer reserves the right to deny overtime and weekend work based on availability of the RPR.

7.10 Taxes

SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:

- A. Owner is exempt from payment of sales and compensating use taxes of the State of **Colorado** and of cities and counties thereof on all materials to be incorporated into the Work.
 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 2. 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.

7.10 Indemnification

SC-7.18 Add a new paragraph immediately after Paragraph 7.18B:

- 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 protections provided by the Colorado Governmental Immunities Act 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

10.03 Resident Project Representative

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 3. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
 4. *Review of Work; Defective Work*
 - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Observe whether any Work in place appears to be defective.
 - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
 5. *Inspections and Tests*
 - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
 - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
 6. *Payment Requests:* Review Applications for Payment with Contractor.
 7. *Completion*
 - a. Participate in Engineer's visits regarding Substantial Completion.
 - b. Assist in the preparation of a punch list of items to be completed or corrected.

- c. Participate in Engineer’s visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
 2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

11.02 Change Orders

SC-11.02 Add a new paragraphs immediately after 11.02B:

- C. At the time of execution of a Change Order or Written Agreement, Owner and Construction Manager 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 Construction Manager further expressly acknowledge that later claims for adjustments to the Contract Price and/or Contract Time associated with the said Change Order or Written Agreement are not valid.
- D. Any and all claims for delay damages pursuant to this Article shall be based on written notice submitted by the party making the claim to the Engineer and the other party to the Contract in accordance with provisions of Article 11. 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.
- E. The Engineer or Owner shall contact the Funding Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Funding Agency before they are effective.

11.08 Change of Contract Times

SC-11.08 Add a new paragraph immediately after 11.08B:

- C. The Owner and Construction Manager 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. The Construction Manager expressly agrees that the Contract Price is based on the 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. Isolated abnormal weather occurrences of a severely destructive nature, which in fact, cause such destruction at the site of the Work;
 4. For winter construction, the number of days below freezing exceeding the historical mean for the months of the construction period by more than one standard deviation;
 5. For the purposes 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 Construction Manager further agrees that should a request for time extension due to unusually severe weather conditions be made, the Construction Manager shall submit all necessary historical and detailed daily data during the construction period to support the claim.

ARTICLE 12—CLAIMS

No Supplementary Conditions in this Article.

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

SC-13.02.C – Delete paragraph in its entirety and insert "Deleted".

13.03 Unit Price Work

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

- 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 extended price of a particular item of Unit Price Work amounts to 30 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 30 percent 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

No Supplementary Conditions in this Article.

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

15.01 *Progress Payment*

SC-15.01.B.4 – Add the following language at the end of paragraph:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the Contractor.

SC-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:

5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Funding Agency must approve all Applications for Payment before payment is made.

SC-15.01.D.1 – Delete paragraph in its entirety and insert the following in its place:

The Application for Payment with Engineer's recommendations will be presented to the Owner and Funding Agency for consideration. If both the Owner and Funding Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

SC-15.01 Add the following new Paragraph 15.01.F:

- F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

SC-15.02.A – Amend paragraph by striking out the following text: "7 days after".

15.03 *Substantial Completion*

SC-15.03.A – Modify by adding the following after the last sentence:

Contractor shall also submit the General (Prime) Contractor’s Certification of Compliance certifying that to the best of the Contractor’s knowledge and belief all substitutes, equals, and all Iron and Steel products proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, are either Produced in the United States or are the subject of an approved waiver under Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

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.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be 2 years after Substantial Completion.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

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 will 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.

17.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

No Supplementary Conditions in this Article.

ARTICLE 19—STATUTORY REQUIREMENTS

SC-19 – Add the following new Article 19 immediately after Article 18:

Article 19 – STATUTORY REQUIREMENTS

19.01 *Non-Discrimination*

A. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. (Appendix A to Part 33-Term and Condition).

19.02 *Immigration Provisions*

A. Unlawful Employees, Contractors and Subcontractors

1. Contractor shall not knowingly employ or contract with an illegal alien to perform Work under this Contract. Contractor shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform Work under this Contract, or (b) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform Work under this Contract. [Colo. Rev. Stat. § 8-17.5-102(2)(a)(I) & (II)]

B. Verification Regarding Illegal Aliens

1. Contractor has verified or attempted to verify through participation in the basic pilot program of the State of Colorado that Contractor does not employ any illegal aliens or Contractor verifies that Contractor has not been accepted into the basic pilot program prior to entering into this Contract. Contractor further verifies that if Contractor will apply to participate in the basic pilot program of the State of Colorado every three months until

Contractor is accepted or this Contract is completed, whichever is earlier. [Colo. Rev. Stat. § 8-17.5-102(2)(b)(I)]

19.03 *Colorado Labor Preference*

A. The requirements of CRS 8-17-101 or latest modification shall be adhered to, requiring that 80% of the labor used on contracts exceeding \$500,000 are Colorado residents.

19.04 *Wage Rate Determinations*

A. The Heavy wage rate determination shall be the primary determination for Davis Bacon Wage Rates for this project.

Project: **Ouray Water Plant (Original Submittal w/ Alternates and Material/Subcontractor Savings) \$ 12,630,965.47**
 Owner: City of Ouray
 Engineer: Element Engineering, LLC
 Bid Date:

Bid Allowances	Unit price	
*****DIVISION 2*****		
Squeegee	\$ 30.30	per ton
Class 6 Road Base	\$ 27.15	per ton
3/4" Free Draining Aggregate	\$ 37.50	per ton
1-1/2" Aggregate	\$ 42.00	per ton
12" Rip Rap	\$ 49.00	per ton
Class 1 Structural Fill	\$ 29.25	per ton
2000 Gallon Precast Holding Tank	\$ 7,500.00	job
6'0" Chainlink Fence	\$ 111.00	lf
*****DIVISION 3*****		
4000 PSI Concrete	\$ 254.80	per cy
4000 PSI Concrete w/ Fiber	\$ 263.05	per cy
Rebar (Dalco)	\$ 1,686.00	per ton
*****DIVISION 4*****		
*****DIVISION 5*****		
Misc. Metals Package (C&C Metals)	\$ 72,300.00	job
Metal Studs/Gypsum/Wall & Ceiling Insulation Subcontractor (IWS)	\$ 36,400.00	job
*****DIVISION 6*****		
*****DIVISION 7*****		
*****DIVISION 8*****		
Over Head Doors ***By MGD***	\$ 33,708.00	ea
Mandoors & Finish Hardware (Single) ***By Heath Steel***	\$ -	ea
Mandoors & Finish Hardware (Double) ***By Heath Steel***	\$ -	ea
FRP Windows ***By Heath Steel***	\$ -	job
*****DIVISION 9*****		
*****DIVISION 10*****		
*****DIVISION 11*****		
Filter Tech Equipment Package	\$ 2,553,000.00	job
500 Gal. & 55 Gal. Chemical Tanks & Pallitizer Package	\$ 37,260.00	job
Tank Mixer Package ***By Aslan***	\$ 124,975.00	job
*****DIVISION 12 & 14*****		
Metal Building Subcontractor ***Heath Steel***	\$ 516,200.00	job

24" & 14" DIP Finished Water (Road to Plant)														
Pipe, Fitting & Valve Package	1	job	0.00	0.00	\$0.00	\$0	\$0	\$265,160.00	\$265,160	\$0	\$0	\$0	\$0	\$265,160
Pipe Excavation (Diabase/Quartzite Rock)	1374.07	cy	0.40	549.63	\$14.46	\$19,869	\$0	\$0.00	\$0	\$39.00	\$53,589	\$0	\$0	\$73,458
Rock Fracture Repair w/ Rock Chipper	1374.07	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$8,244	\$10.00	\$13,741	\$0	\$0	\$21,985
Backfill	1094.07	cy	0.10	109.41	\$3.62	\$3,955	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$3,955
Pipe package	1.00	ls	100.00	100.00	\$3,615.00	\$3,615	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$3,615
Bedding (\$46.30/Ton)	722.22	ton	0.10	72.22	\$3.62	\$2,611	\$0	\$30.30	\$21,883	\$0	\$0	\$0	\$0	\$24,494
Kickblocks	16.00	ea	8.00	128.00	\$289.20	\$4,627	\$0	\$375.00	\$6,000	\$0	\$0	\$0	\$0	\$10,627
Tie-in to existing	2.00	ea	16.00	32.00	\$578.40	\$1,157	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$1,157
Cross utilities	2.00	ea	8.00	16.00	\$289.20	\$578	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$578
Cross utilities	2.00	ea	8.00	16.00	\$289.20	\$578	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$578
Place Fire Hydrant	1.00	ea	16.00	16.00	\$578.40	\$578	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$578
Haul Excess Rock Excavation to Onsite Waste Area	280	cy	0.04	11.20	\$1.45	\$405	\$0	\$0.00	\$6	\$0	\$0	\$18.00	\$5,040	\$5,451
Compaction Testing	1094	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$6,564	\$4.00	\$4,376	\$0	\$0	\$10,940
16" DIP Finished Water (Plant to Tank)														
Pipe, Fitting & Valve Package	1	job	0.00	0.00	\$0.00	\$0	\$0	\$49,015.00	\$49,015	\$0	\$0	\$0	\$0	\$49,015
Pipe Excavation (Diabase/Quartzite Rock)	225.04	cy	0.40	90.01	\$14.46	\$3,254	\$0	\$0.00	\$0	\$39.00	\$8,776	\$0	\$0	\$12,030
Rock Fracture Repair w/ Rock Chipper	225.04	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$1,350	\$10.00	\$2,250	\$0	\$0	\$3,601
Backfill	193.04	cy	0.10	19.30	\$3.62	\$698	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$698
Pipe package	1.00	ls	20.00	20.00	\$723.00	\$723	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$723
Bedding (\$46.30/Ton)	81.12	ton	0.10	8.11	\$3.62	\$293	\$0	\$30.30	\$2,458	\$0	\$0	\$0	\$0	\$2,751
Kickblocks	5.00	ea	8.00	40.00	\$289.20	\$1,446	\$0	\$295.00	\$1,475	\$0	\$0	\$0	\$0	\$2,921
Tie-in to existing	1.00	ea	24.00	24.00	\$867.60	\$868	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$868
Cross utilities	1.00	ea	8.00	8.00	\$289.20	\$289	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$289
Test & Disinfect Pipe	1	job	20.00	20.00	\$723.00	\$723	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$723
Haul Excess Rock Excavation to Onsite Waste Area	32	cy	0.04	1.28	\$1.45	\$46	\$0	\$0.00	\$0	\$0	\$0	\$8.00	\$256	\$302
Compaction Testing	193	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$1,158	\$4.00	\$772	\$0	\$0	\$1,930
6" PVC Neutralized Water:														
Pipe, Fitting & Valve Package	1	job	0.00	0.00	\$0.00	\$0	\$0	\$5,845.00	\$5,845	\$0	\$0	\$0	\$0	\$5,845
Pipe Excavation (Diabase/Quartzite Rock)	128.07	cy	0.40	51.23	\$14.46	\$1,852	\$0	\$0.00	\$0	\$39.00	\$4,995	\$0	\$0	\$6,847
Rock Fracture Repair w/ Rock Chipper	128.07	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$768	\$10.00	\$1,281	\$0	\$0	\$2,049
Backfill	116.07	cy	0.10	11.61	\$3.62	\$420	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$420
Pipe package	1.00	ls	10.00	10.00	\$361.50	\$362	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$362
Bedding (\$46.30/Ton)	27.00	ton	0.10	2.70	\$3.62	\$98	\$0	\$30.30	\$818	\$0	\$0	\$0	\$0	\$916
Kickblocks	5.00	ea	8.00	40.00	\$289.20	\$1,446	\$0	\$295.00	\$1,475	\$0	\$0	\$0	\$0	\$2,921
Tie-in to existing	1.00	ea	24.00	24.00	\$867.60	\$868	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$868
Cross utilities	1.00	ea	8.00	8.00	\$289.20	\$289	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$289
Test & Disinfect Pipe	1	job	12.00	12.00	\$433.80	\$434	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$434
Haul Excess Rock Excavation to Onsite Waste Area	12	cy	0.04	0.48	\$1.45	\$17	\$0	\$0.00	\$0	\$0	\$0	\$8.00	\$96	\$113
Compaction Testing	116	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$696	\$4.00	\$464	\$0	\$0	\$1,160
6" PVC Over-Flow Pipe:														
Pipe, Fitting & Valve Package	1	job	0.00	0.00	\$0.00	\$0	\$0	\$1,365.00	\$1,365	\$0	\$0	\$0	\$0	\$1,365
Pipe Excavation (Diabase/Quartzite Rock)	49.26	cy	0.40	19.70	\$14.46	\$712	\$0	\$0.00	\$0	\$39.00	\$1,921	\$0	\$0	\$2,633
Rock Fracture Repair w/ Rock Chipper	49.26	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$296	\$10.00	\$493	\$0	\$0	\$788
Backfill	111.07	cy	0.10	11.11	\$3.62	\$402	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$402
Pipe package	1.00	ls	10.00	10.00	\$361.50	\$362	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$362
Bedding (\$46.30/Ton)	10.38	ton	0.10	1.04	\$3.62	\$38	\$0	\$30.30	\$315	\$0	\$0	\$0	\$0	\$352
Kickblocks	5.00	ea	8.00	40.00	\$289.20	\$1,446	\$0	\$295.00	\$1,475	\$0	\$0	\$0	\$0	\$2,921
Tie-in to existing	1.00	ea	24.00	24.00	\$867.60	\$868	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$868
Cross utilities	1.00	ea	8.00	8.00	\$289.20	\$289	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$289
Test & Disinfect Pipe	1	job	12.00	12.00	\$433.80	\$434	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$434
Haul Excess Rock Excavation to Onsite Waste Area	5	cy	0.04	0.20	\$1.45	\$7	\$0	\$0.00	\$0	\$0	\$0	\$8.00	\$40	\$47
Compaction Testing	111	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$666	\$4.00	\$444	\$0	\$0	\$1,110
2000 Gallon Precast Holding Tank:														
2000 Gallon Precast Holding Tank:	1	job	0.00	0.00	\$0.00	\$0	\$0	\$7,500.00	\$7,500	\$0	\$0	\$0	\$0	\$7,500
Aggregate Subbase (\$33.00/Ton)	8	tons	0.10	0.80	\$3.62	\$29	\$0	\$27.15	\$217	\$0	\$0	\$0	\$0	\$246
Excavate for Tank (Diabase/Quartzite Rock)	65	cy	0.30	19.50	\$10.85	\$705	\$0	\$0.00	\$0	\$39.00	\$2,535	\$0	\$0	\$3,240
Pipe Excavation (Diabase/Quartzite Rock)	0.00	cy	0.40	0.00	\$14.46	\$0	\$0	\$0.00	\$0	\$39.00	\$0	\$0	\$0	\$0
Rock Fracture Repair w/ Rock Chipper	65	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$390	\$10.00	\$650	\$0	\$0	\$1,040
Test Tank	1	job	10.00	10.00	\$361.50	\$362	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$362
Backfill Tank	46	cy	0.10	4.60	\$3.62	\$166	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$166
Haul Excess Rock Excavation to Onsite Waste Area	19	cy	0.04	0.76	\$1.45	\$27	\$0	\$0.00	\$0	\$0	\$0	\$8.00	\$152	\$179
Compaction Testing	46	cy	0.00	0.00	\$0.00	\$0	\$0	\$6.00	\$276	\$4.00	\$184	\$0	\$0	\$460
Plant Slab, Footer & Pit Excavation & Backfill:														
Plant Excavation:														
Plant Pipe Pit Excavation (Diabase/Quartzite Rock)	390	cy	0.30	117.00	\$10.85	\$4,230	\$0	\$0.00	\$0	\$39.00	\$15,210	\$0	\$0	\$19,440
Plant Footer Excavation (Diabase/Quartzite Rock)	181	cy	0.30	54.30	\$10.85	\$1,963	\$0	\$0.00	\$0	\$39.00	\$7,059	\$0	\$0	\$9,022

4" Expansion Joint	650	lf	0.05	32.50	\$1.81	\$1,175		\$0	\$1.00	\$650		\$0		\$0	\$1,825
Floor Penetrations	25	ea	2.00	50.00	\$72.30	\$1,808		\$0	\$0.00	\$0		\$0		\$0	\$1,808
Form/Pour/Strip Pilaster Pads:															
Fine grade	424.36	sf	0.03	12.73	\$1.08	\$460		\$0	\$0.00	\$0		\$0		\$0	\$460
Edge form	329.60	lf	0.10	32.96	\$3.62	\$1,192	\$7.00	\$2,307	\$0.00	\$0		\$0		\$0	\$3,499
Rebar	0.91	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	17.29	cy	0.65	11.24	\$23.50	\$406		\$0	\$0.00	\$0		\$0		\$0	\$406
Finish	424.36	sf	0.03	12.73	\$1.08	\$460		\$0	\$0.00	\$0		\$0		\$0	\$460
Strip form	329.60	lf	0.03	9.89	\$1.08	\$357		\$0	\$0.00	\$0		\$0		\$0	\$357
No. 4 x 4'6" Long Rock Rebar Dowels	256	ea	0.10	25.60	\$3.62	\$925		\$0	\$4.00	\$1,024		\$0		\$0	\$1,949
Epoxy Adhesive for Rock Dowels	36	tubes	0.10	3.60	\$3.62	\$130		\$0	\$85.00	\$3,060		\$0		\$0	\$3,190
Form/Pour/Strip Footers:															
Fine grade	480.00	sf	0.03	14.40	\$1.08	\$521		\$0	\$0.00	\$0		\$0		\$0	\$521
Edge form	643.00	lf	0.10	64.30	\$3.62	\$2,324	\$7.00	\$4,501	\$0.00	\$0		\$0		\$0	\$6,825
Rebar	2.15	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	19.56	cy	0.65	12.71	\$23.50	\$460		\$0	\$0.00	\$0		\$0		\$0	\$460
Finish	480.00	sf	0.03	14.40	\$1.08	\$521		\$0	\$0.00	\$0		\$0		\$0	\$521
Strip form	643.00	lf	0.03	19.29	\$1.08	\$697		\$0	\$0.00	\$0		\$0		\$0	\$697
No. 4 x 4'6" Long Rock Rebar Dowels	320	ea	0.10	32.00	\$3.62	\$1,157		\$0	\$4.00	\$1,280		\$0		\$0	\$2,437
Epoxy Adhesive for Rock Dowels	54	tubes	0.10	5.40	\$3.62	\$195		\$0	\$85.00	\$4,590		\$0		\$0	\$4,785
Form/Pour/Strip Footer & Pilaster Stems:															
Form	2240.00	sf	0.10	224.00	\$3.62	\$8,098	\$7.00	\$15,680		\$0		\$0		\$0	\$23,778
Rebar	2.00	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	36.30	cy	0.47	17.06	\$16.99	\$617		\$0	\$0.00	\$0		\$0		\$0	\$617
Strip form	2240.00	sf	0.03	67.20	\$1.08	\$2,429		\$0		\$0		\$0		\$0	\$2,429
Patch	2240.00	sf	0.01	11.20	\$0.18	\$405		\$0	\$0.05	\$112		\$0		\$0	\$517
Rub	2240.00	sf	0.01	22.40	\$0.36	\$810		\$0	\$0.10	\$224		\$0		\$0	\$1,034
Form/Pour/Strip Pipe Pit Slab:															
Fine grade	1304.00	sf	0.03	39.12	\$1.08	\$1,414		\$0	\$0.00	\$0		\$0		\$0	\$1,414
Edge form	342.00	lf	0.10	34.20	\$3.62	\$1,236	\$7.00	\$2,394	\$0.00	\$0		\$0		\$0	\$3,630
Rebar	1.85	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	35.42	cy	0.65	23.02	\$23.50	\$832		\$0	\$0.00	\$0		\$0		\$0	\$832
Finish	1304.00	sf	0.03	39.12	\$1.08	\$1,414		\$0	\$0.00	\$0		\$0		\$0	\$1,414
Strip form	342.00	lf	0.03	10.26	\$1.08	\$371		\$0	\$0.00	\$0		\$0		\$0	\$371
Form/Pour/Strip Pipe Pit Walls:															
Form	2092.80	sf	0.10	209.28	\$3.62	\$7,565	\$7.00	\$14,650		\$0		\$0		\$0	\$22,215
Rebar	1.50	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	27.13	cy	0.47	12.75	\$16.99	\$461		\$0	\$0.00	\$0		\$0		\$0	\$461
Strip form	2092.80	sf	0.03	62.78	\$1.08	\$2,270		\$0		\$0		\$0		\$0	\$2,270
Patch	2092.80	sf	0.01	10.46	\$0.18	\$378		\$0	\$0.05	\$105		\$0		\$0	\$483
Rub	2092.80	sf	0.01	20.93	\$0.36	\$757		\$0	\$0.10	\$209		\$0		\$0	\$966
Form/Pour/Strip Building Slab:															
Fine grade	2740.00	sf	0.03	82.20	\$1.08	\$2,972		\$0	\$0.00	\$0		\$0		\$0	\$2,972
Edge form	314.00	lf	0.10	31.40	\$3.62	\$1,135	\$7.00	\$2,198	\$0.00	\$0		\$0		\$0	\$3,333
Rebar	2.20	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	41.86	cy	0.65	27.21	\$23.50	\$984		\$0	\$0.00	\$0		\$0		\$0	\$984
Finish	2740.00	sf	0.03	82.20	\$1.08	\$2,972		\$0	\$0.00	\$0		\$0		\$0	\$2,972
Strip form	314.00	lf	0.03	9.42	\$1.08	\$341		\$0	\$0.00	\$0		\$0		\$0	\$341
Form/Pour/Strip Equipment Pads:															
Fine grade	1129.08	sf	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Edge form	465.60	lf	0.10	46.56	\$3.62	\$1,683	\$7.00	\$3,259	\$0.00	\$0		\$0		\$0	\$4,942
Rebar	1.60	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	30.67	cy	0.65	19.93	\$23.50	\$721		\$0	\$0.00	\$0		\$0		\$0	\$721
Finish	1129.08	sf	0.03	33.87	\$1.08	\$1,224		\$0	\$0.00	\$0		\$0		\$0	\$1,224
Strip form	465.60	lf	0.03	13.97	\$1.08	\$505		\$0	\$0.00	\$0		\$0		\$0	\$505
Form/Pour/Strip Admin. Area 5-1/4" Wide Floor Curbs:															
Form	45.00	sf	0.10	4.50	\$3.62	\$163	\$7.00	\$315		\$0		\$0		\$0	\$478
Rebar	0.03	ton	0.00	0.00	\$0.00	\$0		\$0	\$0.00	\$0		\$0		\$0	\$0
Concrete	0.38	cy	0.47	0.18	\$16.99	\$7		\$0	\$0.00	\$0		\$0		\$0	\$7
Strip form	45.00	sf	0.03	1.35	\$1.08	\$49		\$0	\$0.00	\$0		\$0		\$0	\$49
Patch	45.00	sf	0.01	0.23	\$0.18	\$8		\$0	\$0.05	\$2		\$0		\$0	\$10
Rub	45.00	sf	0.01	0.45	\$0.36	\$16		\$0	\$0.10	\$5		\$0		\$0	\$21
No. 4 x 9" Rebar Dowels	45	ea	0.10	4.50	\$3.62	\$163		\$0	\$1.00	\$45		\$0		\$0	\$208
Epoxy Adhesive Dowels	6	tubes	0.10	0.60	\$3.62	\$22		\$0	\$85.00	\$510		\$0		\$0	\$532

	Soap Dish	1	ea	1.00	1.00				\$36.15	\$36		\$0	\$50.00	\$50		\$0	\$0	\$86	
	Grab Bars	3	ea	2.00	6.00				\$72.30	\$217		\$0	\$125.00	\$375		\$0	\$0	\$592	
	*****Section 10-44-00 Fire Protection Specialties*****																		
	Fire Extinguishers & Cabinets	4	ea	4.00	16.00				\$144.60	\$578		\$0	\$350.00	\$1,400		\$0	\$0	\$1,978	
11	*****Division 11*****																		
	Filter Tech Equipment Package	1	job	0.00	0.00				\$0.00	\$0		\$0	\$2,553,000.00	\$2,553,000		\$0	\$0	\$2,553,000	
	500 Gal. & 55 Gal. Chemical Tanks & Pallitizers Package	1	job	0.00	0.00				\$0.00	\$0		\$0	\$37,260.00	\$37,260		\$0	\$0	\$37,260	
	Compressed Air Pipe, Fittings & Valve Package	1	job	0.00	0.00				\$0.00	\$0		\$0	\$19,000.00	\$19,000		\$0	\$0	\$19,000	
	Place all Filter Tech Equipment	1	job	700.00	700.00				\$25,305.00	\$25,305		\$0	\$0.00	\$0		\$0	\$0	\$25,305	
	Place all Chemical Feed Equipment	1	job	100.00	100.00				\$3,615.00	\$3,615		\$0	\$0.00	\$0		\$0	\$0	\$3,615	
	Place all Compressed Air Equipment, Pipe, Fittings & Valves	1	job	120.00	120.00				\$4,338.00	\$4,338		\$0	\$0.00	\$0		\$0	\$0	\$4,338	
	Filter Tech Start-Up	1	job	200.00	200.00				\$7,230.00	\$7,230		\$0	\$0.00	\$0		\$0	\$0	\$7,230	
	Chemical Feed Start-Up	1	job	60.00	60.00				\$2,169.00	\$2,169		\$0	\$0.00	\$0		\$0	\$0	\$2,169	
12	*****Division 12*****																		
	*****None Required*****																		
		0	job	0.00	0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$0	\$0	
13	*****Division 13*****																		
	*****Section 13-24-19 Metal Building*****																		
	Metal Building Subcontractor (100' x 60') (Heath Steel)	1	job	0.00	0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$516,200.00	\$516,200	\$516,200
	Interior Metal Paneling Subcontractor ***By Heath Steel***	1970	sf	0.00	0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$0.00	\$0	\$0
14	*****Division 14*****																		
	*****None Required*****																		
					0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$0	\$0	
15	*****Division 15*****																		
	Process Pipe, Fitting, Valve & Hanger Package	1	job	0.00	0.00				\$-	\$0		\$0	\$289,100.00	\$289,100		\$0	\$0	\$289,100	
	HVAC Subcontractor	1	job	0.00	0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$93,341.00	\$93,341	\$93,341
	Plumbing Subcontractor	1	job	0.00	0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$113,484.00	\$113,484	\$113,484
	Place all Large Diameter PVC Process Pipe, Fitting & Valves	920	lf	0.75	690.00				\$27.11	\$24,944		\$0	\$0.00	\$0		\$0	\$0	\$24,944	
	Place all Small Diameter PVC Chemical Feed Pipe	1300	job	0.40	520.00				\$14.46	\$18,798		\$0	\$0.00	\$0		\$0	\$0	\$18,798	
	Test & Disinfect all Pipe Systems	8	ea	12.00	96.00				\$433.80	\$3,470		\$0	\$0.00	\$0		\$0	\$0	\$3,470	
16	*****Division 16*****																		
	Electrical Subcontractor	1	job	0.00	0.00				\$-	\$0		\$0	\$0.00	\$0		\$0	\$650,875.00	\$650,875	\$650,875
	Over-Head Electric Line Relocation Allowance	1	job	0.00	0.00				\$-	\$0.00		\$0.00	\$0	\$0		\$0	\$25,000	\$25,000	\$25,000
	Underground Electric Line Relocation	1	job	0.00	0.00				\$-	\$0.00		\$0.00	\$0	\$0		\$0	\$18,000	\$18,000	\$18,000
	Trench for Conduit (Rock)	300	lf	2.00	0.00				\$72.30	\$0.00		\$0.00	\$0	\$0		\$0	\$0	\$0	
	Pour Conduit Concrete Encasement	300	lf	0.35	0.00				\$12.65	\$0.00		\$0.00	\$36.50	\$10,950		\$0	\$0	\$10,950	
	Backfill Conduit Trench	300	lf	0.10	0.00				\$3.62	\$0.00		\$0.00	\$0	\$0		\$0	\$0	\$0	
	Form/Rebar/Pour/ Generator Slab:																		
	Fine grade	360.00	sf	0.03	10.80				\$1.08	\$390		\$0	\$0.00	\$0		\$0	\$0	\$390	
	Edge form	112.00	lf	0.10	11.20				\$3.62	\$405	\$7.00	\$784	\$0.00	\$0		\$0	\$0	\$1,189	
	Rebar	0.70	ton	0.00	0.00				\$-	\$0	\$1,686.00	\$1,180	\$0.00	\$0		\$0	\$0	\$1,180	
	Concret	14.67	cy	0.65	9.53				\$23.50	\$345	\$330.00	\$4,840	\$0.00	\$0		\$0	\$0	\$5,185	
	Finish	360.00	sf	0.03	10.80				\$1.08	\$390		\$0	\$0.00	\$0		\$0	\$0	\$390	
	Strip form	112.00	lf	0.03	3.36				\$1.08	\$121		\$0	\$0.00	\$0		\$0	\$0	\$121	
17	1 Million Gallon Water Storage Tank																		
	Tank Subcontractor (1 MG Welded Steel Tank)	1	job	0.00	0.00				\$-	\$0.00		\$0.00	\$0	\$0		\$0	\$1,350,000	\$1,350,000	\$1,350,000
	Tide-Flex Tank Mixer Package ***By Aslan***	1	job	0.00	0.00				\$0.00	\$0		\$0	\$124,975.00	\$124,975		\$0	\$0	\$124,975	
	Place Tank Mixer System ***By Aslan***	1	job	120.00	120.00				\$4,338.00	\$4,338		\$0	\$0.00	\$0		\$0	\$0	\$4,338	
	Tank Mixer Start-Up ***By Aslan***	1	job	40.00	40.00				\$1,446.00	\$1,446		\$0	\$0.00	\$0		\$0	\$0	\$1,446	
	Tank Excavation/Subbase & Backfill:																		
	Tank Excavation (Diabase/Quartzite Rock)	3026	cy	0.30	907.80				\$10.85	\$32,817		\$0	\$0.00	\$0		\$39.00	\$118,014	\$0	\$150,831
	Rock Fracture Repair w/ Rock Chipper	3026	cy	0.00	0.00				\$0.00	\$0		\$0	\$6.00	\$18,156		\$10.00	\$30,260	\$0	\$48,416
	Place Excavated Tank Rock Excavation as Embankment @ Tank	2402	cy	0.25	600.50				\$9.04	\$21,708		\$0	\$0.00	\$0		\$0	\$0	\$21,708	
	Haul Excess to Onsite Waste Area	730	cy	0.04	29.20				\$1.45	\$1,056		\$0	\$0.00	\$0		\$0	\$8.00	\$5,840	\$6,896
	6" Class 6 Tank Aggregate Subbase	100	tons	0.10	10.00				\$3.62	\$362		\$0	\$27.15	\$2,715		\$0	\$0	\$3,077	
	Class 6 Aggregate for Beds & Winding Track	326	tons	0.10	32.60				\$3.62	\$1,178		\$0	\$27.15	\$8,851		\$0	\$0	\$10,029	
	Mirafi 500X Geo-Grid for Beds & Winding Track	1600	sy	0.00	0.00				\$-	\$0		\$0	\$4.50	\$7,200		\$0	\$0	\$7,200	

CITY OF OURAY
Professional Service Agreement

THIS AGREEMENT is entered into effective this 3rd day of April 2023 by and between: The City of Ouray, a Colorado home rule municipal corporation (the City); and, Element Engineering, LLC, a Colorado limited liability company with its principal place of business located at 12687 West Cedar Dr., Ste 300, Lakewood, CO 80228, (the Engineer).

NOW THEREFORE, in consideration of the mutual representations, promises and conditions contained herein, the parties agree as follows.

1. SCOPE OF ENGINEER SERVICES. The Engineer agrees to provide services in accordance with the Scope of Engineer 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, upon termination of this agreement by either party, or if the services are not completed, this agreement will expire on April 3, 2024 at which time the City and the Engineer will either negotiate a new agreement to complete the services, extend this agreement or their relationship under this agreement will terminate.
3. FEES FOR SERVICES. In consideration of the services to be performed pursuant to this agreement the City will pay the Engineer a sum not to exceed Two Hundred Seventy-Two Thousand Three-Hundred and Sixty Dollars (\$272,360.00).
4. PAYMENT FOR SERVICES. The Engineer 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 with an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation, therefore.
5. CITY REPRESENTATIVE. The 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.
6. INDEPENDENT ENGINEER. The services to be performed by the Engineer are those of an independent contractor and not as an employee of the City. Nothing in this agreement shall constitute or be construed as a creation of a partnership or joint venture between the City and the Engineer, or their successors or assigns. No agent or employee of the Engineer shall be or shall be deemed to be the employee or agent of the City. The 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 Engineer. 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 Engineer. The Engineer 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 Engineer will pay all federal and state income tax on any moneys paid pursuant to this agreement.

7. INSURANCE. The Engineer 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 Engineer. The Engineer 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 Engineer 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 Engineer 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 Two Million Dollars (\$2,000,000.00).
 - b. The Engineer 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 Engineer 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 Engineer upon demand, or the City may offset the cost of the premiums against any monies due to the Engineer.
 - d. The Contractor shall be responsible for any deductible under any policy required above.

8. GOVERNMENTAL IMMUNITY. The Engineer 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.*
9. INDEMNIFICATION. To the fullest extent permitted by law, the Engineer 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 Engineer or any third party under the control or supervision of the Engineer, but not for any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the Engineer or the Engineer's agents, representatives, subcontractors, or suppliers.
10. ASSIGNMENT. The Engineer shall neither assign any responsibilities nor delegate any duties arising under this agreement without the prior written consent of the City.
11. PAYMENTS BY CITY. All payments of money by the City pursuant to this agreement shall be subject to the annual appropriations of money.
12. LEGAL COMPLIANCE. The Engineer 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.
13. 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.
14. 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 Engineer.
15. BINDING EFFECT. This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors.
16. 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.
17. 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.

18. 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.
19. 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.
20. 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.
21. 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 Engineer have signed this agreement effective the day and year first written above.

CITY OF OURAY:

Ethan Funk, Mayor

Attest:

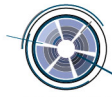
Melissa M. Drake, Clerk

ENGINEER:

Nicholaus P. Marcotte, PE

EXHIBIT A

Scope of Contractor Services



February 24, 2023

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

RE: Proposal for Professional Engineering Services
Water Treatment Plant Construction Services

Dear Mr. Clark,

Element Engineering, LLC (Element) is pleased to provide this proposal for construction services for the proposed City of Ouray Water Treatment Plant (WTP). This letter details our proposed scope of services, deliverables, schedule, and fee.

This letter is intended to be used as an exhibit to the city's standard Owner-Engineer agreement.

UNDERSTANDING

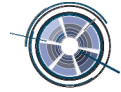
Element understands that the City of Ouray will retain Aslan Construction to construct the water treatment facility as designed by Element Engineering and that engineering construction services are necessary. Desired construction services include onsite inspections, observer's daily reports (ODRS), attending and participating in weekly progress meetings, submittal review, pay application review, request for information (RFI) responses, change order review, startup and commissioning oversight, and project closeout assistance.

Element has dedicated an experienced construction manager to complete necessary onsite inspections. Our construction manager has over 15-years of experience in the construction industry, and 10-years of experience as a construction superintendent on municipal water and wastewater treatment plants.

SCOPE OF SERVICES

The following Scope of Services is proposed:

- Attend and participate in weekly progress meetings. It is assumed weekly progress meetings are held virtually.
- Review and coordinate submittals.



- Review pay applications, RFIs, change orders, and coordinate with the contractor and owner.
- Complete onsite inspections as necessary. This proposal assumes two (2) consecutive days onsite twice per month (4-days per month) including travel time, meals, and lodging. It is assumed construction will take 12-months to complete.
- Compile inspection reports for all onsite inspections.
- Attend coordination meetings onsite as necessary, including at important milestones such as pre-commissioning inspection, commissioning, and startup and training.
- Complete construction closeout services including initial inspection, punch list generation, final inspection, recommendation for final payment, and CDPHE as-constructed documentation.

PROPOSED PROJECT FEE AND SCHEDULE

The estimated fee for the above referenced Scope of Services shall be time and materials based on our currently approved hourly rates not to exceed \$272,360. This proposal assumes a construction timeline of twelve (12) months.

EXCLUSIONS

This proposal excludes special inspections required by the building department, geotechnical, reinforcing steel, and concrete testing during construction. The project specifications require this to be paid for by the contractor.

We appreciate the opportunity to provide this proposal. If you have any questions, please feel free to contact me by phone at 303.378.2969 or by email at nmarcotte@elementengineering.net.

Sincerely,

ELEMENT ENGINEERING, LLC

Nicholaus P. Marcotte, P.E.
President



APPLICATION FOR PARTICIPATION ON A CITY COMMITTEE

City of Ouray
320 6th Avenue
PO Box 468
Ouray, Colorado 81427
Telephone: (970) 325 7211 FAX: (970) 325 7212

An Equal Employment Opportunity Employer

Thank you for your interest in applying to serve on a City Committee. Please complete the following on your background. This information will allow us to select and appoint a balanced membership for each of our committees.

PART 1: PERSONAL DATA

Full Name: Gerardo Arnaldo Tarango-Martha
Physical Address: [Redacted]
Mailing Address: [Redacted]
E-Mail Address: [Redacted]
Home Telephone Number: [Redacted]
Business Telephone Number: [Redacted]
Present job title: Landscaping Manager Ouray Riverside Resort
Present employment is (check one) Full-time Part-time
May we contact you at work for committee related issues? Yes No
Do you rent or own your home? If you own, do you have vacation rentals? No
own my RV, rent RV space.

PART 2: BACKGROUND INFORMATION

Please check the name of the committee you are interested in:
[] Planning Commission [] Ouray Economic Development Committee [x] Beautification
[] Park & Recreation (PARC) [] Tourism Advisory Committee (TAC) [] Other:

How long have you lived in the City of Ouray? 4.5 years

What do you think are the major issues affecting our City?
Affordable housing
Water Treatment
2nd Homes
Hot Springs upgrade

How do you envision your contribution to this committee?
I have already been volunteering, working alongside current members of the Ouray Beautification Committee for five months. (Lori Leo, Robert Stouffer, and Francie Tisdale.)

If you own a business in Ouray, please list name (All businesses must be registered):
N/A

Signature: Gerardo A. Tarango

Date: 3-20-23

Print Name: Gerardo A. Tarango-Martha

If you are interested in an opportunity to serve your community, please fill out the application and return to the above address.



METAL CORETEN SHINGLES:
16"x24"-30"



WOOD SIDING: THERMORY KODIAK
SPRUCE 5/4x8 W/ EXPOSED
FASTENERS OVER METAL AT REVEAL

OTHER EXTERIOR MATERIALS:
-BLACK STANDING SEAM METAL ROOF
WITH BLACK METAL FASCIA

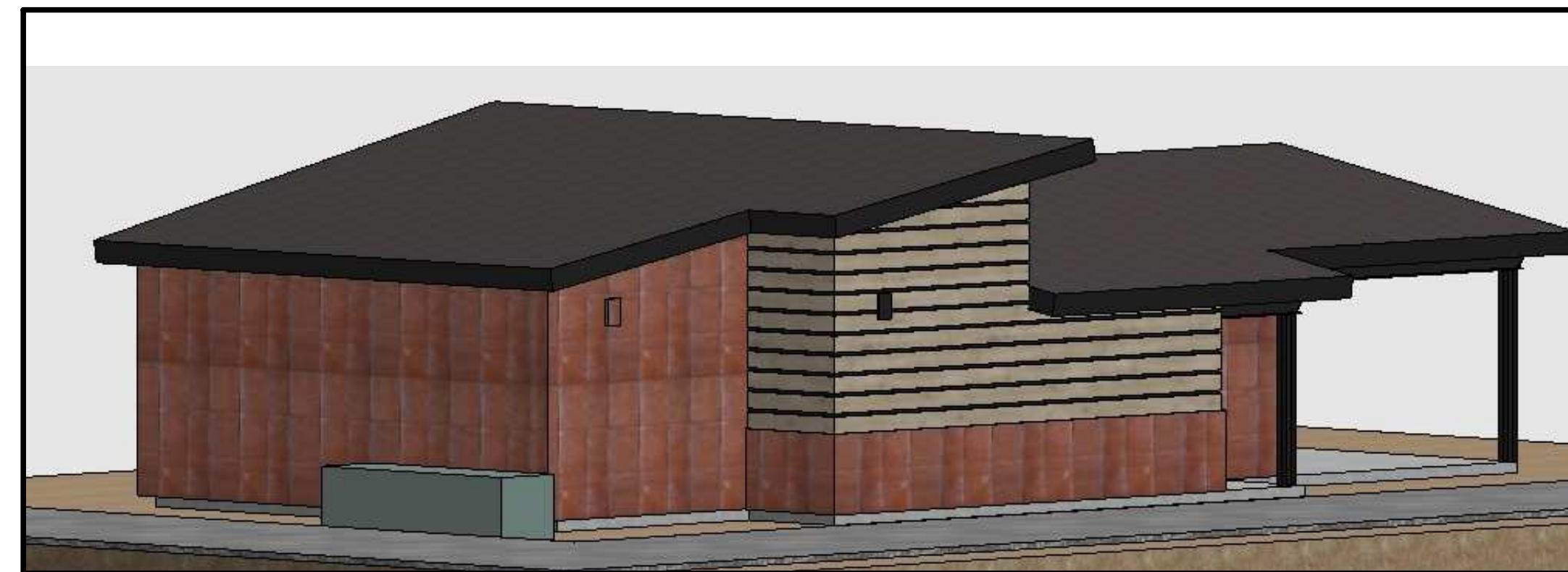
-STEEL W-BEAMS & COLUMNS



4 LOOKING NE
SCALE: 1:91.00



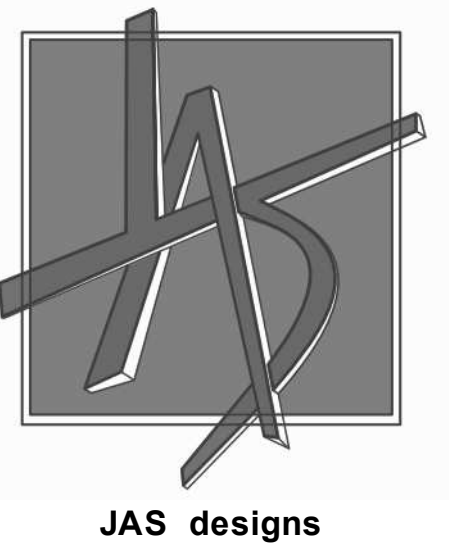
2 LOOKING SW
SCALE: 1:76.02



3 LOOKING SE
SCALE: 1:59.88



1 LOOKING-NW
SCALE: 1:74.65

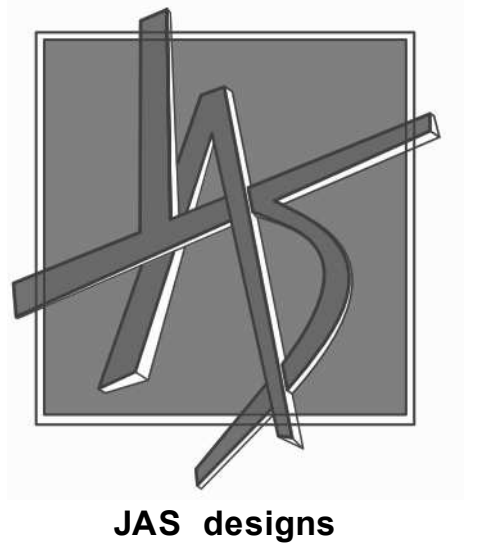


josh smith
po box 472
ouray, co 81427
phone: 970.948.8597
e-mail:
jasdesigns@gmail.com

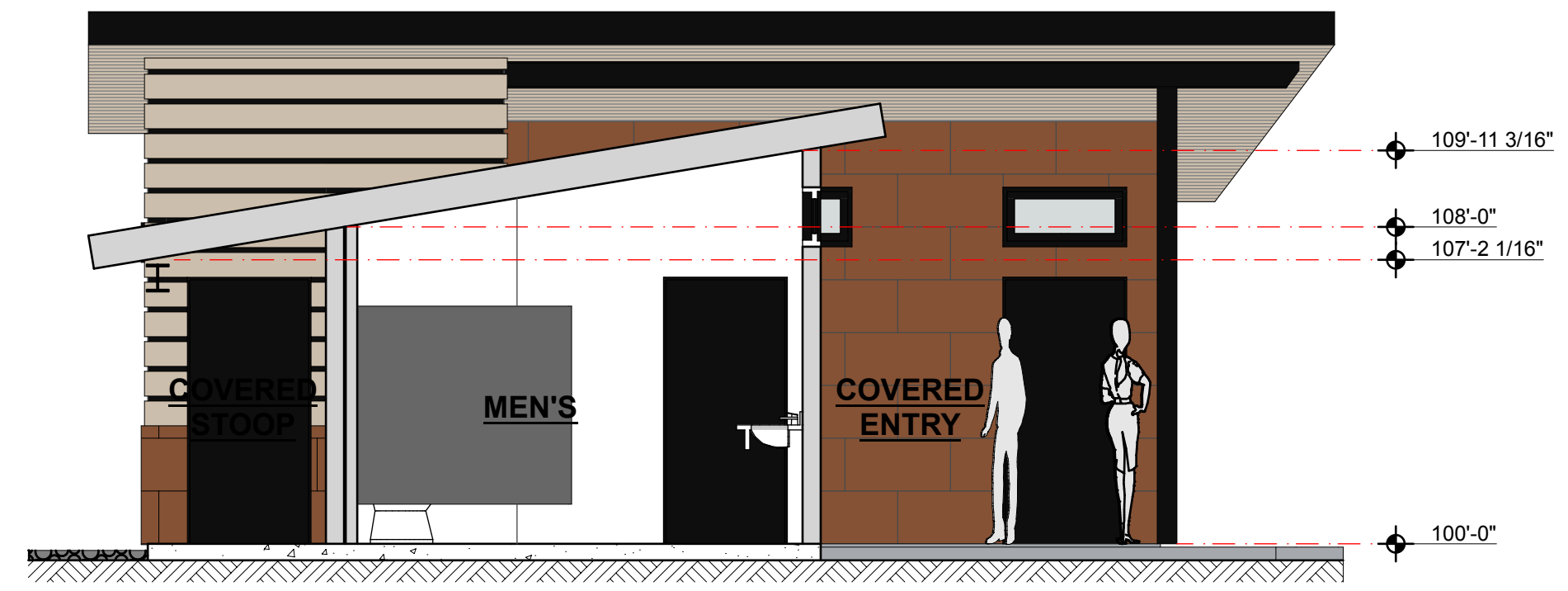
DD REVIEW - NOT FOR CONSTRUCTION
FELLIN PARK RESTROOMS
City of Ouray

issued for:
REVIEW 3/24/23

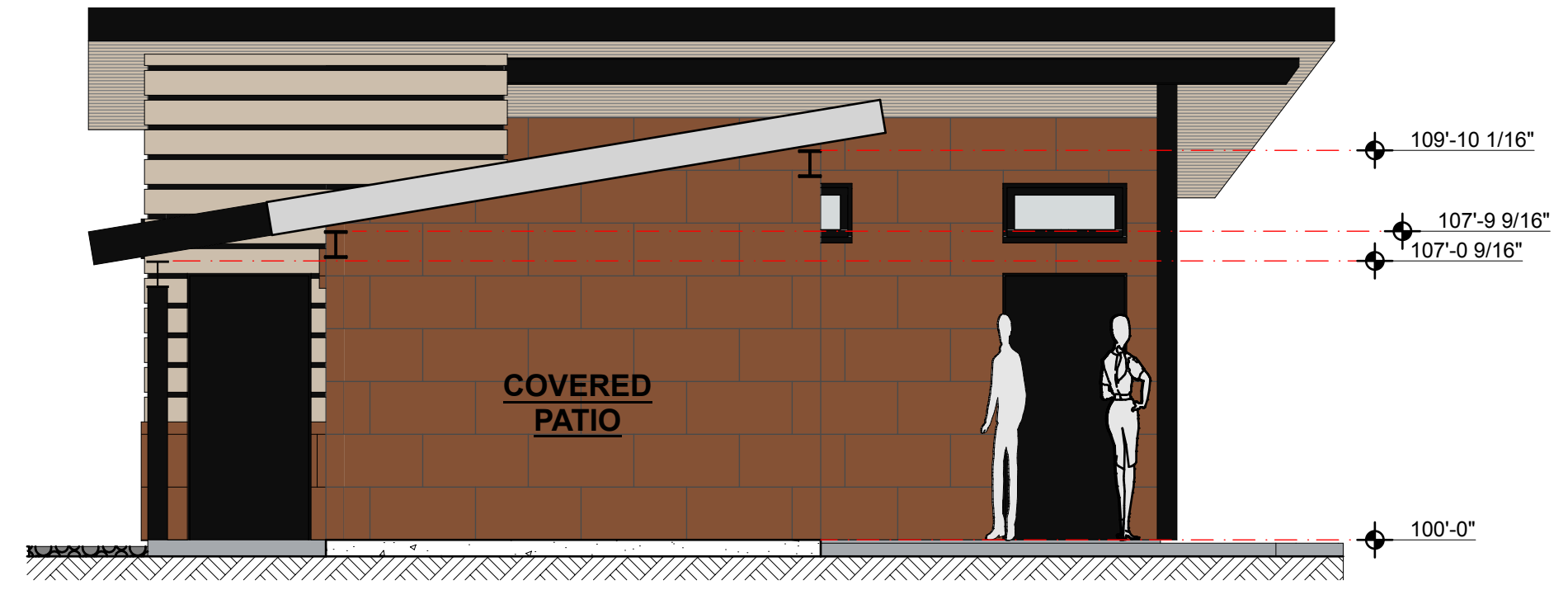
DD-1
DD-REVIEW



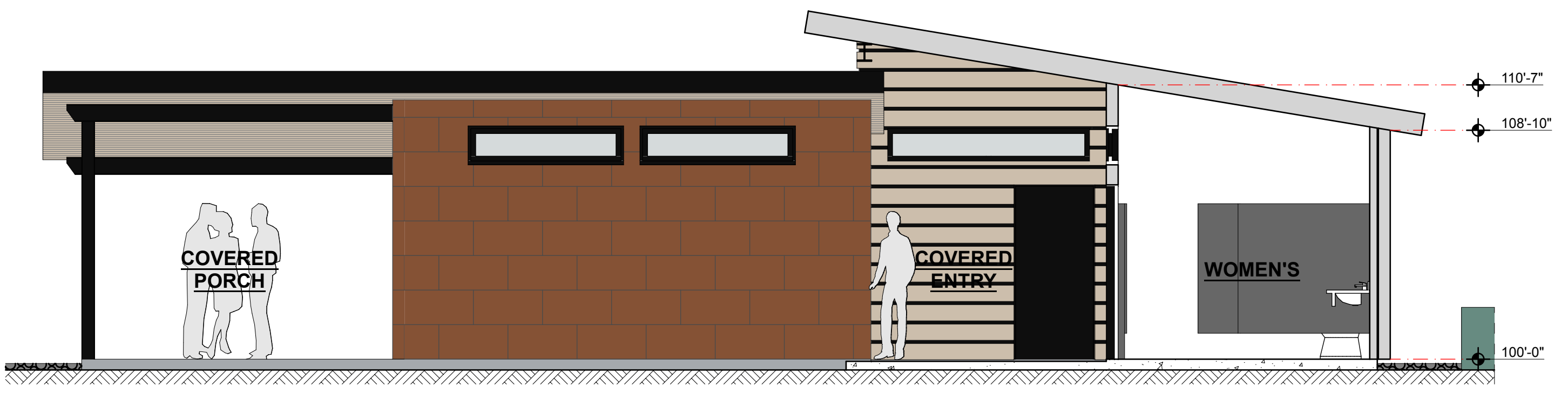
josh smith
po box 472
ouray, co 81427
phone: 970.948.8597
e-mail:
jasdesignsllc@gmail.com



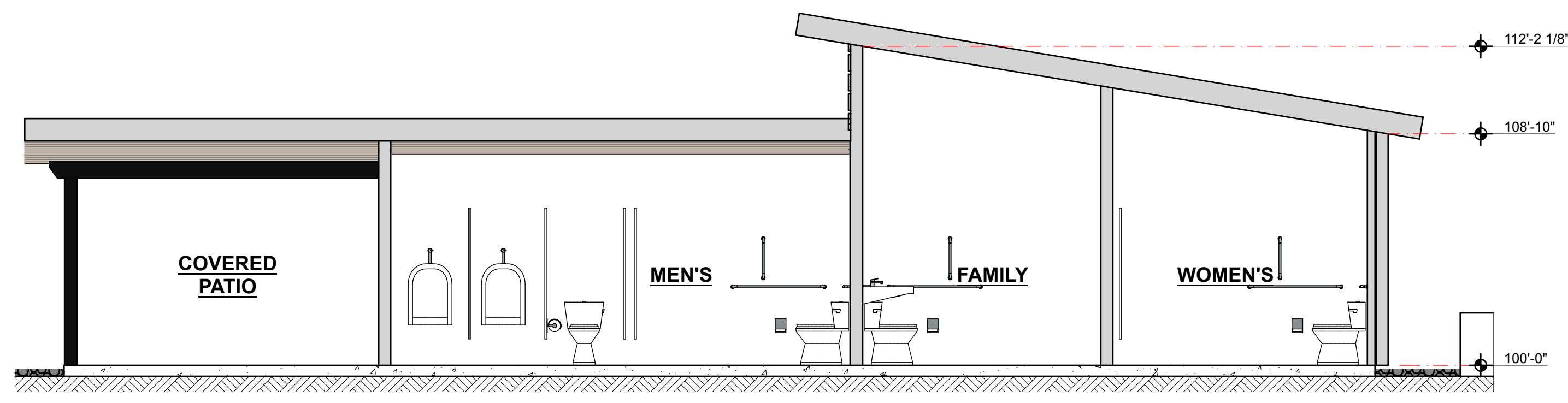
6 SECTION @ MENS LOOKING NORTH
SCALE: 1/4" = 1'-0"



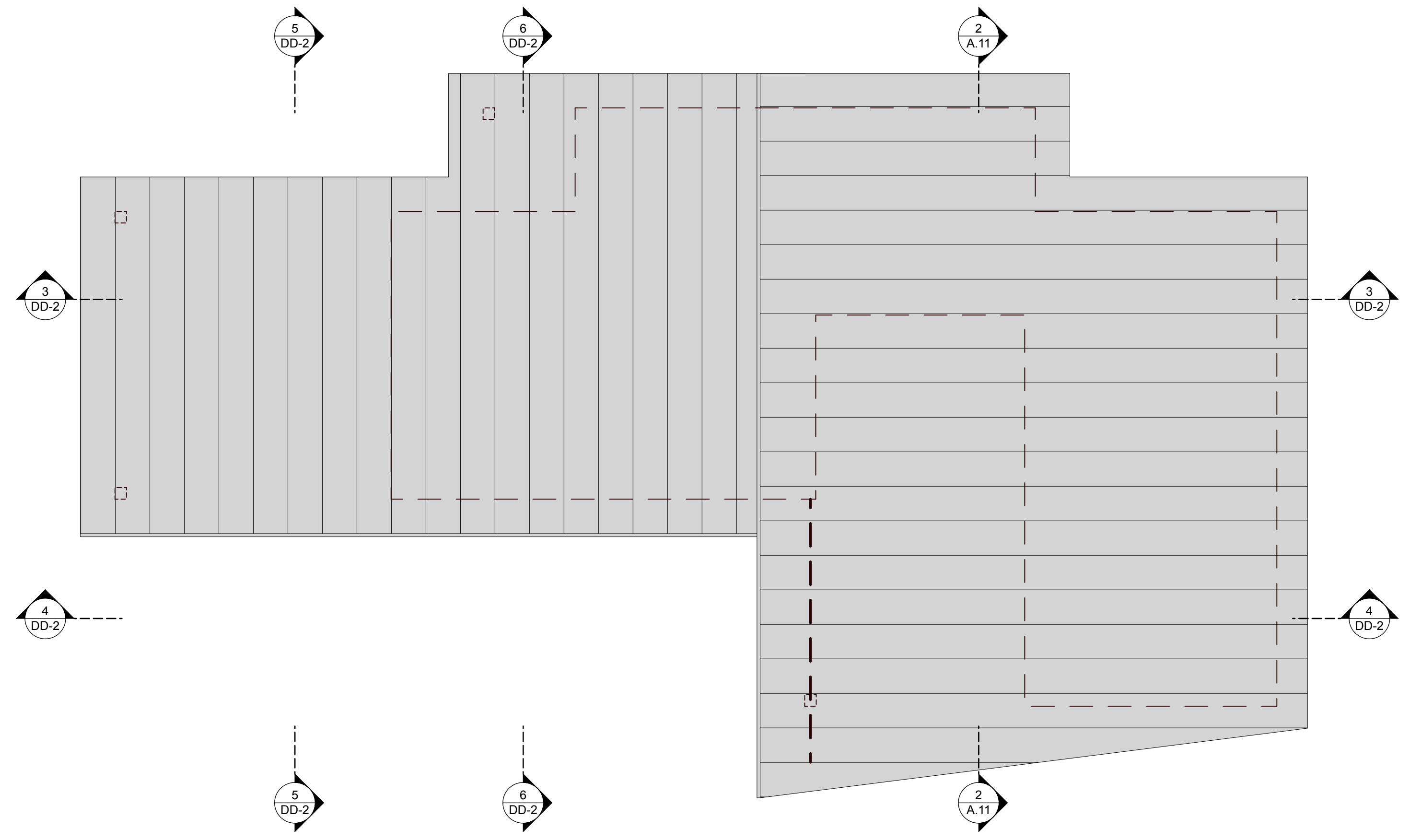
5 SECTION @ PATIO
SCALE: 1/4" = 1'-0"



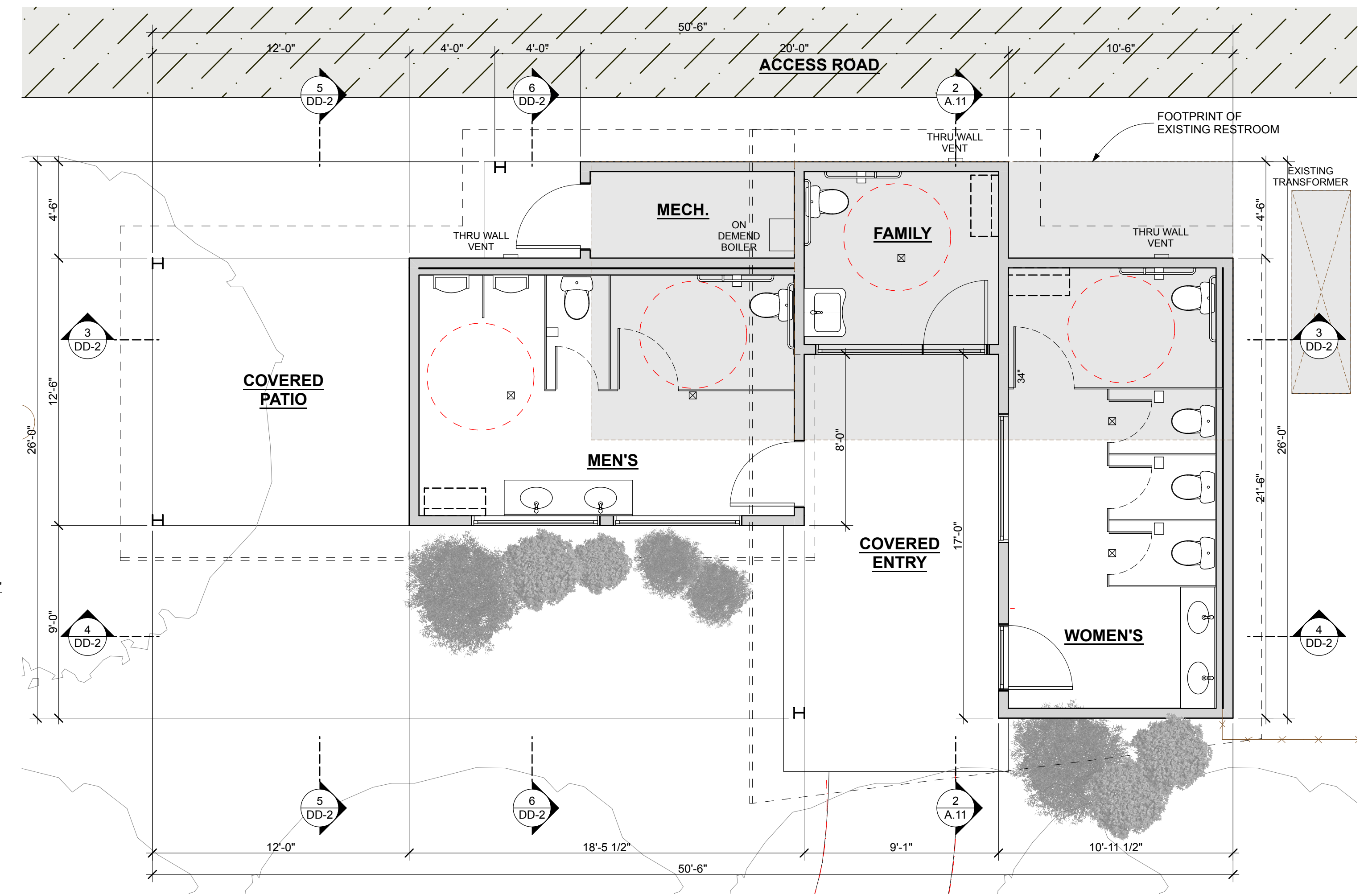
4 SECTION @ COVERED ENTRY
SCALE: 1/4" = 1'-0"



3 SECTION @ MENS/FAMILYH/WOMENS
SCALE: 1/4" = 1'-0"



2 ROOF PLAN
SCALE: 1/4" = 1'-0"



1 FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"

DD REVIEW - NOT FOR CONSTRUCTION
FELLIN PARK RESTROOMS
City of Ouray

issued for:
REVIEW 3/24/23

DD-2
FLOOR PLANS



Home Trust of Ouray County
95 Meadows Circle
Ridgway, CO 81432
director@hometrusted.org

Attention: Ouray City Council
City of Ouray
320 6th Ave
Ouray, CO 81427
efunk@cityofouray.com

Dear Ouray City Council Members,

The Home Trust of Ouray County closed on the Ouray 6-plex at 734 4th Street, Ouray on March 29th, 2023. We are very grateful for the City of Ouray's donation of \$100,000 to preserve this property as affordable housing. Your donation to our organization will help our nonprofit grow an inclusive, economically diverse community by providing permanently affordable homes and rentals for modest income households.

This summer we will be applying for renovation/rehabilitation grant funding through the Federal Home Loan Bank to make needed upgrades and repairs to the property. The bulk of the work will be upgrading the heating system, replacing the windows, repairing two kitchens, finishing the laundry room and purchasing a commercial washer and dryer, purchasing two sheds for storage, and replacing deteriorated flooring. We would like to request the waiver of building permit and inspection fees for these renovation/rehabilitation efforts.

Again, thank you for your generous donation! Your support is crucial to preserving and creating affordable housing.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Sokolowski", with a stylized flourish at the end.

Andrea Sokolowski
Executive Director
Home Trust of Ouray County

State \$LAWRK
PROJECT: C M006-001 (25227),
Ouray Main St RMS

REGION: 5
WMH

CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and CITY OF OURAY hereinafter referred to as the “Contractor” or the “Local Agency.”

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs. Total Contract Amount: \$1,000,000.00.
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for Ouray Main St RMS at four locations throughout Ouray. and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written “Notice to Proceed” prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
5. The Local Agency has requested that State funds be made available for project C M006-001 (25227), Ouray Main St RMS referred to as the “Project” or the “Work.” Such Work will be performed in City of Ouray, Colorado, specifically described in **Exhibit A**.
6. The State has funds available and desires to provide 80% of the funding for the work. Local Agency will provide the other 20%. State funds may be awarded with “Special Funding”. Special Funding may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds or COVID Relief. If Special Funding is used there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the Special Funding and invoiced in compliance with the rules outlined in the award of the funding.
7. The Local Agency desires to comply with all state and other applicable requirements, including the State's general administration of the project through this contract, in order to obtain state funds for the project.
8. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
11. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of Ouray Main St RMS work at four locations throughout Ouray., in City of Ouray, Colorado, as more specifically described in **Exhibit A**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in **Section 27** of this contract
2. This contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit B** (Local Agency Resolution)
5. **Exhibit C** (Funding Provisions)
6. **Exhibit D** (Option Letter)
7. **Exhibit E** (PII Certification)
8. **Exhibit F** (Local Agency Contract Administration Checklist)

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. It shall terminate on December 07, 2032, or sooner if any of the State's funding expires, or is sooner terminated or unless performance is extended in accordance with this Contract.

Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
- B. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- C. Funding will be detailed in **Exhibit C** of the funding provisions.

Section 5. Project Payment Provisions

- A. The State will reimburse the Local Agency for incurred costs relative to the project following the State's review and approval of such charges, subject to the terms and conditions of this Contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the project, and will not be reimbursed by the State.
- B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in **Exhibit C**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
 1. In accordance with the provisions of **Section 5** and with the terms and conditions of this contract;
 2. Necessary for the accomplishment of the Work;
 3. Reasonable in the amount for the goods and services provided;
 4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
 5. Incurred for Work performed after the effective date of this contract;
 6. Satisfactorily documented.
- C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.
 1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
 2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn.

All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

- D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
 2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline as specified in the award letter if applicable, whichever is sooner. The State's obligation to pay Agreement Funds will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Funding Provisions & Performance Period in **Exhibit C**.
- F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
 2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
 3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
 4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. Option Letter Modification

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

- A. Option to begin a phase and/or increase or decrease the encumbrance amount.
- The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30)

days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

- B. Option to transfer funds from one phase to another phase.
The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.
- C. Option to do both Options A and B.
The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

Section 7. State and Local Agency Commitments

The Scope of Work in **Exhibit A** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The “Responsible Party” referred to in this contract means the Responsible Party as identified in the Scope of Work in **Exhibit A**.

- A. Design [if applicable]
1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the responsible party shall comply with the following requirements, as applicable:
 - a. perform or provide the Plans, to the extent required by the nature of the Work.
 - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
 - c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
 - d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
 - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
 - f. provide final assembly of Plans and contract documents.
 - g. be responsible for the Plans being accurate and complete.
 - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
 2. If the Local Agency is the responsible party:
 - a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with State requirements.
 - c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures

implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:

- (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
- (2) it shall ensure that all changes in the consultant contract have prior approval by the State. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
- (3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
- (4) it (or its consultant) shall use the CDOT procedures described in **Exhibit A** to administer that design consultant subcontract, to comply with 23 CFR 172.5(b).
- (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with 23 CFR 172.5(b).
- (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose."
 - (b) "Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project."
 - (c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."
 - (d) The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State requirements.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work in **Exhibit A**. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements as described in the Scope of Work in **Exhibit A**.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
3. If the Local Agency is the responsible party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
 - (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.

- (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
- c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
 - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency and the Stat in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
 - (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
 - (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
 - (4) All force account work shall have prior approval of the State and shall not be initiated until the State has issued a written notice to proceed.
- C. State's obligations
 1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
 2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Scope of Work in **Exhibit A**, within the Work of this contract.

Section 8. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

Section 9. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 10. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

- A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
- B. Obtaining the railroad's detailed estimate of the cost of the Work.
- C. Establishing future maintenance responsibilities for the proposed installation.
- D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 11. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Section 12. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 13. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

Section 14. Termination Provisions

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

- C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

If to State	If to the Local Agency
CDOT Region: 5	City of Ouray
Bridget McDougall	Silas Clarke
Project Manager	City Administrator
3803 N Main Ave	320 6th Ave, PO BOX 468
Durango, CO 81301	OURAY, CO 81427
970-385-1416	970-325-7060

Section 17. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 18. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or

provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 21. Waiver

The waiver of any breach of a term, provision, or requirement of this contract 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.

Section 22. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 26. Statewide Contract Management System

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§Statewide Contract Management System** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of

the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

Section 27. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Section 28. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>THE LOCAL AGENCY CITY OF OURAY</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis Department of Transportation</p> <p>By: _____ Keith Stefanik, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: _____ Signature – Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

<p>STATE OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Colorado Department of Transportation</p> <p>Date: _____</p>

EXHIBIT A
SCOPE OF WORK

Name of Project: Ouray Main St RMS
Project Number: C M006-001
SubAccount #: 25227

The project scope includes crosswalks, signage, striping, sidewalk and ADA/PROWAG compliant curb ramps and possibly some curb and gutter and drainage improvements at four locations throughout Ouray. The four crosswalk and improvement locations include: across US 550 at the Ouray Visitor Center connecting to the Perimeter Trailhead; across Main St (US 550) mid-block crossing between 6th and 7th Street connecting the grocery store and post office; the intersection of Main St (US 550) and 6th Street full improvements with bump outs and crosswalks; across US550 at County Road 361 connecting the parking space to attractions off CR 316.

The scope of work includes Rapid Rectangular Flashing Beacon Crosswalks along with appropriate signage across US 550 and Main St at each of the four locations as deemed appropriate. Detailed design and coordination with CDOT Traffic will be necessary before exact location and other specifics can be determined. Collection of at least one day of pedestrian counts at that locations may be required to provide the necessary information for CDOT Traffic and Safety to consider whether the crosswalk installation is warranted. All crosswalk locations will require a crossing installation request form and evaluation.

Pending additional funding and the project budget, the original scope included improvements at each intersection on Main St (US 550) from 3rd St to 9th St. The improvements are proposed to include bump outs at the corners of the intersection, ADA/PROWAG ramps, drainage improvements, and crosswalks. If funding allows the project scope will increase to include some or all of the additional intersections.

Preliminary survey work will establish the existing right of way and whether the scope of work can be accomplished without the need to acquire additional right of way.

The project will be designed and constructed to meet ADA, PROWAG, AASHTO and MUTCD requirements, as well as any other applicable design standards, including CDOT design and construction standards and policies.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT B
LOCAL AGENCY RESOLUTION (IF APPLICABLE)

EXHIBIT C- FUNDING PROVISIONS

City of Ouray, Project # C M006-001 (25227)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$1,000,000.00, which is to be funded as follows:

1. FUNDING		
C M006-001 (25227)		
a.	State Funds (80% of RMS Award)	\$800,000.00
b.	Local Agency Funds (20% of RMS Award)	\$200,000.00
TOTAL FUNDS ALL SOURCES		\$1,000,000.00
2. ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	State Funds Budgeted	\$800,000.00
b.	Less Estimated State Share of CDOT-Incurred Costs	\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80.00% \$800,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20.00% \$200,000.00
TOTAL PROJECT ESTIMATED FUNDING		100.00% \$1,000,000.00
3. FOR CDOT ENCUMBRANCE PURPOSES		
C M006-001 (25227)		
a.	Total Encumbrance Amount (Only State funds are encumbered)	\$800,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		\$800,000.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit D) or formal Amendment.

WBS Element 25227.10.30	Performance Period Start*/End Date N/A	Design 3020	\$0.00
WBS Element 25227.20.10	Performance Period Start*/End Date N/A	Const. 3301	\$0.00

*For C M006-001 (25227) *The Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Funding Ratios

C M006-001 (25227)

The funding ratio for the State funds for this Work is 80% State funds to 20% Local Agency funds, and this ratio applies only to the \$1,000,000.00 that is eligible for State funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,000,000.00, and additional State funds are available for the Work, the Local Agency shall pay 20% of all such costs eligible for State funding and 100% of all other costs. If additional State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,000,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

C M006-001 (25227)

The maximum amount payable to the Local Agency under this Agreement shall be \$800,000.00. For CDOT

accounting purposes, the State funds of \$800,000.00 will be encumbered, but the Local Agency funds of \$200,000.00 will NOT be encumbered. The total budget of this funding source is \$1,000,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the State funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 6 of this contract. **This applies to the entire scope of Work.**

Exhibit D

SAMPLE OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing # Option Letter OLA #
Original Contract CMS #		Original Contract #	

Vendor name:

SUBJECT:

Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts (*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to extend the term of this Agreement.

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C 2, C-3, C-4, etc.*).

Option C (*Insert the following language for use with Option C*):

In accordance with the terms of the original Agreement (*insert CMS routing # of original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: C-2, C-3, C- 4, etc.*).

(The following language must be included on options A, B and C):

The total encumbrance as a result of this option and all previous options and/or amendments is now (*insert total encumbrance amount*), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (*indicate total budgeted funds*) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

Jared S. Polis, Governor

By: Date:

Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

State Controller Robert Jaros, CPA, MBA, JD

By: Date:

EXHIBIT E

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT F

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. C M006-001	STIP No.	Project Code 25227	Region 5
Project Location Ouray, Colorado			Date 11/28/2022
Project Description Ouray Main St RMS			
Local Agency City of Ouray	Local Agency Project Manager Silas Clarke		
CDOT Resident Engineer Bridget McDougall	CDOT Project Manager Robert Shanks		
<p>INSTRUCTIONS: This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i>. LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.</p> <p>The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p>			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
TIP / STIP AND LONG-RANGE PLANS				
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		x
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION				
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). <i>Please write in "NA", if Not Applicable.</i>		x
PROJECT DEVELOPMENT				
1	5.1	Prepare Design Data - CDOT Form 463	X	X
	5.2	Determine Delivery Method		X
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		x
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	X X	
3,3A	5.5	Conduct Design Scoping Review Meeting	X	
3,6	5.6	Conduct Public Involvement	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	X	
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
3	5.10	Obtain Utility and Railroad Agreements	X	
3	5.11	Conduct Final Office Review (FOR)	X	
3A	5.12	Justify Force Account Work by the Local Agency	X	
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
3	5.14	Document Design Exceptions - CDOT Form 464	X	
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	X	
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	X	
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	X	
	5.21	Ensure Authorization of Funds for Construction		x
	5.22	Use Electronic Signatures	X	X
	5.23	File Project Development Records/Documentation in ProjectWise		x
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).		x
	6.2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Bridget McDougall 11/28/2022 _____ CDOT Resident Engineer Date		x
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) "NA", if Not Applicable		x
	6.4	Enforce Prompt Payment Requirements	X	
	6.5	Use Electronic Tracking and Submission Systems – B2GNow <input checked="" type="checkbox"/> LCPtracker <input type="checkbox"/>	X	
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	NA	NA
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	NA	NA
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS				
Federal Project (use 7.1 series in Chapter 7) <input type="checkbox"/> Non-Federal Project (Use 7.2 series in Chapter 7) <input checked="" type="checkbox"/>				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	X	
7		Advertise for Bids	X	
7		Concurrence to Advertise		X
7		Distribute "Advertisement Set" of Plans and Specifications	X	
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	X	
7		Open Bids	X	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		x
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		x
		Submit required documentation for CDOT award concurrence		
		Concurrence from CDOT to Award		x
		Approve Rejection of Low Bidder		x
7,8		Award Contract (federal)	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	X	
CONSTRUCTION MANAGEMENT				
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	X	
8	8.1	Issue Notice to Proceed to the Contractor	X	
8	8.2	Project Safety	X	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
		Pre-survey • Construction staking • Monumentation	X X	
		Partnering (Optional)	X	
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." TBD _____ Phone number Local Agency Professional Engineer or CDOT Resident Engineer		
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
		Construction inspection and documentation (including projects with structures)	X	
		Fabrication Inspection and documentation	X	
9	8.6	Review and Approve Shop Drawings	X	
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system. Provide the name and phone number of the person authorized for this task. Silas Clarke 970-325-7060 _____ Phone number Local Agency Representative		
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
9B	8.12	Prepare and Authorize Change Orders	X	#
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	
9	8.16	Prepare and Submit Monthly Progress Reports	X	
9	8.17	Resolve Contractor Claims and Disputes	X	
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Bridget McDougall 970-692-7839 _____ Phone number CDOT Resident Engineer		X
9	8.19	Ongoing Oversight of DBE Participation	X	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
MATERIALS				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting <ul style="list-style-type: none"> Buy America documentation required prior to installation of steel 	NA	NA
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project Update the form as work progresses Complete and distribute form after work is completed 	X X	X
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Acceptance Tests	X	
9C	9.6	Accept Manufactured Products Inspection of structural components: <ul style="list-style-type: none"> Fabrication of structural steel and pre-stressed concrete structural components Bridge modular expansion devices (0" to 6" or greater) Fabrication of bearing devices 	X X X	
9C	9.6	Approve Sources of Materials	X	
9C	9.7	Independent Assurance Testing (IAT) Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> <ul style="list-style-type: none"> Generate IAT schedule Schedule and provide notification Conduct IAT 	X X	X
9C	9.8	Approve mix designs <ul style="list-style-type: none"> Concrete Hot mix asphalt 		X X
9C	9.9	Check Final Materials Documentation	X	X
9C	9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	X	
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	NA	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. Complete CDOT Form 838 – OJT Trainee / Apprentice Record. Complete CDOT Form 200 - OJT Training Questionnaire 	NA NA NA	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	NA	
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	NA	
	10.8	Contract Compliance and Project Site Reviews		X
FINALS				
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	

LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	X	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)		x
11	11.11	Process Final Payment	X	
	11.12	Close out Local Project	x	
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	X	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region Civil Rights Office

CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager



Evan Cockrum <ecockrum@cityofouray.com>

Council Agenda Request

Virginia <vjast@q.com>

Mon, Mar 20, 2023 at 4:56 PM

To: Evan Cockrum <ecockrum@cityofouray.com>

Evan,

As we discussed, my wife Virginia has a disability after a stroke four years ago and must eliminate long walking distances or use a wheelchair.

We are members of the Elks 492 and support /attend Wright Opera House functions, but cannot attend functions due to the absence of parking spaces close to those entrances.

Neither the Elks or the WOH have handicapped spaces in front. This surprises us, as we thought they were required by ADA for facilities open to the public.

So we are requesting that the city consider adding these handicapped spaces this spring when painting the lines on Main St. parking spaces.

Thank you for considering this request.

John & Virginia Ast

970-901-8455

[Quoted text hidden]

 **Handicapped Parking Space Request 032023.pdf**
506K

Administrative Services

320 6th Avenue | P.O. Box 468 Ouray, CO 81427
 agenda-request@cityofouray.com | 970-325-7211



CITY COUNCIL AGENDA REQUEST FORM

All interested persons must submit a completed City Council Agenda Request Form to the City of Ouray for review and consideration. Once an agenda item request is received, the City Administrator will review with the Mayor and determine if the request can be handled administratively or should be added to a future City Council agenda.

City Council meetings are held on the 1st and 3rd Monday of every month at 6:00 p.m. in the Community Center, unless otherwise noticed. All requests for the agenda must be submitted by noon on the Wednesday prior to the Council meeting.

CONTACT INFORMATION	
Form Submission Date:	3-20-23
Proposed Agenda Date (if known):	
Name of person(s) proposing item:	JOHN & VIRGINIA AST (112 OURAY VISTA LANE)
Mailing Address:	[REDACTED] OURAY CO 81427
Phone:	[REDACTED]
Email:	[REDACTED]
Subject of Agenda Item:	HANDICAPPED PARKING SPACES IN FRONT OF ELKS & WOH
Property Location of Agenda Item (if applicable):	
Request Type:	<input checked="" type="checkbox"/> Applicable () Information Only (<input checked="" type="checkbox"/>) Action Item () Discussion/Action () Consent () Public Hearing () Agreement/Contract () Other:
Brief description/summary of the agenda item (as you would like it to appear on the agenda):	
SPACES THIS SPRING (23) PLEASE ADD HANDICAPPED SPACES IN FRONT OF ELKS AND WRIGHT OPERA HOUSE PARKING	
Does the subject concern a City Department? If so, please include the name of the department(s):	
Does the subject concern a City Ordinance? If so, please include the ordinance name and number:	
Have you discussed your issue(s) with City/Administrative Staff? EVAN COCHRAN <input checked="" type="checkbox"/> One () No (<input checked="" type="checkbox"/>) Yes	
Desired outcome:	

SIGNATURE	
Review "Rules and Instructions for Public Hearing Request Forms" on Page 2 before signing or submitting form	
Signature of person submitting agenda item:	Date:
<i>John R. Ast</i>	3-20-23
Printed name of person submitting agenda item:	
JOHN R. AST	

**Electeds Compensation
CAST Member Survey
March 2022**

Jurisdiction	Mayor	Council/Commissioner	Mayor Pro-Tem	Other Benefits	Population	Form of Government (Council-Manager, Strong Mayor, etc.)
Avon	\$1,000/mo	\$500/mo	\$750/mo	Group Health, Dental, PTS Retirement Plan	6,072	Council-Manager
Basalt	\$18,750/year	\$12,500/year	same as council	chamber ski pass	4,500	Council/Manager
Breckenridge	\$1,500/month	\$1,000 / month	\$1,000/month	Medical, Dental, Vision, \$500 Credit for Recreation, Ice, Nordic, & Golf Benefits, annual wellness pass for unlimited access to Recreation Center, Ice Arena and Nordic Center	4,885	Council-Manager
Crested Butte	\$16,200/year	\$10,200/year			1,639	
Denver	\$188,488	\$94,236-\$105,527	N/A	DERP, Health Benefits, Opt In Life Insurance, HSA, etc.	705,576	Strong Mayor
Dillon	\$1000/mo	\$500/mo	\$500/mo	Wellness reimbursement, marina discounts.	1,064	Council-Manager
Durango	\$1031.08/mo	\$800.30/mo	\$800.30 /mo	\$40/mo cell phone stipend	18,588	Council-City Manager

Eagle County		\$10,4567/year		Full health insurance, 100% retirement match up to 12% of salary		
Estes Park	\$13,500	\$10,000	\$11,500	Medical, Dental, Vision, Life, Air Ambulance, Retirement	5,904	Council-Manager
Fraser	\$400/mo	\$200/mo			1,400	Council-Mayor
Glenwood Springs	\$1,200	\$1,000	\$1,000		100,000	Council Manager
Jackson, WY	\$39,300	\$32,750		Health insurance, retirement		Town Administrator
Mammoth Lake, CA	\$8,948/year	\$8,948/year	\$8,948/year	Health insurance (self and dependents), dental/vision reimbursement, life insurance	7,191	Council-Manager
Moab, UT	\$12,922/year	\$7,826/year		Health insurance. If opt out, may receive the value of premium-\$26182/\$23741	5,000	Council-Manager
Mt. Crested Butte	\$1,050/mo	\$600/mo	\$600/mo		900	Council-Manager
Ouray	\$500/mo	\$200/mo	\$200/mo	Hot Spring Pool pass	1,000	Council-Manager
Pagosa Springs	\$300/mo		\$200/mo	None	2,000	Council-Manager
Salida	\$650/mo	\$450/mo			6,000	Mayor-council-administrator

Silverthorne	\$750/mo (increases to \$1000/mo after April '22 election)	\$500/mo	\$500/mo	Rec center pass, family pass for \$125, 457 Retirement Account - mandatory 7.5% for council and town matches 7.5%, 40% discount on Pavilion rentals	4,750	Council - Manager
Snowmass Village	\$2,200	\$1,700		Mayor - phone stipend; All - Ski pass discount	2,826	Council-Manager
Summit County		\$104,567.06/year - set by state statute		Full health and retirement benefits	31,000	Commission/Manager
Telluride	\$1943/mo	\$1243/mo	\$1243/mo	Can "opt in" for Individual (no dependents) Medical/Vision/Dental insurance. Ski pass or equivalent amount (\$1200) for other classes, services. Life Insurance with AD&D of \$25K with option to pay for an increased policy amount.	2,400	Council-Manager; weak Mayor

Vail	\$12,000	\$7,500	\$7,500	Health Insurance, Vision, Pension, Lifestyle Spending	5,377	Council-Manager
Winter Park	\$400/meeting	\$200/meeting	No additional	None	1,071	Council/Manager

Employee Health Insurance

2023	Health Plan	Health	Dental	Vision	Total	2023 Monthly Employee Share	City Share	per pay period
Employee Only	PPO 4	\$ 831.00	\$ 38.00	\$ 11.00	\$ 880.00	\$ 18.46	\$ 861.54	\$ 9.23
	PPO 5	\$ 768.00	\$ 38.00	\$ 11.00	\$ 817.00	\$ 17.36	\$ 799.64	\$ 8.68
	HDHP3	\$ 737.00	\$ 38.00	\$ 11.00	\$ 786.00	\$ 42.48	\$ 743.52	\$ 21.24
Employee Plus Spouse	PPO 4	\$ 1,692.00	\$ 83.00	\$ 15.00	\$ 1,790.00	\$ 38.08	\$ 1,751.92	\$ 19.04
	PPO 5	\$ 1,564.00	\$ 83.00	\$ 15.00	\$ 1,662.00	\$ 35.80	\$ 1,626.20	\$ 17.90
	HDHP3	\$ 1,508.00	\$ 83.00	\$ 15.00	\$ 1,606.00	\$ 89.22	\$ 1,516.78	\$ 44.61
Employee Plus Children	PPO 4	\$ 1,565.00	\$ 105.00	\$ 14.00	\$ 1,684.00	\$ 38.62	\$ 1,645.38	\$ 19.31
	PPO 5	\$ 1,447.00	\$ 105.00	\$ 14.00	\$ 1,566.00	\$ 36.34	\$ 1,529.66	\$ 18.17
	HDHP3	\$ 1,391.00	\$ 105.00	\$ 14.00	\$ 1,510.00	\$ 81.74	\$ 1,428.26	\$ 40.87
Employee Plus Family	PPO 4	\$ 2,031.48	\$ 144.00	\$ 26.00	\$ 2,201.48	\$ 333.80	\$ 1,867.68	\$ 166.90
	PPO 5	\$ 1,871.00	\$ 144.00	\$ 26.00	\$ 2,041.00	\$ 262.64	\$ 1,778.36	\$ 131.32
	HDHP3	\$ 1,391.00	\$ 144.00	\$ 26.00	\$ 1,561.00	\$ 375.30	\$ 1,185.70	\$ 187.65

Future Agenda Items/Work Sessions

- 2018 International Code Adoption (IBC/IRC/IEBC/IMC/IFC/IECC)
- Land Use and Sign Codes (April 6)
- River Dredging (April)
- Alcohol at the pool (Proposal from Staff at end of May)
- (Non-Land Use) Code Revisions
- Additional Fee & Fine Schedules
- Workforce & Attainable Housing
- Alcohol – Entertainment/Consumption District on Main Street (In discussions)
- Restaurant Dining on City Streets
- Water Conservation Incentive