

REQUEST FOR PROPOSAL

For the

Crested Butte Tennis Court Replacement Project

To be provided to the

TOWN OF CRESTED BUTTE

July 10, 2014

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I. INVITATION TO SUBMIT PROPOSALS

Date of Request: July 10, 2014

Due Date for Proposals: 10:30 am, July, 31 2014

The Town of Crested Butte, Colorado, respectfully requests proposals for the Town of Crested Butte Tennis Court Project from qualified Contractors (“Contractors”). The selected Contractor will assist the Town’s Parks and Recreation Department on the project that is discussed further in this request for proposal (the “RFP”).

Four (4) copies of the sealed proposal must be submitted and be received at the Cashier’s Desk located at the Town Hall and shall be addressed as follows:

**Parks and Recreation Department
Town of Crested Butte
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
Town of Crested Butte Tennis Court Replacement Project
Attention: Janna Hansen, Parks and Recreation Director**

Include in the sealed submission, (1) one electronic copy of the proposal in .pdf format on a compact disk or external drive.

All proposers are invited to submit questions, attention Janna Hansen, Parks and Recreation Director: (970) 349-5338; jhansen@crestedbutte-co.gov. Please register with the Parks and Recreation Director if you would like to be copied on replies to all questions submitted.

No proposals received after the due date and time for proposals shown above will be considered, and any proposals so received shall be returned to the Proposer unopened without consideration by the Town under any circumstances. Sole responsibility rests with the Proposer to see that its proposal is received on time at the stated location.

Any modifications or withdrawal of a proposal, prior to the date and time specified, is subject to the requirements in Part III of this RFP, INSTRUCTIONS AND PROPOSAL REQUIREMENTS.

The Town reserves the right to reject any and all proposals or any part thereof, to waive any formalities or informalities and further, to award the services to the most responsive and responsible Contractor, according to the Town’s evaluation and as deemed to be in the best interest of the Town. The Town may opt to conduct interviews at its own discretion following the proposal deadline.

Proposals must meet or exceed requirements contained in this RFP.

This RFP will be distributed as follows:

Directly to the following firms by the project manager identified in Part III of this RFP. Other firms will not be precluded from submitting proposals and may be considered. To request a copy of the RFP, please contact the project manager.

- Evergreen Tennis Courts, Loveland, CO

- Renner Sports Surfaces, Loveland, CO
- The Tennis Company, Salt Lake City, UT

- By posting through the Town's homepage: www.townofcrestedbutte.com

- By publication in the Crested Butte News and Gunnison Times on July 10, 2014

II. PROJECT BACKGROUND, DESCRIPTION AND MINIMUM SCOPE OF SERVICES

A. Project Background and Description

1. PROJECT BACKGROUND

The Town of Crested Butte, CO (The Town) is soliciting design-build bids for the design and construction of three tennis courts in downtown Crested Butte. The courts will replace three 35-year-old existing asphalt courts. The existing three-court footprint is 152 feet by 118 feet. The Town will provide demolition and will conduct various landscaping and related construction activities around the tennis courts outside of this contract.

The Town is seeking a qualified court designer and constructor (Contractor) to complete designs and to construct these courts.

2. PROJECT DESCRIPTION

The Town is seeking design completion and construction of three post-tensioned concrete courts that meet United States Tennis Association (USTA) specifications. The footprint will encompass all three courts and will meet any and all USTA specifications. The Contractor will also provide and install dividers between the courts and fencing, gates and windscreens around the perimeter - along with posts, nets and cuter straps and anchors. The perimeter fence on the windward (west) side must be designed to endure strong winds. Each court will be additionally lined for “10 and under” tennis.

The Town anticipates four gates through the perimeter fencing on the south and west sides. This is a variance from the draft preliminary schematic attached. The final locations of the gates are subject to finalization through some discussion with the oversight committee.

The submitter may propose a post-tensioned concrete court design that 1) overlays the existing courts OR 2) that calls for the demolition of the existing courts in their entirety. If the submitter chooses to propose an overlay design, please include in the proposal a discussion regarding how the design will accommodate the fact that the new USTA standard footprint will be larger than the existing footprint, requiring part of the new courts to be built on compacted materials as opposed to entirely upon existing asphalt.

It should be noted that the Town of Crested Butte resides at roughly 9,000 feet above sea level in the Rocky Mountains. Submitter should be familiar with and consider issues, such as weather and climate, at elevation in preparing proposal.

The Town anticipates that site preparation and construction of the post-tensioned concrete slab will take place during fall of 2014 with surfacing and any additional finish work completed by June 19, 2015.

The Town will provide demolition on site per the final design provided by the Contractor.

A preliminary schematic is attached.

3. OBJECTIVES OF PROJECT

It is the Town's objective to select the most qualified design-build team and most economical approach to constructing post tensioned concrete tennis courts. It is the Town's objective to commence construction on or about September 15, 2014 and to complete construction by mid June, 2015. The Town anticipates that it will commence demolition with its own crews the last week of August.

4. PROJECT SCHEDULE

Proposers shall submit a proposed schedule and timeline as part of the bid package.

As a guideline, the Town anticipates the following schedule:

7/10/14	RFP published
7/18/14	Non-mandatory pre-bid meeting, 1:00 pm, commencing at Town Hall in Crested Butte
7/31/14	Deadline to submit bids and bid opening 10:30 am at Town Hall in Crested Butte. The Town may opt to conduct interviews following the bid deadline.
8/18/14	Bid awarded by Town Council at its regular meeting
8/25/14	The Town commences demolition on site
9/12/14	Final design is completed and approved.
9/15/14	Anticipated construction start date.
6/19/15	Anticipated construction finish date.
6/26/15	Last date to complete prior to liquidated damages

B. Minimum Scope of Services

Successful contractor will be responsible for:

- Final design and engineering, including necessary site inspection and identification and analysis of site-specific requirements
 - o CAD drawings and specifications relevant to the following
 - All plans shall be stamped by a licensed engineer
 - All plans and materials shall meet USTA, ADA and other applicable standards
- Site preparation, including grading, compaction and testing
- Construction of post tensioned concrete slab, encompassing three USTA standard courts
 - o Includes provision and tensioning of cables
- Surface finish and color
- Painting of playing lines per USTA standards, including lines for "under 10" play
- Design, procurement and installation of 10' vinyl clad chain link fencing around the courts, including four gates. Note that the windward side (west) must be designed to withstand strong winds. Gates are desired on the south and west sides.

- Provision and installation of the following court equipment:
 - Windscreens
 - Tennis net posts
 - Nets
 - Cuter straps and anchors
- Installation of existing backboard
- Inspection by a qualified, licensed inspector
- Warranty
- Participation at required project meetings, which will take place weekly at minimum, during construction activities
- Provision of regular communication and updates to the Project Manager and appropriate Town staff

Work Provided by Others:

Landscaping, concrete pathways outside of the court and a shelter will be bid separately. A preliminary schematic is attached.

The Town will be responsible for removal of trees, fencing, posts and other interior structures and saw cutting and removal of asphalt as necessary according to final plans and in coordination with Contractor, as well as disposal of said materials.

C. Qualification Requirements

Work is to be performed by a contractor with a minimum of ten (10) similar, successfully completed projects within the past five (5) years. Contractor will be a member of the American Sports Builders Association and will have a Certified Tennis Court Builder on staff. Contractor shall be a member of the Post-tensioning Institute (PTI). Installing foreman shall be certified by the Post-tensioning Institute (PTI) as a Level 2 installer, and all work shall be supervised by a PTI certified Level 2 Inspector. To eliminate potential liabilities of construction, the contractor or subcontractor for the post-tension slab shall assure single-source responsibility by completing all work with its own forces, to include fine grading, construction, tendon fabrication and placing, concrete placement and tendon stressing.

D. Submittals

Proposals shall include:

- Discussion of project approach
- Proposed timeline of activities
- Preliminary designs
- Specifications for:
 - Site preparation
 - Concrete post-tensioned slab and cables
 - Fencing
 - Surfacing
 - Other equipment: posts, nets, etc.
- Organizational information:
 - Organizational background and overview. Organization’s knowledge and

expertise in providing the services required and experience with similar projects with similar challenges, such as elevation and mountain environment.

- Background of persons and any partners directly involved in the project
- Technical expertise
- Experience and references. Provide examples of, and references for, three projects, similar in nature, size and scope along with references and contact information for each. Provide a brief description of each, including budget, activities and any unique requirements and circumstances.

- Price RFP. Include a not-to-exceed price based on scope of work described above. Price qualifications shall include a breakout of the main facets of the work with the estimated number of hours and dollars associated. Also include the estimated number of hours and dollars associated with any potential additions to the project that you might foresee, as well as a schedule of hourly rates for the members of the team. All fees will be considered by the Town to be negotiable based on the final scope of services and deliverables. The Town reserves the right to revise the Scope of Work through the negotiating process.

III. INSTRUCTIONS AND PROPOSAL REQUIREMENTS

DATE: July 10, 2014

Project: Town of Crested Butte Tennis Court Reconstruction Project

Project Manager: JANNA HANSEN, PARKS AND RECREATION DIRECTOR
Town of Crested Butte
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
Email: JHANSEN@CRESTEDBUTTE-CO.GOV
Phone: (970) 349-5338

Sealed proposals including an electronic copy will be received at the office of the Town Clerk, Crested Butte Town Hall, 507 Maroon Avenue, Crested Butte, Colorado 81224 until 10:30 am, MT on JULY 31, 2014. Proposals shall be enclosed in a sealed envelope and addressed to the Parks and Recreation Director, Town of Crested Butte, Colorado, and marked "TOWN OF CRESTED BUTTE TENNIS COURT RECONSTRUCTION PROJECT"

Length of time proposals shall remain open: 60 days after the date of the proposal opening.

Town will provide notice of award within 60 days after the date of proposal opening.

Planned Proposal Schedule:

- RFP Issued to Contractors: July 10, 2014
- **Non-Mandatory but Strongly Encouraged Pre-Proposal Meeting:** 1:00 pm July 18, 2014
- Last day to request information and/or clarification: July 30, 2014
- Last day for issuance of Addenda: July 28, 2014
(3 days prior to Proposal opening)
- Proposal due date and public opening: July 31, 2014, 10:30 am, Crested Butte Town Hall, Council Chambers
- Town Review Proposal Period: July 31 - August 8, 2014
- Contractor Selection: August 8, 2014
- Contract Negotiation: August 8, 2014
- Town Attorney Office Contract Review: August 14, 2014
- Town Council Award of Contract: August 18, 2014
- Notice of award: August 19, 2014
- Execution of Contract and Project Initiation: August 19, 2014

PART 1 - INSURANCE REQUIREMENTS

The Successful Contractor shall carry the insurance specified in Article IX of the Standard Form of Design/Build Agreement, which is included as Exhibit A with this request for proposal, and shall submit proof of such insurance when delivering the executed Contract to the Town of Crested Butte. The Town shall be named as an additional insured on the specified liability insurance policies and certificates of insurance. Insurance certificates required for this project shall be sent or delivered to The Parks and Recreation Department Attention: Janna Hansen.

PART 2 - DEFINED TERMS

When used in this RFP, the following terms shall have the following meaning:

2.01 “Addenda” or “Addendum” means a clarification or modification to this RFP issued by the Town according to Section 6.01 of these instructions.

2.02 “Agreement” means the Standard Form of Design/Build Agreement, which is included as **Exhibit A** to this request for proposal.

2.02 “Contractor” or “Contractors” means entities responding to this RFP.

2.03 “Project” means The Crested Butte Tennis Court Reconstruction Project as more specifically described in Section II of this RFP.

2.03 “Project Manager” means Janna Hansen, Parks and Recreation Director, Town of Crested Butte.

2.04 “RFP” means this Request for Proposal, dated July 10, 2014, for the Crested Butte Tennis Court Reconstruction Project.

2.05 “Successful Contractor” means the best qualified, responsible Contractor whom the Town makes an award on the basis of the Town's evaluations as hereinafter provided.

PART 3 - CONTRACT DOCUMENTS

3.01 Project Background, Description and Minimum Scope of Services are included in Section II of this RFP. Any deviation from the minimum scope of services outlined therein **MUST** be noted in detail and submitted in writing within the proposal. Alternative work proposals should be attached for any substitutions offered, or when amplifications are desirable or necessary. The absence of any alternative work proposals will hold the Contractor strictly accountable to the project requirements as written herein. Failure to submit alternative work proposals, if applicable, shall be grounds for rejection of the item(s) when offered for delivery.

3.02 The Agreement is included as **Exhibit A** of this RFP. **The Successful Contractor will be required to sign the Agreement in substantially the same form as presented in Exhibit A this RFP packet,** except that the Agreement will be modified to reflect the actual scope of services being provided. Similarly, the Successful Contractor will be required to submit a performance and payment bond in the form presented as Exhibit B of this RFP packet. **A request for changes or modifications to the Agreement or bid forms may result in a disqualification of the Contractor.** The Town reserves the right to negotiate optional scope of work items with the Successful Contractor.

3.03 Payment under the Agreement shall be according to Article XI of the Agreement. The Town will not reimburse the Successful Contractor or other Contractors for any expenses incurred in preparing proposals in response to this RFP.

3.04 The Town, in making the Agreement available on the above terms, does so only for the purpose of obtaining proposals on the work and does not confer a license or grant for any other use.

3.05 RFPs not obtained from the Town, may be incomplete or inaccurate.

PART 4 - QUALIFICATIONS OF CONTRACTORS

4.01 All Contractors must be prepared to submit, within five days of the Town's request, written evidence of their qualifications to perform the work. Contractors may be required to submit evidence that they have a practical knowledge of the particular work required by the Project and that they have the financial resources to complete the Project. In determining the Contractor's qualifications, the following factors will be considered: (a) work previously completed by the Contractor, (b) staff and resources available for this Project, (c) recent financial statement relative to resources, including cash and bank credits available, (d) statement of material on hand and available for this Project, (e) whether the Contractor maintains a permanent place of business, and (f) whether the Contractor has appropriate technical experience. Each Contractor may be required to show that it has handled former work so that no just claims are pending against such work. No proposal will be accepted from a Contractor who is engaged on any work that would impair his ability to perform or finance this Project.

No proposal shall be accepted from and no agreement will be awarded to any person, firm, or corporation that is in arrears to the Town, upon debt or contract that is a defaulter, as surety or otherwise, upon any obligation to the Town or that is deemed irresponsible or unreliable by the Town. If requested, any Contractor shall be required to submit satisfactory evidence that they have a practical knowledge of the particular service proposed upon and that they have the necessary financial resources to provide the proposed service called for as described in the Contract Documents.

4.02 Evidence of Contractor's qualification to do business in the State of Colorado may be required. The Town will require a business license to do business in the Town of Crested Butte.

4.03 Contractors will be required to establish to the satisfaction of the Town the reliability and responsibility of all proposed subcontractors and suppliers pursuant to the criteria set forth in these Instructions and Proposal Requirements. Prior to the award of the Contract, the Town will notify Contractors in writing if the Town has reasonable objection to any such proposed subcontractor. In this event, Contractor may, at his option, (1) withdraw his proposal, or (2) submit a substitute acceptable to the Town with an adjustment in the proposal to cover any difference in cost. The Town may, at its discretion, accept the adjusted proposal or may disqualify the Contractor.

PART 5 - EXAMINATION OF CONTRACT DOCUMENTS AND SITE

5.01 Before submitting a proposal, each Contractor should perform the following as applicable: (a) examine the RFP and project requirements thoroughly; (b) visit the site or sites (identified in the maps attached as Exhibit F to the RFP) to familiarize himself with local conditions that may, in any manner, affect cost, progress or performance of the Project; (c) familiarize himself with federal, state, and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Project; and (d) study and carefully correlate Contractor's observations with the RFP requirements.

5.02 Upon request, the Town will provide each Contractor access to the site or sites to conduct such investigations and tests as each Contractor deems necessary for submission of its proposal.

5.03 Contractor's work on the Project shall be confined to street rights-of-way or other lands controlled by the Town or as directed by the Project Manager.

5.04 Site access will be limited to normal working hours unless otherwise provided in the Specifications or otherwise directed by the Project Manager.

5.05 The submission of a proposal will constitute an incontrovertible representation by the Contractor that he has complied with every requirement of this Part 4 and that the RFP requirements are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Project.

PART 6 - INTERPRETATIONS AND GOVERNING LAW

6.01 All questions regarding the meaning or intent of this RFP are to be submitted **IN WRITING ONLY VIA EMAIL** to the Project Manager. Any inquiry received prior to the date fixed for the opening of proposals will be given consideration. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect and will NOT be considered in awarding of project. Addenda will be mailed or delivered to all parties recorded by the Town as having received the RFP. No addenda will be issued later than three (3) days prior to the proposal due date. It shall be each Contractor's responsibility to make inquiry as to Addenda that have been issued. All Addenda shall become part of this RFP, and all Contractors shall be bound by such Addenda, whether or not received by the Contractor.

6.02 All applicable State of Colorado and Federal laws, Town and County ordinances, licenses and regulations of all agencies having jurisdiction shall apply to the Contractor and project throughout and incorporated here by reference. The Agreement with the selected Contractor, and all questions concerning the execution, validity or invalidity, capacity of the parties, and the performance of the Agreement, shall be interpreted in all respects in accordance with the Charter and Code of the Town of Crested Butte and the laws of the State of Colorado.

PART 7 - BASIS FOR EVALUATION OF PROPOSALS AND AWARD OF PROJECT

The Town does not discriminate on the grounds of race, religion, color, age, sex, disability, or national origin in consideration of an award. Disadvantaged business enterprises are afforded a full opportunity to submit proposals. The award will be made to the best, most qualified responsible Contractor meeting the proposal requirements unless Town Council determines, after reviewing the Town Manager's report, that the public interest would be better served by accepting a specific proposal. In determining whether the public interest would be better served by accepting a specific proposal, the following factors shall be considered:

1. The Contractor's skill, ability, and capacity to perform the personal services or to furnish the materials, equipment or supplies required – including experience with similar projects;
2. Whether the Contractor can perform the services or furnish the materials, equipment or supplies promptly, or within the time period specified, without delay or interference;

3. The Contractor's character, integrity, reputation, judgment, experience and efficiency;
4. The quality of the Contractor's performance of previous purchase agreements;
5. The Contractor's previous and current compliance with statutes, ordinances and rules relating to the purchase;
6. The sufficiency of the Contractor's financial resources necessary for the performance of the purchase agreement;
7. The Contractor's ability to provide future maintenance or service;
8. The number and nature of any conditions attached to the proposal;

In addition, the proposals will be evaluated on the Contractor's experience, project understanding and approach. Based on the preliminary review of the proposals, Contractors may then be interviewed prior to selection.

Upon recommendation of the Town Manager, the Town Council may reject all proposals when it determines that such action is in the public interest.

The following is a list of project-specific criteria that may be used in the award of this project:

Category	Available Points
1. Response to the requirements in the RFP and an approach that clearly indicates understanding of the project scope and Town's goals and expectations.	20
2. Recent and relevant project experience in the Colorado region for work of similar size, scope, and complexity. Positive reference feedback regarding past project performance and the performance of individuals proposed for the project.	20
3. Experience, availability, and office location of each of the members of the team and their qualifications.	20
4. Total level of effort and fee relative to the proposed approach. Competitive firm fee schedule and competitive hourly rates for staff assigned to this project relative to their experience level.	20
5. Project schedule that demonstrates clear understanding of the project and that allows a minimum of 2 weeks for Town review of project deliverables.	20
Total Possible Score	100

PART 8 - CONTRACT TIME

8.01 The number of days within which the Project is to be completed shall be negotiated prior to execution of the Agreement and made part thereof.

PART 9 - PROPOSAL CONTENTS AND FORMAT

9.01 Each proposal should not exceed 15 pages of text and figures (at 12 point font). Cover letters and resumes in an appendix to the proposal do not count toward the proposal page limit. Proposals must specifically include the following, at a minimum:

1. Proposer's fee schedule on the form provided as **Exhibit C** to this RFP.
2. Complete responses on the evaluation form provided as **Exhibit D** to this RFP.

9.02 Proposals must be completed in ink or by typewriter, and each Contractor must submit the proposal with a complete Certification Page (see **Exhibit E** to this RFP) in its usual signature by an authorized representative.

1. For corporations, the Certification Page must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
2. For partnerships, the Certification Page must be executed in the partnership name and signed by a partner, whose title must appear under the signature. The official address of the partnership must be shown below the signature.
3. For joint ventures, the Certification Page shall be signed by each participant in the joint venture or by an authorized agent of each participant, and accompanied by evidence of authority to sign.
4. The names of all persons signing must also be legibly printed or typed below the signature. A proposal by a person who affixes to his signature the word "president", "secretary", "agent", or other designation without disclosing his principal may be held to be the proposal of the individual signing. When requested by the Town, evidence of the authority of the person signing shall be furnished.
5. The full name of each person or company interested in the proposal shall be listed on the Certification Page.

9.03 The proposal shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the proposal).

9.04 No alterations in proposals, or in the printed forms therefore, by erasures, interpolations, or otherwise will be acceptable unless each such alteration is signed or initialed by the Contractor. If initialed, the Town may require the Contractor to identify an alteration so initialed. No alteration in any proposal shall be made after the proposal has been submitted.

9.05 The address and phone number to which communications regarding the proposal are to be directed

must be shown.

9.06 All prices must be written in words and expressed in figures. The unit price items in the proposal must cover all items of work to be done and material to be furnished to fully complete the work in accordance with the RFP's Minimum Scope of Services, included in Section II of this RFP. The cost of appurtenant items of work, material, and equipment not listed separately, not shown on the drawings or not specified as necessary to complete the work in accordance with the RFP shall be considered as included in the unit price.

9.07 The Contractor may be provided confidential information. Complete confidentiality must be maintained regarding Town information and data. Signing of a confidentiality agreement will be required by the Successful Contractor.

9.08 The Town is exempt from Town, State, and Federal sales/excise taxes. Certificates will be issued upon request. Any appropriate taxes shall be shown as a separate item in the proposal.

PART 10 - SUBMISSION OF PROPOSAL

10.01 If the proposal is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "PROPOSAL ENCLOSED" on the face thereof.

10.02 Proposals shall be submitted prior to the time and date set for receipt of proposals as indicated in these Instructions and Proposal Requirements, or the modified time and date as indicated by Addendum. Proposals received after the time and date set for receipt of proposals will be returned unopened. Contractor shall assume full responsibility for timely delivery at the location designated for receipt of proposals; Contractors must allow adequate time for delivery of their proposal either by hand delivery, postal service, or other means.

10.03 Oral, telephone, or telegraph proposals are invalid and will not receive consideration. No Contractor may submit more than one proposal. Multiple proposals under different names will not be accepted from one firm or association. Evidence of collusion among Contractors shall be grounds for exclusion of any Contractor who is a participant in any such collusion.

10.04 All information submitted to the Town by the Contractor is a public record, and may be subject to disclosure under the Colorado Open Records Act, Colorado Revised Statute § 24-72-101, et seq. **The Contractor shall clearly identify any portion(s) of its proposal that it believes constitutes trade secrets, privileged information, and/or confidential commercial, financial, geological or geophysical data which may not be subject to disclosure under the Colorado Open Records Act.**

10.05 To the extent required by C.R.S. § 8-17.5-102(1), by submitting a proposal, the Contractor certifies that at the time of proposal submission it does not knowingly employ or contract with an illegal alien who will perform work under its proposal, and that the Contractor will participate in the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration, or the employment verification program administered by the Colorado Department of Labor and Employment in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under its proposal.

PART 11 - MODIFICATION AND WITHDRAWAL OF PROPOSAL

11.01 Proposals submitted early may be modified or withdrawn by notice to the party receiving proposals at the place and prior to the time designated for receipt of proposals. Such notice shall be in writing over

the signature of the Contractor or be by telegram; if by telegram, written confirmation over the signature of the Contractor must have been mailed and postmarked on or before the date and time set for receipt of proposals. It shall be so worded as not to reveal the amount of the original proposal. Proposals may also be modified or withdrawn in person by the Contractor or an authorized representative provided he can prove his identity and authority. Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposals provided that they are then fully in conformance with these Instructions and Proposal Requirements.

11.02 If within twenty-four hours after Proposals are opened, any Contractor files a duly signed, written notice with the Town and promptly thereafter demonstrates to the reasonable satisfaction of the Town that there was a material and substantial mistake in the preparation of his Proposal, that Contractor may withdraw his Proposal. Thereafter, that Contractor will be disqualified from further making a proposal on the project.

PART 12 - OPENING OF PROPOSALS

12.01 Proposals will be opened publicly by the Project Manager on the date and time specified in the Planned Proposal Schedule above. Thereafter, proposals will be evaluated by the Project Manager and other Town staff. Proposals will be acted upon within approximately 10 business days from the opening of the proposals.

PART 13 - PROPOSALS TO REMAIN OPEN

13.01 Proposals shall remain valid until the date specified in this Section III of the RFP. However, under other provisions stated in this RFP, or in the Town's sole discretion, proposals may be released prior to that date.

PART 14 - AWARD OF PROJECT

14.01 The Town reserves the right and discretion to reject any and all proposals, to waive any and all informalities and to negotiate Agreement terms with the Successful Contractor, and the right to disregard all nonconforming, non responsive or conditional proposals. Discrepancies between words and figures will be resolved in favor of the words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the correct sum. Your attention is called to the fact that proposals that are not completed as directed in this RFP are subject to immediate rejection in the discretion of the Town.

14.02 In evaluating proposals, the Town shall consider the qualifications of the Contractors, and whether or not the proposals comply with the prescribed requirements. The Town reserves the right to reject the proposal of any Contractor who does not pass any such evaluation to the Town's satisfaction.

14.03 The proposal of any Contractor that is in arrears to the Town upon debt of contract or that is a defaulter, as surety or otherwise, upon any obligation to the Town may be rejected.

14.04 If the Agreement is to be awarded, it will be awarded to the most qualified responsible Contractor, the evaluation of whom by the Town indicates that the award will be in the best interest of the Town.

14.05 If the Agreement is to be awarded, the Town will give the successful Contractor a notice of award within the time specified in this Section III of the RFP.

14.06 The successful Contractor shall furnish the Town with a proposed schedule and estimated monthly

payments within ten (10) days after receipt of the notice of award.

PART 15 - SIGNING OF CONTRACT

15.01 When the Town gives a notice of award to the successful Contractor, it will be accompanied by unsigned counterparts of the Agreement and all other Contract Documents. A successful Contractor shall execute the Agreement and deliver it, together with evidence of insurance, if required, to the Town within ten (10) calendar days from the date of the notice of award. Failure to do so will be adequate and just cause for the annulment or cancellation of the awards.

PART 16 - NO WAIVER; PROPOSAL BECOMES TOWN PROPERTY

The Town reserves the right to waive technicalities and formalities in proposals, as well as to accept in whole or in part such proposal or proposals where it is deemed advisable in protection of the best interests of the Town.

The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Contractor of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the Agreement between the Town and the Successful Contractor.

TOWN OF CRESTED BUTTE, COLORADO

By: _____

Printed Name: _____

Title: _____

Town of Crested Butte, Colorado
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224
(970) 349-5338

EXHIBIT A TO REQUEST FOR PROPOSAL

**STANDARD DESIGN/BUILD AGREEMENT
FOR THE Town of Crested Butte Tennis Court Reconstruction Project**

THIS AGREEMENT is entered into this ____ day of _____, 20__, by and between _____ (hereinafter, "Design/Builder"), a(n) *corporation/partnership/ joint venture/individual [CHOOSE ONE]* organized pursuant to the laws of the State of _____ and located at _____ and the **TOWN OF CRESTED BUTTE** (hereinafter, "Town"), a home-rule municipality organized pursuant to the laws of the State of Colorado, located at 507 Maroon Avenue, P.O. Box 39, Crested Butte, Colorado 81224, provides that the Design/Builder and Town, in consideration of the mutual covenants hereinafter set forth, agree as follows:

The Parties agree that, in any section in which the Design/Builder prepares any document for "the approval of the Town," such approval does not mean that Town is responsible for the accuracy, thoroughness, or judgment contained in the document. The Town does not waive the right to hold the Design/Builder responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the Town is relying on the expertise of the Design/Builder

This Agreement is expressly contingent upon the approval of the Town of s Crested Butte Town Council of all of the terms set forth herein. In the event this Agreement is not approved in its entirety by Town Council neither Party shall be bound to the terms of this Agreement.

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

1.1 General Intent. The intent of the Parties is to provide for the design and completed installation of *[INSERT SUMMARY OF IMPROVEMENTS]* at *[INSERT LOCATION]* (the "Improvements"). The Improvements are to be constructed using a design/build approach, free of defects in design and constructed in a workmanlike manner. The design and construction of the Improvements (the "Work") is to be completed for the Contract Sum set forth in paragraph 11.1 of this Agreement (unless modified by a duly approved Change Order(s)). The parties intend that the chronology by which the Improvements shall be constructed is as follows:

- .1 Submission of a Proposal, Preliminary Design and any Minimum Performance Standards for the Improvements by Design/Builder in response to the Town's Request for Proposal;

- .2 Town will issue Notice of Award;
- .3 Design/Builder shall execute the Agreement, provide fully executed bonds in the form required by the Town, and insurance certificates; and shall deliver them to the Town;
- .4 Pre-Design/Build meeting held to submit proposed schedule of values and schedule of payments to the Town, and receive Notice to Proceed with Design from Town;
- .5 Submission of Final Project Design Drawings and Specifications and Construction Documents by Design/Builder, and approval thereof by the Town;
- .6 Submission by the Town to Design/Builder of the Notice to Proceed with Construction;
- .7 Preconstruction conference and submission of estimated progress and payment schedules;
- .8 Commencement of construction of the Work;
- .9 Substantial Completion of construction of the Work; and
- .10 Final acceptance of the Work by the Town and Final Payment for Design/Builder.

1.1.1 The Contract Documents consist of this Agreement, the Request for Proposals, the Instructions to Proposers, Notice of Award, Notice to Proceed, Special Conditions, Addendum, Specifications, Change Orders, Insurance Certificates, Tax-Exempt Certificates, the Design/Builder's Proposal, Preliminary Design, and Minimum Performance Standards to be attached as Attachment 1, the Final Project Design Drawings and Specifications to be attached as Attachment 2, the Construction Documents to be attached as Attachment 3, the completed and executed Payment and Performance Bonds in substantially the same form as provided by the Town to be attached as Attachment "4," and any Modifications issued after execution of this Agreement. A Modification is a Change Order or a written amendment to this Agreement signed by both Parties.

The Contract Documents also include: [if others] . These form the Agreement and are as fully a part of the Agreement as if attached to this Agreement or repeated herein.

1.1.2 The Project is the total design and construction of the Improvements for which the Design/Builder is responsible under this Agreement, including all of the technical, administrative, professional design, construction, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide such design and construction.

1.1.3 The Work comprises the completed construction of the Project and, unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

1.1.4 Underground Utilities means any below ground line, structure, facility or installation used by a utility or service provider including, but not limited to, telephone company lines, cable and conduit; cable television lines, cable and conduit; internet lines, cable and conduit; sewer lines and water lines, including individual sewer and water service lines; stormwater lines; gas lines; electrical lines, cables and conduit; and traffic signal lines, cable and conduit.

1.2 Further Intent. It is the further intent and agreement of the Parties that:

1.2.1 The completed Improvements shall meet the Minimum Performance Standards and Final Project Design Drawings and Specifications prepared by Design/Builder and approved by the Town.

1.2.2 The Design/Builder shall be solely and exclusively responsible for the proper design and workmanlike construction of the Improvements.

1.3 Service of Process. Design/Builder's registered agent for service of legal process in the State of Colorado is _____, whose address is

_____. Such agent for service shall be maintained at a minimum for a period of two (2) years following the Date of Substantial Completion of the Improvements. Design/Builder shall provide the Town with immediate written notice of any change to its registered agent.

1.4 Execution, Correlation and Intent.

1.4.1 This Agreement shall be signed in not less than duplicate by the Town and Design/Builder.

1.4.2 It is the intent of the Town and Design/Builder that the Contract Documents include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent with and is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.5 Ownership and Use of Documents.

1.5.1 All drawings and specifications prepared during the design, development and construction phases, but which are not included in the Contract Documents incorporated into the Agreement between the Town and the Design/Builder (drawings and specifications prepared by

Design/Builder, but excluded from the project prior to the establishment of the Contract Sum) shall remain the property of the Design/Builder.

1.5.2 All other drawings and specifications prepared pursuant to this Agreement (drawings and specifications which become a part of the Contract Documents incorporated into the Agreement between the Town and Design/Builder) shall be the joint property of the Town and Design/Builder, provided, however, the rights of ownership shall be limited as follows:

1.5.3 The Town may utilize the drawings and specifications with respect to construction, maintenance, repair and modification of the Project.

1.5.4 The Town may utilize the drawings and specifications with respect to another project if: (a) the Town engages the Design/Builder to perform design/build services with respect thereto at a fee to be negotiated, or (b) the Town engages another licensed design/builder with respect to said project and agrees to hold the Design/Builder harmless and indemnify the Design/Builder from any claims arising out of Town's subsequent use of said drawings and specifications.

1.5.5 Design/Builder may utilize any of the constituent parts of the drawings and specifications on any other project, except for any unique or distinctive architectural components or effects which taken independently or in combination would produce a project with substantially similar and distinctive features.

1.5.6 Design/Builder shall provide the Town with a complete set of as-built drawings and specifications depicting the project as modified during construction in both electronic and print form.

1.5.7 Submission or distribution of the drawings and specifications to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design/Builder's rights.

ARTICLE II

SCOPE OF WORK

2.1 The Work. The Work to be performed by the Design/Builder includes all design, engineering, procurement, construction, labor, supervision, testing, training, and other services, equipment, systems and materials provided or to be provided by Design/Builder necessary to achieve final acceptance of the Improvements in accordance with this Agreement.

2.2 Design and Construction. Design/Builder will design and construct the Improvements and otherwise perform the Work in accordance with this Agreement. In furtherance of the foregoing, Design/Builder shall, in addition to its other obligations set forth in this Agreement, at its own cost and expense, (subject to reimbursement pursuant to Article XI), perform all of the following:

2.2.1 Perform and prosecute the Work using methods and equipment that are accepted as

prudent electrical, mechanical and civil engineering practice and operations;

2.2.2 Design and operate all equipment lawfully and with safety, dependability, efficiency and economy in each case using qualified and competent and, where necessary, licensed personnel;

2.2.3 Provide all construction materials, equipment, and supplies;

2.2.4 Arrange for complete handling, storing, insuring, transporting and delivery of all materials, equipment and construction equipment, including inspection, expediting, shipping, unloading, receiving, customs clearance and claims;

2.2.5 Obtain, to the extent permitted by law, waivers of lien from all subcontractors, vendors and suppliers as of the date of Final Payment under paragraph 11.10;

2.2.6 Provide as-built drawings of the completed Improvements in both electronic and print form, and copies of all reports, studies and test results performed in connection with the Work along with a set of mylar reproducible sheets;

2.2.7 Designate a contact person reasonably acceptable to the Town who will have full responsibility for the prosecution of the Work and will act as a single point of contact and agent in all matters on behalf of Design/Builder; provided that Design/Builder shall not change the contact person or any other key member of Design/Builder's project staff without the prior written consent of the Town which shall not be unreasonably withheld;

2.2.8 Remove from the Site and maintain the Site free of waste material and rubbish, and clear the Site of temporary structures, surplus material, equipment and tools prior to the date of final acceptance;

2.2.9 Provide such data, reports, certifications, opinions of counsel and other documents or assistance as may be reasonably requested by the Town, provided, however, that the provision of this information shall not in any manner diminish Design/Builder's rights or obligations under any other provision of this Agreement.

2.2.10 Cooperate with the Town in the review of the design and construction of the Work, the conduct of inspections and other matters relating to the Work; and

2.2.11 In the event of a dispute under this Agreement, grant to the Town all audit rights with respect to all documentation pertaining to such dispute which the Town shall reasonably request.

2.3 This Agreement and Other Contract Documents. The term "this Agreement" includes all the provisions of this document and all other Contract Documents, including all Attachments, Appendices, Amendments, Supplements and Modifications thereto, including all Change Orders approved in accordance with the terms of this Agreement.

2.4 Site. The term "Site" means the property on which the Improvements are to be constructed, located at the Town Tennis Court Complex on Sixth Avenue, Crested Butte, Colorado, and all

structures and grounds appurtenant or reasonably related thereto.

2.5 Strict Privity of Contract. Nothing in this Agreement shall be construed as creating any contractual relationship of any kind between the Town and any subcontractor, consultant or vendor retained by the Design/Builder, or any other person other than the Design/Builder.

2.6 No Third Party Beneficiaries. Nothing in this Agreement shall be construed as creating any third party beneficiary rights or status to any third party and the Town and Design/Builder expressly disclaim any intent to create any such third party beneficiary rights or status by this Agreement.

2.7 No Discrimination. In connection with the execution of this Agreement, the Design/Builder shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design/Builder represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the execution of this Agreement.

ARTICLE III

TOWN

3.1 The Town shall designate a representative authorized to act on the Town's behalf with respect to the Project. The Town or such authorized representative shall promptly render decisions as needed to avoid delay in the orderly progress of the Work.

3.2 The Town may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Town and Design/Builder agree in writing from time to time. The appointment of such representatives is for the exclusive benefit of the Town and not the Design/Builder.

3.3 The Town shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections.

3.4 If the Town observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Final Project Design Drawings and Specifications, Construction Documents or other Contract Document, the Town shall give prompt written notice thereof to the Design/Builder. Nothing herein shall be construed as creating any duty on the part of the Town to observe or discover defects in the Work.

3.5 The Town shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

3.6 The Town shall, at the request of the Design/Builder and upon execution of this Agreement,

provide a certified or notarized statement of funds available for the Project and their source.

3.7 The Town shall communicate with Design/Builder's contractors and subcontractors only through the Design/Builder.

3.8 Unless otherwise provided in the Contract Documents, the Town shall not be responsible to provide water, heat, and utilities necessary for the performance of the Work. Design/Builder has inspected the Site and has determined the existing utilities are adequate for the performance of the Work as contemplated by this Agreement, or has made arrangement to provide the necessary utilities at Design/Builder's sole expense.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES REGARDING DESIGN/BUILDER'S KNOWLEDGE AND CAPACITY

4.1 Warranties of Knowledge and Capacity Town. In addition to all other representations, warranties and covenants set forth in this Agreement, the Design/Builder represents, warrants and agrees that:

4.1.1 It has the required authority, ability, skills and capacity Town to, and shall perform the Work in a manner consistent with this Agreement.

4.1.2 It has inspected the Site and surrounding locations, including both surface and subsurface conditions, to the extent it deems necessary in accordance with prudent engineering practices, for performing its obligations under this Agreement, and is familiar with the physical requirements of the Work and accepts them for such performance.

4.1.3 It has knowledge of all of the legal requirements and business practices in the State of Colorado that must be followed in performing the Work and the Work shall be performed in conformity with such requirements and practices. The Improvements can and shall be built in conformity with all relevant building codes.

4.1.4 Substantial Completion of the Improvements and all Work can be achieved by the Guaranteed Completion Date and for the Contract Sum.

4.1.5 Design/Builder is a corporation duly organized, validly existing and in good standing under the laws of the State of its incorporation and has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted and Design/Builder is duly qualified, registered to do business and in good standing in the State of Colorado and in all other jurisdictions where necessary in light of the business and properties it conducts and owns and intends to conduct and own.

4.1.6 The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action and do not and will not (a) require any consent or approval of the board of directors or any

shareholders of Design/Builder or any other person that has not been obtained and each such consent and approval that has been obtained is in full force and effect or (b) result in a breach of or a default under the certificate of incorporation or bylaws of Design/Builder or any indenture, loan, or credit agreement or other material agreement or instrument to which Design/Builder is a party or by which its properties and assets may be bound or affected.

4.1.7 This Agreement constitutes the legal, valid and binding obligations of Design/Builder enforceable in accordance with its terms.

ARTICLE V

DESIGN OF PROJECT

5.1 Qualifications. Design services shall be performed by qualified architects, engineers and other professionals.

5.2 Liability for Design Errors. The Design/Builder shall be responsible to the Town in contract and tort for acts and omissions of the Design/Builder's employees, subcontractors, agents, and parties in privity of contract with the Design/Builder for all design elements of the Project, including the design of the Improvements.

5.3 Minimum Performance Standards. The Design/Builder and the Town shall agree upon any Minimum Performance Standards for the Improvements.

5.4 Alternative Approaches. The Design/Builder shall review with the Town alternative approaches to the design and construction of the Improvements.

5.5 Proposal and Preliminary Design. Not later than _____, the Design/Builder shall prepare and submit to the Town a Proposal, Preliminary Design for the Work, a statement of the Contract Sum for the Work, and a proposed schedule for completion of the Improvements. The Proposal shall be responsive to the Town's Request for Proposals. The Proposal and Preliminary Design Documents consist of the proposal, preliminary design drawings, outline specifications and other documents attached hereto as Attachment "1." The Preliminary Design Documents constitute the Minimum Performance Standards and fix and describe the general size, quality and character of the entire Work, its architectural, structural, mechanical, electrical, and instrumentation and control systems, and the materials and such other elements of the Work intended to be incorporated into the Final Project Design Drawings and Specifications and Construction Documents.

5.5.1 Quality Control/Quality Assurance. Design/Builder shall prepare and submit to the Town a quality control/quality assurance plan that indicates the requirements for review by the Project Coordinator, testing, and documentation.

5.6 Final Project Design Drawings and Specifications and Construction Documents. Not later than _____, based on the Preliminary Design Documents, the Design/Builder shall prepare and submit draft Final Project Design Drawings and Specifications

and Construction Documents for review and approval by the Town in hard copy **and** in an electronic/digital format acceptable to the Town.

5.6.1 The Final Project Design Drawings and Specifications and Construction Documents as approved by the Town are attached to this Agreement as Attachments 2 and 3, respectively. 3. In addition, the Final Project Design Drawings and Specifications and Construction Documents shall be provided to the Town in an electronic/digital format acceptable to the Town.

5.6.2 The Final Project Design Drawings and Specifications and Construction Documents and are intended to include technical drawings, schedules, diagrams and specifications, setting forth in detail the requirements for construction of the Improvements, including:

- .1 the intent of the Design/Builder's Proposal in greater detail;
- .2 information customarily necessary for the use of those in the building trades; and
- .3 documents customarily required for regulatory agency approvals.

5.6.3 The Design/Builder warrants that the Final Project Design Drawings and Specifications and Construction Documents are free of defects, reasonably sufficient to permit the construction of the Improvements to proceed without the need of any interpretation or speculation of the intent or requirements of the Final Project Design Drawings and Specifications and Construction Documents, and that the Final Project Design Drawings and Specifications and Construction Documents if followed as directed shall result in the construction and installation of the Improvements in a workmanlike manner, free of defects, and able to meet or surpass the Minimum Performance Standards.

5.6.4 Nothing herein shall be construed as in any way limiting the Design/Builder's ability to make changes to the Final Project Design Drawings and Specifications and Construction Documents in the course of constructing the Project as Design/Builder in its sole and exclusive judgment shall deem necessary to meet the Minimum Performance Standards. Any such proposed changes that will change the overall cost of the Work shall be reviewed with the Town prior to their implementation and shall be reflected in a duly authorized Change Order executed pursuant to Article VIII of this Agreement.

5.6.5 No review or approval by the Town of the Proposal, Preliminary Design Documents or the Final Project Design Drawings and Specifications and Construction Documents shall in any way relieve or reduce Design/Builder's responsibility for the content and adequacy of such documents.

5.7 Notice to Proceed. Upon execution of this Agreement by both Parties, Design/Builder shall be authorized to proceed with the development of the Preliminary Design Documents and Final Design Documents pursuant to paragraphs 5.5 and 5.6 of this Agreement. The Town shall issue a written "Notice to Proceed with Design" to the Design/Builder. Upon the Town's review and approval of the Final Project Design Drawings and Specifications and Construction Documents, the Town shall issue a "Notice to Proceed with Construction" and this later Notice to Proceed shall establish the Date of Commencement of the Work as defined in paragraph 7.3.1.

ARTICLE VI

CONSTRUCTION

6.1 Supervision and Direction of Work; Sole Responsibility of Design/Builder. The Design/Builder shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for all safety precautions and programs that may be reasonably required in connection with the Project, and for coordinating all portions of the Work under this Agreement. The Design/Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

6.1.1 The Design/Builder shall be responsible to the Town in tort and contract for the acts and omissions of its employees, subcontractors, sub-subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Design/Builder.

6.1.2 The Design/Builder shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Town in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Design/Builder.

6.1.3 The Design/Builder shall locate all existing Underground Utilities prior to performing any work. If utility locate services are provided in the field by utility owners, Design/Builder nonetheless remains solely responsible to determine the actual location of all Underground Utilities, as the Design/Builder is solely responsible for locating all existing underground installations, including Underground Utilities and their service connections. The Design/Builder shall use its own information and shall not rely upon any information shown or not shown on the plans or on field locates provided by the utility owner concerning existing Underground Utilities, facilities, structure, or installations. Known Underground Utilities and other underground structures are shown on the Preliminary Design only to the extent such information has been made available to or discovered by the Town. It is expected that there may be discrepancies and omissions in the location and quantities of actual Underground Utilities and other underground structures and those shown. This information is shown for the convenience of the Design/Builder, but is not guaranteed to be either correct or complete, and all responsibility for the accuracy and completeness thereof is expressly disclaimed by the Town. Contractor is responsible for, at no additional cost to the Town, potholing all existing Underground Utilities to be crossed or that may otherwise affect their means and methods for constructing the Project prior to beginning any Work. Any delay, additional work, or extra cost to the Design/Builder caused by existing Underground Utilities, facilities, structures or installations shall not constitute a claim for extra work, additional payment, or damage.

6.1.4 Design/Builder shall not be relieved of obligations to perform the Work in accordance with this Agreement by tests, inspections, or approvals performed by persons other than Design/Builder.

6.2 Provision of Labor and Materials. Unless otherwise provided in the Contract Documents,

the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

6.3 Work Force. The Design/Builder shall at all times enforce strict discipline and good order among its employees, agents and subcontractors and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

6.4 Progress Reports. The Design/Builder shall keep the Town reasonably informed of the progress and quality of the Work by holding periodic meetings and updating the project schedule.

6.5 Taxes. All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by the Town are exempt from State use taxes.

6.5.1 The Design/Builder shall deliver and execute an "Application for Exemption Certificate" prepared by the Town which shall be submitted for approval of the Department of Revenue, State of Colorado. This certificate will serve as an indication to the Town that the Design/Builder has acquired the necessary exemption for State and RTD sales and use taxes. The Design/Builder also agrees to make the same requirement, as contained above, of the subcontractor or subcontractors on this project. Town use tax will be due on construction tools and equipment used on the Project if municipal use tax was not paid on the full purchase price of these items. Construction equipment which had a purchase price of \$2,500 or more must be declared. All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and be kept available for inspection by the Town for three years after the completion of the Project. The Town's Finance Department shall provide reasonable assistance to Design/Builder in acquiring the State of Colorado and RTD tax-exemptions contemplated by this paragraph.

6.6 Equipment Installation. Experienced manufacturer's representatives shall be used to supervise the installation of equipment. Any special tools or equipment which may be required for first class work shall be provided by the Design/Builder.

6.7 Materials Standards. In the absence of detailed specifications, all materials shall conform to the more stringent of the latest standards of the American Society for Testing Materials available as of the date of execution of this Agreement by Design/Builder and any other applicable standards. Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specifications or specifications available as of the date of execution of this Agreement by Design/Builder unless otherwise indicated.

6.8 Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work.

6.8.1 The Design/Builder shall take reasonable precautions for safety of, and shall provide

reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein; and
- .3 other property at or adjacent to the Site.

6.8.2 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury of loss.

6.8.3 The Design/Builder shall be liable for damage or loss to property at the Site caused in whole or in part by the Design/Builder, a contractor or subcontractor of the Design/Builder or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable.

6.8.4 The Design/Builder shall protect, shore, brace, support and maintain all underground pipes, conduits, drains, and underground construction uncovered or otherwise affected by the construction work performed by him.

6.8.5 The Design/Builder shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

6.8.6 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Design/Builder shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

6.8.7 The Design/Builder shall designate a responsible member of his organization at the Site whose duty shall be the prevention of accidents. This person shall be the Design/Builder's superintendent unless otherwise designated by the Design/Builder in writing to the Town.

6.8.8 The Design/Builder shall not load or permit any part of the Work to be loaded so as to endanger its safety, or the safety of any nearby personnel or property.

6.8.9 In any emergency affecting the safety of persons or property, the Design/Builder shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Design/Builder on account of emergency work shall be determined as provided in Articles VII, VIII, and/or X.

6.9 Warranty of Title. As of the date of Final Payment, Design/Builder warrants that it owns and has good and marketable title to all materials, equipment, tools and supplies furnished by it and its subcontractors and vendors that become part of the Work or are purchased for the Town for the operation, maintenance or repair thereof, free and clear of all liens. As of the date of Final Payment, title to all of said materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to the Town upon payment by the Town to Design/Builder of

invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Design/Builder shall retain sole care, custody and control of said materials, equipment, tools and supplies and shall exercise due care with respect thereto until the date of final acceptance. Such transfer of title shall in no way affect the Town's rights as set forth in any other provision of this Agreement. For the purpose of protecting the Town's interest in all materials, equipment, tools and supplies with respect to which title has passed to the Town but which remain in possession of another party, Design/Builder shall take or cause to be taken all steps reasonably necessary under the laws of the appropriate jurisdiction(s) to protect the Town's title and to protect the Town against claims by other parties with respect thereto.

6.10 Orderly Progression of Work. Design/Builder shall at all times schedule and direct its Work so that it provides an orderly progression of the Work to completion within the specified time for completion.

6.11 Superintendent. The Design/Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during the progress of the Work. The superintendent shall represent the Design/Builder and all communications given to the superintendent shall be as binding as if given to the Design/Builder, provided, however, that all communications concerning any change to the Scope of the Work, the drawings or specifications for the Project, or any Minimum Performance Standards shall be in writing in order to be binding on the Design/Builder. Further, all oral communications given to the superintendent in connection with non-substantial or non-material aspects of the Work shall be as binding as if given to Design/Builder.

6.12 Estimated Progress and Payment Schedule. The Design/Builder, at the pre-design/build conference, shall prepare and submit for the Town's information an estimated progress schedule for the Work. The Design/Builder shall prepare and submit an estimated progress payment schedule to the Town. The progress schedules shall be related to the entire Work to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The pre-design/build conference shall be scheduled at the time the Notice to Proceed with Design is issued.

6.13 Records. The Design/Builder shall maintain at the Site for the Town one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available for inspection by the Town at all times and shall be delivered to the Town in hard copy and in an electronic/digital format acceptable to the Town upon completion of the Work.

6.13.1 Throughout the progress of construction, the Design/Builder shall maintain a careful up-to-date record of all changes on the drawings during actual construction. Upon completion of the Work, and prior to final acceptance by the Town, the Design/Builder shall file with the Town one set of complete drawings with all changes and Design/Builder's field construction notes neatly and legibly recorded thereon. Such information may be used to prepare record drawings for the Town. Such drawings shall include all lines, piping, and underground construction installed by Design/Builder.

6.14 Manuals. Design/Builder shall furnish the Town with three (3) copies of all operator's instructions, service and parts manuals, and all other literature received by Design/Builder from the manufacturer or supplier of equipment furnished under the Agreement. All operator's instructions, service and parts manuals, and all other such literature shall be bound in three (3) permanent binders satisfactory to the Town.

6.15 Manufacturer's Warranties. Copies of any manufacturer's warranty or certificate as may be required by the Contract Documents shall be submitted to the Town prior to Final Payment and final acceptance of the Work by the Town.

6.16 Fitting of Parts. The Design/Builder shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

6.17 Waste and Rubbish. The Design/Builder at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

6.18 Patents and Royalties. The Design/Builder shall protect, defend, indemnify and save harmless the Town, and each of its officers, agents, servants and employees, from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Agreement, including its use by the Town, or the Town's officers, agents, servants, or employees, unless otherwise specifically stipulated in the Contract Documents.

6.18.1 If the Design/Builder uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Design/Builder or his Surety shall protect, defend, indemnify and save harmless the Town from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under the Agreement, and shall indemnify the Town for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

6.18.2 The Design/Builder shall pay royalties and license fees.

6.19 Extension of Agreement Requirements to Subcontractors. By an appropriate agreement, written where legally required for validity, the Design/Builder shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Design/Builder by the terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities which the Design/Builder, by these Documents, assumes toward the Town. Said agreement shall preserve and protect the rights of

the Town under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Design/Builder-subcontractor agreement, the benefit of all rights, remedies and redress against the Design/Builder that the Design/Builder, by these Documents, has against the Town. Where appropriate, the Design/Builder shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Design/Builder shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this section, and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

6.20 Warranty. The Design/Builder warrants to the Town that all materials and equipment furnished under this Agreement shall be of good quality and new unless otherwise required or permitted by the Contract Documents, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Town, the Design/Builder shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished. This warranty shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality or uniformity, to the material or equipment specified, or are not as represented to the Town.

6.20.1 Within one year after the date of final acceptance of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Design/Builder shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Town shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to the Design/Builder or his agent, the Design/Builder shall neglect to make, or undertake with due diligence to make the aforesaid repairs, the Town is hereby authorized to make such repairs at the Design/Builder's expense. In case of an emergency, the Design/Builder will be notified and shall correct and make repairs within the necessary time constraints. Failure of the Design/Builder to respond to the notification shall result in the Town making the necessary repairs at the Design/Builder's expense. This obligation shall survive termination of this Agreement.

6.20.2 Should the Town claim by written communication before the warranty period expires that certain defects exist and that these require repair or replacement, the warranty period and applicable surety shall be automatically extended for as long as these defects remain unremedied.

6.21 Title. The Design/Builder warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Town either by incorporation in the construction or upon the receipt of payment by the Design/Builder, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Design/Builder, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by

the seller or otherwise imposed by the Design/Builder or such other person.

ARTICLE VII

TIME

7.1 Expedition of Work. The Design/Builder shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction.

7.2 Time of Essence. All time limits stated in the Contract Documents are of the essence of the Agreement.

7.3 Dates. The Date of Substantial Completion of the Work or designated portion thereof is the date when construction is sufficiently complete, in accordance with the Contract Documents, so the Town can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

7.3.1 The Date of Commencement of the Work is the date established in the Town's Notice to Proceed with Construction pursuant to paragraph 5.7.

7.3.2 Substantial Completion of the Work in accordance with the Contract Documents shall be achieved by the Guaranteed Completion Date of June 26, 2014.

7.3.3 The term day as used in the Contract Documents shall mean calendar day.

7.4 Commencement of Work. The Design/Builder shall begin the Work on the Date of Commencement. He shall carry the Work forward expeditiously with adequate forces and shall achieve substantial completion of the Work within the Guaranteed Completion Date.

7.5 Delays and Extensions. If the Design/Builder is delayed, disrupted, or otherwise interfered with at any time, or from time to time, in the performance of the Work, the rights and obligations of the parties with respect to such delay shall be as set forth in this subsection 7.5. Design/Builder's exclusive remedy for any delay, disruption, or interference shall be as set forth in this subsection 7.5.

7.5.1 Any delay within the control of the Design/Builder or within the control of any subcontractor, agent or supplier thereof (including, without limitation, delay within the joint control of the Design/Builder or one or more of his subcontractors, agents or suppliers) shall be the sole responsibility of the Design/Builder, and the Design/Builder shall not be entitled to any extension of time or to any increase in the Contract Sum as the result of any such delay.

7.5.2 Upon the occurrence of any delay which will affect compliance with the Guaranteed Completion Date caused by fire, flood, unusually severe weather or other act of God, or by court order, unforeseen, concealed, or differing condition related to the Work or other factors beyond the reasonable control of any party hereto or his agents, employees or subcontractors, then the period of performance specified herein shall be extended by Change Order or Construction

Change Directive, on a day-for-day basis, but such extension shall not result in any increase in the Contract Sum, and provided that Design/Builder complies with subsection 7.5.4 below.

7.5.3 Upon the occurrence of any delay which will affect compliance with the Guaranteed Completion Date not concurrent with delays described under subsections 7.5.1 and 7.5.2 above, which is proximately caused by acts or omissions within the control of the Town, its agents or employees, the period of performance specified herein shall be extended by Change Order or Design or Construction Change Directive on a day-for-day basis and the Design/Builder shall be entitled to reimbursement of actual, proven costs reasonably and necessarily incurred as a direct consequence of such delay, but not in excess of the amount above the Contract Sum for each day of such delay as specified in the Contract Documents.

7.5.4 Any claim for an extension of time under subsections 7.5.2, and 7.5.3 above, and any claim for additional compensation authorized by subsection 7.5.3 above, shall be made as follows:

7.5.4.1 The Design/Builder shall, within five (5) days after the onset of any delay, notify the Town in writing of the causes of delay, the facts relating thereto, and the requested time extension. In the case of a continuing delay, only one claim is necessary. Proof of any recoverable delay costs shall be submitted within fifteen (15) days after the end of any period of delay.

7.5.4.1 The Town shall either approve or disapprove the extension requested or claim made. Should a time extension or delay cost claim be granted by the Town, a Change Order or other notice signed by the Town, shall be issued to indicate the new Guaranteed Completion Date, or the adjustment to the Contract Sum.

7.5.4.2 Failure by Design/Builder to timely provide, in writing, a request for time extension, claim for delay costs, or proof of such costs, shall constitute a waiver by Design/Builder of any time extension or reimbursement of delay costs which Design/Builder may have otherwise been granted pursuant to this subsection 7.5.

7.5.4.3 Nothing herein shall prevent Design/Builder from requesting, and Town granting, an extension of time contingent upon payment by Design/Builder of an agreed amount of liquidated damages in consideration of the time extension.

7.6 Liquidated Damages. If Substantial Completion of the Work is not achieved within the Guaranteed Completion Date, Design/Builder understands the Town will suffer substantial damages including the loss of revenue, reduced public confidence, adverse public relations, and additional administrative costs and expenses, the precise amount of such damages the parties agree would be difficult or impossible to determine. Therefore, Design/Builder agrees to pay the Town as liquidated damages for delay Five Hundred Dollars (\$500.00) for the first calendar day past the Guaranteed Completion Date and Two Hundred Dollars (\$200.00) per calendar day for each day thereafter and continuing through and including the day Substantial Completion is ultimately achieved.

7.6.1 It is understood and agreed by Design/Builder that any liquidated damages payable in accordance with this paragraph are in the nature of liquidated damages and not a penalty and represent a reasonable estimate of fair compensation for the damages that may be reasonably anticipated from Design/Builder's failure to achieve Substantial Completion within the Guaranteed Completion Date.

ARTICLE VIII

CHANGES IN THE WORK

8.1 Change Orders. A Change Order is a written order to the Design/Builder, signed by the Town and Design/Builder, stating their agreement upon a change in the Work, the amount of the adjustment in the Contract Sum, if any, and the extent of the adjustment in the Guaranteed Completion Date, if any. The Contract Sum and the Guaranteed Completion Date may be changed only by Change Order. Any change to the Guaranteed Completion Date shall be subject to the limitations of paragraph 7.5 of this Agreement.

8.1.1 If the Town requests the Design/Builder to submit a proposal for a change in the Work and then elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for design services or proposed revisions to the Contract Documents. This shall not apply to changes in the Work by Design/Builder.

8.2 Design or Construction Change Directives. A Design or Construction Change Directive is a written order directed to the Design/Builder and signed by the Town, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Guaranteed Completion Date, or both. The Town, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, and the Guaranteed Completion Date shall be adjusted accordingly.

8.2.1 Upon receipt of a Design Construction Change Directive, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Town of the Design/Builder's agreement or disagreement with the method, if any, provided in the Design or Construction Change Directive for determining the proposed adjustment in the Contract Sum or Guaranteed Completion Date.

8.2.2 A Design or Construction Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder therewith, including adjustment in Contract Sum and Guaranteed Completion Date or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

8.2.3 If the Design/Builder does not respond promptly to the Design or Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such work's actual cost for Design/Builder and ten percent (10%) of such work's actual cost to be apportioned between any

and all subcontractors and sub-subcontractors. For work performed by Design/Builder's own forces, Design/Builder's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, the Design/Builder shall keep and present, in such form as the Town may prescribe, an itemized accounting of actual costs together with appropriate supporting data.

8.2.4 Pending final determination of actual cost to the Town, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Design/Builder to the Town for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

8.2.5 If the Town and Design/Builder do not agree with the adjustment in Guaranteed Completion Date or the method for determining it, the adjustment or the method shall be determined in accordance with Paragraph 7.5 hereof.

8.3 Minor Changes in the Work. The Town shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Guaranteed Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Town and the Design/Builder. The Design/Builder shall carry out such written orders promptly.

8.4 Regulatory Changes. The Design/Builder shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to execution of this Agreement.

ARTICLE IX

INSURANCE, RISK CONTROL AND INDEMNIFICATION

9.1 Workers' Compensation Insurance. The Design/Builder shall carry, at its own expense, valid Workers' Compensation Insurance throughout the entire term of its obligations to the Town. A copy of the policy or signed certificate of insurance shall be on file with the Town at all times.

9.1.1 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intention of non-renewal to the Town.

9.1.2 Limits of liability shall be statutory in conformance with the Workers' Compensation Laws of the State of Colorado.

9.2 Commercial General Liability. The Design/Builder shall carry and maintain, at its own expense, Commercial General Liability Insurance throughout the entire term of its obligations to the Town. A copy of the policy or a signed certificate of insurance shall be on file with the Town at all times.

9.2.1 The policy shall be appropriately endorsed to name the Town as an additional insured, to comply with this Agreement, and to give all named parties a minimum of thirty (30) days notice of cancellation or intention to non-renew coverage or any material change or restriction of coverage.

9.2.2 Limits of liability shall be a minimum of one million dollars (\$1,000,000) each occurrence; Bodily Injury and Property Damage combined, annual two million dollars (\$2,000,000) aggregate.

9.2.3 The following coverages shall be included in the policy:

- .1 Premises, operations and elevators, including work let or sublet, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
- .2 Products and completed operations.
- .3 Broad form blanket contractual liability with all exclusions deleted.
- .4 Personal injury liability.
- .5 Explosions, collapse, and underground hazards.
- .6 Broad form property damage endorsement.
- .7 Independent contractors.
- .8 Incidental malpractice.

9.2.4. The products and completed operations coverage shall be maintained in effect for a period of six (6) years following final acceptance of the Work.

9.3 Comprehensive Automobile Liability. The Design/Builder shall carry and maintain, at its own expense, Comprehensive Automobile Liability Insurance. A copy of a certificate of insurance shall be on file with the Town at all times.

9.3.1 The policy shall cover all owned or leased vehicles operated by the insured as well as coverage for all non-owned or hired vehicles used by the insured in the course of his operations.

9.3.2 The policy shall be appropriately endorsed to name the Town as an additional insured, to comply with this Agreement, and to give all named parties a minimum of thirty (30) days notice of cancellation or intent to non-renew.

9.3.3 The limits of liability shall be a minimum of one million dollars (\$1,000,000) per occurrence and five hundred thousand dollars (\$500,000) per person.

9.4 Umbrella/Excess Liability. The Design/Builder shall carry and maintain, at its own expense, an Umbrella (excess) Liability policy throughout the entire term of its obligations to the Town. A copy of the policy or a signed certificate of insurance shall be on file with the Town at all times.

9.4.1 Policy shall be in excess of all underlying insurance including employer's liability.

9.4.2 Policy shall not contain any exclusions for hazards, or contractual hazards.

9.4.3 The policy shall be appropriately endorsed to name the Town as an additional insured, to comply with this Agreement, and to give all named parties a minimum of thirty (30) days notice of cancellation or intent to non-renew.

9.4.4 Limits of liability shall be a minimum of three million and five hundred thousand dollars (\$3,500,000) in the aggregate.

9.5 Owner's Liability. The Design/Builder shall carry and maintain, at its own expense, an Owner's Liability policy in the name of the Town.

9.5.1 Limits of liability shall be a minimum of two million dollars (\$2,000,000) in the aggregate.

9.6 Coverage Primary and Defense Cost Exclusion. In all liability insurance policies required by this Article IX, such policies shall be primary with respect to claims made by the Town, except Workers' Compensation and professional liability policies, and additional insured coverage shall include completed operations coverage. All liability policies required by this Article IX shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorney fees.

9.7 Builder's Risk/Property Insurance. The Design/Builder shall purchase and maintain property insurance upon the entire Work at the Site to the full insurable value thereof.

9.7.1 This insurance shall include the interests of the Town, the Design/Builder, subcontractors and sub-subcontractors in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and shall be in the form of "all risk" insurance for physical loss or damage with all exclusions deleted. If not covered under all risk insurance or otherwise provided in the Contract Documents, the Design/Builder shall effect and maintain similar property insurance on portions of the Work stored offsite or in transit when such portions of the Work are to be included in an Application for Payment under Paragraph 11.3.

9.7.2 The form of policy for this coverage shall be "Completed Value." The coverage under this policy shall include contemplated work and work in progress.

9.7.3 If by the terms of this insurance any mandatory deductibles are required, or if the Design/Builder should elect, with the concurrence of the Town, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Design/Builder shall be responsible for payment of the amount of all deductibles in the event of a paid claim. If separate contractors are added as insureds to be covered by this policy, the separate contractor shall be responsible for payment of appropriate parts of any deductibles in the event claims are paid on their part of the Project.

9.8 Professional Liability Insurance. The Design/Builder shall carry and maintain, at its own expense, Professional Liability Insurance throughout the entire term of its obligations to the

Town. A copy of the policy or a signed certificate of insurance shall be on file with the Town at all times.

9.8.1 The policy shall be appropriately endorsed to give all named parties a minimum of thirty (30) days notice of cancellation or intention to non-renew coverage or any material change or restriction of coverage.

9.8.2 Limits of liability shall be a minimum of one million dollars (\$1,000,000) each occurrence, two million dollars (\$2,000,000) aggregate. Such insurance shall have a deductible not in excess of twenty five thousand dollars (\$25,000) self-insured.

9.8.3 Professional liability insurance shall be maintained in effect for the period of the appropriate statute of repose pertaining to such professional services as set out in the Colorado Revised Statutes, as amended, following final acceptance of the Work

9.9 Certificates of Insurance. Certificates of insurance for each required coverage evidencing compliance with this Article IX shall be filed with the Town prior to the issuance of the Notice to Proceed with Design. If the Town is damaged by the failure of the Design/Builder to maintain such insurance and to so notify the Town, then the Design/Builder shall bear all reasonable costs properly attributable thereto.

9.10 Additional Stipulations and Conditions. All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Town, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- .2 The insurance companies issuing the policy or policies shall have no recourse against the Town for payment of any premiums due or for any assessments under any form of any policy.
- .3 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Design/Builder.

9.10.1 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies, licensed in the State of Colorado and approved by the Town (which approval shall not be unreasonably withheld) and shall be maintained until the Design/Builder's Work is accepted by the Town.

9.10.2 All policies under the Contract Documents which are scheduled to expire prior to the time the Design/Builder's Work is finally accepted by the Town shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Town for approval.

9.10.3 All of the liability insurance policies required by this Article shall be occurrence-based policies, except for the professional liability policy which is a claims-made policy.

9.10.4 None of the insurance policies required by this Article shall contain any exclusions relating to design-build contracts.

9.10.5 It shall be an affirmative obligation of the Design/Builder to provide written notice to the Town within two days of the cancellation of or substantive change to any of the policies required herein and failure to do so shall constitute a breach of this Agreement.

9.11 Additional Insurance. Additional coverages and/or higher limits of liability may be required by the Town should the scope or nature of the work change during the course of the Contract.

9.12 Subcontractor's Insurance. The Design/Builder shall be solely responsible for ensuring that all subcontractors obtain and maintain in force for the term of this Agreement insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

9.13 No Limitation of Liability. Nothing contained in this Article IX shall be construed as limiting the extent of the Design/Builder's responsibility for payment of damages resulting from his operations under the Agreement. Design/Builder agrees that he alone shall be completely responsible for procuring and maintaining full insurance coverage to adequately insure against the risk attendant to the performance of this Agreement. Any approvals of Design/Builder's insurance coverages by the Town shall not operate to the contrary.

9.14 Risk of Loss. The risk of loss to any property to be provided by Design/Builder to Town pursuant to this Agreement shall be upon the Design/Builder until said property has been finally accepted by Town.

9.15 Governmental Immunity. Nothing in this Article IX shall be deemed or construed as a waiver of any of the protections to which Town may be entitled pursuant to the Colorado Governmental Immunity Act, sections 24-10-101, et seq., C.R.S., as amended.

9.16 Remediation of Damage. The Design/Builder shall promptly remedy all damage or loss to any property caused in whole or in part by the Design/Builder, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Design/Builder is responsible, except damage or loss attributable to the acts or omissions of the Town or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to his obligations under this Agreement.

9.17 Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Design/Builder shall indemnify, defend, and hold harmless the Town and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from

the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Design/Builder, any subcontractor of the Design/Builder, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Town and its agents and employees from and against all professional liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Design/Builder, any subcontractor of the Design/Builder, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

9.17.1 In any and all claims against the Town or any of its agents or employees by any employee of the Design/Builder, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design/Builder or any subcontractor under workers' compensation act, disability benefit acts or other employee benefit acts.

9.18 Attorney's Fees. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

ARTICLE X

CLAIMS AND DISPUTES

10.1 Definition. A claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. The term "claim" also includes other disputes between the Town and Design/Builder arising out of or relating to the Agreement. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the Party making the claim.

10.2 Time Limit on Claims. Claims by either Party must be made within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the

claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

10.3 Continuing Agreement Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Town in writing, the Design/Builder shall proceed diligently with performance of the Agreement and the Town shall continue to make payments in accordance with the Contract Documents.

10.4 Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by the Parties except those arising from:

10.4.1 Liens, claims, security interests, or encumbrances arising out of the Agreement and unsettled;

10.4.2 Failure of the Work to comply with the requirements of the Contract Documents;

10.4.3 Terms of special warranties required by the Contract Documents; or

10.4.4 Faulty or defective work appearing after Substantial Completion.

10.5 Concealed Conditions. If concealed or unknown conditions of an unusual nature that affect the performance of the Work and vary from those indicated by the Contract Documents are encountered below ground or in an existing structure other than the Work, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for in this Agreement, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed and in no event later than five (5) days after first observance of the conditions. Claims by either Party arising from such concealed or unknown conditions must be made in accordance with this Article X.

10.6 Claims for Additional Cost. If the Design/Builder wishes to make claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by the Town. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 6.8.9. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Design or Construction Change Directive. Such claims shall be subject to Paragraph 7.5.

10.7 Claims for Additional Time. If the Design/Builder wishes to make claim to extend the Guaranteed Completion Date, written notice as provided herein shall be given. The Design/Builder's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary. Such claims shall be subject to Paragraph 7.5.

10.8 Resolution of Claims and Disputes.

10.8.1 The other Party will review claimant's claim(s) and take one or more of the following preliminary actions within ten days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the other party indicating when action is expected to be taken; (3) reject the claim in whole or in part, stating reasons for rejection; (4) approve the claim in whole or in part, or (5) suggest a compromise.

10.8.2 If a claim has been resolved, the Town will prepare or obtain appropriate documentation.

10.8.3 If a claim has not been resolved, the claimant shall within ten (10) days after the preliminary action in subparagraph 10.8.1, take one or more of the following actions: (1) submit the requested additional supporting data; (2) modify the initial claim; or (3) notify the other Party that the initial claim stands.

10.8.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the Parties, the other Party shall notify the claimant in writing of its decision which shall be considered advisory only and not binding on the Parties in the event of litigation in respect of the claim. If there is a surety and there appears to be a possibility of a Design/Builder's default, the Town may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE XI

PAYMENTS AND COMPLETION

11.1 Contract Sum.

11.1.1 The Contract Sum is _____ (\$_____) and, including authorized adjustments thereto, is the total amount payable by the Town to the Design/Builder for the performance of the Work under the Contract Documents.

11.1.2 The Design/Builder will not be allowed any claims for anticipated profits, for loss of profits, or for any damages or additional costs incurred because of a difference between the estimate of any item and the amount of the item actually required, or for the elimination of any part of the Work. Funds for construction of the Work herein contemplated are limited.

11.2 Schedule of Values.

11.2.1 Before the first Application for Payment, the Design/Builder shall submit to the Town a schedule of values allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to subcontractors, supported by such evidence of correctness as the Town may direct. This Schedule, when approved by the Town, shall be used to monitor the progress of the Work and as a basis for Applications for Payment.

11.3 Applications for Payment.

11.3.1 At least ten (10) days before the date for each progress payment, the Design/Builder shall submit to the Town an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Design/Builder's right to payment as the Town may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

11.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Design or Construction Change Directives but not yet included in Change Orders.

11.3.1.2 Such applications may not include requests for payment of amounts the Design/Builder does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

11.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and, if approved in advance by the Town, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing for subsequent incorporation in the Work. Payments for materials or equipment stored on or off the Site shall be conditioned upon submission by the Design/Builder of bills of sale or such other procedures satisfactory to the Town to establish the Town's title to such materials or equipment or otherwise protect the Town's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off the Site.

11.3.3 The Design/Builder warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Town either by incorporation in the construction or upon the receipt of payment by the Design/Builder, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article XI as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Design/Builder, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Design/Builder or such other person.

11.3.4 When application for payment includes materials stored offsite or stored on the Site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is offsite shall be a bonded warehouse or appropriate storage approved by Town with the stored materials properly tagged and identifiable for this project and properly segregated from other materials. The Town's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Town's sole discretion.

11.3.5 The presentation by Design/Builder of an Application for Payment will constitute a representation by the Design/Builder to the Town that the Work has progressed to the point indicated, and that, to the best of the Design/Builder's knowledge, information and belief, the

quality of the Work is in accordance with the Contract Documents and that all lien waivers and certificates required under the Contract Documents have been furnished to the Town in proper form.

11.4 Omitted.

11.5 Decisions to Withhold Payment.

11.5.1 The Town may decline to make payment and may withhold its payment in whole or in part, to the extent reasonably necessary to protect the Town, if in its opinion, the representations to the Town as provided in subparagraph 11.3.5 are unfounded in fact. If the Town refuses to make payment in the amount of the application, it will, within seven (7) days after the receipt of the signed Design/Builder's Application for Payment, notify the Design/Builder in writing its reasons for withholding a payment in whole or in part. If the Design/Builder and the Town cannot agree on a revised amount, the Town will promptly issue a payment for the amount that the Town and Design/Builder agree is not in controversy. The Town may also decline to make payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any payment previously made, to such extent as may be necessary because of:

- .1 defective work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Design/Builder to make payments properly to subcontractors or supplies for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Town or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to maintain accurate and up-to-date as-built drawings.

11.5.2 When the above grounds are removed, payment shall be made by the Town for amounts withheld because of them.

11.6 Progress Payments.

11.6.1 The Town shall make payment in a timely manner not to exceed thirty (30) days from the time of Application for Payment. The Town may refuse to make payment on any Application for Payment for any default of the Contract, including, but not limited to those defaults set forth in subparagraphs 11.5.1.1 through 11.5.1.8. The Town shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

11.6.2 The Design/Builder shall promptly pay each subcontractor, upon receipt of payment from the Town, out of the amount paid to the Design/Builder on account of such subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Design/Builder on account of such subcontractor's work. The Design/Builder shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

11.6.3 The Town may, on request and at his discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Design/Builder and the action taken thereon by the Town on account of Work done by such subcontractor.

11.6.4 The Town shall not have any obligation to pay or to see the payment of any monies to any subcontractor except as may otherwise be required by law.

11.6.5 Payment to suppliers shall be treated in a manner similar to that provided in subparagraphs 11.6.2, 11.6.3, and 11.6.4.

11.6.6 No progress payment nor any partial or entire use or occupancy of the project by the Town, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

11.6.7 Retainage.

11.6.7.1 In addition to any amounts withheld from payment pursuant to any other provision in this Agreement, and if the Design/Builder is satisfactorily performing the Agreement, the Town shall retain from progress payments, until payment is due under the terms and conditions governing Final Payment, amounts as follows:

- .1 The Town shall retain ten percent (10%) of each progress payment until the Work is at least fifty percent (50%) complete.
- .2 After the Work is fifty percent (50%) complete, the Town may, at its sole discretion, reduce retainage to five percent (5%) of each progress payment. A retainage of five percent (5%) of any progress payment shall not limit the Town's discretion to retain ten percent (10%) of any subsequent progress payment.

11.6.7.2 In no event shall the amount retained pursuant to Subparagraph 11.6.7 be reduced to less than five percent (5%) of the Contract Sum until after final acceptance of the Project by the Town.

11.7 Failure of Payment.

11.7.1 If the Town does not, for reasons other than a default of the Agreement, including, but not limited to those defaults set forth in Subparagraphs 11.5.1.1 through 11.5.1.8, pay the Design/Builder within thirty (30) days after an Application for Payment, then the Design/Builder may, upon seven (7) additional days' written notice to the Town, stop the Work until payment of the amount owing has been received. The Guaranteed Completion Date shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design/Builder's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

11.8 Substantial Completion.

11.8.1 Substantial Completion is the stage in the progress of the Work when the Work (or designated portion thereof which the Town agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Town can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Town's personnel in the operation of systems has been completed, and all final finishes within the Agreement are in place. In general, the only remaining Work shall be minor in nature, so that the Town could utilize the improvements on that date and the completion of the Work by the Design/Builder would not materially interfere or hamper the Town's normal operations. As a further condition of Substantial Completion acceptance, the Design/Builder shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the date of Substantial Completion.

11.8.2 When the Design/Builder considers that the Work, or a designated portion thereof which the Town agrees to accept separately, is substantially complete, the Design/Builder shall prepare and submit to the Town a list of items to be completed or corrected. The Design/Builder shall proceed promptly to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Design/Builder to complete all Work in accordance with the Contract Documents. Upon receipt of the Design/Builder's list, the Town will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Town's inspection discloses any item, whether or not included on the Design/Builder's list, which is not in accordance with the requirements of the Contract Documents, the Design/Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Town. The Design/Builder shall then submit a request for another inspection by the Town to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Town will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Town and the Design/Builder for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Design/Builder shall complete the items listed therein, which time shall be no longer than thirty (30) days after the scheduled completion date. The Certificate of Substantial

Completion shall be submitted to the Town and the Design/Builder for their written acceptance of the responsibilities assigned to them in such Certificate.

11.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Design/Builder, the Town shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

11.9 Partial Occupancy or Use.

11.9.1 The Town may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless of whether the Guaranteed Completion Date has expired (hereinafter sometimes referred to as "partial occupancy"). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.

11.9.2 In the event of partial occupancy, the Design/Builder shall promptly secure endorsement from its insurance carriers and consent from its sureties, if any.

11.9.3 In the event of partial occupancy before Substantial Completion as provided above, the Design/Builder shall cooperate with the Town in making available for the Town's use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Town desires to occupy the aforesaid portion or portions, the Design/Builder shall make every reasonable effort to complete such Work or make temporary provisions for such work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that the Town may use or occupy such portions of the structure or improvement.

11.9.4 In the event of partial occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between the Town and Design/Builder in respect of the operation and cost of necessary security, maintenance and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Town shall assume proportionate and reasonable responsibility for the cost of the above services, reduced by any savings to Design/Builder for such services realized by reason of partial occupancy. Further, mutually acceptable arrangements shall be made between the Town and Design/Builder in respect of insurance and damage to the Work. Design/Builder's acceptance of arrangements proposed by Town in respect of such matters shall not be unreasonably withheld, delayed, or conditioned. Similar provisions shall be made where the improvements or structures are not buildings so that the Town may use or occupy such portions of the structure or improvement.

11.9.5 In each instance, when the Town elects to exercise its right of partial occupancy as described herein, the Town will give Design/Builder advance written notice of its election to take the portion or portions involved, and immediately prior to partial occupancy, the Town and Design/Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

11.9.6 It shall be understood, however, that partial occupancy shall not: (1) constitute final acceptance of any work, (2) relieve the Design/Builder for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Design/Builder shall not be liable for ordinary wear and tear resulting from such partial occupancy.

11.9.7 Subject to the terms and conditions provided herein, if the Design/Builder claims that delay or additional cost is involved because of partial occupancy by the Town, Design/Builder shall make such claim as provided elsewhere in the Contract Documents.

11.10 Final Completion and Final Payment.

11.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Town will promptly make such inspection. Design/Builder's final Application for Payment shall constitute a certification by Design/Builder that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance due the Design/Builder, and noted in said final Certificate, is due and payable. The Design/Builder's final Application for Payment shall also constitute a further representation that the conditions precedent to the Design/Builder's being entitled to final payment as set forth in Subparagraph 11.10.2 have been fulfilled. Final Payment is also subject to all Town Charter and Town Code requirements. Warranties required by the Contract Documents shall commence on the date that the Town issues a Final Payment to the Design/Builder.

11.10.2 Neither the Final Payment nor the remaining retained percentage shall become due until the Design/Builder submits to the Town (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Town or his property might in any way be responsible have been paid or otherwise satisfied, (2) consent of surety, if any, to Final Payment, and (3), if required by the Town, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement, to the extent and in such form as may be designated by the Town, and (4), evidence of compliance with all requirements of the Contract Documents: notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including but not limited to (a) instruction of Town staff in the operation of mechanical, electrical, plumbing and other systems (b) delivery of keys to the Town with keying schedules, sub-master and special keys, (c) delivery to the Town of all written warranties and assignments thereof prepared in duplicate, certificates of inspections, and bonds for the Town's review, (d) delivery to the Town of printed or typewritten operating, servicing, maintenance and cleaning instructions for the Work; parts lists and special tools for mechanical and electrical work, (e) delivery to the Town of a final waiver of liens in a form satisfactory to the Town, covering all work including that of all subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized. In addition to the foregoing, all other submissions required by other articles and paragraphs of the specifications including final construction schedule shall be submitted to the Town before approval of Final Payment. If any

subcontractor refuses to furnish a release or waiver required by the Town, the Design/Builder may furnish a bond satisfactory to the Town to indemnify the Town against any such lien. If any such lien remains unsatisfied after all payments are made, the Design/Builder shall refund to the Town all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

11.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design/Builder or by the issuance of Change Orders affecting final completion, the Town shall make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design/Builder to the Town prior to such payment. Such payment shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

11.10.4 The acceptance of Final Payment by the Design/Builder, a subcontractor, or supplier shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled on payee's final Application for Payment.

ARTICLE XII

PERFORMANCE AND PAYMENT BONDS

12.1 Performance and Payment Bonds. The Design/Builder shall furnish a Performance Bond and a Payment Bond, each in an amount equal to one hundred percent (100%) of the Contract Sum. Said bonds shall be issued by a responsible surety approved by the Town and shall guarantee the faithful performance of the Agreement and the terms and conditions herein contained and the maintenance of the proposed improvements in good repair according to the terms contained in this Agreement. Accompanying each bond form shall be a "Power of Attorney" authorizing the attorney in fact to bind the surety company and certified to include the date of the bond. Such bonds shall be on forms provided by the Town.

12.1.1 The Design/Builder shall deliver said bonds, completed and executed, to the Town according to the chronology set forth in Section 1.1 and prior to the commencement of any Work pursuant to this Agreement.

ARTICLE XIII

CORRECTION OF THE WORK

13.1 Correction of Work. The Design/Builder shall promptly correct Work rightfully rejected by the Town or known by the Design/Builder to be defective or failing to conform to the Construction Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct Work under this Agreement found to

be defective or nonconforming within a period of one year from the date of Substantial Completion of the Work or designated portion thereof, or within such longer period provided by any applicable special warranty in the Contract Documents.

13.2 No Limitation. Nothing contained in this Article XIII shall be construed to establish a period of limitation with respect to other obligations of the Design/Builder under this Agreement. Paragraph 13.1 above relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than correction of the Work.

13.3 Town's Right to Stop Work. If the Design/Builder fails to correct defective Work as required or persistently fails to carry out Work in accordance with the Contract Documents, the Town, by written order signed personally or by an agent specifically so empowered by the Town in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Town's right to stop the Work shall not give rise to a duty on the part of the Town to exercise the right for benefit of the Design/Builder or other persons or entities.

13.4 Town's Right to Correct Work. If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Town to commence and continue correction of such default or neglect with diligence and promptness, the Town may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Town may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Town. Such action by the Town shall be subject to arbitration.

13.5 Uncovering of Work. If any portion of the Work has been covered, the Town may request to see such Work and it shall be uncovered by the Design/Builder. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Town. If such Work be found not in accordance with the Contract Documents, the Design/Builder shall pay such costs unless it be found that this condition was caused by the Town, in which event the Town shall be responsible for the payment of such costs.

ARTICLE XIV

TERMINATION

14.1 Termination for Cause. If Design/Builder is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors,

or if a receiver is appointed on account of its insolvency, or if Design/Builder shall fail to commence the Work in accordance with the provisions of this Agreement or fail to prosecute the Work to completion thereof in a diligent, efficient, timely, workmanlike, skillful and careful manner and in substantial accordance with the provisions of the Contract Documents, fail to use an adequate amount or quality of personnel or equipment to complete the Work without undue delay, fail to perform any of its obligations under the Contract Documents, or fail to make prompt payments due to its subcontractors, materialmen or laborers, then Town shall have the right, if Design/Builder shall not cure any such default after fifteen (15) days written notice thereof to (i) terminate this Agreement, (ii) take possession of and use all or any part of Design/Builder's materials, equipment, supplies, and other property of every kind used by Design/Builder in the performance of the Work and to use such property in the completion of the Work, or (iii) complete the Work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by Town shall not be deemed a waiver of any other right or remedy of Town.

14.2 Termination for Convenience. Town hereby reserves the right to terminate this Agreement, with or without cause, and without regard to fault or breach upon seven (7) days' prior written notice to Design/Builder. In the event of such termination, the Town shall compensate the Design/Builder for all services performed prior to the termination date together with reimbursable expenses then due, plus any additional actual out-of-pocket costs incurred by Design/Builder attributable solely and exclusively to Town's early termination of this Agreement, exclusive of any lost profit by Design/Builder had this Agreement been completed, and in excess of those costs that would have been incurred absent such termination.

14.3 Upon a determination by a court that termination of Design/Builder pursuant to subparagraph 14.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to subparagraph 14.2 and Design/Builder's remedy for wrongful termination is limited to the recovery of the payments permitted for termination for convenience as set forth in subparagraph 14.2.

ARTICLE XV

MISCELLANEOUS PROVISIONS

15.1 The Design/Builder shall give notices and comply with laws, ordinances, rules, regulations, and lawful order of public authorities relating to the Project.

15.2 This Agreement shall be deemed entered into in Gunnison County, State of Colorado. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Gunnison County.

15.3 This Agreement shall be governed by the laws of the State of Colorado and the charter and ordinances of the Town of Crested Butte.

15.4 In case a provision of this Agreement is held to be invalid, illegal, or unenforceable, the

validity, legality, and enforceability of the remaining provisions shall not be affected.

15.5 This Agreement shall be binding on successors, assigns, and legal representatives of and persons in privity of contract with the Town or Design/Builder. Neither Party shall assign, sublet, or transfer an interest in this Agreement without the written consent of the other.

15.6 This Agreement represents the entire agreement between the Town and Design/Builder and supersedes any prior negotiations, representations, or agreements. The Agreement may be amended only by written instrument signed by both Parties.

15.7 Design/Builder agrees that the economic loss rule as set forth in the *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the Town's right to pursue tort remedies in addition to other remedies it may have against Design/Builder. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents. Design/Builder further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under the Agreement.

15.8 Commercial Driver's License Substance Screening. The Design/Builder shall provide written assurance to the Town that each driver that provides services requiring a commercial driver's license pursuant to this Agreement participates in an alcohol and controlled substances testing program that meets the requirements of the Federal Motor Carrier Safety Regulations found at 49 C.F.R. Part 382.

15.9 Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Contractor shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Contractor shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Contractor shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in

C.R.S. § 8-17.5-102(5).

15.10 The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

SIGNATURE PAGE FOLLOWS

[SAMPLE ONLY]

[INSERT REGISTERED BUSINESS
NAME OF DESIGN/BUILDER]

TOWN OF CRESTED BUTTE

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Secretary

Town Clerk

(Corporate Seal,
if applicable)

(Seal)

Address for giving notice:

Address for giving notice:

507 Maroon Avenue
P.O. Box 39
Crested Butte, Colorado 81224

Approved as to legal form:

Attachment 1 to Agreement
Proposal and Preliminary Design Documents
(To be inserted in final contract)

Attachment 2 to Agreement
Final Project Design Drawings and Specifications
(To be inserted in final contract)

Attachment 3 to Agreement
Construction Documents
(To be inserted in final contract)

Attachment 4 to Agreement
Performance and Payment Bonds
(To be inserted in final contract)

EXHIBIT B TO REQUEST FOR PROPOSAL

REQUIRED FORM OF PERFORMANCE AND PAYMENT BONDS
(to be Completed Only upon Award)

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____
_____ ("Principal") and _____
_____ ("Surety"), hereby jointly and severally bind ourselves, our respective
heirs, executors, administrators, successors and assigns, to pay the Town of Crested Butte, State of
Colorado ("Owner") the sum of

_____ Dollars (\$ _____), in United States currency.

WHEREAS, Principal has, by means of a written agreement dated _____,
entered into a contract with Owner for the construction of _____,
_____ which contract is by reference made a part hereof the same as though fully set forth herein (the
"Contract");

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. Principal shall: (1) faithfully perform each and every term and condition of said
Contract on Principal's part; (2) fully indemnify and save harmless the Owner from all costs and damages
which Owner may suffer by reason of Principal's failure to do so; and (3) fully reimburse and repay
Owner all outlay and expenses which Owner may incur in making good any default.

SECOND. For a period of one year from Owner's final acceptance of the work performed
pursuant to said Contract, the material furnished and used and the workmanship employed in the
construction of the improvements described in the Contract shall be free from all defects. The Principal
shall make such repairs as required to remedy any defects of which the Owner has given the Principal
written notice prior to the expiration of the one-year warranty period hereby provided.

THIRD. Provided the Owner has given written notice to the Principal of defects in the Principal's
performance of the Contract prior to the expiration of the one-year warranty period provided for above,
this bond will remain in effect until defects have been remedied in accordance with the Owner's plans and
specifications to the Owner's satisfaction.

FOURTH. If Principal or any of Principal's subcontractors fail to duly pay for any labor,
materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by Principal
or Principal's subcontractor in performance of the Contract, or fails to pay any person who supplies rental
machinery, tools, or equipment, in the prosecution of the Contract, Surety will pay the same in an amount
not exceeding the sum specified in this bond together with interest at the rate allowed by statute.

FIFTH. The Owner shall not be joined in any action against the Principal or Surety on this bond
to enforce payment for amounts lawfully due from the Principal or Principal's subcontractors for work
performed under the Contract, nor shall the Owner be liable for the payment of any costs or expenses of
such action.

SIXTH. In addition to all other conditions hereof, this bond includes all provisions set forth in
section 38-26-106, Colorado Revised Statutes.

If all the above conditions are fully satisfied, this obligation shall be null and void; otherwise it
shall remain in full force and effect.

For value received, Surety further agrees that, any Contract provision to the contrary notwithstanding, Surety's obligations hereunder shall not be affected in any way by any of the following and expressly waives notice of the same:

1. Any extension of time granted to Principal in which to perform the Contract.
2. Any change in the Plans, Drawings, Specifications, Contract or other Contract Documents.

An action on the performance provisions of this bond may be brought by the Owner or any person entitled to the benefits of this bond within five years from the time the cause of action arises.

Principal and Surety are jointly and severally liable under the provisions hereof and actions against either or both may proceed without prior action against the other, and both may be joined in one action.

SIGNED AND SEALED THIS ____ day of _____, 20____.

PRINCIPAL

SURETY

(Name of Company)

(Name of Company)

By: _____

By: _____

Address:

Address:

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____
_____ ("Principal"), and _____
_____ ("Surety"), hereby bind ourselves, our respective heirs,
executors, administrators, successors and assigns jointly and severally to pay the Town of Crested Butte,
State of Colorado ("Owner"), the sum of _____
_____ Dollars (\$ _____), in United States currency.

WHEREAS, the Principal has, by means of a written agreement dated _____,
entered into a contract with the Owner for the construction of _____,
_____ which
contract is by reference made a part hereof the same as though fully set forth herein ("Contract");

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. The principal shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing him or his subcontractors with labor, materials, rental machinery, tools, or equipment used or performed in the prosecution of the Contract and, further, shall indemnify and save harmless the Owner to the extent of any payments in connection with the carrying out of any such contract which the Owner may be required to make under the law.

SECOND. If the Principal or its subcontractor fails to duly make such payments, the Surety shall pay the same together with interest at the rate allowed by statute.

THIRD. The Owner shall not be joined in any action by a claimant against the Principal and the Surety on this bond nor shall the Owner be liable for payment of any costs or expenses of such suit.

FOURTH. In addition to all other conditions hereof, this bond includes all provisions set forth in section 38-26-105, Colorado Revised Statutes.

If these conditions are fully satisfied, this obligation shall be null and void; otherwise it shall remain in full force and effect.

For value received, Surety further agrees that, any Contract to the contrary notwithstanding, Surety's obligations hereunder shall not be affected in any way by any of the following and expressly waives notice of the same:

1. Any extension of time granted to Principal in which to perform the Contract.
2. Any change in the Plans, Drawings, Specifications, Contract or other Contract Documents.

An action on the payment provisions of this bond may be brought by the Owner or any person entitled to the benefits of this bond at any time within five years from date of final settlement of the Contract.

Principal and Surety are jointly and severally liable under the provisions hereof and actions against either or both may proceed without prior action against the other, and both may be joined in one action.

SIGNED AND SEALED THIS _____ day of _____, 20____.

IN PRESENCE OF:

ATTEST: (As to Corporation)

Secretary

(CORPORATE SEAL)

COUNTERSIGNED:

()Resident Agent

Print Name

Street Address

City and State

Principal

By:_____

(Name) (Title)

Surety

By:_____

Attorney-in-fact

Give local address and phone
number:

(SEAL OF SURETY)

EXHIBIT C TO REQUEST FOR PROPOSAL
PROPOSER'S FEE SCHEDULE
(Form to be Completed and submitted with Proposal)

EXHIBIT D TO REQUEST FOR PROPOSAL
EVALUATION FORM
(Form to be Completed and submitted with Proposal)

EXHIBIT E TO REQUEST FOR PROPOSAL
PROPOSER'S CERTIFICATION
(Form to be Completed and submitted with Proposal)

NOTE: Please ensure that this document is completed and submitted with your proposal. Failure to do so may result in your proposal not being considered for award.

I have carefully examined the Request for Proposal and any other documents accompanying or made a part of this Request for Proposal, including the standard form of agreement provided as Exhibit A to the RFP (the "Agreement"). I hereby certify that, if selected, I can meet all insurance and other requirements contained within the Agreement and that I will sign the Agreement in substantially the form presented in this RFP.

I hereby propose to furnish the goods or services specified in the Request for Proposal at the prices or rates quoted in my proposal. I agree that my proposal will remain firm for a period of up to sixty (60) days in order to allow the Town adequate time to evaluate the proposals.

I agree to abide by all conditions of this proposal and understand that a background investigation may be conducted by the Crested Butte Marshal's Department prior to award.

I certify that all information contained in this proposal is true to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the Contractor as its act and deed and that the Contractor is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Town of Crested Butte or of any other Proposer interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

NAME OF BUSINESS

BY:

SIGNATURE

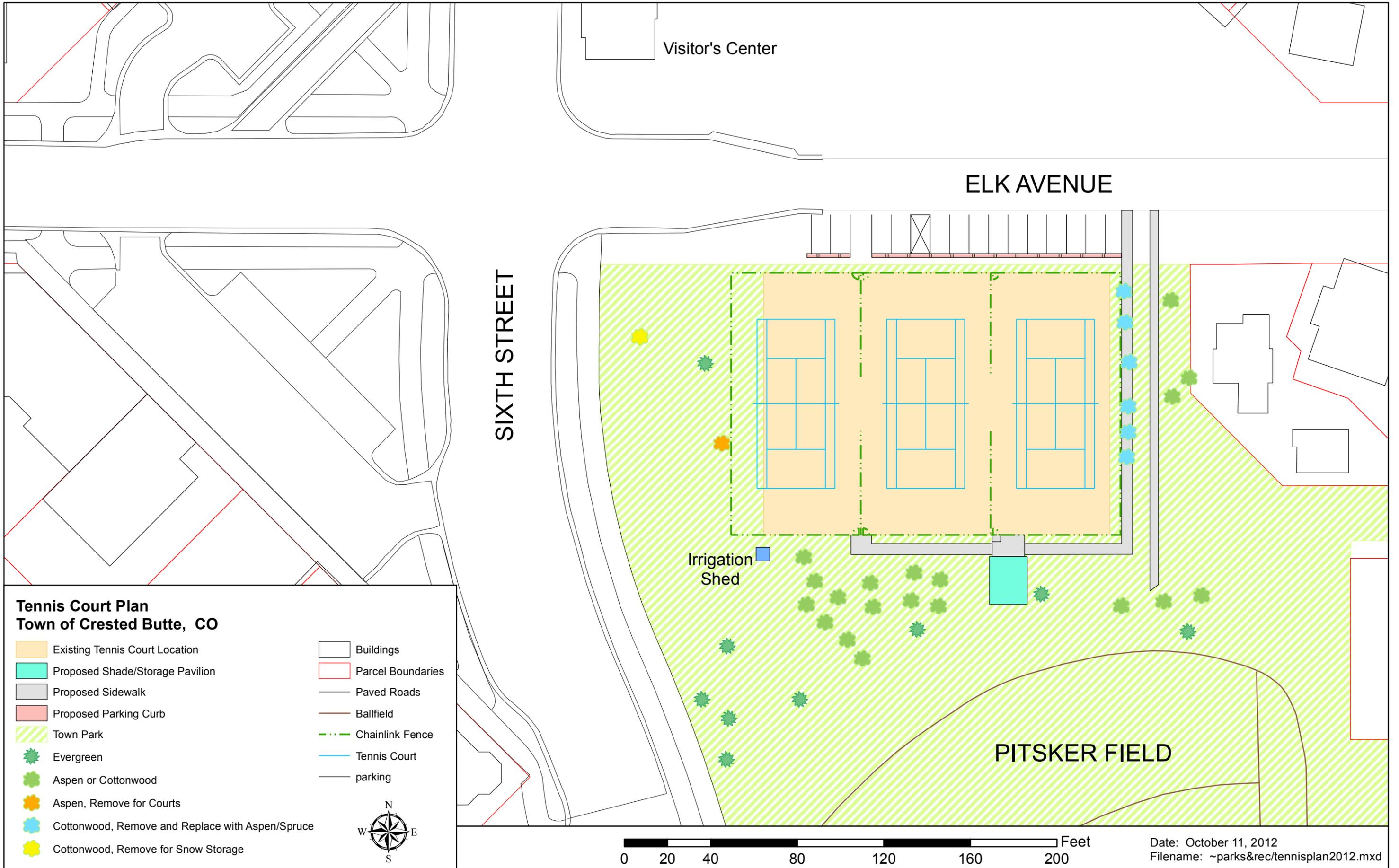
PRINTED NAME & TITLE

MAILING ADDRESS

TOWN, STATE, ZIP CODE

() _____
TELEPHONE NUMBER

EXHIBIT F TO REQUEST FOR PROPOSAL
(if any)





**Town of Crested Butte, Colorado
Tennis Court Renovation Project**

