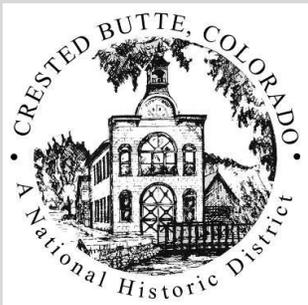


**AGENDA**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, April 3, 2017**  
**Council Chambers, Crested Butte Town Hall**



*Critical to our success is an engaged community and knowledgeable and experienced staff.*

**Town Council Values**

- *Preserve our high quality of Life*
- *Resource Efficiency/ Environmental Stewardship*
- *Support a sustainable and healthy business climate*
- *Maintain a “real” community*
- *Fiscally Responsible*
- *Historic Core*

*The times are approximate. The meeting may move faster or slower than expected.*

**6:00 WORK SESSION**

1) Presentation by the Crested Butte Community School on the Budget for the Employee Rental Unit School Build.

**6:40** 2) Presentation by Gunnison Valley Regional Housing Authority (GVRHA) on the 2017 Strategic Plan.

**7:00 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM**

**7:02 APPROVAL OF AGENDA**

**7:04 CONSENT AGENDA**

1) March 20, 2017 Regular Town Council Meeting Minutes.

2) March 23, 2017 Emergency Town Council Meeting Minutes.

3) Letter of Support to Senators Michael Bennet and Cory Gardner and Representative Scott Tipton on the Thompson Divide Withdrawal and Protection Act of 2017.

4) Resolution No. 14, Series 2017 - Resolutions of the Crested Butte Town Council Appointing Creative District Commissioner Jeff Taylor to a 3 Year Term to Expire January 1, 2020.

5) Resolution No. 15, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Award of a Contract for the 3<sup>rd</sup> Street Pavement Project and Authorizing the Town Mayor to Enter Into a Construction Contract Between the Town of Crested Butte and Old Castle SW Group DBA United Companies.

*The listing under Consent Agenda is a group of items to be acted on with a single motion. The Consent Agenda is designed to expedite Council business. The Mayor will ask if any citizen or council member wishes to have any specific item discussed. You may request that an item be removed from Consent Agenda at that time, prior to the Council's vote. Items removed from the Consent Agenda will be considered under New Business*

**7:07 PUBLIC COMMENT**

*Citizens may make comments on item not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments may be limited to five minutes.*

**7:12 STAFF UPDATES**

**7:25 PUBLIC HEARING**

1) Ordinance No. 5, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 16, Article 12 of the Crested Butte Municipal Code to Include Regulations for the Consolidation of Residential Properties Subdivided Into Condominiums or Townhouses.

2) Ordinance No. 7, Series 2017 - An Emergency Ordinance of the Crested Butte Town Council Authorizing Redemption of 721 Butte Avenue, Unit 1, Town of Crested Butte Pursuant to § 38-38-302, Et Seq. of the Colorado Revised Statutes in an Amount Not to Exceed \$125,000.00.

**7:45 NEW BUSINESS**

1) Discussion and Possible Action Regarding the Budget for the Employee Rental School Build on Lot 3, Block 79.

**7:55** 2) Resolution No. 16, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Award of a Contract for the Construction of the Wastewater Treatment Plant Upgrades 2017 and Authorizing the Town Mayor to Enter Into a

Construction Contract Between the Town of Crested Butte and Integrated Water Services, Inc (IWS).

**8:10** 3) Ordinance No. 8, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 1, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Michael and Angela Horn for the Sale Price of \$65,000.00.

**8:15** 4) Ordinance No. 9, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 7, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Andrew Allen for the Sale Price of \$55,000.00.

**8:20** 5) Ordinance No. 10, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described As Lot 9, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Kevin and Susan Emery for the Sale Price of \$25,000.00.

**8:25** **LEGAL MATTERS**

**8:30** **COUNCIL REPORTS AND COMMITTEE UPDATES**

**8:45** **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

**8:55** **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, April 17, 2017 - 7:00PM Regular Council - Council will discuss scheduling a special meeting to replace.
- Monday, May 1, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 15, 2017 - 6:00PM Work Session - 7:00PM Regular Council

**9:00** **ADJOURNMENT**



## Memorandum

**To:** Mayor Michel and Town Council  
**From:** Michael Yerman, Crested Butte Director of Planning  
**Subject:** Community School Affordable Housing Project and Budget Update  
**Date:** April 3, 2017

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### Update

The Community School students have successfully gained approval from BOZAR on their design for Lot 8, Block 79 for a 2 bed 1 ½ bath home. This project has evolved over the past year with the Town and Community School working to develop a curriculum that gives the students real world experience on designing and building a home. The new home will be added to the Town's rental units and be made available to a Town employee once constructed. Through the design phase many community members have assisted the students including Gary Hartman, August Hasz, and Dodson Harper who have donated their time to teach the students the fundamentals of architecture and design.

The process of working with the students on the design of a home on a micro lot also taught the staff several important considerations if in the future the Town pursues the creation of additional micro lots. These challenges include achieving proper roof pitches with a 24' height limitation, proper room for parking and snow storage, and storage for the site as a whole.

Now that the home has been designed, the students have been working on the structural design while working on getting bids to develop a budget. Last year, when the project first started the Town budgeted \$130,000 for the construction of the home in 2017. Throughout the design, the Town, acting as the client made several requests that enlarged the design from 1 to 2 bedrooms. The addition of storage and an external deck elevated costs. Other design decisions such as the windows and siding that inflated the costs. Also the decision to go to 2 stories also increased the overall cost.

The students have compiled a budget after receiving bids for the skilled trades, required stamped plans, construction materials, appliances, and other construction costs. After working with contractors to develop the construction budget the new budget is \$170,000. Several community members have been assisting the students and will help serve as the General contractor if the project is constructed this summer including John Stock and Crocket Farnell.

At this time, the Community School is proceeding to develop a summer class curriculum and they are recruiting students to assist with the build. The construction is contingent upon enrollment by students in this summer's class.

If the Council would like to continue to pursue the build this summer, action will need to be taken later during the regular meeting to amend the affordable housing budget.

# CBCS Cottage 906 Butte Ave.

Crested Butte Community School Applied Architecture Class 2016-2017



Behrens, Walter  
 Chandler, Caroline  
 Dumas, Noah  
 Eldridge, Ian  
 Farnell, Quinn  
 Fessenden, Lily  
 Freed, Clayton  
 Merck, Joshua  
 Myers, Ryan  
 Shanks, Mia  
 Washburn, Catherine  
 Wilson, Finnegan

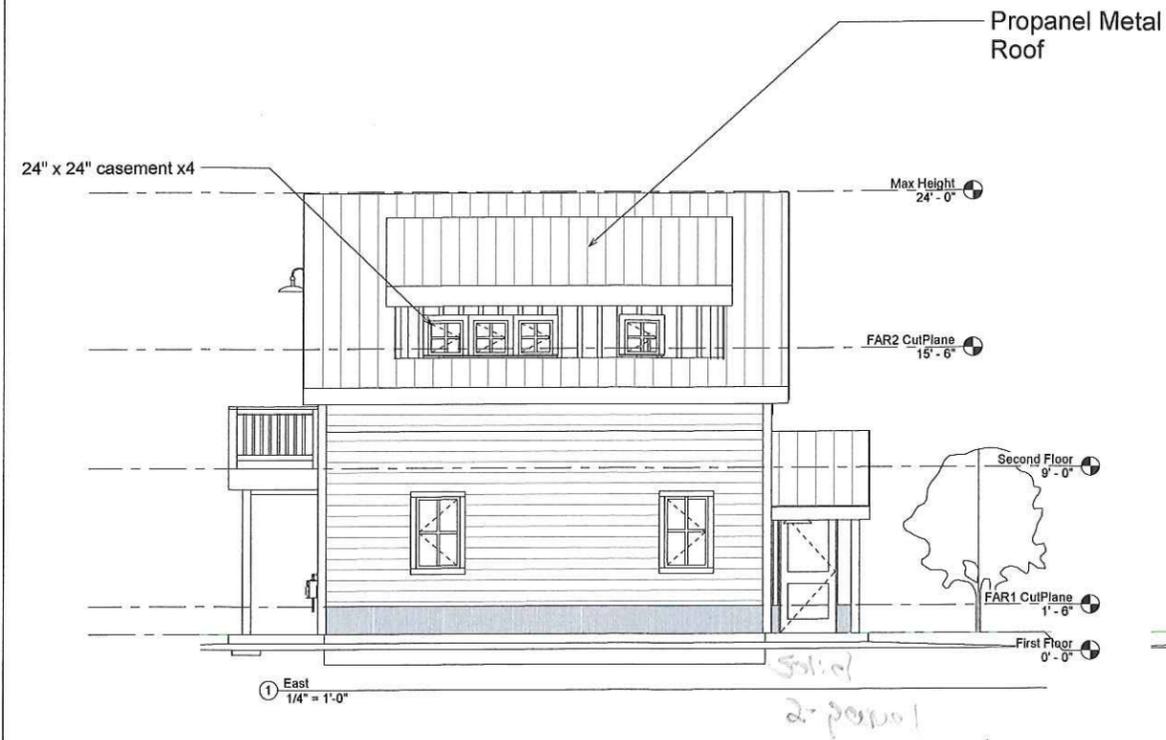


CBCS Cottage 906 Butte Ave.

Town of Crested Butte



Designers:  
 Behrens, Walter  
 Chandler, Caroline  
 Dumas, Noah  
 Eldridge, Ian  
 Farrell, Quinn  
 Fessenden, Lily  
 Freed, Clayton  
 Merck, Joshua  
 Myers, Ryan  
 Shanks, Mia  
 Washburn, Catherine  
 Wilson, Finneagan



BOZAR Submittal Date: 2/3/17

ISSUES:	
Date:	Description
Project: <b>CBCS Cottage 906 Butte Ave.</b> Town of Crested Butte	
Issue Date: 1/19/2017	Drawn by: Author
Sheet Title: Elevations (E,W)	<b>A2.2</b>

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 D:\CS\BOZAR\BOZAR\2\_13\_17.rvt

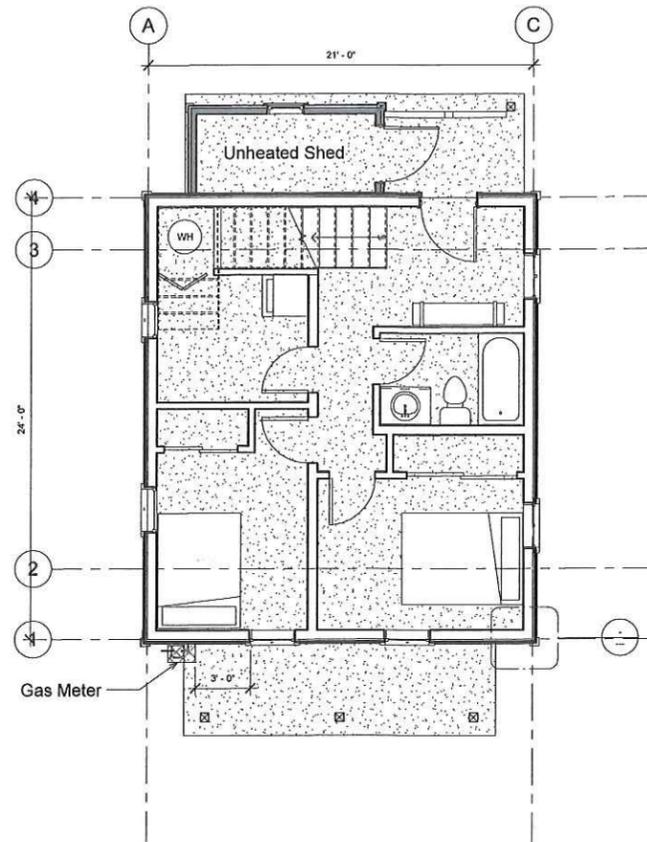
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Copyright © 2016

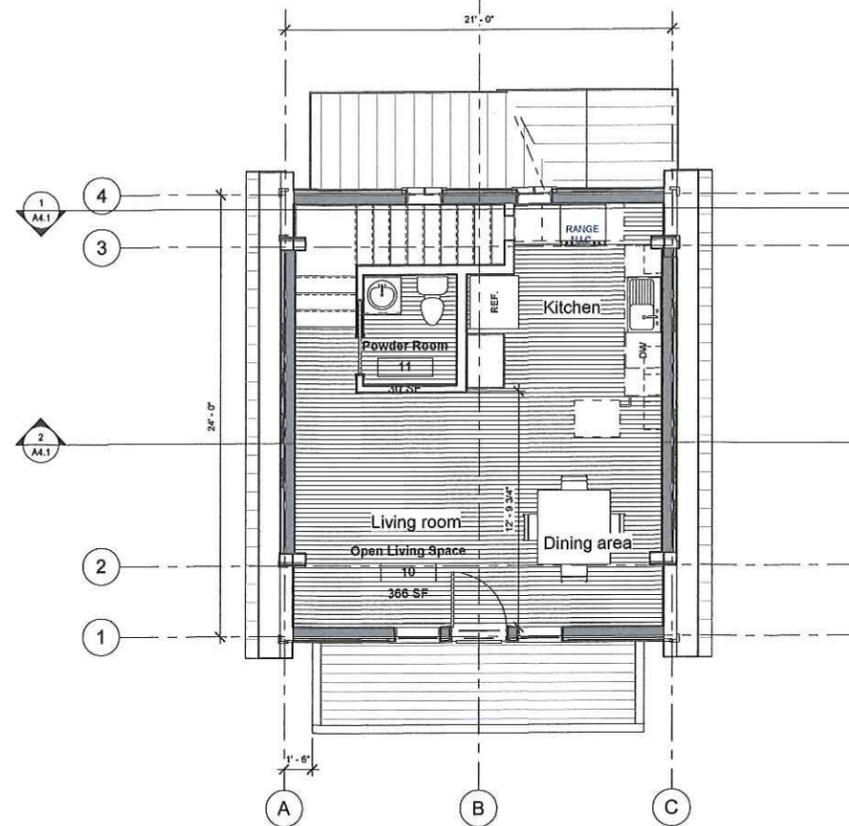




Designers:  
 Behrens, Walter  
 Chandler, Caroline  
 Dumas, Noah  
 Eldridge, Ian  
 Farnell, Quinn  
 Fessenden, Lily  
 Freed, Clayton  
 Merck, Joshua  
 Myers, Ryan  
 Shanks, Mia  
 Washburn, Catherine  
 Wilson, Finneagan



② First Floor  
 1/4" = 1'-0"



① Second Floor  
 1/4" = 1'-0"

BOZAR Submittal Date: 2/3/17

ISSUES:

Date:	Description

Project:  
**CBCS Cottage 906 Butte Ave.**  
 Town of Crested Butte

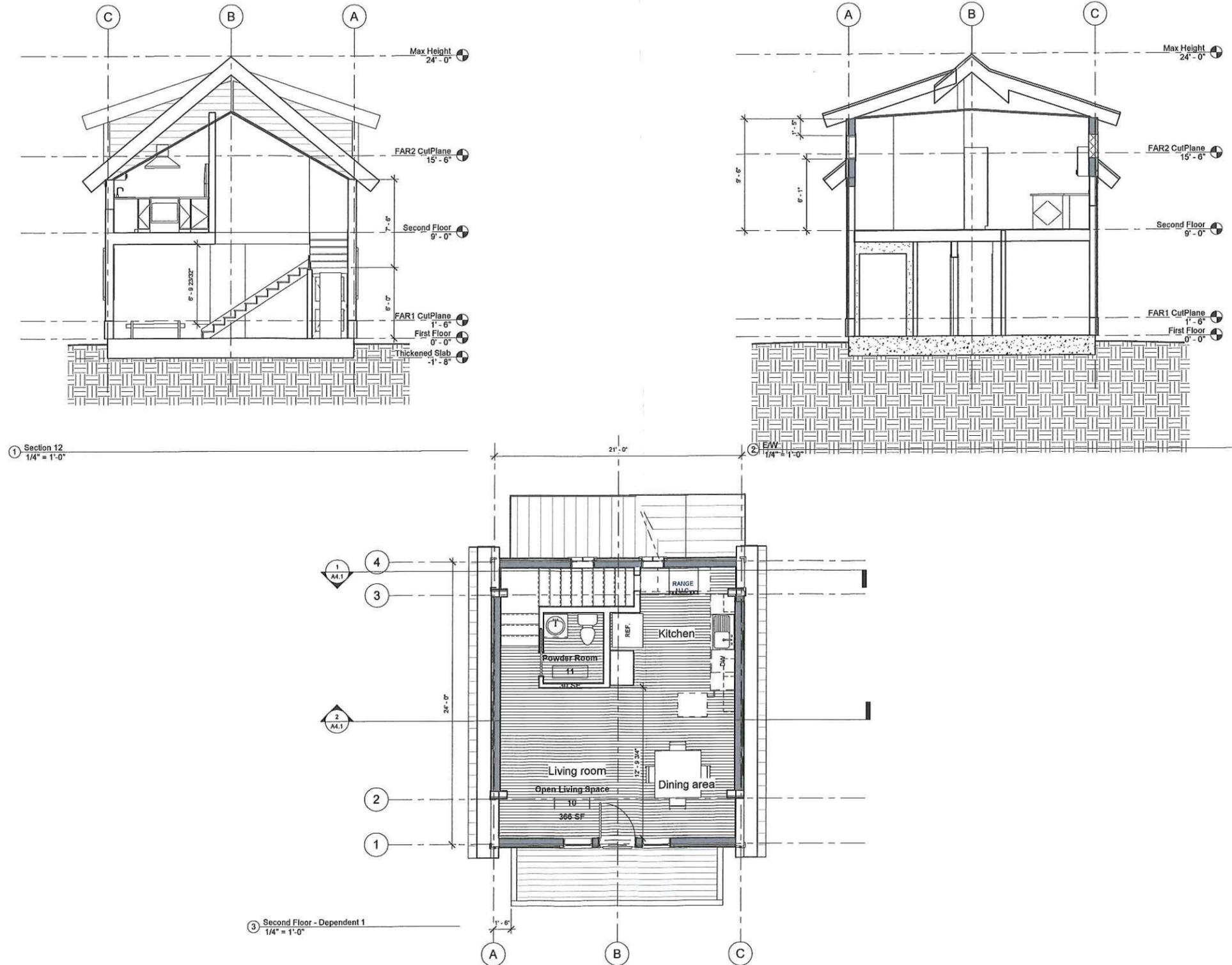
Issue Date: 1/19/2017 Drawn by:

Sheet Title:  
**Floor Plans** **A1.1**





Designers:  
 Behrens, Walter  
 Chandler, Caroline  
 Dumas, Noah  
 Eldridge, Ian  
 Farnell, Quinn  
 Fessenden, Lily  
 Freed, Clayton  
 Merck, Joshua  
 Myers, Ryan  
 Shanks, Mia  
 Washburn, Catherine  
 Wilson, Finneagan



BOZAR Submittal Date: 2/3/17

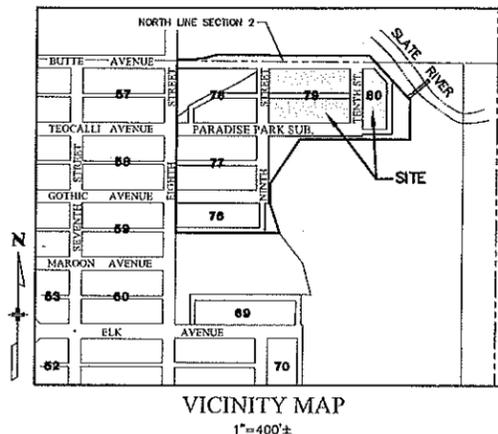
ISSUES:	
Date:	Description:

Project:  
**CBCS Cottage 906 Butte Ave.**  
 Town of Crested Butte

Issue Date: 1/19/2017      Drawn by: Author

Sheet Title:  
**Section Views**      **A4.1**

Copyright © 2016  
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 C:\Users\CHANDLER\Documents\Projects\Buller Class\BOZAR\Project\BOZAR.dwg  
 2/16/2017 2:52:29 PM



# REPLAT OF BLOCKS 79 AND 80 PARADISE PARK SUBDIVISION

ACCORDING TO THE FINAL PLAT OF PARADISE PARK  
RECORDED AUGUST 28, 2002 AT RECEPTION NO. 523289  
TOWN OF CRESTED BUTTE  
COUNTY OF GUNNISON, STATE OF COLORADO

**ATTORNEY'S OPINION:**

1. John D. Belkin, an attorney at law duly licensed to practice the State of Colorado, hereby certify that I have examined the title to the lands herein described. Such title is vested in the TOWN OF CRESTED BUTTE, COLORADO, and is free and clear of all liens, defects, encumbrances, restrictions and reservations of record, except as follows:

1. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

2. All Patent reservations as set forth in United States Patents recorded October 30, 1882 in Book 45 at page 12 and November 18, 1883 in Book 45 at Page 13.

3. Resolution No. 2, Series 2016, Resolutions of the Crested Butte Town Council Adopting the New Town-wide Affordable Housing Guidelines and the Effect of Such Guidelines on the Lands Set Forth in this Plat.

Dated this \_\_\_ day of \_\_\_\_\_, 2016.

John D. Belkin, Colo. Reg. No. 50963

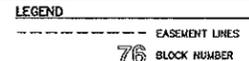
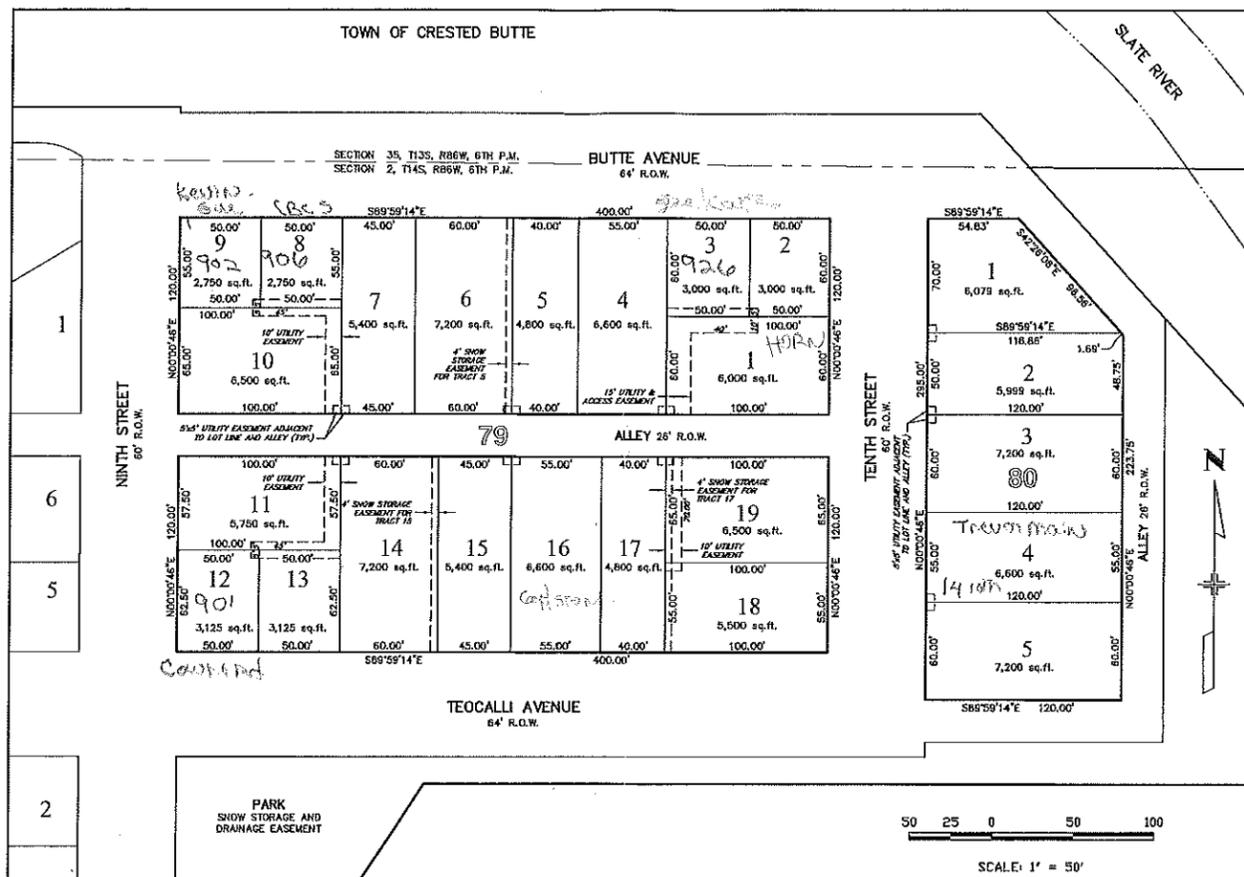
**SURVEYOR'S CERTIFICATE:**

I, Norman C. Whitehead, a registered land surveyor in the State of Colorado, do hereby certify that this REPLAT OF BLOCKS 79 AND 80, PARADISE PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT OF PARADISE PARK RECORDED AUGUST 28, 2002 AT RECEPTION NO. 523289, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO was made by me or under my direct supervision from an accurate survey of the subject real property, accurately depicts the layout of the real property and that it is true and correct to the best of my knowledge. Monuments have been found as shown herein.

Dated this \_\_\_ day of \_\_\_\_\_, 2016.

**BASIS OF BEARING**

A line between monuments found at the center line intersections of Elk Avenue and Third Street (3" aluminum cap, LS No. 9476) and Elk Avenue and Seventh Street (an aluminum cap, LS No. Nono) having a bearing of South 89° 59' 14" East.



**NOTES:**

1. The minimum number of units to be constructed on each Tract requirement is hereby eliminated.
2. The Final Plat of Paradise Park Recorded August 28, 2002 at Reception No. 523289, Town of Crested Butte, County of Gunnison, State of Colorado is no longer applicable to the lands set forth on this plat.
3. According to Colorado law you must commence legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based on any defect in this survey be commenced more than ten years from the date of the surveyor's certificate shown herein.

**GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE:**

This REPLAT OF BLOCKS 79 AND 80, PARADISE PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT OF PARADISE PARK RECORDED AUGUST 28, 2002 AT RECEPTION NO. 523289, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO is accepted for filing in the official real property records of the Office of the Clerk and Recorder for Gunnison County, State of Colorado on this \_\_\_ day of \_\_\_\_\_, 2016 at Reception No. \_\_\_\_\_.

Time: \_\_\_\_\_ Date: \_\_\_\_\_

**DEDICATION:**

Blocks 79 and 80:

The undersigned TOWN OF CRESTED BUTTE, COLORADO, a Colorado home rule municipal corporation, being the owner of Blocks 79 and 80, Paradise Park Subdivision, according to the Final Plat of Paradise Park Recorded August 28, 2002 at Reception No. 523289, Town of Crested Butte, County of Gunnison, State of Colorado, does hereby dedicate, consent to and approve this REPLAT OF BLOCKS 79 AND 80, PARADISE PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT OF PARADISE PARK RECORDED AUGUST 28, 2002 AT RECEPTION NO. 523289, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO, along with the perpetual use of the Town of Crested Butte of the streets, avenues, alleys, roads, easements, driveway/snow storage areas, parks, and other portions of such lands labeled as such, as set forth in this plat.

IN WITNESS WHEREOF, the Town of Crested Butte, Colorado has subscribed its name hereto this \_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Glenn Michel, Mayor

Attest: \_\_\_\_\_ (SEAL)  
Lynelle Stanford, Town Clerk

STATE OF COLORADO )  
COUNTY OF GUNNISON )

The foregoing Dedication for Blocks 79 and 80 was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016 by Glenn Michel, Mayor, Town of Crested Butte, Colorado, a Colorado home rule municipal corporation on behalf of said entity.

My commission expires: \_\_\_\_\_

Witness my hand and official seal: \_\_\_\_\_

Notary Public

**TOWN COUNCIL APPROVAL:**

The REPLAT OF BLOCKS 79 AND 80, PARADISE PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT OF PARADISE PARK RECORDED AUGUST 28, 2002 AT RECEPTION NO. 523289, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO, as set forth in this plat, is hereby approved by the Town Council of the Town of Crested Butte, Colorado, a Colorado home rule municipal corporation.

Dated this \_\_\_ day of \_\_\_\_\_, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Glenn Michel, Mayor

Attest: \_\_\_\_\_ (SEAL)  
Lynelle Stanford, Town Clerk

REPLAT OF BLOCKS 79 AND 80 PARADISE PARK SUBDIVISION A PART OF NE 1/4 NW 1/4, SECTION 2, T14S, R86, 6TH P.M. GUNNISON COUNTY, COLORADO	
Prepared By: NCW & Associates, Inc.	
P.O. Box 3688 (970) 349-6384	Crested Butte Colorado 81224
PROJECT: 15181.00	DWG.: PLAT
DATE: 2/23/16	SHEET 1 OF 1

## GVRHA Strategic Plan Summary

As we wrapped up the Housing Needs Assessment process November of 2016, our consultant for that project strongly suggested that our next step was to develop an action oriented strategic plan. The GVRHA engaged in the development of this plan along with our funding partners during the month of February in 2017. This strategic plan is designed and intended to guide the GVRHA and our jurisdictional partners to succeed in creating the housing units identified in the Housing Needs Assessment.

To ensure our success in the implementation of this plan, we are engaging our jurisdictional partners to commit to this plan and to adopt parallel goals and objectives for their organizations. Commitments we are seeking from our partners included in this plan are:

1. Long term financial commitment for operational funding
2. Housing goals per jurisdiction to assist in the 400 additional units needed by 2020
3. Support in seeking a ballot initiative for sustainable funding for construction of units
4. Outlining a pipeline of projects and prioritizing them
5. Assisting in energy efficiency programs to address substandard housing

## Gunnison Valley Regional Housing Authority Strategic Plan

Adopted March 8, 2017

The Gunnison County Housing Authority was created in 1982 by the Gunnison County Commissioners to improve housing conditions for low and moderate income households in Gunnison County. By 1998 the municipalities of Crested Butte, Gunnison and Mt. Crested Butte entered into an IGA with Gunnison County to become members to jointly work on housing efforts valley wide. In 2012 that agreement was further amended to create the Gunnison Valley Regional Housing Authority (GVRHA) made up of the member jurisdictions to embark on housing efforts throughout the valley. The Gunnison Valley Regional Housing Authority's **MISSION** is to advocate, promote, plan and provide the long-term supply of desirable and affordable housing in Gunnison County in order to maintain a well-rounded community.

In 2016, the member partners of the GVRHA embarked on a Housing Needs Assessment to inform them of the need of workforce housing in the Gunnison Valley. The assessment identified the need of 900 additional housing units by the end of 2020. This plan outlines the goals and results needed to obtain those units.

### Strategic Priorities

1. Role of the GVRHA and Single/Unified Housing Vision
2. Public/Private Collaboration
3. Funding
4. Regional Housing Solutions

### Strategic Priority #1: The Role of the GVRHA and Single/Unified Housing Vision

The GVRHA will be a 1-stop shop for affordable housing projects and information as evidenced by:

1. The Central repository of housing information
2. Qualify applicants for housing programs and projects
3. Advocacy for funding and community support
4. Prioritization of pipeline projects and facilitation of the projects
5. Facilitating programs such as first time homebuyer assistance
6. Participating in home quality improvements.

The following results will solidify the GVRHA's role in the valley:

**Strategic Result #1: Member Commitment**

By July 1, 2017, execute a 5-year funding commitment of equal proportions with the jurisdictional members' subject to annual appropriations.

**Strategic Result #2: Amended Bylaws and structure**

By November 1, 2017, the GVRHA bylaws and IGA will be amended to accommodate any revised governance model necessary to accomplish the strategic plan.

**Strategic Result #3: Work Plan**

By July 1, 2017 and by November 1<sup>st</sup> of subsequent years, develop and publish the following year's workplan consistent with the affordable housing strategies.

**Strategic Priority #2: Public/Private Collaboration**

The GVRHA understands and embraces the need to work collaboratively with the private sector development community to ensure the workforce housing units identified in the housing needs assessment are constructed in a timely manner to address the ever-growing need in the valley. The GVRHA and its member partners additionally understand that the expertise of the private sector in the planning and construction of the units is essential and not obtainable from the public sector.

**Strategic Result #1: Development Environment**

The GVRHA and its member partners will continuously work to create a development environment that encourages the construction of 500 additional free market workforce housing units by December 31, 2020.

**Strategic Result #2: Collaboration**

85% of the 400 additional permanently affordable housing units that the GVRHA will participate in obtaining by December 31, 2020 will be built through public/private collaboration.

**Strategic Priority #3: Funding**

To be able to address the affordable housing needs in the valley, the GVRHA must obtain continuous and sustainable funding for both projects and to grow and sustain operations. It is estimated that the creation of 400 additional affordable units will equate to \$80 million in new housing assets. To be able to leverage and partner to fund these projects, approximately an additional \$1.5 million annually in public funding is needed.

**Strategic Result #1: Additional Funding**

By December of 2017, the GVRHA will, by some taxing mechanism(s), secure up to \$1.5 million in annual public funding for permanently affordable regional housing solutions.

**Strategic Result #2: Sustainable Operations**

By December 31, 2020, 50% of the GVRHA operational expenses will be covered by revenues generated by operational income with the balance being contributed by housing authority members.

**Strategic Priority #4: Housing Solutions**

The Housing Needs Assessment dated November 2016 identifies the new housing units needed in the community and the number of inadequate housing units currently part of the housing stock in the valley.

**Strategic Result #1: New Units**

By December 31, 2020, there will be 400 additional permanently affordable housing units in the Gunnison Valley.

**Strategic Result #2: Member Commitment**

By July 1, 2017, each regional housing authority member will have committed to a housing goal contributing to the 400 additional units.

**Strategic Result #3: Pipeline of Projects**

By June 1, 2017, a pipeline of valley wide regionally significant housing projects will be identified based of the owner/rental and AMI mix prescribed in the housing needs assessment.

**Strategic Result #4: Quality Housing**

By December 31, 2020, 50% of the identified inadequate housing units will have received energy assessments and identified strategies to improve the quality of the home.



**February 28<sup>th</sup>, 2017**  
**MEMORANDUM**

**TO: PAULA SWENSON**  
**FR: MAGELLAN STRATEGIES**  
**RE: PROPOSAL OF SERVICES FOR GUNNISON VALLEY REGIONAL HOUSING AUTHORITY**

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### **Overview**

This brief memorandum details a month-by-month proposal of services to be provided by Magellan Strategies to the Gunnison Valley Regional Housing Authority, anticipating a ballot initiative for November 2017.

### **March 2017**

250-300n benchmark survey among likely November 2017 voters in Gunnison County.

Cost - \$8,000-\$10,000.

### **April-June 2017**

Monthly consulting fee for assistance in education campaign, including copy and design of postcards and informational materials as well as mail pieces to targeted voter households, as determined by the results of the survey. Each mailing itself would cost somewhere around \$4,500-\$5,000 depending on the size of the universe, but that would be paid to the design firm/mail house. For the Gunnison Valley RTA campaign, we used Cold Spark Media out of Pittsburgh, a firm that we highly recommend and use for our other campaigns. During this three-month period, you would want to send at least one, maybe two mail pieces depending on the budget.

Cost - \$2,000/month, \$6,000 total

### **July 2017**

250-300n “brushfire” survey among likely November 2017 voters in Gunnison County. This survey would be much shorter than the benchmark survey from March, and would be primarily used to gauge support for the ballot language.

Cost - \$5,000-\$7,000

### August-October 2017

Reduced campaign-consulting fee to assist with draft radio scripts, design of a logo and newspaper ads, as well as design of another mail piece aimed at persuading voters to support the campaign. The fee is reduced at this point because as the official campaign begins in August, we would pass off a lot of the day-to-day tasks to someone on the ground who would manage the campaign. For the Gunnison Valley RTA campaign, Molly Mugglestone and Mary Burt filled this role.

Cost - \$500/month, \$1,500 total

**Total Cost for Services Provided by Magellan Strategies:** \$24,500. This assumes the high end of projected survey costs, and so the actual amount may fall below \$24,500.



**MINUTES**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, March 20, 2017**  
**Council Chambers, Crested Butte Town Hall**

Mayor Michel called the meeting to order at 7:02PM.

Council Members Present: Jim Schmidt, Jackson Petito, Chris Ladoulis, Roland Mason, and Paul Merck

Staff Present: Town Manager Dara MacDonald, Town Attorney John Belkin, and Planning Director Michael Yerman

Parks and Recreation Director Janna Hansen, Building and Zoning Director Bob Gillie, Public Works Director Rodney Due, and Town Clerk Lynelle Stanford (all for part of the meeting)

**APPROVAL OF THE AGENDA**

Schmidt moved and Merck seconded a motion to approve the agenda with the striking of item #2 on the Executive Session. A roll call vote was taken with all voting, "Yes."

**Motion passed unanimously.**

**CONSENT AGENDA**

**1) March 6, 2017 Regular Town Council Meeting Minutes.**

**2) Resolution No. 12, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Award of a Contract for Engineering Services for the Contract Management of the Wastewater Treatment Plant Upgrades 2017 and Authorizing the Town Manager to Enter Into an Engineering Services Agreement Between the Town of Crested Butte and FEI Engineers.**

**3) Resolution No. 13, Series 2017 - Resolutions of the Crested Butte Town Council Approving the Intergovernmental Agreement for a Regional Planning Commission for Transportation Planning Gunnison Valley Transportation Planning Region.**

Item #1 was removed from the Consent Agenda and added under New Business.

Merck moved and Petito seconded a motion to approve the Consent Agenda and moving #1 into New Business. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

## **PUBLIC COMMENT**

Harry Woods - Reported to live at 127 Luisa Lane in CB South and Managing Artistic Director at the Crested Butte Mountain Theatre

- Addressed rental increases at the Crested Butte Mountain Theatre and Old Town Hall.
- He thought towns would have to step up and support the arts.
- Old Town Hall had been a great place for the community to have a local theatre.
- The proposed rent increase would severely impact their bottom line.
- There was a jewel in Town. He asked the Council to consider a long-term lease with no rent increase. He asked if Town would benefit from an increase, compared to the benefit of not having an increase to the Mountain Theatre.

## **STAFF UPDATES**

Janna Hansen

- The grant from the Department of Agriculture had been awarded to the joint applicants for over \$21K for an intern to help manage noxious weeds this summer.
- Crews had been working hard to clean up trash as the snow banks melted.
- Ladoulis brought up the sidewalk by the clock tower (across from Teocalli Tamale). The eastern edge had sunk, and he questioned who was responsible. Due explained that it fell on the business owner when tubing was installed. He agreed to look into it.

Rodney Due

- Attended a meeting in Gunnison on high water concerns, and he handed out graphs depicting snow pack. This year, snowfall exceeded '95 and '08.
- Due reported 5,800 loads of snow had been removed. He confirmed the Town had not charged more to private contractors for the amounts hauled to the gravel pit this year.

Lynelle Stanford

- She was looking to schedule a picture of the Council on either May 1<sup>st</sup> or May 15<sup>th</sup>.
- Working on sidewalk seating packets to send to business owners.
- The Flauschink parade would be on April 8<sup>th</sup>.
- Applications were being submitted for summer events.

Michael Yerman

- There would be a special meeting for Sixth Street Station tomorrow night.
- Discussions were ongoing with Clark's and 208 Elk.
- Cypress submitted the major impact application to the County.
- BOZAR was completely booked in April and May.

Dara MacDonald

- The discussions with the Center for the Arts on financial assistance were continuing. They were hoping to be back in April with an agreement.
- Auditors were at Town Hall this week.
- The joint meeting with the County Commissioners would be next Tuesday, March 28 from 10AM to Noon.
- She would be leaving next Thursday, and Gillie would cover the meeting on April 3<sup>rd</sup>. She would be back on April 13<sup>th</sup>.
- The 2016 budget included a new vehicle for Town Hall. Senior Staff decided it was not necessary, and they had not run into the need for another vehicle. She wanted to buy some bicycles for Town Hall instead.
- The County decided they would pull out of the vehicle registration office by the end of this month. Schmidt was disappointed. MacDonald confirmed Town was hoping to get to a rental rate of \$1,600 a year. Michel added further discussion to Other Business.
- Gillie would be retiring in June. Yerman would assume duties, and the departments would be restructured. An ordinance was required for the change. She mentioned they would like to start advertising for a senior planning position.

## **PUBLIC HEARING**

### **1) Ordinance No. 4, Series 2017 - An Ordinance of the Crested Butte Town Council Approving a Loan From the Colorado Water Resources and Power Development Authority; and Authorizing the Execution of a Loan Agreement and a Governmental Agency Bond to Evidence Such Loan.**

Michel confirmed proper public notice had been given. Due explained the ordinance was necessary to fulfill requirements for the loan. He explained terms of the loan and bond. Michel opened the meeting to public comment. There was no one from the public present to comment. The public hearing was closed, and there was no Council discussion.

Ladoulis moved and Merck seconded a motion to approve Ordinance No. 4, Series 2017. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

### **2) New Hotel and Restaurant Liquor License Located at 202 Elk Avenue for Public House LLC DBA Public House.**

Michel confirmed proper public notice was given. David Leinsdorf, Kyra Martin, and Jake Jones were present on behalf of the applicant. Leinsdorf entered two statements of needs and desires of the community into the record. It was stated they would be open to the public, serve food, and there were two levels of the building that would be liquor licensed. Martin clarified they could be closed for private events just like any other restaurant. Schmidt asked about music and noise, and he recognized it was next to a residential area. Jones informed the Council that Public House would be under his

purview. He explained their plan for the building. The building was sound insulated, and live music would be in the basement zone.

The meeting was opened to public comment. There was no one present to comment. The public hearing was closed, and there was no further Council discussion.

Merck moved and Mason seconded a motion to approve the Hotel and Restaurant Liquor License for Public House LLC DBA Public House located at 202 Elk Avenue; Crested Butte, Colorado for the reasons stated in the staff report contingent upon the issuance of a certificate of occupancy and thereby a BOLT license. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

## **NEW BUSINESS**

### **1) Presentation by High Country Conservation Advocates (HCCA) on the Thompson Divide Legislation.**

Matt Reed, HCCA's Public Lands Program Director, asked the Town for a letter of support on the Thompson Divide Protection Bill. He gave background on the location of Thompson Divide and its relevance to the Town. Reed explained the significant content of the bill. He listed other entities that supported. Reed asked that the letter be drafted drawing a connection to Town. MacDonald stated the letter could be on the next Consent Agenda. The Council indicated, with a thumbs-up, to include on the next agenda, and no one voiced disagreement.

### **2) Ordinance No. 5, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 16, Article 12 of the Crested Butte Municipal Code to Include Regulations for the Consolidation of Properties Subdivided Into Condominiums or Townhouses.**

Gillie explained Ordinance No. 5 generally did not allow condos to be consolidated or vacated in a manner that would reduce residential units. He wanted to confirm it was what Council had in mind. Also, he asked if they would allow the out of providing compensation with a deed-restricted unit. Michel questioned the Council on the out. Ladoulis was not crazy about it. Michel agreed they wanted to preserve as many units as possible where they were at. Petit asked about an out, such as one in which the applicant could provide double the square footage. The discussion turned to contemplate units that were right next to each other. Belkin explained where the affordable housing allowance arose. He foresaw a Code change. Michel preferred to constrict it now. Merck liked people trading housing. Mason wanted to see as many free market condos in Town as possible. Schmidt agreed with Ladoulis. Gillie confirmed the purposes and intent section was in line with what they wanted to accomplish. Michel said the ordinance was spot on.

Mason moved and Merck seconded a motion to refer Ordinance No. 5, Series 2017 to BOZAR for a recommendation and set for public hearing at the April 3<sup>rd</sup> meeting with the following change of striking the affordable housing piece. **Motion passed.**

### **3) March 6, 2017 Regular Town Council Meeting Minutes.**

Petito stated that in the minutes, on page 29 of the packet, it reflected that Michel called for public comment. Michel had recused himself from that part of the meeting, and it was meant to be Mason.

Schmidt moved and Merck seconded a motion to approve the minutes as amended. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

Michel recused himself and left the room. Mayor Pro Tem Mason took the Mayor’s seat

### **4) Ordinance No. 6, Series 2017 - An Ordinance of the Crested Butte Town Council Amending the Definition of Vacation Rental in Section 16-1-20 of the Crested Butte Municipal Code; Amending Section 16-14-90 of the Code to Include New Regulations for Vacation Rentals; and Making Such Other Conforming Changes to Code in Connection Therewith.**

Mason read the title of the ordinance, and he provided history of past discussions. The issue was that they didn’t want the community to turn into hotels. The ordinance addressed putting percentage limitations in the zones, and he listed zones that were included and not included. Mason explained the process for the meeting.

Schmidt asked Belkin about primary residences. Belkin stated they could use primary residence, but they had to under the concern of neighborhoods turning into lodging districts. Merck confirmed Schmidt wanted to allow primary residents to short-term rent in zones where it wasn’t allowed. Mason referred to the green zone, and he acknowledged they were looking at 30% of the green zone having short-term rental licenses. They were considering a cap of 35% in the green zone and not allowing any more rentals in the other zones. Mason’s goal was to get something that didn’t get bogged down in primary residence versus non-primary residence. He reiterated there were 32 licenses remaining to get to 35%. Merck identified that they wanted to protect long-term residents the most.

Merck asked if the previous years’ licenses had to be concurrent in the white zone in order to apply for a license again. Petito questioned if preference could be given to people in the white zones who had licenses before the moratorium rush. Ladoulis thought the spirit would be honored even if they had a license in 2015. MacDonald confirmed they were discussing that they would allow lapsed licenses in the white zone to renew. Schmidt didn’t think they needed to go back beyond 2015. Mason questioned how they were upholding if they allowed lapsed licenses to be processed. He would then be more in favor of allowing x percentage in white zones. If they talked about increasing

in other areas, they needed to talk about the percentage. He was comfortable with the ordinance as presented.

Schmidt wanted to confirm the license went with the property, and he questioned property versus license. Gillie stated that licenses were associated with property and an owner. MacDonald understood licenses were not transferable. Belkin elaborated that a vacation rental license was tied to the property but not the owner. Gillie said the trigger was tied to the RETT. Mason wanted to be sure licenses were non-transferable. MacDonald explained that if the sale triggered the RETT, the license would not transfer.

Mason opened the meeting to public comment:

Steve Brown - 81 Par Lane

- His main concerns were: 1) they may be passing an ordinance that was setting Town up for litigation and 2) the effect of limiting on STRs could have negative impacts on the economy.
- Cited rent control statute, and he read the statute. He explained it had been ruled constitutional, and the Telluride ordinance was invalid for violating the state law.
- Questioned if anyone had a compelling argument that would actually bring back neighbors.
- All people were entitled to the same rights under the law.

David K. Owen - 903 Elk Ave

- Do not enact a prohibition by zone of short-term rentals.
- He wondered why the Council felt there was an issue with short-term rentals.
- Hard cap reminded him of Whatever USA wristbands.
- People would get licenses just to get them to add value to their homes.
- A hard limit meant less tourists and less money. It would lead to more dark houses around Town. It would not have an impact on affordable housing.
- A hard cap was logical and fair if they must make a prohibition by zone. Grandfathering was not fair or logical. If there were prohibited zones, then take the grandfathering away.
- Do not pick winners and losers.

Caren Carroll - 809 Sopris

- Agreed with Owen.
- The IRS Code clearly defined primary residence. The IRS allowed rentals of primary residences for 14 days.
- Consider locals who were short-term renting for a short period of time to pay bills.

Liz Sawyer - 810 Sopris

- Agreed with Owen.
- Unfair to restrict in zones in areas where Town had overlooked and issued licenses.

- There were a ton of locals in Verzuh Ranch.
- Extra income was wonderful.
- Her license had lapsed.
- She was asking for six weeks to short-term rent to help with income.

Don Pulley - 810 Whiterock

- He should have got his license (when he could).
- It was tough to swallow.
- Suggested they offer another deadline.

Todd Carroll - 809 Sopris

- He wanted to talk about the white zone. They were starting to think about short-term renting now.
- There was a worry, if licenses were non-transferable, the white zone would be a dark zone.
- It would help to keep locals in Town if they were allowed to short-term rent.

Susan Eskew - 201½ Gothic Ave

- Told the Council to think about the middle-class that was represented in the room. Consider the guests as well.
- Changing the market to allow 30-day rentals attracted a different type of people.

Jim Starr - 323 Gothic

- They were on the right track.
- They would address people tonight by taking Schmidt's suggestion (on primary residence).
- Don't be scared by legal action.
- Keep community and promote people already living here.

Mindy Sturm - 117 Teocalli

- Thanked the Council for opening up discussion in white zones.
- She was not sure what they were trying to solve.
- Town was known to write bad policy that was not enforced.
- She brought up aging parents and that people could have to leave to take care of them.
- By limiting white zones, they were limiting the locals of the Town.
- It was poorly written policy that should not be passed. There were loopholes and room for a lawsuit.

Mason brought the meeting back to Council discussion. He saw a strong showing from people in excluded areas. Mason said they were trying to limit rentals in the green zone and had to discuss what they should do in the white zone. He thought the green zone was in good shape. He reminded the Council that the white zone also included the mobile home district and other high-density zones. Ladoulis thought the comments from the public were consistent with the spirit of what they were trying to accomplish. They

needed to get the primary residence question raised and answered. Mason identified the problem as the conversion of residential properties into commercial businesses. Merck thought the community was asking to be able to fairly rent their homes to be able to stay.

Mason referred to the questions asked by Brown during public comment. Belkin stated the interpretation of the rent control statute didn't apply. Mason reiterated they didn't want residential areas to turn into commercial zones. They were currently discussing equality and fairness. He thought it was difficult to differentiate between a primary and a non-primary residence. They were trying to address the issue of allowing things to happen that shouldn't have been allowed. Mason saw they would have the silver bullet if they could define primary residence. Merck thought if they didn't allow a primary resident to rent, they would lose more than they would gain. Petito would like to see a 20% limitation in both zones, with the exception of primary residences. He didn't want people to come to Town to buy mini hotels. Schmidt stated all zoning was unfair. Belkin recognized how they supported was the key to the legality of the primary residence question. Schmidt wanted to add in the primary residence allowance. Petito thought they would be on solid ground with the IRS definition of primary residence.

Mason asked the Council about limiting. Schmidt said the questions were if they allowed primary residents to rent and how long they allowed it. Belkin didn't think the definition of primary residence was the challenge. Mason identified the focus was on when the Town considered that a residence became a commercial business. Gillie pointed out locals could create commercial operations as well. Ladoulis was okay with an exception for primary residence because it reflected the spirit. Petito was agreeable to the primary residence exception, too. It was summarized that Council was going back to looking at primary residences being exempt from the permit cap.

MacDonald asked if they wanted to limit the number of days for primary residents. The Council wanted to see some limit on the number of days. She asked if they were changing the percentages. Mason said currently they were not. Ladoulis stated there could be two tiers of licenses. MacDonald recapped they would modify the existing ordinance to allow another track that would apply to the entire town for primary residences. Gillie questioned non-primary residences in white zones. They could maintain renting as long as they maintained the BOLT. MacDonald recommended they continue the first reading of the ordinance.

Schmidt moved and Merck seconded a motion to continue the first reading of Ordinance No. 6, Series 2017 with direction as specified by the Town Manager to May 15<sup>th</sup>, 2017.

**Motion passed.**

Mayor Michel returned to the meeting, and he took his seat.

##### **5) Discussion on HB17-1242.**

Michel explained HB17-1242 and the implications to sales tax. He acknowledged it would put the local sales tax at over 10%. Mason knew of other taxes that could be on

the ballot. Schmidt wondered why they gave up on the gas tax, and he couldn't agree to write a letter that would support a proposed sales tax increase. Michel recognized the tax would fall on local retailers and Town's economy. The gas tax was not keeping up with inflation. MacDonald suggested discussing with other entities in the area such as Mt. Crested Butte and the County. Michel said that CML was listening. The Council determined they would not take action at this time.

## **LEGAL MATTERS**

None

## **COUNCIL REPORTS UPDATES AND COMMITTEE UPDATES**

Jim Schmidt

- The Housing Committee had five applications for the new director. They would interview three people via Skype to narrow the field.

Jackson Petito

- Attended a Housing Foundation meeting last Wednesday. They talked about the Housing Authority's strategic plan. They were entertaining the possibility of a tax.

Chris Ladoulis

- The busy spring break period just ended. Everyone seemed to believe it was a different spring break crowd.

Paul Merck

- Participated in the Al Johnson play at the museum and the Avalanche Center's Al Johnson race.
- Went to the Creative Arts District special meeting, and they interviewed people for the committee.
- He missed the Center's meeting because of the Council retreat. The update was on what they were working on for financing with Town.

Roland Mason

- There was a RTA meeting last week that he missed.
- The Mountain Express meeting would be on Thursday, and the audit meeting would be tomorrow.

Glenn Michel

- Attended CAST last week. His main take away from Mayor Hancock was that Denver was dealing with the same issues as Town. The State Economist predicted a recession. A presentation from Ski Country USA indicated that skier numbers were up. The message was baby boomers had wealth, but millennials were driving growth.

## **OTHER BUSINESS TO COME BEFORE THE COUNCIL**

Michel asked the Council about potentially sending a letter to the Board of County Commissioners concerning the DMV office closing in Town Hall. Mason recognized people could do a lot online. Ladoulis thought they could preserve it. Schmidt wanted to send a letter and copy Mt. Crested Butte and CB South. Mason suggested they direct Staff to give Mt. Crested Butte a call. Michel agreed with Schmidt that they should send a letter. The Council unanimously agreed.

The Council discussed at the retreat that they needed to review the Town Attorney. It was decided to schedule the review for May 17 from 9AM to Noon.

Schmidt was approached by a property owner regarding the 0 Block of Sopris. He asked if paving was on the Town's radar.

Schmidt wondered if there had been action on the potential Town picnic. He thought they needed to direct Staff. MacDonald told Council that Staff could come up with the scope and general budget. Ladoulis suggested it be held the week after school gets out, which was the week of June 12.

Mason identified it would be beneficial to Council to have a work session on how the transition would happen with the merger of departments. MacDonald stated they could accomplish a lot through the process of the ordinance.

Ladoulis talked to a business owner who lamented they would have to wait until May 15 for sidewalk seating. Schmidt said it used to snow in May, and crews would have to plow. MacDonald would bring back the topic for discussion.

Michel suggested they ask for an update from the Chamber, specifically to learn where the BOLT money was being allocated. He wanted to re-establish the relationship. No one on the Council disagreed.

MacDonald included retreat follow-up in the packet. She asked for any comments from the Council.

## **DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, April 3, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, April 17, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, May 1, 2017 - 6:00PM Work Session - 7:00PM Regular Council

Michel, Mason, and Ladoulis would be gone for the meeting on April 17<sup>th</sup>. Council would discuss at the next meeting.

## **EXECUTIVE SESSION**

Michel read the reason for Executive Session:

For a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b).

Merck moved and Mason seconded a motion to go into Executive Session for this topic. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

Schmidt was present for the first discussion related to Freeport-McMoRan. He recused himself and left the meeting before the Council discussed Poverty Gulch.

The Council went into Executive Session at 10:32PM. Council returned to open meeting at 11:34PM. Mayor Michel made the required announcement before returning to open meeting.

Ladoulis hereby moved and Petito seconded a motion to approve the Agreement Regarding Assignment of Junior Lien and Redemption Rights and instruct the Mayor to execute the same. A roll call vote was taken with all voting, "Yes," except for Schmidt who had recused himself. **Motion passed unanimously.**

Petito hereby moved and Ladoulis seconded a motion to approve the Town filing the Notice of Intent to Redeem with the Gunnison County Public Trustee, with the Town Attorney executing the same. A roll call vote was taken with all voting, "Yes," except for Schmidt who had recused himself. **Motion passed unanimously.**

Mason hereby moved and Petito seconded a motion to instruct the Town Attorney to work with the attorneys of the junior lienholder that has filed a notice of intent to redeem to pay off such junior lienholder in exchange for the assignment of its junior lien and redemption rights, in an amount not to exceed \$10,000.00. The Town Manager may enter into such agreements prepared by the Town Attorney necessary to consummate such transactions. A roll call vote was taken with all voting, "Yes," except for Schmidt who had recused himself. **Motion passed unanimously.**

Ladoulis hereby moved and Petito seconded a motion to instruct the Town Staff and Town Attorney to prepare resolutions of the Town Council for presentation at the April 3, 2017 Town Council meeting approving the payment of \$93,000.00 and such other amounts necessary to redeem the certificate of purchase issued to Mindy Sturm. A roll call vote was taken with all voting, "Yes," except for Schmidt who had recused himself. **Motion passed unanimously.**

**ADJOURNMENT**

Mayor Michel adjourned the meeting at 11:47PM.

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Glenn Michel, Mayor

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Lynelle Stanford, Town Clerk      (SEAL)

**MINUTES**  
**Town of Crested Butte**  
**Emergency Town Council Meeting**  
**Thursday, March 23, 2017**  
**Council Chambers, Crested Butte Town Hall**

Mayor Michel called the meeting to order at 5:11PM.

Council Members Present: Jackson Petito, Chris Ladoulis, Roland Mason, and Paul Merck

Staff Present: Town Manager Dara MacDonald, Town Attorney John Belkin, Planning Director Michael Yerman, and Town Clerk Lynelle Stanford

Mason moved and Merck seconded a motion to approve the agenda for the emergency meeting on March 23, 2017. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**1) Discussion, Instructing Negotiators and Possible Action Regarding Foreclosure Proceedings for 721 Butte Avenue; Unit I.**

Belkin reminded the Council of the last meeting, specifically when the Council authorized the expenditure of up to \$10K. Upon his communication with the junior lienholder's attorneys, the arrangement became for \$12K to obtain the assignment of the junior lien and redemption rights. He recommended they authorize up to \$12K. Ladoulis questioned the timeline. Belkin explained the conclusion would be sometime around the middle of April. Ladoulis wondered if the deal would be sealed. Belkin thought it would be done subject to working with the agreement. Merck wondered if other properties in Town were the same as not having the right of first refusal. Belkin said a number of other units could be subject to something similar. MacDonald had discussed with Yerman the need to inventory deed restrictions. Yerman agreed it was a big puzzle. He said they would bring a plan via the budget next year to systematically review deed restrictions. Ladoulis questioned the deed restriction and the opportunity to start from scratch with a new one. Yerman said this method was the cleanest and best way to retain the unit. Merck questioned the possibility of a lawsuit. Belkin acknowledged there was always potential, but the chances were low if they took the recommended direction.

Ladoulis hereby moved and Merck seconded a motion to have the Town Attorney work with the attorneys of the junior lienholder that has filed a notice of intent to redeem to pay off such junior lienholder in exchange for the assignment of its junior redemption rights in an amount not to exceed \$12,000.00, and as such transactions may be structured upon approval of the Town Attorney. The Town Manager may enter into such agreements prepared by the Town Attorney necessary to consummate such transactions. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**ADJOURNMENT**

Mayor Michel adjourned the meeting at 5:26PM.

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Glenn Michel, Mayor

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Lynelle Stanford, Town Clerk      (SEAL)

April xx, 2017

The Honorable Michael Bennet  
261 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Cory Gardner  
354 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Scott Tipton  
218 Cannon House Office Building  
Washington, D.C. 20515

Re: Support for the Thompson Divide Withdrawal and Protection Act of 2017

Dear Senator Bennet, Senator Gardner and Representative Tipton,

The Town of Crested Butte, Colorado strongly supports the Thompson Divide Withdrawal and Protection Act of 2017. We specifically support the provision in the legislation that permanently withdraws, subject to valid existing rights, lands in Gunnison County from all forms of (1) entry, appropriation, and disposal under the public land laws; (2) location, entry, and patent under the mining laws; and (3) operation of the mineral leasing, mineral materials, and geothermal leasing laws. Included in the Thompson Divide Withdrawal and Protection Area are federal lands near Crested Butte, including the iconic Kebler Pass area along County Road 12, lands near Ohio Pass, and lands adjacent to the Raggeds Wilderness and West Elk Wilderness. Conservation of this interconnected landscape is critical to the economic and environmental sustainability of Crested Butte, and we support its permanent protection through federal legislation.

Crested Butte has a history in mining, but now has a vibrant local economy based on recreation, ranching, and tourism. The public lands in Gunnison County that are part of the Thompson Divide Withdrawal and Protection Area support all three of these economic drivers. Mineral development in the withdrawal area, especially near Kebler Pass and County Road 12, Ohio Pass, and the Raggeds and West Elk Wilderness areas, is incompatible with our economic wellbeing and community values.

Near Crested Butte, the withdrawal area includes the iconic aspen forests that draw tourists every fall for leaf peeping. It also encompasses a significant portion of the West Elk Loop Scenic Byway, the proposed Carbondale to Crested Butte Trail, and those routes' viewsheds. The Town of Crested Butte is a partner in both the Byway and the Trail because they attract tourists to our town and surrounding communities. Hunting, fishing, hiking, mountain biking and backcountry winter sports are popular recreation endeavors within the mineral withdrawal area. Wildlife also call this area home. Historic

ranching stands to benefit from this legislation's permanent protection of public lands that support grazing. In addition, the mineral withdrawal area in Gunnison County is directly upstream from the farms, orchards and vineyards of Delta County, an area that supplies much of the fresh, local produce for Crested Butte residents and businesses.

The Thompson Divide Withdrawal and Protection Act of 2017 is good for Crested Butte, good for Gunnison County, and good for Colorado. By achieving a balance between energy development and conservation, it will sustain the quality of life we have developed in our community now and for future generations.

Sincerely,

Glenn Michel  
Mayor of the Town of Crested Butte



## Staff Report

April 3, 2017

**To:** Mayor and Town Council

**Thru:** Dara MacDonald, Town Manager

**From:** Michael Yerman, Director of Planning

**Subject:** **Appointment of Creative District Commissioner**

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**Background:**

The Town Council passed Ordinance 14, Series 2015 establishing the Creative District Commission. The Ordinance states that the Commission shall be comprised of nine (9) members, including a town council liaison and a member of town staff. Besides these two positions, the remaining Commissioners are appointed by the Town Council for three year terms. Currently, there is one vacancy on the Commission for a three-year term.

The Creative District Selection Committee (Paul Merck – Town Council Liaison, Mary Tuck – Commissioner, Shaun Horne – Commissioner) met on March 17, 2017 to interview applicants. They are recommending Jeff Taylor to a 3 year term.

Resolution 14, Series 2017 appoints Jeff Taylor to a three (3)-year term, expiring on January 1, 2020.

**Recommendation:** Staff recommends that the Council approves Resolution 14, Series 2017 for the Creative District Commission appointment of Jeff Taylor to a 3 year term that expires January 1, 2020.

**RESOLUTION NO. 14**

**SERIES 2017**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPOINTING CREATIVE DISTRICT COMMISSIONER JEFF TAYLOR TO A 3 YEAR TERM TO EXPIRE JANUARY 1, 2020**

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town was designated a Certified Colorado Creative District in 2016;

WHEREAS, the Town Council, by Ordinance 14, Series 2015, created the Crested Butte Creative District Commission (the "**CBCDC**") and in doing so also set terms for Commissioner appointments;

WHEREAS, the CBCDC has interviewed new Commissioner applicants and has made a recommendation on the appointment of a new Commissioners; and

WHEREAS, the Town Council desires to appoint a new Commissioners for the term defined below, such appointment being the best interest of the health, safety and welfare of the residents and visitors of Crested Butte.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

**Findings; Appointment.** The Town Council hereby appoints the following members of the public as Commissioners of the CBCDC for the following terms, such appointments being the best interest of the health, safety and welfare of the residents and visitors of Crested Butte:

Jeff Taylor: 3 year term expiring on January 1, 2020

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Glenn Michel, Mayor

ATTEST

\_\_\_\_\_

Lynelle Stanford, Town Clerk

(SEAL)



## Staff Report

April 3, 2017

**To:** Mayor and Town Council  
**Thru:** Dara MacDonald, Town Manager  
**From:** Rodney E. Due, Director of Public Works

**Subject:** **RESOLUTION NO. 15 SERIES 2017 A RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE AWARD OF A CONTRACT FOR THE 3<sup>RD</sup> STREET PAVEMENT PROJECT AND AUTHORIZING THE TOWN MAYOR TO ENTER INTO A CONSTRUCTION CONTRACT BETWEEN THE TOWN OF CRESTED BUTTE AND OLD CASTLE SW GROUP, INC. dba UNITED COMPANIES.**

**Attachment:** 1. Contract documents  
 2. Resolution NO. 15 series 2017

**Date:** March 29, 2017

**Summary:** : In the March 18<sup>th</sup> and 25<sup>th</sup> edition of the Crested Butte News, the Public Works Department published an Invitation for Bid for the 3<sup>rd</sup> Street Pavement Project The Invitation to Bid was also posted on the Town of Crested Butte web site. Proposals were received by the Public Works Department until 02:00pm on Tuesday, March 28<sup>th</sup>, when they were opened and publically read aloud. There was only one (1) bid received. The bid was reviewed by the Public Works Department, and Town Manager. The engineering estimate for this project was \$46,000. Staff recommends awarding the contract in an amount not to exceed \$41,775 and authorizing the Public Works Director to utilize up to \$46,000 for the project (includes a \$4,225 contingency). The Town received proposals from;

1. United Companies	\$41,775.00
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**BACKGROUND:** During the 2016 Budget cycle the Town Council put paving the 412 3<sup>rd</sup> Street and the 3<sup>rd</sup> Street right of ways off Elk Avenue as a number one priority.

**Recommendation:** To approve Resolution No. 15, Series 2017 approving the award of a contract for the 3<sup>rd</sup> Street Pavement Project and authorizing the Town Mayor to enter into a construction contract between the Town of Crested Butte and Old Castle SW Group, Inc. dba United Companies.

**Recommended Motion:** Motion to approve Resolution No. 15, Series 2017 and authorizing the Public Works Director to utilize up to \$46,000 for the project as a part of the Consent Agenda.

**RESOLUTION NO. 15**

**SERIES NO. 2017**

**A RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE AWARD OF A CONTRACT FOR THE 3<sup>RD</sup> STREET PAVEMENT PROJECT AND AUTHORIZING THE TOWN MAYOR TO ENTER INTO A CONSTRUCTION CONTRACT BETWEEN THE TOWN OF CRESTED BUTTE AND OLD CASTLE SW GROUP. INC. dba UNITED COMPANIES.**

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town Council desires to award a contract for the construction of the 3<sup>rd</sup> Street Pavement project; and Old Castle SW Group, Inc. dba United Companies ("**United Companies**"), responded to the Town's Invitation to Bid for Construction services; and

WHEREAS, the Town Council desires to award the contract to United Companies, accordingly, subject to the terms and conditions of the contract in an amount not to exceed \$41,775.00 to be executed by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO THAT:

1. The Town Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.

2. The Town Council hereby awards the contract for construction services for the construction of the 3<sup>rd</sup> Street Pavement Project to United Companies in an amount not to exceed \$41,755.00 and authorizes the Town Mayor to execute a contract further detailing the terms and conditions of such award.

RESOLVED, APPROVED and ADOPTED this 3<sup>rd</sup> day of April, 2017.

TOWN OF CRESTED BUTTE

By: \_\_\_\_\_  
Glenn Michel, Town Mayor

ATTEST

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made this 4th day of April, 2017 by and between Oldcastle SW Group, Inc, dba United Companies (hereinafter referred to as “Contractor”), and the Town of Crested Butte, Colorado, a Colorado municipal corporation (hereinafter the “Town”).

### WITNESSETH:

WHEREAS, the Town desires that Contractor perform the duties of general contractor for the construction of certain improvements, namely the **3<sup>rd</sup> Street Pavement Project** (hereinafter the “Project”); and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the Project in writing.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Statement of Work.** Contractor agrees to manage and supervise the construction of the project located in the Town of Crested Butte, Gunnison County, Colorado, as directed by the Town and pursuant to the Town of Crested Butte Design Standards and according to the plans and specifications approved by the Town. Contractor shall (a) furnish all tools, equipment, supplies, superintendence, transportation and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and skillful manner and in accordance with the provisions of this Agreement; and (d) execute, construct and complete all work included in and covered by this Agreement.

2. **Time of Commencement and Completion.** Construction under this Agreement will begin on or after June 5, 2017 and shall be completed by June 23, 2017 (“Completion Date”). The Completion Date may, at the Town’s sole discretion, be extended if approved by the Town in writing, but in no event may the Completion Date extend beyond June 30, 2017. If, due to misconduct or neglect, Contractor fails to complete the Project on or before the Completion Date, the Town may deduct **liquidated damages in the amount of \$1000 the first day and \$500.00 for each additional day** the Contractor works beyond this date. It is understood by Contractor and the Town that actual damages caused by Contractor’s failure to complete this Agreement on time are impracticable or extremely difficult to fix, and that the per diem deduction from the contract price will be retained by the Town as payment by Contractor of liquidated damages, and not as a penalty.

3. Compensation. Town shall pay and Contractor shall receive the contract price of **\$41,775.00** as stipulated in the Notice of Award, attached to this contract as **Exhibit A** and incorporated herein by this reference, as FULL compensation for everything furnished and done by Contractor under this Agreement, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work, including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Agreement.

4. Draw Requests. Contractor agrees to perform all work on the Project according to the schedules set forth in the approved Bid Proposal attached hereto as **Exhibit B** and incorporated herein by this reference. Contractor shall submit weekly progress reports to the Public Works Director or his designee showing actual costs incurred and work completed. Contractor shall also submit to the Town monthly draw requests for all authorized costs incurred up to that date for the Project, if the time for the work exceeds one month. Upon review and approval of the progress reports and draw request(s) by the Public Works Director or his designee, the Town agrees to pay Contractor the amounts shown on all draw requests, minus a ten percent (10%) retainage for any payments other than the final payment, no later than the fifteenth (15<sup>th</sup>) business day following the date the draw request was submitted. Payments may be withheld if:

- A. Work is found defective and not remedied;
- B. Contractor fails to meet schedules shown on Exhibit B, as may be amended by the actual construction commencement date.
- C. Contractor does not make prompt and proper payments to subcontractors;
- D. Contractor does not make prompt and proper payments for labor, materials, or equipment furnished;
- E. Another contractor is damaged by an act for which Contractor is responsible;
- F. Claims or liens are filed on the job; or
- G. In the opinion of the Town, Contractor's work is not progressing satisfactorily.

The Town shall disburse the total retainage and the final draw request submitted by Contractor upon acceptance of the Project as described in Paragraph 12 below.

5. Liability for Damages. The Town its officers, agents or employees, shall not in any manner be answerable or responsible for any loss or damage to the work or to any part of the work; for any loss or damage to any materials, building, equipment or other property that may be used or employed in the work, or placed on the worksite during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to any person, whether an employee of Contractor or otherwise; or for any damage to any property

occurring during or resulting from the work. Contractor shall indemnify the Town, its officers, agents and employees, against all such injuries, damages and compensation arising or resulting from causes other than the Town's neglect, or that of its officers, agents or employees.

6. Inspection of Work and Materials.

- A. The Town Manager or his designee may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interests of the Town materials furnished and work done as the work progresses.
- B. The Town shall at all times have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted.
- C. Contractor shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by the Town, including soil and material tests.
- D. Inspection of the work by the above-mentioned authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of Contractor.
- E. No material of any kind shall be used in the work until it has been inspected and accepted by the Town. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply.
- F. Whenever the specifications, the instructions of the Town or the laws, ordinances or regulations of any public authority require work to be specially tested or approved, Contractor shall give the Town timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for the inspection.

7. Insurance. Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required under this section and the insurance has been approved by the Town Manager or his designee. Similarly, Contractor shall not allow any approved subcontractor to commence work on his or her subcontract until all similar insurance required of subcontractor has been so obtained and approved. The following insurance shall be required:

- A. Commercial General Liability Insurance: At a minimum, combined single limits of \$1,000,000 per occurrence and \$1,000,000 for general aggregate for bodily injury and property damage, which coverage shall include products/completed operations, independent contractors, and contractual liability each at \$1,000,000 per occurrence.

- B. **Workers' Compensation and Employer's Liability:** Workers' compensation insurance for all of Contractor's employees engaged in work at the site of the project including occupational disease coverage in accordance with scope and limits as required by the State of Colorado.
- C. **Comprehensive Automobile Liability Insurance:** Including coverage for all owned, non-owned, and rented vehicles with \$1,000,000 combined single limit for each occurrence.

The Town of Crested Butte shall be named as an additional insured. All insurance policies must be written in a manner consistent with the requirements of the Standard Form Agreement. Certificates of insurance shall be issued prior to execution of the Notice to Proceed.

8. **Performance Bond.** To secure performance of Contractor's obligations under this Agreement, the Contractor shall provide the Town with a Performance Bond in the amount of the full contract price, or **\$41,775.00**. The Contractor shall use the form of the Performance Bond supplied by the Town. The Town shall be authorized to draw upon the Performance Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Town Manager. The Performance Bond shall be held by the Town through the one year warranty period specified in Paragraph 13 below.

9. **Payment of Labor and Materials Bond.** To secure performance of Contractor's obligations under this Agreement to its subcontractors and suppliers, Contractor shall provide the Town with a Payment of Labor and Materials Bond in the amount of the full contract price, or **\$41,755.00**. After the execution of this agreement and prior to the notice to proceed, the Contractor shall provide the Payment of Labor and Materials Bond to the Town in the form supplied by the Town. The Town shall be authorized to draw upon the Payment of Labor and Materials Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the Town Manager.

10. **Notice to Proceed.** Notice to Proceed shall be issued within ten (10) calendar days of the execution of this Agreement by all parties. If the Town fails to issue such Notice to Proceed within that time limit, Contractor may terminate the Agreement without further liability on the part of either party. Such notice of termination must be tendered in writing to the Town. Additionally, the parties may mutually agree that the time for the Notice to Proceed may be extended.

11. **Compliance with Laws.** Contractor and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself or herself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his or her contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not the laws, ordinances or regulations are mentioned in this contract, and shall indemnify the Town, its officers, agents and employees, against any claim or liability arising from or based on the violation of any such laws, ordinances or regulations.

12. Certificates and Permits. Contractor shall secure at Contractor's own expense all necessary certificates, licenses and permits from municipal or other public authorities required in connection with the work contemplated by this Agreement or any part of this Agreement, and shall give all notices required by law, ordinance or regulation. Contractor shall pay all fees and charges incident to the due and lawful prosecution of the work contemplated by this Agreement, and any extra work performed by Contractor.

13. Termination. The Town may, at its sole discretion, terminate this Agreement without liability in the event that Contractor fails to provide the Performance Bond and/or Payment of Labor and Materials Bond, Certificates of Insurance required by Paragraph 7, or otherwise fails to meet the conditions precedent to issuance of the Notice to Proceed set forth in Paragraph 10 above. The Town may also, at its sole discretion, on one week's notice to Contractor, terminate this Agreement without liability before the completion date, and without prejudice to any other remedy the Town may have, when Contractor defaults in the performance of any provision, or fails to carry out the construction of the Project in accordance with the provisions of this Agreement.

14. Substantial Completion / Acceptance. The date of substantial completion of the Project shall be a date mutually agreed upon by the Town and Contractor. In the event that the Town and Contractor do not reach an agreement as to the date of substantial completion, the Crested Butte Town Council shall determine such date. Upon the date of substantial completion, Contractor shall certify in writing that substantially all improvements described in the Statement of Work have been completed in conformance with the plans and specifications and submit to the Town a completed substantial completion list utilizing a form approved by the Town. Thereafter, and within thirty (30) business days after a request for final inspection by Builder, the Town shall inspect the Project and notify Builder in writing and with specificity of their conformity or lack thereof to the plans and specifications. Builder shall make all corrections necessary to bring the Project into conformity with the plans and specifications. Once any and all corrections are completed, the Town shall complete a Project Acceptance Form and promptly notify Builder in writing that the Project is in conformance with the approved plans and specifications, and the date of such notification shall be known as the Acceptance Date. The Acceptance Date shall coincide with the commencement of the one year warranty period described in Paragraph 15 below. Within thirty (30) days of the Acceptance Date, the Town shall pay Builder the amount shown on the final draw request; provided, however, that the amount of funds left from the contract price specified in the Notice of Award are sufficient to cover this amount.

15. Warranty. Contractor shall warrant any and all improvements constituting the Project constructed for the Town pursuant to this Construction Agreement for a period of twenty four (24) months from the Acceptance Date as set forth in Paragraph 14 herein. Specifically, but not by way of limitation, Contractor shall warrant that:

- A. Any and all improvements constituting the Project shall be free from any security interest or other lien or encumbrance; and
- B. Any and all structures so conveyed shall be free of any defects in materials or workmanship for a period of two (2) years, as stated above.

16. Corrections to Project. If, within one (2) years after the date of substantial completion, any of Contractor's work on the Project is found to be not in accordance with the standards set forth in the preceding Paragraph 15, Contractor shall, at Contractor's expense, correct it promptly after receipt of a written notice from the Town to do so unless the Town has previously accepted such condition. Such notice shall be either delivered personally or by overnight express courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and must be received by Contractor as soon as practicable after the Town discovers the defect or the loss or damage caused by such defect, but in no event later than the date that the warranty given hereby expires.

17. Modifications. The Town may modify this Agreement with respect to the arrangement, character, alignment, grade or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. Contractor shall accept such modifications when ordered in writing by the Town Manager or his designee. Any such modifications shall not subject Contractor to increased expense without equitable compensation, which compensation may be approved by the Town pursuant to its Purchasing Policy. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. These deductions shall be determined by the Town Manager or his designee. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent of the modifications has first been certified by the Town in writing and sent to Contractor.

18. Attorneys' Fees; Survival; Costs of Collection. Should this Agreement become the subject of legal action to resolve a claim of default in performance by any party, including the collection of past due amounts, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

19. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement.

20. Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning party.

21. Amendment. This Agreement shall not be amended, except by subsequent written agreement of the parties.

22. Entire Agreement. This Agreement, **along with any addendums and attachments hereto**, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

23. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.



- B. Contractor does not knowingly employ or contract with an illegal alien to perform work or enter into a contract with a subcontractor that fails to verify to Town that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Contractor has participated in or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104<sup>th</sup> Congress, as amended, and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended, administered by the Department of Homeland Security (hereinafter, “E-Verify”) in order to verify that Contractor does not employ illegal aliens. If Contractor is not accepted into E-Verify prior to entering into this Agreement, Contractor shall forthwith apply to participate in E-Verify and shall submit to the Town written verification of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in E-Verify, and shall certify such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph shall be null and void if E-Verify is discontinued.
- D. Contractor shall not use E-Verify procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- E. If the Town obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:
- (a) 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; and
  - (b) 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; and
  - (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph 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.
- F. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

G. If Contractor violates this Paragraph, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

30. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

31. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

WHEREFORE, the parties hereto have executed duplicate originals of this Construction Agreement on the day and year first written above.

[CONTRACTOR]:

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

TOWN OF CRESTED BUTTE, COLORADO:

By \_\_\_\_\_  
Glenn Michel, Town Mayor  
Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

Bond # \_\_\_\_\_



## Staff Report April 3, 2017

**To:** Town Council  
**Thru:** Dara MacDonald  
**From:** Bob Gillie, Building and Zoning Director  
**Subject:** **Ordinance #5, Series 2017: Concerning the Consolidation of Residential Condominiums and Townhouses**  
**Date:** March 22, 2017

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**Summary:** The Town Council, at previous meetings, has requested that the staff develop an ordinance to address the consolidation and vacation of condominiums and townhouses within the Town. The Council's concerns are that condominium and townhouses previously approved by the Town and Council could be reconfigured to reduce the number of units yet increase their size. This activity could have a detrimental effect on the number or residential units in the Town and their affordability.

At first reading the Town Council requested that the provision in section 3 (a) that allowed the Council to accept a deed restricted residential unit as compensation for consolidation be removed, which it has.

Bozar considered the ordinance at its March 28, 2017 meeting. The Board had six members present and did not reach a majority recommendation. Three members favored the ordinance and intent. Two members felt like there should be some control of unit loss but felt like there should be some flexibility to account for unique circumstances. One member felt that the ordinance was over reach into the market economy.

**Discussion:** The ordinance addresses several topics.

Section 1: This section adds an additional sentence to the existing condominium and townhouse purpose and intent section to add consolidation to the section that currently deals with the formation of condominiums and townhouses.

Section 2: The amendment to this section is an additional requirement for both the creation and consolidation of condominium requirements. The new requirement requires that lienholders on the property consent to the activity. This is a reasonable and legally defensible requirement that protects the property owner and Town from future challenges to the action of creating, changing, or abandoning condominiums and townhouses in which third parties have a financial interest.

Section 3: This is the addition of a new section to the rule set to deal with the consolidation of residential condominiums and townhouses and is the main focus of the ordinance.

- (a) This section requires that the Town Council approve any consolidation and prohibits the loss of the number of units or a net loss of square footage in any existing unit. For instance two units may not be combined to create only one or two 1000 square foot units cannot be reconfigured to create one 1500 square foot unit and one 500 square foot unit.
- (b) This section merely requires that consolidation or vacation follow the same process as the original creation of the condominium or townhouse.
- (c) This section confirms that no tap fees will be reimbursed if consolidation is allowed.
- (d) This section states that the previously approved parking may not be reduced by consolidation.
- (e) This section allows the Town Manager and Town Attorney to determine if the consolidation and rule set are applicable in specific circumstances.

**Recommendation:** The staff recommends that the Town Council approve Ordinance #5, Series 2017.

**Proposed Motion for ordinance #5:** I move to approve ordinance #5, Series 2017.

**ORDINANCE NO. 5****SERIES 2017****AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 16, ARTICLE 12 OF THE CRESTED BUTTE MUNICIPAL CODE TO INCLUDE REGULATIONS FOR THE CONSOLIDATION OF RESIDENTIAL PROPERTIES SUBDIVIDED INTO CONDOMINIUMS OR TOWNHOUSES**

WHEREAS, the Town of Crested Butte, Colorado (“Town”) is a home rule municipality duly and regularly organized and now validly existing as a body corporate and public under and by virtue of the Colorado Constitution and laws of the State of Colorado;

WHEREAS, pursuant to Article XX of the Colorado Constitution, as implemented through the Town of Crested Butte Charter, Title 31, Article 23, and Title 20, Article 29, C.R.S., the Local Government Land Use Control Enabling Act of 1974, the Town has the authority to enact and enforce land use regulations;

WHEREAS, the Town Council has publicly expressed concern over the consolidation of properties that have been previously subdivided into condominiums and townhouses with the approval of the Town Council pursuant to Chapter 16, Article 12 of the Crested Butte Municipal Code (the “Code”);

WHEREAS, the Town Council is concerned that the consolidation of residential properties that have been subdivided into condominiums and townhouses will undermine residential zone densities and the diversity of units anticipated through the original land use approvals;

WHEREAS, at the request of the Town Council, the Town Staff has recommended amendments to the Code as reflected in this ordinance intending to prevent the undermining of residential zone districts through the consolidation of properties that have been subdivided into condominiums and townhouses; and

WHEREAS, the Town Council finds that making the amendments to the Code set forth herein accomplish the Town Council goals of preventing the undermining of residential zone districts through the consolidation of properties that have been subdivided into condominiums and townhouses, and for the foregoing reasons, are in the best interest of the health, safety and welfare of the Crested Butte, its residents and visitors alike.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

**Section 1. Amending Section 16-12-10.** Section 16-12-10 of the Code is amended by deleting the Section in its entirety and replacing it with the following new Section that shall read as follows:

**“Sec. 16-12-10 - Purpose and intent.**

For the purpose of this Article, the word *condominium* shall be deemed to include the word townhouse, as both are defined in Section 16-1-20 of this Chapter. These regulations are intended to set forth requirements for the construction of condominiums and townhouses within the Town, and the requirements for information to be supplied to the Town when the construction or approval of condominiums or townhouses or changes to existing condominiums or townhouses within the Town is requested. These regulations shall also include the requirements for the consolidation of residential condominiums and townhouses.”

**Section 2. Amending Section 16-12-20.** Section 16-12-20 of the Code is amended by adding a new subsection (7) thereto that shall read as follows, and renumbering all the subsections thereafter starting with existing subsection (7) which shall be renumbered subsection (8) and so forth:

“(7) Lienholder consent. Lienholder consent to the Plat as reflected in a title commitment for the property shall be included thereon.”

**Section 3. Adding a New Section 16-12-70.5.** A new Section 16-12-70.5 is added to the Code and shall read as follows:

**“Sec. 16-12-70.5 – Consolidation of residential units.**

Properties with condominiums and townhouses approved by the Town Council under this Article may be consolidated, provided that the following requirements are met:

(a) Consolidation shall not result in any fewer residential units or reduction in square footages for any existing unit. Such consolidation shall be approved by the Town Council in its sole discretion.

(b) Consolidation shall be reflected in a vacation plat approved in the same manner as the plat creating the condominium or townhouse on the subject property.

(c) Consolidation shall not permit the reduction in parking spaces required by any land use approval or this Code.

(d) Taps fees previously paid shall not be reimbursed to the property owner as a result of a reduction in taps.

(e) The process for consolidation approval shall be the same process as creating a condominium or townhouse on the subject property; provided that, those requirements contained in this Chapter that are uniquely applicable to creating multiple property interests as

opposed to one property interest shall be inapplicable as determined by the Town Manager and the Town Attorney.”

**Section 4. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 5. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of the Code that is in conflict with this ordinance is hereby repealed as of the effective date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

TOWN OF CRESTED BUTTE

By: \_\_\_\_\_  
Glenn Michel, Mayor

ATTEST:

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

[SEAL]

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 Crested Butte, Colorado 81224  
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## MEMORANDUM

### **Non Attorney-Client Privileged and Confidential Communication**

**TO:** Town Council

**FROM:** John D. Belkin, Town Attorney

**CC:** Dara MacDonald, Town Manager

**RE:** Poverty Gulch Foreclosure / Redemption

**DATE:** March 30, 2017

1. Following your Special Meeting on March 23, 2017, we completed the assignment of lien and redemption rights with the second junior lienholder as authorized and approved by the Town Council. That assignment is attached hereto as **Exhibit "A"**.
2. Enclosed in your packets is the ordinance authorizing the Town Manager and Town Attorney to redeem the Property by paying the Public Trustee the redemption amount (\$97,079.08) as provided by Mindy Sturm and set forth in Exhibit "A" to the ordinance by **12:00 P.M., MT on Tuesday, April 4, 2017**. If you recall, the Town stepped into the position of Poverty Gulch Condominiums Homeowners Association (the "**Association**") to gain this redemption right.
3. The authorized amount under the ordinance also includes \$9,236.22 paid to the Association and \$12,000.00 to be paid to H2 Properties, Inc. (i.e., the second junior lienholder), **such amounts having been previously authorized and approved by motions of the Town Council at regular and special meetings of the Town Council on March 20, 2017 and March 22, 2017, respectively**. The payment to the second junior lienholder must be made by April 12, 2017.
4. Following the Town's redemption on April 4, the Town will be issued a certificate of redemption. After the redemption periods have run on April 11, 2017, the Town having acquired the second junior lienholder's redemption rights (i.e., H2 for \$12,000.00), the Town will receive the confirmation deed on the property. That is the end of the foreclosure process with the Town in fee title to the property.
5. **RECOMMENDED MOTIONS:**
  - ✓ I move to approve Ordinance No. 6, Series 2017 as presented.

## ORDINANCE NO. 7

## SERIES 2017

**AN EMERGENCY ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE REDEMPTION OF 721 BUTTE AVENUE, UNIT 1, TOWN OF CRESTED BUTTE PURSUANT TO § 38-38-302, ET SEQ. OF THE COLORADO REVISED STATUTES IN AN AMOUNT NOT TO EXCEED \$125,000.00**

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

WHEREAS, the Town Council is authorized pursuant to §§ 31-25-301 and 302, C.R.S., as amended, Article XX of the Colorado Constitution and the Town of Crested Butte Charter to acquire interests in land necessary, suitable or proper for public interests;

WHEREAS, Unit 1, Poverty Gulch Condominiums, according to the Condominium Map recorded at Reception No. 498092 and the Condominium Declaration of Poverty Gulch Condominiums recorded at Reception No. 498091 (the "**Property**") is currently in foreclosure proceedings subject to a Notice of Election and Demand for Sale by the Public Trustee of the County of Gunnison (the "**Public Trustee**") dated September 16, 2016;

WHEREAS, the Town has filed a Notice of Intent to Redeem and Redemption Amount Statement with the Public Trustee dated March 20, 2017 (the "**Redemption Notice**");

WHEREAS, pursuant to the Redemption Notice and §§ 38-38-302, *et seq.* C.R.S. (the "**Foreclosure Statute**"), the Town has the right to redeem the Property (the "**Redemption Right**");

WHEREAS, the Public Trustee's Certificate of Purchase dated March 8, 2017 and recorded at Reception No. 645290 (the "**Certificate of Purchase**") is currently held by Mindy Sturm (the "**Sturm**") and is subject to the Town's Redemption Right;

WHEREAS, the Town Staff has recommended that the Town redeem the Property pursuant to its Redemption Right by paying the Public Trustee the redemption amount as provided by Sturm pursuant to the Foreclosure Statute and as provided in **Exhibit "A"** attached hereto;

WHEREAS, the Town has spent public funds in the acquisition and development of properties, including, without limitation, the Property, for the purposes of establishing, creating and maintaining affordable housing;

WHEREAS, establishing, creating and maintaining affordable housing is a critical mission of the Town Council and a critical need of the residents of Crested Butte;

WHEREAS, the Town Council finds that it is in the best interest of the health, peace, safety and welfare of the residents and visitors of Crested Butte to redeem the Property pursuant to its Redemption Right by paying the Public Trustee the redemption amount as provided by Sturm pursuant to the Foreclosure Statute and as provided in **Exhibit “A”** so that the Town may ensure that the terms, conditions, restrictions, agreements and obligations as contained in Town of Crested Butte 1995 Affordable Housing Guidelines Butte Avenue and Seventh Street Deed Restriction recorded on November 17, 1999 at Reception No. 497829; Town of Crested Butte 1995 Affordable Housing Guidelines (1999 Edition) recorded December 20, 1999 at Reception No. 498499, amended and replaced by Amended and Restated Affordable Housing Guidelines recorded July 18, 2013 at Reception No. 621504 and Acknowledgment, Consent and Agreement recorded August 5, 2013 at Reception No. 621881 (collectively, the “**Deed Restriction**”) remain an encumbrance on the Property that runs with the Property in perpetuity;

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, peace, safety and welfare of the residents and visitors of Crested Butte, that the Town redeem the Property pursuant to its Redemption Right as described above and as set forth below; and

WHEREAS, the Town Council hereby finds that this ordinance and the actions authorized hereunder are of an emergency nature because protecting the Deed Restriction by way of the Town redeeming the Property pursuant to its Redemption Right as described above requires that the Town pay the Public Trustee the redemption amount as provided as provided in **Exhibit “A”** by 12:00 P.M., MT on Tuesday, April 4, 2017 is time limited, and for such reason, and in support of the Town’s protection of affordable housing established, created and maintained by public funds, it is necessary and appropriate that this ordinance take immediate effect immediately upon adoption.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

**Section 1. Incorporation.** The facts and findings set forth in the recitals above are material terms of this ordinance and are hereby incorporated herein as material terms and conclusive findings of fact of the Town Council. Capitalized terms shall have the meanings ascribed to such terms hereinabove.

**Section 2. Authorization to Redeem.** The Town Council, pursuant §§ 31-25-301 and 302, C.R.S., as amended, Article XX of the Colorado Constitution and the Town of Crested Butte Charter, hereby authorizes the Town Manager and the Town Attorney to redeem the Property by paying the Public Trustee the redemption amount as provided by Sturm pursuant to the Foreclosure Statute and as provided in **Exhibit “A”** by 12:00 P.M., MT on Tuesday, April 4, 2017, and for a sum in the foreclosure proceedings not to exceed \$125,000.00. Such authorized amount includes, without limitation, \$9,236.22 paid to the Poverty Gulch Condominiums Homeowners Association and \$12,000.00 paid to H2 Properties, Inc. previously authorized and approved by motions of the Town Council at regular and special meetings of the Town Council on March 20, 2017 and March 22, 2017, respectively, plus costs and expenses in connection with exercising the Redemption Right and acquiring title to the Property by way of a confirmation deed to be issued by the Public Trustee, and pursuant thereto, hereby authorizes and directs the Town Manager and the Town Attorney to give and execute any and all documents and take all actions necessary and advisable to consummate said transactions. All actions of the Town

Council in furtherance thereto and included in motions of the Town Council to date as aforesaid are hereby ratified and confirmed.

**Section 3. Appropriation of Funds.** The Town Council hereby appropriates the sum not to exceed \$125,000.00 plus costs and expenses in connection with exercising the Redemption Right and acquiring title to the Property by way of a confirmation deed to be issued by the Public Trustee out of the Affordable Housing Fund, and authorizes the expenditure of said sum for such purpose.

**Section 4. Effective Upon Adoption; Emergency.** The Town Council hereby finds that for the immediate preservation of the health, peace, safety and welfare, for the reasons stated hereinabove, it is necessary and appropriate that this ordinance be of an emergency nature and take effect immediately upon adoption.

**Section 5. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 6. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Glenn Michel, Mayor

ATTEST:

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

**EXHIBIT "A"**

[attach Public Trustee Lienor Redemption Statement here]

**Gunnison County Treasurer/Public Trustee**  
P.O. Box 479  
Gunnison, CO 81230

**Town of Crested Butte, Colorado, a Colorado home rule municipality**

**C/O Garfield & Hecht, P.C.**

**PO Box 2919**

**Crested Butte, CO 81224**

Phone: (970)349-6698 Fax:

FORECLOSURE # 2016-014  
721 BUTTE AVENUE, UNIT I  
CRESTED BUTTE CO 81224

Date: 3/27/2017

**Lienor Redemption Statement**

\*\* This amount is estimated to be valid until NOON on 4/4/2017 per C.R.S.38-38-302(4). When you intend to bring the funds, you MUST check with our office via email or fax for an updated figure that will include interest due through the date of payment. The Public Trustee's office CANNOT accept personal checks, money orders, payroll checks or third party checks endorsed over to it. Pursuant to law, all moneys payable to a Public Trustee must be in the form of a certified check, cashier's check, teller's check or official teller's or cashier's check as defined in Colorado law, or in the form of cash or electronic funds transfer. Checks payable to the Public Trustee must be certified or issued by a Colorado or Federally chartered bank, savings and loan association or credit union licensed to do business in Colorado.

Lien Amount		\$93,000.00
Interest Rate		6.1250%
Per Diem		\$15.61
# of Days		28
Total Interest		\$437.08
Advances	WIRE FEE	\$35.00
Advances	TITLE O&E	\$50.00
Advances	TITLE COMMITMENT	\$300.00
Advances	ATTORNEY FEE 1	\$2,632.50
Advances	ATTORNEY FEE 2	\$581.50
Sub Total		\$97,036.08
Certificate of Redemption		\$43.00
Wire Fee		\$0.00
Total **		\$97,079.08



**Teresa Brown, Deputy Public Trustee**

**RECORDING REQUESTED BY:  
WHEN RECORDED RETURN TO:**

Town of Crested Butte  
c/o Garfield & Hecht, P.C.  
Attn: John D. Belkin, Esq.  
P.O. Box 2919  
Crested Butte, CO 81224

**ASSIGNMENT OF JUDGMENT LIEN  
AND RIGHT OF REDEMPTION**

1. Regarding Gunnison County Public Trustee Foreclosure File No. 2016-014 (the "**Foreclosure**"), the property legally described as follows:

**Legal Description of Real Property:**

Unit I, Poverty Gulch Condominiums, according to the Condominium Map recorded at Reception No. 498092 of the records of Gunnison County, Colorado and the Condominium Declaration of Poverty Gulch Condominium recorded at Reception No. 498091 of the records of Gunnison County, Colorado, Town of Crested Butte, County of Gunnison, State of Colorado

also known by street and number as: 721 Butte Avenue, Unit 1, Crested Butte, Colorado 81224 (the "**Property**"), was sold to a third party bidder at auction on March 8, 2017.

2. H2 Properties, Inc., a Colorado corporation ("**Assignor**") filed a Notice of Lienor Intent to Redeem with an Assignment of Judgment Lien with the Public Trustee of Gunnison County, Colorado (the "**Trustee**"), copies of which are attached hereto as **Exhibit "A"** (collectively, the "**Lien**").

3. The Town of Crested Butte, a Colorado home rule municipality (the "**Assignee**") hereby agrees to pay Assignor the sum of **Twelve Thousand and No./100 Dollars (\$12,000.00)** in exchange for Assignee's assignment of the Lien and all rights of redemption in connection therewith, Assignor waiving any right it may have to redeem the Property in the Foreclosure and letting its redemption right toll and period expire with no action taken by Assignor to redeem.

4. In connection with Section 3 hereinabove, Assignor, in consideration of **Twelve Thousand and No./100 Dollars (\$12,000.00)** (the "**Assignment Payment**") and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby transfer, assign, convey and set over unto Assignee all of Assignor's right, title and interest in and to the Lien and all redemption rights in connection therewith.

5. Assignee shall (a) on or before April 12, 2017, pay the Assignment Payment to Assignor by wire transfer (pursuant to wire instructions provided by Assignor); and (b) re-assign the Lien to Assignor.

6. Assignor covenants and agrees that it is the lawful holder of the Lien pursuant to § 38-38-100.3 *et seq.*, C.R.S., and that it has not and will not sell, assign, convey or otherwise transfer the Lien or any associated redemption rights to any other person; except that Assignor may reassign to A-1 Collection Agency Ltd. the Transcript of Judgment recorded on October 19, 2015 at Reception No. 636107 attached hereto as **Exhibit "B"**.

7. The parties agree to perform such further acts and execute and deliver such further agreements or other documents, including, without limitation, any instruments required by the Trustee, as may be reasonably necessary to effectuate and carry out the parties' intentions under this Agreement.

8. In the event of any dispute in connection with a party's performance or failure to perform under this Assignment, the substantially prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses in connection with such dispute.

9. Each of Assignor and Assignee represent and warrant it has the requisite authority to enter into and perform in accordance with the terms of this Assignment.

10. This Assignment may be executed in multiple counterparts, each of which, when taken together shall constitute one and the same instrument.

11. For purposes of enforcement and recording of this Assignment on the public records, facsimile or other telecopy signatures shall be deemed to be originals.

[Remainder of Page Intentionally Left Blank;  
Signature Page(s) to Follow]

Made and given this 28th day of March, 2017.

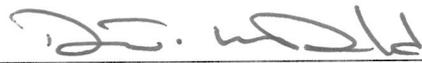
**ASSIGNOR:**

**H2 Properties, Inc.,**  
a Colorado corporation

By: \_\_\_\_\_  
Name: Joseph Hicks  
Title: \_\_\_\_\_

**ASSIGNEE:**

**Town of Crested Butte, Colorado,**  
a Colorado home rule municipality

By:   
Dara MacDonald, Town Manager

Attest:   
Lynelle Stanford, Town Clerk



Made and given this 28th day of March, 2017.

**ASSIGNOR:**

**H2 Properties, Inc.,**  
a Colorado corporation

By:   
Name: Joseph Dicks  
Title: VICE PRESIDENT - H2 PROPERTIES

**ASSIGNEE:**

**Town of Crested Butte, Colorado,**  
a Colorado home rule municipality

By:   
Dara MacDonald, Town Manager

Attest:   
Lynelle Stanford, Town Clerk

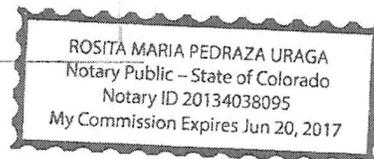


STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing Assignment of Judgment Lien and Right of Redemption was acknowledged before me this 28<sup>th</sup> day of March, 2017 by Joseph Hicks, Via President, H2 Properties, Inc., a Colorado corporation, on behalf of said entity.

Witness my hand and official seal.  
My commission expires: 6/20/17.

[Signature]  
Notary Public



STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing Assignment of Judgment Lien and Right of Redemption was acknowledged before me this 28 day of March, 2017 by Dara MacDonald, Town Manager, Town of Crested Butte, Colorado, a Colorado home rule municipality, on behalf of said entity.

Witness my hand and official seal.  
My commission expires: 2/9/2020.

[Signature]  
Notary Public



STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Assignment of Judgment Lien and Right of Redemption was acknowledged before me this \_\_\_ day of March, 2017 by Joseph Hicks, \_\_\_\_\_, H2 Properties, Inc., a Colorado corporation, on behalf of said entity.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_.

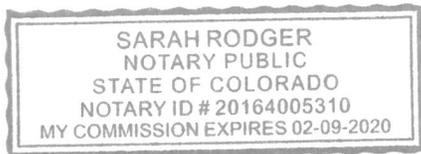
\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing Assignment of Judgment Lien and Right of Redemption was acknowledged before me this 28 day of March, 2017 by Dara MacDonald, Town Manager, Town of Crested Butte, Colorado, a Colorado home rule municipality, on behalf of said entity.

Witness my hand and official seal.  
My commission expires: 2/9/2020.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**  
(Lien)

[attach here]

1. Notice of Lienor Intent to Redeem
2. Assignment of Judgment Lien

NOTICE OF LIENOR INTENT TO REDEEM  
INCLUDING STATEMENT OF REDEMPTION AMOUNT

Public Trustee Foreclosure Sale No. 2016-014

TO THE PUBLIC TRUSTEE OF Gunnison COUNTY, STATE OF COLORADO

Date of Public Trustee Sale 03/08/2017  
Name of Junior Lienor Intending to Redeem H2 Properties, Inc.  
Type of Junior Lien Judgment  
County of Recording Gunnison  
Recording Date 10-19-2015  
Recording Information (Reception Number) 636107

The undersigned ("Junior Lienor") is a Junior Lienor pursuant to CRS §38-38-100.3(12) and is entitled to redeem from the Public Trustee's Sale described above pursuant to CRS §38-38-302. Junior Lienor's lien: (i) is a deed of trust or other lien created or recognized by state or federal statute or by judgment of a court of competent jurisdiction; (ii) is a junior lien as defined in CRS §38-38-100.3(11); and (iii) appears by instrument(s) duly recorded in the county named above. Junior Lienor is one of the persons who would be entitled to cure pursuant to CRS §38-38-104, regardless of whether such Lienor filed a notice of intent to cure.

Junior Lienor is not a qualified holder pursuant to CRS §38-38-100.3(20). The original instrument (or a certified copy) evidencing Junior Lienor's lien is attached. The original recorded assignment (or a certified copy) is also attached as required by 38-38-302 (1) e) OR

Junior Lienor is a qualified holder pursuant to CRS §38-38-100.3(20). A copy of the instrument evidencing the Junior Lienor's lien is attached. A copy of the recorded assignment is also attached as required by 38-38-302 (1) (e)

Junior Lienor is entitled to redeem under CRS §38-38-302(1)(c) because the instrument evidencing Junior Lienor's lien, which was recorded in the incorrect county as described below prior to the date and time of the recording of the Notice of Election and Demand, was re-recorded in the correct county, as described above, at least fifteen calendar days prior to the actual date of sale. The recording information for the incorrect county is:

Incorrect County of Recording of Junior Lien \_\_\_\_\_

Recording Date of Junior Lien \_\_\_\_\_

Recording Information (Reception Number) \_\_\_\_\_

Executed on: 3/20/17

Name of Junior Lienor H2 Properties, Inc.

By: (signature) [Signature]

By: (print name) Andrew Hicks

Title: President

Junior Lienor Address 250 Steele St, #325

Denver CO 80206

Junior Lienor Telephone 303-808-2217

Junior Lienor Email ANDYHICKSDENVER@GMAIL.COM

Junior Lienor Fax \_\_\_\_\_

State of Colorado )  
 ) ss.

County of Denver

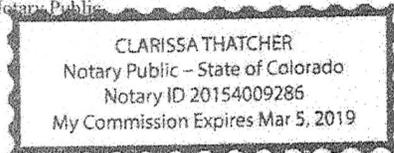
The foregoing Notice of Lienor Intent to Redeem was acknowledged before me on 20 of March, 2017 by Andrew Hicks as President of H2 Properties, Inc. the Junior Lienor.

Witness by hand and official seal.

[Signature]  
Notary Public

My commission expires: 3-5-19

Affix Seal



STATEMENT OF REDEMPTION AMOUNT  
AS ATTACHED TO THE NOTICE OF LIENOR INTENT TO REDEEM  
PURSUANT TO CRS §38-38-302(D)(f)  
Public Trustee Foreclosure Sale No. 2016-014

The amount required to redeem the Junior Lien through the nineteenth business day after the sale, is as follows:  
(Inapplicable items may be omitted)

Amounts due under the Junior Lien:

Principal \$ 1419.<sup>57</sup>  
Interest \$ 1121.26  
Late Charges \$ \_\_\_\_\_

Other amounts due under the evidence of debt under Junior Lien: (specify)

\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_

Category subtotal: \$ 2,540.<sup>83</sup>

Other fees and costs advanced by the Junior Lienor: (specify)

Intent to redeem \$ 50.<sup>00</sup>  
Filing \$ \_\_\_\_\_  
\_\_\_\_\_  
\$ \_\_\_\_\_

Category subtotal: \$ 50.<sup>00</sup>

Total due Junior Lienor: \$ 2,590.<sup>83</sup>

\$ \_\_\_\_\_ Per Diem Interest @ \_\_\_\_\_ % per annum.

- The amount required to redeem the Junior Lien is zero.
- Junior Lienor is entitled to redeem under CRS §38-38-305 because the Junior Lienor is:
  - lessee of the property.
  - holder of an easement encumbering the property.

Executed on: 3/20/17

Name of Junior Lienor H2 Properties, Inc.

By: (signature) [Signature]  
By: (print name) Andrew Hicks  
Title: President

Junior Lienor Address 250 Steele St, #325  
Denver CO 80206  
Junior Lienor Telephone 303-808-2217  
Junior Lienor Email ANDYHICKSDENVER@gmail.com  
Junior Lienor Fax \_\_\_\_\_

State of Colorado )  
County of Denver )

The foregoing Statement of Redemption Amount was acknowledged before me on 20 March, 2017.

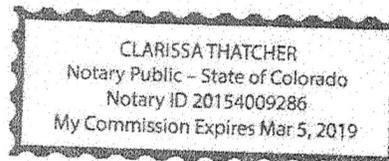
by Andrew Hicks as President of H2 Properties, Inc. the Junior Lienor.

Witness by hand and official seal.

[Signature]  
Notary Public

My commission expires: 3-5-19

Affix Seal



**EXHIBIT "B"**  
(Transcript of Judgment)

[attach here]

K Simillion Gunnison County, CO  
10/19/2015 3:34:46 PM  
416

636107  
Page 1 of 1  
R 11.00 D 0.00



COUNTY COURT, GUNNISON COUNTY, COLORADO

Court Address:

Gunnison County Courthouse

200 E. Virginia Ave.

Gunnison, CO 81230-0000

Case Number: 09C -000265

Div.: B

Plaintiff: A-1 COLLECTION AGENCY LTD

Defendant: HARLAN, JAMES E.

TRANSCRIPT OF JUDGMENT

Original Judgment Amount: \$1,419.57 Judgment Date: December 11, 2009  
Revived Judgment Amount: \$2,283.18 Judgment Date: September 16, 2015  
Judgment Status: JUDGMENT REVIVED

Additional Remarks:  
INTEREST ACCRUES AT 8%

Debtor(s): JAMES E HARLAN, P O BOX 2797, BAD ADDRESS, CRESTED BUTTE, CO  
81224

Creditor(s): A-1 COLLECTION AGENCY LTD, P O BOX 1929, GRAND JUNCTION, CO  
81502

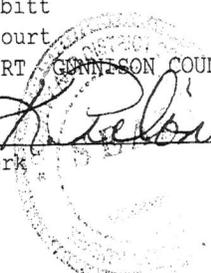
Balance of Judgment to Date: \$2,283.18

I hereby certify that the above is a true and complete transcript of the judgment in the above-referenced case which is retained in my office.

Betsy Nesbitt  
Clerk of Court  
COUNTY COURT GUNNISON COUNTY

DATE: October 09, 2015

BY   
Deputy Clerk





## Memorandum

**To:** Mayor Michel and Town Council  
**From:** Michael Yerman, Crested Butte Director of Planning  
**Thru:** Lois Rozman, Finance Director  
**Subject:** Community School Affordable Housing Project Budget Implications  
**Date:** April 3, 2017

---

### **Background**

Last year, the Town and Community School formed a partnership to create a curriculum to give the students the opportunity to design and build a home. The Town agreed to give the students a real site to design the home on. Micro Lot 8 in Block 79 was chosen for the design of the home. It was agreed, if constructed, that the home would remain with the Town as a Town Rental. This would give flexibility to the students on construction schedules and allow the curriculum to be elastic.

The Town budgeted \$130,000 for the construction of the home in the 2017 Affordable Housing budget. This included the costs for construction materials and skilled labor. Now that designs have been approved and the students have prepared a budget estimated cost of construction is now at \$170,000. The total square footage of the new home is 1,050 bringing the total cost in at \$160 a square foot. This is still well below the average cost of construction for affordable housing at \$220 a square foot.

### **Budget Implications**

The total project is estimated to be \$40,000 over the original budget. There is \$25,000 budgeted for the GVRHA for the assistance in the designing of 3 duplexes this spring. Due to the departure of the Executive Director it is unlikely this project will occur in 2017. However, even if this project does not proceed, there will still be a budget deficit of \$15,000.

The Council could make up the shortfall from the Affordable Housing reserve. The Affordable Housing fund had a \$595,000 reserve as of 12/31/2016. The 2017 budget anticipates using \$203,000 from reserves. That leaves an estimated \$392,000 in reserve, an amount that can absorb the budget adjustment on the school/Town build project as well as the possible acquisition of the Poverty Gulch unit.

### **Recommendation of Staff**

Staff recommends that this project proceed and that the Council makes a motion to move \$40,000 from the Affordable Housing reserves for the construction of the Community School Build.



## Staff Report

April 3, 2017

**To:** Mayor and Town Council  
**Thru:** Dara MacDonald, Town Manager  
**From:** Rodney E Due, Director of Public Works  
**Subject:** **Award for Construction of Wastewater Treatment Plant Upgrades 2017**

**Attachments:** 1. Construction Contract Documents  
 2. Resolution NO. 16

**Date:** March 24, 2017

**Summary:** : In the January 27<sup>th</sup> and February 3<sup>rd</sup> editions of the Crested Butte News, the Public Works Department published an Invitation to Bid for the construction of the Wastewater Treatment Plant Upgrades. The Invitation to Bid was also posted on the Town of Crested Butte web site, and several plan rooms. Proposals were received by the Public Works Department until 02:00 p.m. on Friday, February 24<sup>th</sup> when the bids were opened and read out loud. There were five (5) Proposals received. The proposals were reviewed by the Public Works Department, FEI Engineers, Inc., and Town Manager. The estimate for construction of this project was \$2,526,000. All bids came in over the engineering estimate for the project. The apparent low bidder was Integrated Water Services whose base bid price for the project was \$3,124,000.00. Town Staff recommendation will be to award the project to IWS in an amount not to exceed \$3,124,000, and authorizing the Public Works Director to utilize up to \$3,324,000 for the project (includes the 200K contingency). The Town received proposals from;

<u>General Contractor</u>	<u>Base Bid</u>	<u>Bid Alt #1</u>
1. Integrated Water Services	\$3,124,000	\$2,841,000
2. Moltz Construction	\$3,211,000	\$2,953,000
3. Velocity Construction	\$3,942,714	\$3,709,669
4. Myers & Sons	\$3,946,000	\$3,871,000
5. Aslan Construction	\$4,109,000	\$3,849,000

**BACKGROUND:** The Town is currently requesting funding for the construction of the upgrades to the Wastewater Treatment Plant in 2017 in the amount of 2.5 million from the Colorado Water Resources and Power Development Authority. This will be a 20 year 2% low interest loan. The total project cost was estimated at 3.3 million including the construction management. The

additional funding will come from a \$400,000 tier II DOLA Grant, and \$400,000 from the Enterprise Fund. An additional \$200,000 Tier I DOLA Grant is currently being requested to offset the \$400,000 for the Enterprise Fund.

The base bid came in \$598,000 over the estimated construction cost for this project. Bid alternate #1 did not include the headworks, or phase 2 of the project, which was originally estimated at \$400,000. However, the headworks portion of the project came in under the estimate at \$283,000. Total amount for the project to include the Headworks is now at \$3,539,000 (base bid). Total amount of the project without the Headworks is now at \$3,236,000 (bid alt#1). If the Town receives the \$150,000 (amount reduced because of the bid price coming in below \$400,000) tier 1 DOLA Grant the Town is looking at an additional \$89,000 from reserves above what we originally anticipated. If we do not receive the DOLA Grant the Town is looking at an additional \$239,000 dollars from reserves. The Enterprise Fund can absorb the additional funding if the council decides to award the base bid. If the council decides to award bid alt#1 then the Town would not exceed the original estimated cost of \$3,300,000.00.

<u>FUNDING</u>		<u>PROJECT COST</u>	
2.5M	State Revolving Fund Loan	Construction Cost	\$3,124,000
400K	DOLA Grant secured	Contingency	\$200,000
489K	Enterprise Fund	Construction Management	\$200,000
150K	DOLA Grant pending	Geotech/testing	\$15,000
<b>3.539M</b>	<b>Total</b>	<b>Total</b>	<b>3.539M</b>

This award is contingent upon successful execution of the pending \$2.5MM Colorado Department of Public Health & Environment (CDPHE) State Revolving Fund loan (SRF). Said SRF Loan Agreement has been approved by CDPHE and the loan agreement is anticipated to be executed by April 15, 2017. Further, this award is contingent upon successful execution of the pending \$200,000 (now \$150,000) Tier I Department of Local Affairs (DOLA) Grant to fully fund the entire project. The Project consists of two Phases. Phase 1 is all Work identified in the Contract Documents prepared by FEI Engineers Inc. described as Bid Alternate 1, which excludes the Headworks Area Work. Phase 2 is the additional Work to complete the Headworks Area Work. Because the DOLA Grant may not be fully executed by the time the contract Notice to Proceed is issued, this award is also conditional in that Integrated Water Services, Inc may not proceed with any Work related to the Phase 2 Headworks Area, until a second Notice to Proceed is issued, so authorized by the Town in writing.

**Recommendation:** To approve Resolution No. 16, Series 2017 approving a resolution of the Crested Butte Town Council approving the award of a contract for construction of the Wastewater Treatment Plant Upgrades 2017 and authorizing the Town Mayor to enter into an engineering services agreement between the Town of Crested Butte and Integrated Water Services in an amount not to exceed \$3,124,000.00.

**Recommended Motion:** Motion to approve Resolution No. 16, Series 2017 as amended to include the additional \$89,000 from reserves, and authorizing the Public Works Director to utilize up to \$200,000 for the project.

**RESOLUTION NO. 16****SERIES NO. 2017****A RESOLUTIONS OF THE CRESTED BUTTE TOWN COUNCIL APPROVING THE AWARD OF A CONTRACT FOR THE CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT UPGRADES 2017 AND AUTHORIZING THE TOWN MAYOR TO ENTER INTO A CONSTRUCTION CONTRACT BETWEEN THE TOWN OF CRESTED BUTTE AND INTEGRATED WATER SERVICES, INC (IWS).**

WHEREAS, the Town of Crested Butte, Colorado (the “Town”) is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town Council desires to award a contract for the construction of the Wastewater Treatment Plant Upgrades project; and Integrated Water Services, Inc. responded to the Town’s Invitation to Bid for Construction services; and

WHEREAS, the Town Council desires to award the contract to Integrated Water Services, Inc, accordingly, subject to the terms and conditions of the contract in an amount not to exceed \$3,124,000 to be executed by the parties.

WHEREAS, this award is contingent upon successful execution of the pending \$2.5MM Colorado Department of Public Health & Environment (CDPHE) State Revolving Fund loan (SRF). Said SRF Loan Agreement has been approved by CDPHE and the loan agreement is anticipated to be executed by April 15, 2017. Further, this award is contingent upon successful execution of the pending \$200,000 Tier I Department of Local Affairs (DOLA) Grant to fully fund the entire project. The Project consists of two Phases. Phase 1 is all Work identified in the Contract Documents prepared by FEI Engineers Inc. described as Bid Alternate 1, which excludes the Headworks Area Work. Phase 2 is the additional Work to complete the Headworks Area Work. In exception that the DOLA Grant may not be fully executed by the time the contract Notice to Proceed is issued, this award is also conditional in that Integrated Water Services, Inc may not proceed with any Work related to the Phase 2 Headworks Area, until a second Notice to Proceed is issued, so authorized by the Town in writing.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO THAT:

1. The Town Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.
2. The Town Council hereby awards the contract for construction services for the construction of the Wastewater Treatment Plant Upgrades to Integrated Water Services, Inc in an amount not to exceed \$3,124,000 and authorizes the Town Mayor to execute a contract further detailing the terms and conditions of such award.

Town of Crested Butte, Colorado  
Resolution No. \_\_, Series 2017  
Page 2 of 2

RESOLVED, APPROVED and ADOPTED this 3<sup>rd</sup> day of April, 2017.

TOWN OF CRESTED BUTTE

By: \_\_\_\_\_  
Glenn Michel, Mayor

ATTEST

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

**SECTION 00520**  
**AGREEMENT BETWEEN OWNER AND CONTRACTOR**  
**FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Town of Crested Butte (“Owner”) and  
Integrated Water Services, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

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

**ARTICLE 2 – THE PROJECT**

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

- A. The Work consists of retrofitting the Town of Crested Butte’s existing wastewater treatment plant to replace existing headworks and UV disinfection equipment and upgrade the secondary treatment process to provide redundancy, improved treatment, and additional capacity. The project includes all civil, structural, mechanical, process, electrical, controls, and other Work necessary to make the facilities fully operational.

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by FEI Engineers, Inc.

3.02 The Owner has retained FEI Engineers, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 Time of the Essence

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

4.02 Contract Times: Calendar days

- A. The Work will be substantially completed within 411 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 440 calendar days after the date when the Contract Times commence to run.
- B. Parts of the Work including Milestone No. 1 and No. 2 shall be substantially completed within the following contract time (calendar days):

- |                              |                           |
|------------------------------|---------------------------|
| 1. Milestone No. 1 – Train 3 | Completed within 214 days |
| 2. Milestone No. 2 – Train 2 | Completed within 289 days |

#### 4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Milestones and Substantial Completion: Contractor shall pay Owner \$750 for each calendar days that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for both Milestones No. 1 and No. 2 and Substantial Completion until the Work associated with these Milestones and overall project Substantial Completion are achieved and substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each calendar days that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain the required Milestones and Substantial Completion and final completion are not additive and will not be imposed concurrently.

#### 4.04 Special Damages

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

### ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work other than Unit Price Work, a lump sum of: \$3,124,000.00.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

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

### 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15<sup>th</sup> day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

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

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

### 6.03 Final Payment

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

## ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 1 percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
  - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
  - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor. Contractor accepts the authority of Engineer’s written resolution and interpretation of the Contract Documents, and further that in cases where conflicts exists regarding the Work, Contractor will not be entitled to a positive change order to provide the more costly interpretation of the Work, except as allowed by the Contract Documents.
  - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 8, inclusive).
  2. Performance bond (pages \_\_\_ to \_\_\_, inclusive).
  3. Payment bond (pages \_\_\_ to \_\_\_, inclusive).
  4. Other bonds. Not Applicable
  5. General Conditions (pages 1 to 74, inclusive).
  6. Supplementary Conditions (pages 1 to 22, inclusive).
  7. Specifications (not attached but incorporated by reference) as listed in the table of contents of the Project Manual.
  8. Drawings (not attached but incorporated by reference) consisting of 57 sheets with each sheet bearing the following general title: Town of Crested Butte Wastewater Treatment Plant Upgrades.
  9. Addenda No. 1 to 5 (not attached but incorporated by reference).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages 1 to 32, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 10.03 Successors and Assigns

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

#### 10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor,

through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

- B. This agreement is contingent upon successful execution of the pending \$2.5MM Colorado Department of Public Health & Environment (CDPHE) State Revolving Fund loan (SRF). Said SRF Loan Agreement has been approved by CDPHE and the loan agreement is anticipated to be executed by April 15, 2017. Further, this Agreement is contingent upon successful execution of the pending \$200,000 Tier I Department of Local Affairs (DOLA) Grant to fully fund the entire project. The Project consists of two Phases. Phase 1 is all Work identified in the Contract Documents prepared by FEI Engineers Inc. described as Bid Alternate 1, which excludes the Headworks Area Work. Phase 2 is the additional Work to complete the Headworks Area Work. In exception that the DOLA Grant may not be fully executed by the time the contract Notice to Proceed is issued, this award is also conditional in that Integrated Water Services, Inc. may not proceed with any Work related to the Phase 2 Headworks Area, until a second Notice to Proceed is issued, so authorized by the Town in writing.

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

This Agreement will be effective on April 4, 2017 (which is the Effective Date of the Contract).

**CONTRACTOR**

**OWNER**

\_\_\_\_\_  
Integrated Water Services, Inc.

\_\_\_\_\_  
Town of Crested Butte, Colorado

By: \_\_\_\_\_

By: \_\_\_\_\_

Signature

Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Signature

Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SECTION 00700**  
**STANDARD GENERAL CONDITIONS**  
**OF THE CONSTRUCTION CONTRACT**

PART 1      GENERAL

1.1      SECTION INCLUDES

- A.      2013 edition of the Standard General Conditions of the Construction Contract as prepared by the Engineers Joint Contract Documents Committee

1.2      RELATED SECTIONS

- A.      Section 00800—Supplementary Conditions
- B.      Section 00850—Requirements For State Revolving Fund Loan Projects

PART 2      PRODUCTS

Not Used

PART 3      EXECUTION

Not Used

**END OF SECTION**

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

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

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### 2.02 *Copies of Documents*

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

### 2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

#### 2.05 *Initial Acceptance of Schedules*

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

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

#### 3.02 *Reference Standards*

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

#### 3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

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

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

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

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

### 4.02 *Starting the Work*

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

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

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

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. abnormal weather conditions;
3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
4. acts of war or terrorism.

D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

## **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### 5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### 5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

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

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. Contractor gave the notice required in Paragraph 5.05.B.
  2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

## 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

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

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

### 6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
  2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

#### 6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
  3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  6. extend to cover damage or loss to insured property while in transit.
  7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. allow for the waiver of the insurer's subrogation rights, as set forth below.
  9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. not include a co-insurance clause.
  11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. include performance/hot testing and start-up.
  13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

#### 6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

#### 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

## **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

### *7.01 Supervision and Superintendence*

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

### *7.02 Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

### *7.03 Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
  - C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
  - D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
  - E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
  - F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

- O. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

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

#### 7.08 *Permits*

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

#### 7.09 *Taxes*

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

#### 7.10 *Laws and Regulations*

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

#### 7.11 *Record Documents*

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

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
  - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
  - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
  - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
  - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

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

#### 7.16 *Shop Drawings, Samples, and Other Submittals*

##### A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
  5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.

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

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

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

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

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

## 8.02 *Coordination*

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

## 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

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

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

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

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

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

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

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

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

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

### **9.05 *Lands and Easements; Reports, Tests, and Drawings***

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### **9.06 *Insurance***

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

### **9.07 *Change Orders***

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

#### 10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

#### 10.06 *Determinations for Unit Price Work*

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

#### 10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

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

#### 10.08 *Limitations on Engineer's Authority and Responsibilities*

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

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

#### 10.09 *Compliance with Safety Program*

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

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

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

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

#### 11.03 *Unauthorized Changes in the Work*

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

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notification to Surety*

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

### ARTICLE 12 – CLAIMS

#### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
  1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
  - F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
  - G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
  1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

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

### 13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

### 14.01 *Access to Work*

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

### 14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

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

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

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

### **15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
  2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
    - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
    - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
  4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. to supervise, direct, or control the Work, or
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

#### 15.02 *Contractor's Warranty of Title*

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

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

- A. *Application for Payment:*
  1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

**B. *Engineer's Review of Application and Acceptance:***

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

**C. *Completion of Work:*** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

**D. *Payment Becomes Due:*** Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. correct the defective repairs to the Site or such other adjacent areas;
  2. correct such defective Work;
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

## ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

### 16.01 *Owner May Suspend Work*

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

### 16.02 *Owner May Terminate for Cause*

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

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

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

#### 16.03 *Owner May Terminate For Convenience*

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

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

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

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

### 17.01 *Methods and Procedures*

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

## ARTICLE 18 – MISCELLANEOUS

### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### 18.02 *Computation of Times*

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

### 18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

**SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**

**PART 1 GENERAL**

**1.1 SECTION INCLUDES**

- A. Supplements to the General Conditions of the Contract.
- B. These Supplementary conditions amend or supplement Section 00700, the Standard General Conditions of the Construction Contract (EJCDC No. C-700, 2013 Edition) and other provisions of the Contract Documents as indicated below.
- C. All provisions which are not so amended or supplemented remain in full force and effect.

**1.2 DRAWINGS AND SPECIFICATIONS**

- A. The specifications which govern the material and equipment to be furnished and the work to be performed under this Contract are listed in the Table of Contents at the beginning of this volume.
- B. The Contract Drawings, or plans, consist of sheets. Sheet titles are listed on the cover sheet of the Contract Drawings. In addition, each sheet bears the following general title, "Town of Crested Butte, Wastewater Treatment Facility Upgrades".
- C. The Drawings referred to above may be supplemented by drawings bound in the Project Manual and listed in the Table of Contents, and by additional shop and dimensional drawings to be prepared by Contractor as set forth in the specifications.

**1.3 STREAMLINED SPECIFICATIONS**

- A. These specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases "The Contractor shall", "in conformity therewith", "shall be", "as shown on the drawings", "a", "an", "the", and "all" are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the drawings.

**1.4 SPECIFICATION CROSS-REFERENCING**

- A. The cross-referencing of specification sections under the heading "Related Sections" and elsewhere within each specification section is intended as an aid to the Contractor and shall not relieve the Contractor from his responsibility to coordinate the Work under the Contract Documents.

- B. Listings of cross-references are not intended to be comprehensive. The omission of a cross-reference to an additional or related requirement shall not relieve the Contractor of his obligation to provide a complete Project.

#### 1.5 ADDRESSES

- A. Owner is Town of Crested Butte acting through its duly authorized agents. All notices, letters and communication directed to Owner shall be addressed and delivered to 507 Maroon Avenue, Crested Butte, CO 81224 with a copy to Engineer.
- B. The business addresses of Contractor given in the Bid Form and Contractor's office at the site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered.
- C. Either Owner, Subcontractor, or Engineer may change his address at any time by an instrument in writing delivered to the other two.

#### 1.6 SC-1.01-DEFINITIONS

- A. The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions.
- B. Additional terms used in these Contract Documents will have the meanings indicated below, which are applicable to both the singular and plural thereof:
  - a. Product-Materials, systems and/or equipment provided by Contractor
  - b. Architect-Refers to Engineer in this Contract
  - c. "Or equal"-Refers to "Or accepted equal" or "Or approved equal." Use of the term "or equal" or similar language is intended to mean that Engineer will consider proposed equal items as in compliance with the Contract Documents upon review of submission or upon receipt of a "Certificate of Compliance" from the Contractor under provisions of the Contract Documents.
  - d. "'Or substitute"-Refers to "Or accepted substitution" or "Or accepted substitute." Use of the term "or substitution" or similar language is intended to mean that the Engineer will consider proposed substitutions as deviations from the Contract Documents and will review proposed substitutions under provisions of the Contract Documents.
  - e. Change (Cost) Proposal Request (CPR) and Procedure: Document prepared by Engineer that requests an addition, deletion, or revision to the Work or adjustment to Contract Price or Contract Time on behalf of the Owner. Contractor shall submit supporting data for any change in contract price and change in contract time in accordance with Contractor certification requirements. Supporting data shall be reviewed by Engineer and recommendation for approval will then be made to Owner. If approved by Owner, approved CPR including other approved CPR's will be incorporated into a single Change Order for further processing.

- C. SC-1.01.A.24-Delete paragraph 1.01.A.24 in its entirety and insert the following in its place: "Liens--Verified statements of claim filed with Owner pursuant to the Colorado Revised Statutes."
- 1.7 SC-201-DELIVERY OF BONDS AND EVIDENCE OF INSURANCE
- A. SC-2.01.B--Delete paragraph 2.01.B in its entirety and insert the following in its place: "Before any Work at the Site is started, CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the supplementary conditions, certificates of insurance (and other evidence of insurance which OWNER or an additional insured may request) which CONTRACTOR is required to purchase and maintain in accordance with Article 6."
- 1.8 SC-2.02-COPIES OF DOCUMENTS
- A. SC-2.02.A-Delete paragraph 2.02.A in its entirety and insert the following in its place: "Owner shall furnish to Contractor one complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction, which is: Complete set of Project Manual and Project Drawings - \$200."
- 1.9 SC-4.03-REFERENCE POINTS
- A. SC-4.03A – Amend the first sentences to read: "Owner shall provide survey reference points for construction which in Engineer's judgement are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for providing services of a Professional Land Surveyor for laying out the work..."
  - B. SC-4.03.B - Add the following new paragraph immediately after paragraph 4.05.A: "Vertical and horizontal control points will be provided by the Owner where shown on the Drawings for the Contractor to tie into. The Contractor shall provide construction stakes as required for construction. The Contractor shall coordinate survey and staking with respect to other contractors working concurrently."
- 1.10 SC-5.01-AVAILABILITY OF LANDS
- A. SC-5.01.A-Delete paragraph 5.01.A in its entirety and insert the following in its place: "Owner shall furnish site."
  - B. SC-5.01.B-Delete paragraph 5.01.B in its entirety. (change paragraph 5.01.C to 5.01.B)
- 1.11 SC-5.03-SUBSURFACE AND PHYSICAL CONDITIONS
- A. SC-5.03.C-Add the following new paragraph immediately after paragraph 5.03.B: "In the preparation of Drawings and Specifications, Engineer or Engineer's Consultants relied upon the following reports of explorations and tests of subsurface conditions at the Site of the Work:
    - a. Report dated August 30, 2016, prepared by Mountain States Engineering &

Testing, entitled: “Geotechnical Engineering Study Proposed Wastewater Treatment Facility Upgrade Project, Crested Butte, Colorado”

- B. SC-5.03.D-Add the following new paragraph immediately after paragraph 5.03.C: "In the preparation of Drawings and Specifications, Engineer or Engineer's Consultants relied upon the following for physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site of the Work:
- a. Construction Drawings dated May 1998, prepared by RBD Engineering Consultants, entitled: Wastewater Treatment Facility Expansion and Joint Sludge Authority ATAD Facility.
  - b. Construction Drawings dated January 2010, prepared by HDR Engineers, entitled: Wastewater Treatment Facility Improvements, Clarifier Expansion and Facility Upgrades – As Built.”
- C. SC-5.03.E-Add the following new paragraph immediately after paragraph 5.03.D: "Copies of reports and drawings itemized in SC 5.03.C and SC 5.03.D that are not included with the Bidding Documents may be examined at FEI Engineers, 5325 S. Valentia Way, Greenwood Village, Colorado 80111 during regular business hours. These drawings are not of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer and Engineer's Consultants in preparation of Drawings and Specifications."
- D. SC-5.03.F- Add the following new paragraph immediately after paragraph 5.03.B.E: “Data CONTRACTOR knew or should, in the exercise of reasonable diligence, have known of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Time by the submission of a BID or becoming bound under a negotiated contract.”
- 1.12 SC-5.05-UNDERGROUND FACILITIES
- A. SC-5.05.A.3-Add the following new paragraph immediately after paragraph 5.05.A.2: "Existing underground installations such as water mains, gas mains, sewers, telephone lines, power lines, and similar buried structures in the vicinity of the Work are indicated on the drawings only to the extent such information was made available to or discovered by Engineer in preparing the drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. Generally, service connections are not indicated on the drawings.
- B. SC-5.05.A.4-Add the following new paragraph immediately after paragraph 5.04.A.3: "Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use his own information and shall not rely upon any information indicated on the drawings concerning existing underground installations.

- C. SC-5.05.A.5-Add the following new paragraph immediately after paragraph 5.05.A.4: "The Contract General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional work, or extra cost to Contractor caused by existing underground installations shall not constitute a claim for extra work, additional payment, or damages.
- 1.13 SC-5.06-HAZARDOUS ENVIRONMENTAL CONDITION AT SITE
- A. SC-5.06.G – Delete paragraph in its entirety.
- 1.14 SC-6.02-INSURANCE GENERAL PROVISIONS
- A. SC-6.02.A - Amend the following to add the following new paragraph immediately after the last sentence: "Bonds shall be executed on the forms included in the Contract Documents. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the Bond."
- B. SC-6.02.C- Delete paragraph 6.02.C in its entirety and insert the following in its place: "Owner and Engineer reserves the right to reject surety providing performance and payment bonds or other bonds as specified in the Contract Documents. Contract Agreement will not be executed until surety is acceptable to Owner and Engineer. Surety may be required to certify bonding capacity and confirm companies listing on most recent U.S. Treasury Department publication Circular 570 as referenced by paragraph 6.01.B of the General Conditions."
- C. SC-6.02.I- Add the following new paragraphs immediately after 6.02.H: "Deductible. Any and all deductibles or self-insured retentions continued in any Insurance policy shall be assumed be and at the sole risk of the Contractor.
1. In Force. If any of the said policies shall fail at any time to meet the requirements, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements, the Contractor shall promptly obtain a new policy.
  2. Insurer. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Owner.
  3. Additional Insured. Owner and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies.
  4. Primacy of Coverage. Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by Owner or the State.
  5. Cancellation. The insurance policies shall include provisions preventing cancellation or non-renewal without at least 45-days prior notice to the Owner and Owner shall forward such notice to the State within seven days of the Owner's receipt of such notice.

6. Subrogation Waiver. All insurance policies shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Owner or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.”

#### 1.15 SC-6.03-CONTRACTOR’S INSURANCE

- A. SC-6.03.A.3-Delete paragraph 6.03.A.3 in its entirety and insert the following in its place: "claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employees or uninsured subcontractors under any applicable law;"
- B. SC-6.03.B.2-Delete paragraph 6.3.B.2 in its entirety and insert the following in its place: "claims for damages insured by personal injury liability;"
- C. SC-6.03.B.4-Add new paragraph 6.03.B.4 and insert the following in its place: "claims for damages other than to the CONTRACTOR'S own work itself;"
- D. SC-6.03.C-Amend the first sentence of paragraph 6.03.C to read as follows: "The policies of insurance so required by this paragraph 6.03 to be purchased and maintained shall include but not be limited to;"
- E. SC-6.03.K-O-Add the following new paragraphs immediately after paragraph 6.04.J: “The insurance required by this paragraph shall include the specific coverages and be written for not less than the limits of liability and coverages specified or required by Law, whichever is greater.
1. Workers’ Compensation Statutory:.....\$500,000
  2. Employer’s Liability:
    - Each Person.....\$100,000
  3. Commercial General Liability:
    - Bodily Injury (including completed operations & products liability):
      - Each occurrence .....\$1,000,000
      - General Aggregate .....\$1,000,000
      - Products and Completed Operations Aggregate \$1,000,000
      - Any One Fire.....\$50,000
    - Property Damage:
      - Each occurrence .....\$1,000,000
      - General Aggregate .....\$1,000,000
      - Products and Completed Operations Aggregate \$1,000,000
      - Any One Fire.....\$50,000
  4. Property Damage Liability

Insurance will provide explosion, collapse and underground coverages where applicable.

5. Commercial Automobile Liability

Bodily Injury:

Each Person.....\$1,000,000  
 Each Occurrence .....\$2,000,000

Property Damage:

Each occurrence .....\$1,000,000  
 Or a combined single limit of .....\$2,000,000

6. Umbrella Liability Insurance

Per Occurrence.....\$5,000,000  
 Annual Aggregate .....\$2,000,000

7. The insurance specified above except Worker's Compensation and Employer's Liability shall be endorsed to include the Owner and Engineer as additional insureds thereunder.

L. The commercial general liability insurance shall include completed operations insurance and premises/operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or refused until at least thirty days' prior written notice has been given to Owner and Engineer by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with General Conditions 14.03 – Defective Work. In addition, Contractor shall maintain such completed operations insurance for at least two years after final continuation of such insurance at final payment and one year thereafter.

M. The property and damage liability coverage under this policy shall contain no exclusion (commonly referred to as XC&U exclusion) relative to blasting, explosion, collapse of buildings or damage to underground property. This policy shall provide Broad Form Property Damage coverage.

N. This insurance shall include Independent Contractors Protective Liability coverage.

O. Contractual Liability Insurance: The commercial general liability insurance required by Paragraph SC-6.03 shall include contractual liability insurance applicable to Contractor's obligations under General Conditions 5.02 – Use of Site and Other Areas, 7.07 – Patent Fees and Royalties and 7.11 – Record Documents. The insurance required by this paragraph shall be written for not less than the limits of liability and coverages specified.

Bodily Injury:

Each Occurrence .....\$2,000,000

## Property Damage:

Each occurrence .....\$1,000,000

Or a combined single limit of .....\$2,000,000”

## 1.16 SC-6.04-OWNERS LIABILITY INSURANCE

- A. SC-6.04.A-Delete paragraph 6.04.A in its entirety and insert the following in its place: "CONTRACTOR shall purchase at its own expense and maintain such liability and other insurance in full force and effect at all times as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of the Work and CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:"

## 1.17 SC-6.04-OWNER'S LIABILITY INSURANCE

- A. SC-6.04A.B.-Delete paragraph 6.04 in its entirety and insert the following in its place: "In addition to the insurance required by Contractor under paragraph 6.04, Contractor shall purchase and maintain Owner's liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents. The policy shall not be less than \$1,000,000. Contractor may purchase Owner's liability insurance as a separate policy or include under Contractor's own liability insurance policy."

## 1.18 SC-6.05-PROPERTY INSURANCE

- A. SC-6.05.A-Amend the first paragraph 6.05.A to read as follows: "Unless otherwise provided in the supplementary conditions, CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof. All deductible amounts with regard to such insurance shall be the responsibility of the CONTRACTOR. Property insurance coverage form shall be subject to prior review and approval by the Owner. Property insurance (Builders Risk) may have a deductible amount not to exceed \$1,000.00 at the option of the party furnishing the insurance. If deductibles are required by the terms of the property insurance policy, or if the Contractor should elect, with the concurrence of the Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Contractor 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 portion of the Project."

## 1.19 SC-6.07-RECEIPT AND APPLICATION OF PROPERTY INSURANCE PROCEEDS

- A. SC-6.07.C-Delete paragraph 6.07.C in its entirety.

## 1.20 SC-7.02-LABOR/WORKING HOURS

- A. SC-7.02.C-Add the following new paragraph immediately after paragraph 7.02.B: "Regular working hours as referenced in paragraph 6.02.B shall be defined as from 7:00 AM to 4:00 PM Monday through Friday."
- B. SC-7.02.D-Add the following new paragraph immediately after paragraph 7.02.C: "Should the Contractor wish to work overtime and if additional resident project representation is determined to be necessary by the Engineer, upon written consent from the Owner, the Contractor shall be charged by the Owner at a rate of \$100.00/hr, Monday through Friday and \$150.00/hr for weekends and holidays for the time required to provide additional resident project representation. Those charges as accrued on a monthly basis shall be deducted from the money due the Contractor."

## 1.21 SC-7.06-CONCERNING SUBCONTRACTORS, SUPPLIERS AND OTHERS

- A. SC-7.06.A-Delete the second sentence of paragraph 7.06.A.
- B. SC-7.06.C-Add the following sentence at the end of paragraph 7.06.C: "Owner or Engineer may furnish to any such Subcontractor, Supplier, or other individual or entity, to extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor, Supplier, or other individual or entity."
- C. SC-7.06.D-Delete paragraph 7.06.D in its entirety and insert the following: "Each Bidder shall supply with the Bidding Documents the information identified in Section 00200 – Instructions to Bidders, Article 15 – Submittal of Bid and Article 7 – Attachments to this Bid. The List of Subcontractors shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, entity or individual proposed for portions of the Work. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award."
- D. SC-7.06.P-Add the following new section immediately after paragraph 7.06.O: Should Contractor cause damage to the Work or property of any separate contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against Contractor, Owner, Engineer, Engineer's Consultants, the construction coordinator, Contractor shall promptly attempt to settle with such separate contractor by agreement, or to otherwise resolve the dispute by mediation or at law."
- E. SC-7.06.Q-Add the following new paragraph immediately after paragraph 7.04.P: " Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultant, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors

of each and any of them from and against all claims, costs, losses, and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals, and court and/or mediation costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner, Engineer, Engineer's Consultants, the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim; Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, Engineers Consultants or the construction coordinator on account of any such damage or Claim."

- F. SC-7.06.R-Add the following new paragraph immediately after paragraph 7.06.Q: "If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a claim for an extension of times in accordance with Article 12 of the General Conditions. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, Engineer's Consultants and Construction Coordinator for any delay, disruption, interference or hindrance caused by any separate contractor."

## 1.22 SC-7.09 - TAXES

- A. SC-7.09.A-Delete paragraph 7.09.A in its entirety and insert the following in its place: "Owner is exempt from Colorado State Sales and Use Taxes on materials and equipment to be incorporated in the Work (exemption No. 98-05103-0000). Said Taxes shall not be included in the Contract Price or modifications to the Contract Price."
- B. SC-7.09B.-Add the following new paragraph immediately after 7.09.A: "Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of cities and counties thereof on all materials to be incorporated into the Work.
1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
  2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

## 1.23 SC-7.11-PROJECT RECORD DOCUMENTS

- A. SC-7.11.B-Add the following new paragraph immediately after paragraph 7.11.A: "The Contractor shall keep an updated set of construction drawings and specifications showing

as-built conditions under provisions of Section 01720. This set of drawings shall be updated each day to indicate construction work accomplished that day.

1.24 SC-7.18-INDEMNIFICATION

- A. SC-7.18.A.-Delete the word "caused" in paragraph 7.18.A. and insert the following in its place: "caused or is alleged to be caused"

1.25 SC-9.02-REPLACEMENT OF ENGINEER

- A. SC-9.02.A-Delete paragraph 9.02.A in its entirety and insert the following in its place: "In case of termination of the employment of ENGINEER, OWNER may, in OWNER's sole discretion, appoint a replacement engineer whose status under the Contract Documents shall be that of the former ENGINEER."

1.26 SC-9.04-PAY WHEN DUE

- A. SC-9.04-Delete article 9.04 in its entirety, including the heading and insert the following in its place: "9.04-A. OWNER shall make payments to CONTRACTOR promptly when they are due, subject to CONTRACTOR's satisfaction of all terms and conditions contained in Article 14, and OWNER's right to withhold payment there under."

1.27 SC-9.05-LANDS AND EASEMENTS; REPORTS AND TESTS

- A. SC-9.05.A-Amend the first sentence of paragraph 9.05.A by deleting the words: "and easements"

1.28 SC-9.06-INSURANCE

- A. SC-9.06-Delete article 9.06 in its entirety.

1.29 SC-9.07-CHANGE ORDERS

- A. SC-9.07.A-Delete paragraph 9.07.A in its entirety and insert the following in its place: "OWNER may execute Change Orders as indicated in Article 11. Upon OWNER's agreement to the terms thereof, OWNER is obligated to execute the Change Order."
- B. SC-9.07.B-Add the following new paragraph immediately after paragraph 9.07.A: "OWNER will issue no Change Order or other form of order or directive requiring additional work to be performed, which work causes aggregate amounts payable under the Contract to exceed the amount appropriated for the original Contract, unless the CONTRACTOR is given written assurance by the OWNER that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered by remedy granting provisions of the Contract."

### 1.30 SC-9.11-EVIDENCE OF FINANCIAL ARRANGEMENTS

- A. SC-9.11.B-Add the following new paragraph immediately after paragraph 9.11.A: "OWNER affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by OWNER to Contractor subject to the terms and conditions of the contract documents. In the event that OWNER approves a change order or other additional compensable work to be performed by Contractor, (other than that contemplated by the contract documents under any remedy-granting provision), OWNER will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the OWNER's governing body.

### 1.31 SC-10.03-PROJECT REPRESENTATIVE

- A. SC-10.03.A-Delete paragraph 10.03.A in its entirety and insert the following in its place: "Resident Project Representative is Engineer's Agent and shall act as directed by and under the supervision of Engineer. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
  4. Liaison:
    - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
  5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
  6. Shop Drawings and Samples:
    - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

- b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
10. Records:
- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
  - b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
  - c. Maintain records for use in preparing Project documentation.
11. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
  - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
  - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. Completion:
- a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
  - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
  - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.
- C. The RPR shall not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
  2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
  3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
  4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
  5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
  8. Authorize Owner to occupy the Project in whole or in part.
- 1.32 SC-10.08-LIMITATIONS ON ENGINEER'S AUTHORITY AND RESPONSIBILITIES
- A. SC-10.08.A-Delete paragraph 10.08.A in its entirety.
- 1.33 SC-11.05-CHANGE OF CONTRACT TIMES
- A. SC-11.5.C-Add the following new paragraph immediately after paragraph 11.05.B: "Adjustment of the Contract Times determined under any of the various contract clauses will be granted only to the extent that the critical path for the Work was delayed or the time allowed for any activity or activities affected exceed the identified available float or slack that occurs, or should occur, along the chain of activities involved."
- 1.34 SC-13.01-COST OF THE WORK
- A. SC-13.01.A.3 – Add new paragraph in its entirety: “Section 39-26-114 C.R.S., provides for tax free purchases of materials provided an exemption is applied for and granted by the Colorado Department of Revenue, Sales Tax Division. Owner has received such exemption and will provide Contractor and subcontractors with tax exemption number. The Owner reserves the right to require such additional information and/or documentation as may be necessary to insure that no sales taxes are paid by the Contractor and charged to the Owner. If sales tax is required to be paid to the vendor, Contractor (or its subcontractor) is responsible for applying for a refund to the Colorado Department of Revenue, Sales Tax Division.”
- 1.35 SC-15.08-CORRECTION PERIOD
- A. SC-15.08.F-Add the following new paragraph immediately after paragraph 15.08.E: "Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations of Contractor to correct the Work, and has no relationship to the time within which his obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish his liability with respect to his obligations other than to specifically correct the Work.
- 1.36 SC-15.01.B.- APPLICATIONS FOR PAYMENTS
- A. SC-15.01.B.4-Add the following new paragraph immediately after paragraph 15.02.B.3: "Payment for materials and equipment not incorporated in the Work, but delivered and suitably stored, shall be based only upon the actual cost of such materials to Contractor, and shall not include any overhead or profit to Contractor."

- B. SC-15.02.B.5-Add the following new paragraph immediately after paragraph SC-15.02.B.4: "Whenever Contractor receives payment pursuant to this section, the Contractor shall make payments to each of its subcontractors of any amounts actually received which were included in the Contractor's request for payment to the Owner for such subcontracts. Contractor shall make such payments within seven calendar days of receipt of payment from the Owner in the same manner as the Owner is required to pay the Contractor under this section if the subcontractor is satisfactorily performing under his contract with the Contractor."
- C. SC-15.02.B.6-Add the following new paragraph immediately after paragraph SC-15.02.B.5: "The Contractor shall monitor the subcontractor who shall pay all suppliers, sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the subcontractor any amounts actually received which were included in the subcontractor's request for payment to the Contractor for such persons, in the same manner set forth in this subsection regarding payments by the Contractor to the subcontractor. If the subcontractor fails to make such payments in the required manner, the subcontractor shall pay said suppliers, sub-subcontractors, laborers interest in the same manner set forth in this subsection regarding payments by the Contractor to the subcontractor."
- D. SC-15.02.B.7-Add the following new paragraph immediately after paragraph SC-15.02.B.6: "At the time the subcontractor submits a request for payment to the Contractor, the subcontractor shall also submit to the Contractor a list of the subcontractor's suppliers, sub-subcontractors, and laborers. The Contractor shall be relieved of the requirements of this subsection regarding payment in seven days and interest payment until the subcontractor submits such list. If the Contractor fails to make timely payments to the subcontractor as required by this section, the Contractor shall pay the subcontractor interest as specified by contract on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this subsection shall be construed to affect the retention provisions of any contract."
- E. SC-15.02.B.8-Add the following new paragraph immediately after paragraph SC-15.02.B.7: "The provisions of this section shall be made part of each contract between Contractor and subcontractor either expressly or by incorporation by reference to this Contract."
- 1.37 SC-15.03---SUBSTANTIAL COMPLETION
- A. SC-15.03.G-Add the following new paragraph immediately after paragraph 15.03.F: "Substantial completion is the time when the following facilities and activities are complete-in-place and in service:
- a. All Facilities listed in Section 01010 - Summary of Work
  - b. Facility testing and training requirements as specified in Section 01650 – Starting of Systems
  - c. Final equipment O&M manuals are submitted to Owner as specified in Section

## 01730 – Operation and Maintenance Data

- d. Furnishing of all equipment and materials spare parts as required by individual technical specifications.

- B. SC-15.03.H-Add the following new paragraph immediately after paragraph 15.03.G: "Substantial completion does not include minor landscaping Work and completion of other Work that is weather-dependent as approved by Owner and Engineer"

## 1.38 SC-15.06-FINAL PAYMENT

- A. SC-15.06.A.4- Add paragraph 15.06.A.4 in its entirety: “Notwithstanding any provision of the Contract Documents to the contrary, the following statutory requirements shall be applicable. Owner shall retain 10 percent of the progress payments until such time as the project is 50 percent complete. Before final payment may be made to Contractor, the Owner is required to comply with state statutes regarding publication of a notice of final settlement specifying the date of such final settlement. Any unpaid supplier of materials, equipment, service or labor (including Contractor’s subcontractors) may file a verified statement with Owner of the amount due and owing. Contractor acknowledges that Owner is required by law to withhold from final settlement payment the total amount of all such claims for a period of 90 days after the date of final settlement, even if such amounts exceed the retainage. During such 90 day period, any unpaid supplier may commence an action to seek payment if such claim is not settled. At the expiration of the 90 day period, Owner shall pay any retained funds which are not the subject of litigation. Any amounts retained by Owner as either retainage, or as a result of the claims, shall be in such amounts as may be sufficient to pay any judgments arising from said litigation.”

## 1.39 SC-16.03-OWNER MAY TERMINATE FOR CONVENIENCE

- A. SC-16.03. -Delete paragraph 16.03.A.1.-3. in its entirety and insert the following in its place: ‘The performance of the work may be terminated at any time in whole, or from time to time in part, by Owner for convenience. Any such termination shall be effected by delivery to Contractor of a written notice (“Notice of Termination”) specifying the extent to which performance of the work is terminated and the date upon which termination becomes effective. After receipt of a Notice of Termination, and except as otherwise directed by Owner, Contractor shall, in good faith, and to the best of its ability, do all things necessary, in the light of such notice and of such requests in implementation thereof as Owner may make, to assure the efficient, proper closeout of the terminated work including the protection of Owner’s property. Among other things, Contractor shall, except as otherwise directed or approved by Owner:
  1. stop the work on the date and to the extent specified in the Notice of Termination;
  2. place no further orders or subcontracts for services, equipment or materials except as may be necessary for completion of such portion of the work as is not terminated;
  3. terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

4. assign to Owner, in the manner and to the extent directed by it, all of the right, title and interest of Contractor under the orders or subcontracts so terminated, in which case Owner shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  5. with the approval of Owner, settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts; and
  6. deliver to Owner, when and as directed by Owner, all documents and all property which, if the work had been completed, Contractor would be required to account for or deliver to Owner, and transfer title to such property to Owner to the extent not already transferred.
- B. SC-16.03.C – Add new paragraph 15.03.C in its entirety: “In the event of such termination, the Contractor shall be entitled to payment for the work performed prior to the termination date plus the profit and overhead on that work, including:
1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- C. SC-16.03.D-Add the following new paragraph immediately after paragraph 16.03.C: "CONTRACTOR shall include in all contracts entered with any Subcontractor, any Supplier any individual or entity directly or indirectly employed by CONTRACTOR to perform any of the Work, a Termination for Convenience Clause similar to that listed in Section 16.03. Recovery by any Subcontractor, any Supplier, or other individual or entity upon OWNER's termination for convenience shall be limited by the terms listed in Section 16.03."
- 1.40 SC-17.01-METHODS AND PROCEDURES
- A. SC-17.01.A- Remove and replace 17.01.A with the following in its place and make SC-17.01A (B): "In an effort to resolve any conflicts that arise during the construction of the Project or following the completion of the Project, all parties to this Agreement agree that all disputes arising out of or relating to this Agreement shall be submitted to mediation, unless the parties mutually agree otherwise. Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any disputed."
- 1.41 SC-17.02A.1-EMPLOYMENT OF ILLEGAL ALIENS
- A. SC-17.02.A.1-Add the following new paragraph immediately after paragraph SC-17.02.A: "1. The Contractor certifies that the Contractor shall comply with the provisions of CRS 817.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this contract.

The Contractor represents, warrants, and agrees that it (i) has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the basic pilot employment verification program administered by the Social Security Administration and the Department of Homeland Security, or (ii) otherwise will comply with the requirements of CRS 8-17.6-102(2)(b)(1). The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101, et seq., the District may terminate this contract for breach of contract, and the Contractor shall be liable for actual and consequential damages to the District. If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall:

- a. Notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-paragraph (a) above, the subcontractor does not stop

#### 1.42 SC-17.02.A.2 - SPEAKING ENGLISH ON THE PROJECT SITE

- A. SC-17.02.A.2-Add the following new paragraph immediately after paragraph SC-17.02.A.1.b.: "2. The General Contractor is strongly encouraged to ensure its workers, subcontractors, and equipment suppliers working on the Project site are proficient in understanding and speaking English. Workers, subcontractors, and equipment suppliers on the Project site are free to speak other languages. This request is included to encourage clear and efficient communication on the Project site, and to minimize potential safety hazards and construction quality issues due to ineffective communication."

#### 1.43 SC-18.07-CONTROLLING LAW

- A. SC-18.07.A-Delete paragraph 18.07.A in its entirety and insert the following in its place: "This Contract shall be governed and construed according to the law of the State of Colorado. All civil actions brought in relation to this Contract shall be filed in District Court, Weld County, and State of Colorado."

#### 1.44 SC-18.09. LIQUIDATED DAMAGES

- A. Insert new paragraph after SC-18.08: "Time is an essential condition of the Contract. Should Contractor fail to perform the Work within the period of time stipulated in the Agreement, Contractor shall pay to Owner, as liquidated damages and not as a penalty, the amount set forth in Section 00520 of the Contract Agreement unless extensions of time granted by Owner specifically provide for the waiving of liquidated damages."

#### 1.45 SC-18.10-CONTRACTOR CERTIFICATION

- A. Insert new paragraph after SC-18.09: “For each Change (Cost) Proposal Request, Change Order or Claim, Contractor shall submit a certification that:
  - a. Change (Cost) Proposal Request, Change Order or Claim is made in good faith Supporting data are accurate and complete to the best of the Contractor's knowledge and belief and Amount and time extension requested accurately reflects contract adjustments for which Contractor believes Owner is liable”

#### 1.46 ARTICLE 19 – MANDATORY STATE LAW PROVISIONS

*Add the following new paragraphs immediately after Article 18.*

- A. SC-19.1 The provisions of this Article 19 shall control and supersede any terms, conditions or provisions of this Agreement or any of the other Contract Documents to the contrary.
- B. SC-19.2 Before entering upon the performance of any work hereunder, the Contractor shall provide the Owner a performance and warranty bond in a penal sum not less than the greater of (i) one-half of the total amount payable by the terms of this Agreement and (ii) the amount for such bond as set forth in the Contract Documents. Such bond shall comply with the provisions of Section 38-26-106, C.R.S.
- C. SC-19.3 With regard to any payment required to be made by the Owner hereunder, the Owner shall authorize partial payments of the amount due under this Agreement at the end of each calendar month, or as soon thereafter as practicable, to the Contractor if the Contractor is satisfactorily performing this Agreement. Ninety-five percent (95%) of the calculated value of any work completed shall be paid until fifty percent (50%) of the work required by such Agreement has been performed. Thereafter, the public entity shall pay any of the remaining installments without retaining additional funds if, in the opinion of the Owner, satisfactory progress is being made in the work. If, in the opinion of the Owner's Representative and Owner, satisfactory progress is not being made, or if claims are filed under Section 38-26-107, Colorado Revised Statutes, as amended, Owner may retain such additional amounts as Owner may deem reasonably necessary to assure completion of the Work or to pay such claims and any Owner's attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. The withheld percentage of the Agreement price of any such work, improvement, or construction shall be retained until the Agreement is completed satisfactorily and finally accepted by the Owner. If the Owner finds that satisfactory progress is being made in all phases of the Contract Documents, it may, upon written request by the Contractor, authorize final payment from the withheld percentage to the Contractor or subcontractors who have completed their work in a manner finally acceptable to the public entity. Before such payment is made, the public entity shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the Work.

- D. SC-19.4 Any retainage required to assure satisfactory performance of the contract, as provided for in Section 18.3 above, may be withdrawn if the Contractor deposits acceptable securities with the Owner pursuant to § 24-91-105, C.R.S.
- E. SC-19.5 Final payment by the Owner shall conform with the provisions of Section 38-26-107, C.R.S.

PART 2      PRODUCT – NOT USED

PART 3      EXECUTION - NOT USED

**END OF SECTION**

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**SECTION 00410  
BID FORM**

**Crested Butte Wastewater Treatment Facility Upgrades  
Town of Crested Butte, CO**

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**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

Town of Crested Butte  
507 Maroon Avenue  
Crested Butte, Colorado 81224

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 45 calendar days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

**ARTICLE 3 – BIDDER'S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>	
1	1/24/17	Add 5 rec'd 3/1/17
2	2/21/17	
3	2/24/17	
4	2/28/17	

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques,

sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### **ARTICLE 5 – BASIS OF BID**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

**SUGGESTED FORMATS FOR LUMP SUM BID**

Bidder to include in other Bid item(s) the other costs (if any) associated with accepting such assignment and administering the assigned contract.

**Total Lump Sum - Base Bid**  
(All Work)

\$ 3,124,000

**Total of All Lump Sum – Bid Alternate 1**  
(All Work Except Headworks Area Work)

\$ 2,841,000

**ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

**ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. 00411 – Certification of Bidder's Experience and Qualifications
  - B. 00412 – Bidder Qualification Requirements
  - C. 00412A – Bidder Qualification Statement
  - D. 00414 – Affidavit of Non-Collusions
  - E. 00415 – Prospective Contractor Compliance Certificates
  - F. 00430 – Bid Bond
  - G. 00450 – Major Equipment Listing
  - H. 00455 - Subconsultants Qualifications

**ARTICLE 8 – DEFINED TERMS**

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 – BID SUBMITTAL****BIDDER**

Integrated Water Services, Inc.

Bidder's Name

By:

Signature

Jeff Thomas

3/7/17

Date

Print Name

Integrated Water Services, INC.

Title

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

Attest:

Signature

3/06/2017

Date

Jeff Thomas

Print Name

Vice President

Title

Address for giving notices:

4001 N Valley Dr

Longmont, CO 80504

Telephone Number:

970-214-2493

Contact Name:

Jeff Thomas

E-mail address:

jthomas@integratedwaterservices.com

Submit Date:

March 7, 2017

## SECTION 00411

## CERTIFICATION OF BIDDER'S EXPERIENCE AND QUALIFICATIONS

The undersigned bidder certifies that he is, and shall be, throughout the period of the contract, licensed by the State of Colorado to do the type of work required under terms of the contract documents. Bidder further certifies that he is skilled and regularly engaged in the general class and type of work called for in the contract documents. The bidder warrants that he is competent, knowledgeable and has special skills on the nature, extent and inherent conditions of the work to be performed.

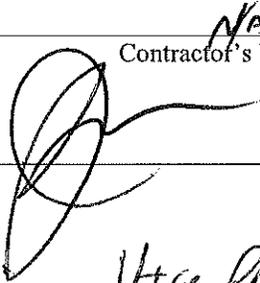
Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the particular facilities which may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that he is aware of such peculiar risks and that he has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

Signed this 6 day of March, 2017.

Integrated Water Services, Inc.

Name of Bidder

NA  
Contractor's License No. And State

  
Signature of Bidder

Vice President  
Title of Signator

END OF SECTION

**SECTION 00450  
MAJOR EQUIPMENT  
BID ALTERNATES**

1.1 REQUIREMENTS

- A. Bidder warrants that the cost for each item of equipment and material and designated below as a "Base Bid", and sole source equipment items listed in Section 00240 are included in the lump sum for Base Bid in accordance with Section 00110. All sole-source equipment prices are direct or prorated from the information in Section 00240 and include cost for spare parts.
1. The difference in cost between the Base Bid manufacturer of this section and the selected manufacturer/supplier will be added to or deducted from the Base Bid prior to award of the contract. Reference Section 00110 for Contract award requirements and procedures.
- B. Engineer may require detailed submission of information for preliminary evaluation of Owner selected equipment listed in this section under provisions of Section 00200 and Section 01630.
- C. If Contract includes items of equipment of any Manufacturer/Supplier which may require any modification or deviation from the Contract Documents, the undersigned agrees to prepare and submit detailed revisions to Engineer showing all modifications in structures, piping, electrical and mechanical work, required to adapt the Contract Documents to equipment selected. The Bidder further understands that Engineer will review said detailed drawings of modifications and either accept or indicate thereon changes necessary to comply with the project requirements. Detailed drawings which are not accepted will be revised then resubmitted to the Engineer for acceptance until acceptance is obtained in compliance with Section 01340. If acceptance is unobtainable, then original base bid equipment will be provided.
- D. Unless otherwise indicated in the column labeled, "Bid Price," all prices listed herein include delivery, submittals, installation, overhead and profit, bonds, training, testing for equipment to be complete and ready for operation as intended by the Contract Documents and take into consideration any changes that will be required. Bid price and installation cost for all listed manufacturers/suppliers in this section are required for consideration as a responsive bid.
- E. For each line item listed in the table below, provide a total installed cost for the specified equipment including equipment costs and the contractors' cost for coordination, receiving, storing, installing, testing and starting up of equipment, including overhead and profit. Equipment identified below as Base Bid shall be used in calculating the Base Bid line item in Section 00410. That specific equipment as identified below has been established for convenience only. **Contract award shall be based on the Owner's final selection of equipment. Bidder is required to provide complete and competitive pricing for all equipment alternative presented below.**

**Major Equipment Base Bid & Bid Alternates (Contractor to complete)**

<b>Section 11310 – Submersible Solids Handling Pumps (IMLR Only)</b>			
<b>Vendor</b>	<b>Bid Price</b>	<b>Guaranteed Effluent at Duty Point No. 2</b>	<b>BHP at Duty Point No. 2</b>
KSB - Base Bid	\$ 33,000	70.6%	2.72
Wilo - Alternate	\$ 49,000	486 GPM	2.18 bhp
Flygt - Alternate	\$ 34,000	Yes	2.8
<b>Section 11373 – Oil Free Screw Compressors</b>			
<b>Vendor</b>	<b>Bid Price</b>	<b>Guaranteed KW at Duty Point No. 2</b>	<b>Minimum Flow</b>
Aerzen - Base Bid	\$ 109,000	20	248
Robuschi - Alternate	\$ 110,000	14.55	400
<b>Section 11375 – Diffusers</b>			
<b>Vendor</b>	<b>Bid Price</b>	<b>Certified SOTE</b>	
Aquarius - Base Bid	\$ 36,000	26.1	
Sanitaire - Alternate	\$		
EDI - Alternate	\$ 40,000	26.1	
SSI - Alternate	\$ 47,000	26.1	
<b>Section 11387 – Submersible Mixers</b>			
<b>Vendor</b>	<b>Bid Price</b>	<b>Thrust</b>	<b>BHP</b>
Wilo - Base Bid	\$ 44,000	560	2.7
KSB - Alternate	\$ 32,000	552N	2.37
Flygt - Alternate	\$ 34,000	430N	2.5

**END OF SECTION**

**SECTION 00412 - EXHIBIT A  
BIDDER QUALIFICATIONS STATEMENT**

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

SUBMITTED TO: Town of Crested Butte

SUBMITTED BY: Jeff Thomas

CHECK ONE:       Corporation  
                       Partnership  
                       Individual  
                       Joint Venture  
                       Other

1. How many years has your organization been in business as a General Contractor? 12

2. How many years has your organization been in business under its present business name? 12

3. If a Corporation, answer the following:

a. Date of Incorporation December 3, 2003

b. State of Incorporation Colorado

c. President Dave Patton

d. Vice President(s) Jeff Thomas and Gwen Rogers

e. Secretary Gwen Rogers

f. Treasurer Dave Patton

4. If a Partnership, answer the following:

a. Date of Organization \_\_\_\_\_

b. Type of Partnership \_\_\_\_\_

c. Name and Address of all partners: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. If other than a Corporation or Partnership, describe the organization and name principals:

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6. What percent of work do you normally perform with your own forces: 65%

List trades: Process Piping and Equipment  
Earthwork  
Dewatering  
Concrete  

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7. Have you ever failed to complete any work awarded to you? If so, indicated when, where and why.

No.  

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8. Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a construction contract? No.

If so, what were the circumstances?  

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## 9. List major construction projects your organization has under contract on this date:

Project Name	Owner	A/E	Contract Amount	Contract Date	Percent Complete	Scheduled Completion
Clear Creek WWTP	Clear Creek San. Dist.	Dewberry	3.5M	1/17/17,	10%	11/17
City of Wislow WWTP	City of Winslow, AZ	PACE	\$6.3M	12/16	15%	2/18

## 10. List major construction projects your organization has completed in the past 5 years:

Project Name	Owner	A/E	Contract Amount	Date Awarded	Date Completed	% of Own Forces
Town of Bayfield WTF	Town of Bayfield	FEI	\$7.2M	6/15	3/17	65%
Walmart Dist Pretreatment	Walmart Corp	Burns&Mc	\$1.6M	3/15	9/15	75%
Stapleton Lift Station	City of Den	FEI	\$1.7M	3/16	1/17	70%
Tulelake WWTP	City of Tulelake, CA	Adkins	\$4.3M	9/15	7/16	80%

## 11. List the construction experience of the principal individuals in your organization:

Individual's Name	Construction Experience (years)	Present Position & Years Experience	Dollar Volume Responsibility	Previous Position & Years Experience
David W. Patton	25	President	\$32M	President, 12
Dale Hemstad	35	Dir. Const.	\$18M	PM, 23
Jay Alman	35	COO	\$20M	VP, 20

## 12. List states and categories in which your organization is legally qualified to do business:

General Construction: CO, AZ, CA, NM, WY, OR, WA, TX, UT, MT

## 13. Project references and performance information:

List and provide company Project References and performance information for at least 2 similar municipal wastewater treatment facility construction projects. List the project references below

and provide additional information by completing a Project Reference Form at the end of this Exhibit for each listed reference project.

Project Name and Location	Owner	Engineer	Contract Value	Year Completed
Town of Bayfield Water Treatment Plant Bayfield, CO	Town of Bayfield and La Plata Archuleta Water District	FEI Engineers	\$7,091,131	2016
City of Tulelake Wastewater Treatment Facility Tule Lake, CA	City of Tule Lake	Adkins Consulting Engineering	\$4,400,000	2016

14. Bank references, including contact name and phone number:

Christian Bordewick

4848 Thompson Parkway #100, Johnstown, CO 80534

Phone: (970) 663-7600

15. Trade references, including contract name and phone number:

Ferguson Enterprises, Inc. 800-898-1887

White Cap Const Supply - 8000-944-8322

Pace Supply - 707-545-7101

16. Name of bonding and insurance companies, and name and address of agents:

Name of Company	Name of Agent	Address of Agent	Maximum Bonding Capacity
PFS Insurance Group	John Hintzman	4848 Thompson Pkwy Ste 200 Johnstown, CO 80535	
	Joe Clarcken	1819 E Morten Ave Ste 200 Johnstown, CO 80535	\$30M

17. The undersigned agrees to furnish, upon request by the Owner, within 48 hours after bid proposal opening, a current Statement of Financial Conditions, including the Contractor's latest regular dated financial statement of balance sheet which must contain the following items:

Current assets: Cash, joint venture accounts, accounts receivable, notes receivable, accrued interest on notes, deposits, and materials, and prepaid expenses, next fixed assets and other assets.

Current liabilities: Accounts payable, notes payable, accrued interest on notes, provision for income taxes, advances received from owners, accrued salaries, accrued payroll taxes, other liabilities, and capital (capital stock, authorized and outstanding shares par values, earned surplus).

Date of statement of balance sheet: 12/31/15

Name of firm preparing statement: Eide Bailly

By (Agent and Capacity): \_\_\_\_\_

18. Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ (Day) (Year)

Name of Organization: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

19. NOTARIZATION:

State of: Colorado

County of: Weld

Mr. Thomas being duly sworn deposes and say that (he/she) is the Vice President of Integrated Water Services, Inc. Contractor(s) and that the answers to the foregoing questions and all statements and information contained on attachments herein contained are true and correct.

Subscribed and sworn before me this

10<sup>th</sup> day of March 2017  
(Day) (Year)

Notary Public: Sierra Aparicio

My commission expires: 2/15/2021

**SIERRA MARIE APARICIO**  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20174007173  
My Commission Expires 2/15/2021

**SIMILAR WASTEWATER TREATMENT FACILITY PROJECT REFERENCE FORM**

(Complete for 2 Projects Minimum)

Project Name and Location: Town of Bayfield Water Treatment Plant

Bid Amount: \$7,062,131

Final Contract Amount: \$7,091,131 Year Completed: 2016

Contract Completion Time: 330 Days

Dollar Amount and Number of Change Orders: On change order: \$29,000

Actual Completion Time: 330 Days

## Description of Work:

General Overview: Construct modifications to the water treatment plant

New Facility or Retrofit/ Expansion? Expansion

Facility Capacity in MGD: \_\_\_\_\_

Treatment Processes Constructed: MBR, Concrete Wetwell, Pumps

Other Information? (attach as needed) \_\_\_\_\_

## Names Key Contractor Personnel:

Project Manager Matthew Brown

Project Engineer Patrick O'Brien of FEI Engineers

Superintendent Travis Williams

Are all of these persons still employed by your organization No

If no, name those employee(s) not currently employed Matthew Brown

Name and phone number of currently employed individual at your organization who is familiar with this Project. Travis Williams: (970) 420-9998

Name, Address, and Telephone Number of **Owner** (including name and telephone number of contact person):

Town Of Bayfield and La Plata Archuleta Water District

Ron Saba

(970) 884-9544

Name, Address, and Telephone Number of **Engineer** (including name and telephone number of contact person):

FEI Engineers:

Patrick O'Brien

(970) 247-0724

Name, Address, and Telephone Number of **Construction Manager** employed by Owner

Ron Saba

(970) 884-9544

Amount and number of claims resulting in arbitration or litigation:

n/a

Amount of Settlement:

Further Information of Claims:

**[REPEAT FOR OTHER PROJECTS]**

**SIMILAR WASTEWATER TREATMENT FACILITY PROJECT REFERENCE FORM**

(Complete for 2 Projects Minimum)

Project Name and Location: City of Tulelake Wastewater Treatment Facility in Tule Lake, Ca  
 Bid Amount: \$4,350,000  
 Final Contract Amount: \$4,400,000 Year Completed: 2016  
 Contract Completion Time: 300 Days  
 Dollar Amount and Number of Change Orders: One Change order: \$55,000  
 Actual Completion Time: 200 Days

## Description of Work:

General Overview: Reuse Project featuring aeration pond treatment, 12 acre storage pond, & lift station/conveyance piping  
 New Facility or Retrofit/ Expansion? Retrofit  
 Facility Capacity in MGD: 2  
 Treatment Processes Constructed: MBR, concrete, settling pond, pump station  
 Other Information? (attach as needed) \_\_\_\_\_

## Names Key Contractor Personnel:

Project Manager Jon Bopp  
 Project Engineer Jeremy Morris with Adkins Consulting Engineering  
 Superintendent John Caterall  
 Are all of these persons still employed by your organization Yes  
 If no, name those employee(s) not currently employed \_\_\_\_\_

Name and phone number of currently employed individual at your organization who is familiar with this Project. Jon Bopp (970) 290-6561

Name, Address, and Telephone Number of **Owner** (including name and telephone number of contact person):

City of Tulelake

Name, Address, and Telephone Number of **Engineer** (including name and telephone number of contact person):

Jeremy Morris

(541) 844-4666

2950 Shasta Way, Klamath Falls, OR 97603

Name, Address, and Telephone Number of **Construction Manager** employed by Owner

Brett J. Nystrom

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(541) 810-1915

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Amount and number of claims resulting in arbitration or litigation:

NA

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Amount of Settlement: \_\_\_\_\_

Further Information of Claims: \_\_\_\_\_

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**[REPEAT FOR OTHER PROJECTS]**



## ADDITIONAL PROJECT REFERENCES

### 1. Well Site No. 7, Manganese Removal System – City of San Luis, AZ

**Project Description:** IWS was awarded a \$2mm contract with the City of San Luis, AZ to construct a Manganese Removal System in December 2014 and is currently constructing the 2,200 gpm treatment system featuring the Pureflow Filtration system. The scope of work for the contract is to install a complete manganese removal system for the drinking water system at Well Site No. 7. The site consists of two (2) groundwater production wells, Wells No. 11 and 12. The working includes a new packaged manganese removal facility, well pump replacement, 40' by 60' enclosure building and pad, 60,000 gallon reclaim tank, sludge mixing system, sludge sewer disposal, all mechanical piping (12" diameter), and all associated electrical and controls.

Owner: City of San Luis, AZ

Engineer: Tres Rios Consulting Engineers, Phoenix, AZ

Contract Value: \$1,995,000

Overall Project Value: \$1,995,000

Date of Completion: September 2015

Percent of Work with Own Forces: 30%

Reference: Jeff Bower, PE (Tres Rios Consulting Engineers) 480-755-1042

Principal-in-Charge: Dave Patton

Project Manager: Jon Bopp

### 2. Mt. Evans Outdoor Lab School Wastewater Treatment Plant

**Project Description:** The IWS scope of work includes the installation of a wastewater treatment plant, collection system improvements, storm drainage, site grading, and electrical.

Owner: Jefferson y Schools, Brian Korb, 303-982-2472

Engineer: JVA, Simon Farrell, 303.444.1951

Contract Value: \$890K

Project Start Date: May, 2015

Date of Completion: November, 2015

Percent of Work with Own Forces: 90%

Principal-in-Charge: Dave Patton

Project Manager: Matt Brown

### 3. River Glen Lift Station and Force Main

**Project Description** – Decommission Wastewater Lagoons, Construct Lift Station, Install Force Main

Owner: Larimer y, CO, Ed Schemn, Larimer y, (970) 498-6778

Engineer: JVA, John McGee, 970-222-8060

Contract Amount: \$586,000

Project Start Date: April, 2014

Date of Completion: August, 2014

Percent of work with own forces: 80%

Principal-in-Charge: Jeff Thomas

Project Manager: Jon Bopp

**4. Greeley Airport Lift Station**

**Project Description:** The IWS scope of work includes the installation of a lift station, concrete vault, site grading, and electrical.

Owner: Justin Scholz, City of Greeley, 970-350-9330

Engineer: Steve Butherus, Ketterling, Butherus & Norton, 970-3958-9880

Contract Value: \$329,670

Project Start Date: September, 2015

Date of Completion: December, 2016

Percent of Work with Own Forces: 90%

Principal-in-Charge: Jeff Thomas

Project Manager: Jon Bopp

**5. Sinclair Oil Lift Station and Wastewater Treatment Plant – Sinclair, Wyoming**

**Project Description:** Construction of lift station and wastewater treatment plant including electrical, generator, force main and controls.

Owner: Sinclair Oil

Reference: Ken Forster, Tel: (801) 524-2700

Engineer: Trihydro Corporation, Laramie, WY

Contract Value: \$560,000

Date of Completion: March, 2014

Percent of Work with Own Forces: 85%

Percent Complete: 100%

Principal-in-Charge: Dave Patton

**6. City of Loveland Boyd Lake Avenue Interconnect**

**Project Description – Interconnect Water System, Valve Vault, Piping**

Owner: City of Loveland, Brian Gandy, 970-962-3760

Engineer: Colorado Civil Group, Inc, 970-278-0029

Contract Amount: \$285,000

Project Start Date: April, 2015

Date of Completion: July, 2015

Percent of work with own forces: 95%

Principal-in-Charge: Jeff Thomas

Project Manager: Jon Bopp

**7. Restaurant /Commercial Complex, Malibu, CA**

**Project Description - MBR Installation and Treatment Plant Construction.**

Owner: Lawrence Investments, Los Angeles, CA,

Engineer: Ensitu Engineering

Contract Amount: \$4.3M

Date of Completion: 6/2012

Percent of work with own forces: 75%

Reference: Rob Vogel, P.E., Owner Representative, 360 N Grenola St Pacific Palisades, CA 90272, 310-994-0390

**8. Padre Dam Advanced Water Treatment Project**

**Project Description-** Construction and Installation of Membrane Filtration, Reverse Osmosis and UV Disinfection and Facility Construction of Water Purification Plant.

Owner: Padre Dam Water District  
Engineer: Trussell Technologies, Inc  
Contract Amount: \$1.55M  
Date of Completion: 3/2015  
Percent of work with own forces: 75%  
Reference: Arne Sanvik, P.E., PM, 9300 Fanita Parkway, Santee, CA 92071, Tel: 619-258-4643

**9. USMC Mtn. Warfare Training Center Utilities and Wastewater Plant**

**Project Description:** Construction and Installation of water and wastewater treatment facilities, including an SBR, all wet utilities and Control Building and Control Systems  
Owner: Hunt Building Companies  
Engineer: Apex  
Contract Amount: \$1.9M  
Date of Completion: 6/2014  
Percent of work with own forces: 80%  
Reference: Tim Fraser, Owner's Rep, Tel: 760-908-1866

**10. Sysco Foods Water Treatment Facility**

**Project Description:** Construction and Installation of Wastewater Treatment System including sand filter, lift stations and 2-acre wetland ponds for denitrification  
Owner: Sysco Foods  
Engineer: Rob Beggs, P.E. Brown & Caldwell  
Contract Amount: \$1.1M  
Date of Completion: 6/2011  
Percent of work with own forces: 80%  
Reference: Rob Beggs, P.E., Engineer, Tel: 530-204-5203

**11. Malibu Lumber Yard Wastewater Treatment Filtration Plant**

**Project Description:** Installation and Construction of MBR wastewater treatment plant, all ancillary piping, controls and distribution network.  
Owner: Weintraub Partners  
Engineer: Ensitu Engineering  
Contract Amount: \$2.93M  
Date of Completion: 4/2010  
Percent of work with own forces: 85% Reference: Dick Miller, Owner's Rep, Tel: 562-903-2277

**12. Mesa Verde Wastewater Treatment facility**

Owner: Mesa Verde National Park  
Engineer: Stantec  
Contract Amount: \$800K  
Date of Completion: 2/2012  
Percent of work with own forces: 90%  
Reference: Matt Bowman, PM, Tel: (303) 365-6500

**13. Walmart Wastewater Treatment and Filtration Plant**

**Project Description:** Site Development, Construction and Installation of Concrete WW Plant Equipment, housing treatment facilities, equipment and system controls.  
Owner: Walmart

Engineer: Burns & McDonald  
Contract Amount: \$2.8M  
Date of Completion: 9/2013  
Percent of work with own forces: 80%  
Reference: Kile Martin, HBI Construction, Tel: 949-851-2211

**14. Baldy Mesa Water District Water Treatment System**

**Project Description:** Mechanical and Civil construction of pipelines and treatment equipment for Arsenic removal and treatment system for Municipal water district.

Overall Project Value: \$4mm  
Owner: Baldy Mesa Water District  
Engineer: Basin Water,  
Contract Amount: \$800,000  
Date of Completion: 9/2011  
Percent of work with own forces: 70%  
Reference: Cliff Swan

**SECTION 00414**  
**AFFIDAVIT OF NON-COLLUSION**

TO BE EXECUTED BY EACH AWARDEE OF A PRINCIPAL CONTRACT:

I, Jeff Thomas, being first duly sworn, deposes and says that they are  
Vice President of Integrated Water Services, Inc.  
(sole owner, a partner, president, etc.)

the party making the foregoing bid; that such a bid is not made in the interest of or on behalf of any undisclosed person, partnership, company association, organization, or corporation; that such a bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, nor that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of said bidder or of any other bidder, nor to fix any overhead, profit, or cost element of such bid price, nor of that of any other bidder, nor to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in such bid are true; and, further, that said bidder has not directly or indirectly, submitted his bid price or any breakdown thereof, nor the contents thereof, nor divulged information or data relative thereto, nor paid and will not pay fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, nor any member or agent thereof, nor any to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

**BIDDER**

By:

Signature

Jeff Thomas

3/6/17

Print Name

Date

Vice President

Title

Attest:

Signature

Sierra Aparicio

3/6/17

Print Name

Date

Secretary

Title

**SECTION 00415**  
**PROSPECTIVE CONTRACTOR COMPLIANCE CERTIFICATE**  
 (To Be Executed by Bidder Prior to Executing a Public Contract for Services)

In connection with the proposed Crested Butte Wastewater Treatment Facility Upgrades and pursuant to Section 8-17.5-102(1), C.R.S., the undersigned prospective Contractor hereby certifies that, as of the date of this Certificate, it does not knowingly employ or contract with an illegal alien and it has participated or attempted to participate in the Basic Pilot Employment Verification Program (as such term is defined in Section 8-17.5-101(1), C.R.S.) in order to verify that it does not employ any illegal aliens.

This Certificate is dated the 6<sup>th</sup> day of March, 2017.

**BIDDER**

Integrated Water Services, INC

Bidder's Name

By:

Signature

3/6/17

Date

Jeff Thomas

Print Name

Vice President

Title

**H.B. 06-1343 MODEL LANGUAGE SUPPLEMENT**

**[The following text is to be inserted in all “contracts for public services” in accordance with Section 8-17.5-101 *et seq.*, C.R.S.]**

1. Illegal Aliens – Public Contracts for Services.

The Contractor certifies that the Contractor shall comply with the provisions of Section 8-17.5-101 *et seq.*, C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an agreement with a subcontractor that knowingly employs or contracts with an illegal alien. The Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, or (ii) otherwise will comply with the requirements of Section 8-17.5-101(2)(b)(I), C.R.S. The Contractor shall not use Basic Pilot Program Procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall: (i) notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or Section 8-17.5-101 *et seq.*, C.R.S., the District may terminate this Agreement for breach and the Contractor shall be liable for actual and consequential damages to the District.

**SECTION 00430  
BID BOND (PENAL SUM FORM)**

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

**BIDDER** *(name and address):*

Integrated Water Services Inc

P O Box 774565, Steamboat Springs, CO 80477

**SURETY** *(name and address of principal place of business):*

The Guarantee Company of North America, USA

21642 N 9th Ave Suite 100, Phoenix, AZ 85027

**OWNER** *(name and address):*

Town of Crested Butte

507 Maroon Ave, Crested Butte, CO 81224

**BID**

Bid Due Date:

Description *(Name and location):* Town of Crested Butte Wastewater Treatment Facility Upgrades

**BOND**

Bond Number:

Bid Bond

Date:

February 23, 2017

Penal Sum:

*(Words)*

Five Percent of Amount Bid

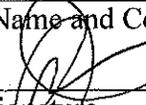
*(Figures)*

\$ 5% of Amount Bid

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

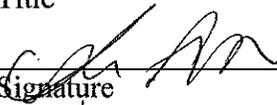
Integrated Water Services Inc  
Bidder's Name and Corporate Seal

By:   
Signature

Jeff Thomas  
Print Name

3/6/17  
Date

Vice President  
Title

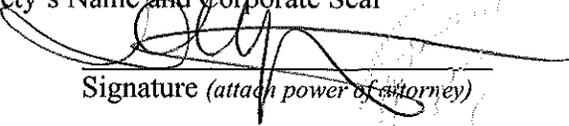
Attest:   
Signature

3/6/2017  
Date

Secretary  
Title

**SURETY**

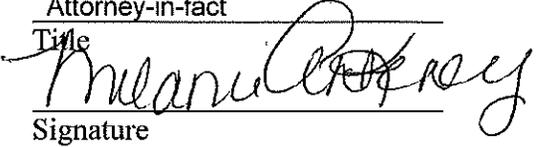
(seal) The Guarantee Company of North America, USA (seal)  
Surety's Name and Corporate Seal

By:   
Signature (attach power of attorney)

Jennifer Castillo  
Print Name

February 23, 2017  
Date

Attorney-in-fact  
Title

Attest:   
Signature

February 23, 2017  
Date

Witness  
Title

Notes: (1) Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 calendar days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party

concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



The Guarantee Company of North America USA  
Southfield, Michigan

## POWER OF ATTORNEY

**KNOW ALL BY THESE PRESENTS:** That **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

David J. McKee, Patrick R. Hedges, Joseph A. Clarken III, Melanie L. Ankeney, Jennifer S. Castillo  
Constructors Bonding, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon **THE GUARANTEE COMPANY OF NORTH AMERICA USA** as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of **THE GUARANTEE COMPANY OF NORTH AMERICA USA** at a meeting held on the 31<sup>st</sup> day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.



IN WITNESS WHEREOF, **THE GUARANTEE COMPANY OF NORTH AMERICA USA** has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

**THE GUARANTEE COMPANY OF NORTH AMERICA USA**

STATE OF MICHIGAN  
County of Oakland

Stephen C. Ruschak, President & Chief Operating Officer

Randall Musselman, Secretary

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of



Cynthia A. Takai  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires February 27, 2018  
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

I, Randall Musselman, Secretary of **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by **THE GUARANTEE COMPANY OF NORTH AMERICA USA**, which is still in full force and effect.



IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 23rd day of February, 2012

Randall Musselman, Secretary

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

INTEGRATED WATER SERVICES, INC.

is a

Corporation

formed or registered on 12/12/2003 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20031385802 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/03/2017 that have been posted, and by documents delivered to this office electronically through 03/06/2017 @ 15:01:01 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/06/2017 @ 15:01:01 in accordance with applicable law. This certificate is assigned Confirmation Number 10114292 .



*Wayne W. Williams*

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."*

## Subcontractor Listing

- Excavation
  - Lacey
  - Crested Butte, CO
  
- Concrete
  - KMN
  - Longmont, CO
  
- Coatings
  - Quality Linings
  - Denver, CO
  
- Demo
  - Omega
  -
  
- Electrical
  - Encore
  - Denver, CO
  
- Controls
  - Browns-Hill
  - Denver, CO



**To:** Mayor Michel and Town Council

**From:** Michael Yerman, Director of Planning

**Subject:** **Ordinances 8-10, Series 2017 Lot Sales**

**Date:** April 3, 2017

**Background:**

On June 23, 2016, the Town in conjunction with the Gunnison Valley Regional Housing Authority conducted a lottery for the sale of 8 single-family lots located in Block 79 and 80. Each new owner is responsible for finding construction financing, preparing plans and construction budgets, and construction of their home.

In September of 2016, half of the lottery winners closed on their lot purchase with the Town. Three of the other lottery winners are set to close on their lots on May 5, 2017. The sale of Town-owned property requires an ordinance of the Town Council. One original lot winner backed out of their lot and this lot went to a subsequent applicant/lottery winner. The 2 year building process restarted and Carson West will close with the Town in May 2018.

Once the Council adopts each ordinance to sell these lots, these property owners can begin the BOZAR approval process. The following three lot owners are ready to close on their lots in May:

Lot 1, Block 79 Michael and Angela Horn \$65,000  
 Lot 7, Block 79 Andrew Allen \$55,000  
 Lot 9, Block 79 Kevin and Susan Emery \$25,000

**Recommendation:**

A Council person make a motion followed by a second to set Ordinance 8, Series 2017 to a public hearing on April 17, 2017.

A Council person make a motion followed by a second to set Ordinance 9, Series 2017 to a public hearing on April 17, 2017.

A Council person make a motion followed by a second to set Ordinance 10, Series 2017 to a public hearing on April 17, 2017.

**ORDINANCE NO. 8**

**SERIES 2017**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 1, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO MICHAEL AND LORI HORN FOR THE SALE PRICE OF \$65,000.00**

**WHEREAS**, the Town of Crested Butte, Colorado (the “**Town**”) is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

**WHEREAS**, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

**WHEREAS**, the Town Council has directed the Town staff to sell the above-described property to Michael and Lori Horn for \$65,000.00; and

**WHEREAS**, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,**

**Section 1. Authorization to Sell Town-owned Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$65,000.00 plus customary closing costs and fees, the real property legally described as Lot 1, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Michael and Lori Horn, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

**Section 2. Appropriation of Funds.** The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

**Section 3. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 4. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

**INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.**

**TOWN OF CRESTED BUTTE, COLORADO**

**By: \_\_\_\_\_  
Glenn Michel, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Lynelle Stanford, Town Clerk**

**[SEAL]**

**ORDINANCE NO. 9**

**SERIES 2017**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 7, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO ANDREW ALLEN FOR THE SALE PRICE OF \$55,000.00**

**WHEREAS**, the Town of Crested Butte, Colorado (the “**Town**”) is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

**WHEREAS**, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

**WHEREAS**, the Town Council has directed the Town staff to sell the above-described property to Andrew Allen for \$55,000.00; and

**WHEREAS**, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,**

**Section 1. Authorization to Sell Town-owned Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$55,000.00 plus customary closing costs and fees, the real property legally described as Lot 7, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Andrew Allen, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

**Section 2. Appropriation of Funds.** The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

**Section 3. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 4. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

**INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_,2017.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.**

**TOWN OF CRESTED BUTTE, COLORADO**

**By: \_\_\_\_\_  
Glenn Michel, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Lynelle Stanford, Town Clerk**

**[SEAL]**

**ORDINANCE NO. 10**

**SERIES 2017**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE SALE OF TOWN-OWNED PROPERTY LEGALLY DESCRIBED AS LOT 9, BLOCK 79, PARADISE PARK SUBDIVISION, TOWN OF CRESTED BUTTE, COUNTY OF GUNNISON, STATE OF COLORADO TO KEVIN AND SUSAN EMERY FOR THE SALE PRICE OF \$25,000.00**

**WHEREAS**, the Town of Crested Butte, Colorado (the “**Town**”) is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

**WHEREAS**, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

**WHEREAS**, the Town Council has directed the Town staff to sell the above-described property to Kevin and Susan Emery for \$25,000.00; and

**WHEREAS**, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the above-described property be sold as set forth hereinbelow.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,**

**Section 1. Authorization to Sell Town-owned Property.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the sale and transfer by the Town, for the sum of \$25,000.00 plus customary closing costs and fees, the real property legally described as Lot 9, Block 79, Paradise Park Subdivision, Town of Crested Butte, County of Gunnison, State of Colorado to Susan and Kevin Emery, for the construction of and use for affordable housing, and authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate said sale following approval thereof by the Town Attorney.

**Section 2. Appropriation of Funds.** The Town Council hereby appropriates all customary closing costs and fees for the sale and transfer of the above-described real property out of the Town’s affordable housing fund, and authorizes the expenditure of said sum for such purpose.

**Section 3. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 4. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

**INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_,2017.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.**

**TOWN OF CRESTED BUTTE, COLORADO**

**By: \_\_\_\_\_  
Glenn Michel, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Lynelle Stanford, Town Clerk**

**[SEAL]**



## Memorandum

**To:** Town Council  
**From:** Lynelle Stanford, Town Clerk  
**Thru:** Dara MacDonald, Town Manager  
**Subject:** Sidewalk Seating  
**Date:** March 24, 2017

According to the rule set, businesses are permitted to incorporate sidewalk seating starting the Friday prior to Memorial Day, which is Friday, May 26 this year, and runs through October 15. This memo is in response to a request from a business owner to allow sidewalk seating earlier in the season.

The process for sidewalk seating includes an application and supporting documents, which are submitted by the applicant and prepared by Staff for Council approval. Any business owner who desires to include alcohol service within the sidewalk seating area is also required to go through a modification of premises process with State Liquor Enforcement (LE). The process with LE does not begin until the Council has approved the addition of sidewalk seating to the licensed premises. The businesses owners who apply for sidewalk seating will be on the agenda for the Council's approval on May 15, allowing time to complete the modification of premises process with LE prior to May 26. The timeline of the entire process has been planned with consideration of allowing the business owners to respond, the Council meeting, and the process with LE.

Crews from both Public Works and Parks and Recreation work after the snow melts to beautify Elk Avenue for the summer. The following items must be completed to prepare Elk Avenue for summer use prior to the setup of sidewalk seating and after plowing is done for the season:

1. Repairs to bricks, sidewalks, and other items damaged by snow removal like fences and building corners
2. Power washing of sidewalks
3. Street Sweeping
4. Melting of snow around pavilions to access benches, bike racks, and garbage cans
5. Placement of benches, bike racks, and garbage cans
6. Striping, curbing, and crosswalk painting
7. Marking of sidewalk seating boundaries on the sidewalk

Staff does not recommend allowing sidewalk seating to start earlier because of the process; but moreover, after the winter season and before summer season, there is a small window for crews to

prepare Elk Avenue. Sidewalk seating would be an impediment, making it difficult for crews to complete the work necessary in the short seasonal timeline.

**May 1, 2017****Work Session**

Summer Projects

**Consent Agenda**

Big Mine Architectural Services

Approval of Transit Center Bid

**New Business**

First reading of ordinance regarding department configurations

Resolution approving an agreement with STR Helper for monitoring vacation rentals

**May 15, 2017****Work Session**

Vinotok

**New Business**

Continued first reading:

Ordinance No. 6, Series 2017 - An Ordinance of the Crested Butte Town Council Amending the Definition of Vacation Rental in Section 16-1-20 of the Crested Butte Municipal Code; Amending Section 16-14-90 of the Code to Include New Regulations for Vacation Rentals; and Making Such Other Conforming Changes to Code in Connection Therewith.

**June 5, 2017****New Business**

Update from Zach Vaughter from Coal Creek Watershed Coalition (CCWC) on the Gunsight Reclamation Project

**Future Work Session Items:**

- Camping @ Town Ranch (allow? Not allow? Allow camping in other places?)
- BLM and OBJ Campground/Seasonal Housing Shortage (this could be combined with others – especially the Affordable Housing item at the bottom of this list)
- Perimeter Trail – Update, timelines, costs, what does this look like when finished
- Land Trust and Town Preservation Priorities – basically a joint planning/discussion with the CBLT (maybe in Exec Session if they would like) to confer on the priority parcels identified by the CBLT and the priorities of the Town (for planning future open space acquisitions). Maybe even a discussion about purchasing trail easements.
- Elk Avenue Rule Set re: Private Clubs – the whole “private clubs on Elk Avenue” concern that was raised when Irwin obtained a private liquor license for the Scarp Ridge Lodge.
- Affordable Housing/Density/Workforce – Blk 79/80
- Drones
- Special Events
- Speeding