BOARD OF TRUSTEES
July 13, 2021
6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Regular Meeting Agenda

Individuals that attend the meeting in person and have not been fully vaccinated will be required to wear a face covering while in attendance.

Individuals wishing to make public comments must attend the meeting in person or may submit comments by sending an email to euckerkk@wellingtoncolorado.gov. The email must be received by 4:00 p.m. Tuesday July 13, 2021. The comments will be provided to the Trustees and added as an addendum to the packet. Emailed comments will not be read during the meeting.

The Zoom details below are for online viewing and listening only.

https://us06web.zoom.us/j/83434011716?pwd=WmlQZ0RWSTgzV2FNRXdyQm93TkNFdz09
Passcode: 720487
Webinar ID: 834 3401 1716
Or One tap mobile :
US: +17207072699,,83434011716# or +12532158782,,83434011716#
Or Telephone:
US: +1 720 707 2699 or +1 253 215 8782 or +1 346 248 7799

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Amendments to Agenda
4. Conflict of Interest

B. COMMUNITY PARTICIPATION

1. Public Comment

2. Proclamation
   a. Park and Recreation Proclamation

C. CONSENT AGENDA

1. Minutes of the June 22, 2021 Board of Trustees Meeting

D. ACTION ITEMS

1. Wellington Senior Resource Center Contract Renewal

    - Presentation: Jenny Jones, Executive Assistant

2. Resolution No 18-2021 - A Resolution Approving Participation in the metroDPA Program

    - Presentation: Scott Riffle, Managing Director at Stifel Public Finance

3. Revitalizing Main Street Grant Presentation

    - Presentation: Kallie Cooper, Executive Director of Wellington Main Streets Program

4. Authorize the Execution of Two Construction Contracts for the 2021 Old Town Streets Repair Project.

    - Presentation: Nathan Ewert, Engineer

5. Authorize the Execution of the 2021 Stormwater Masterplan Contract

    - Presentation: Nathan Ewert, Engineer

6. Resolution No. 19-2021 - A Resolution Approving the Fourth Amended Intergovernmental Agreement for the Establishment of the Larimer Emergency Telephone Authority (LETA 911)

    - Presentation: Dan Sapienza, Town Attorney

7. Ordinance No. 07-2021 - An Ordinance Establishing a Hearing Process to Address Alleged Campaign Finance Complaints and Violations

    - Presentation: Krystal Eucker, Town Clerk

8. Consideration of Invoice not Included in 2021 Budget

    - Presentation: Patti Garcia, Town Administrator

9. Resolution No. 20-2021 - A Resolution Adopting the 2021 Larimer County Multi-Jurisdictional Hazard Mitigation Plan Update

    - Presentation: Bob Gowing, Public Works Director

E. REPORTS

1. Town Attorney

2. Town Administrator

3. Staff Communications

   a. Larimer County Sheriff's Office Monthly Report - May 2021

   b. List of Bills - June 2020

4. Board Reports

F. EXECUTIVE SESSION

1. For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators pursuant to Section 24-6-402(4)(e), C.R.S. – regarding negotiations with North Poudre Irrigation Company

G. ADJOURN

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

TOWN OF WELLINGTON

PROCLAMATION

Park and Recreation Month
July 2021

WHEREAS parks and recreation programs are an integral part of communities throughout this country, including Wellington, Colorado; and

WHEREAS our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and

WHEREAS parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and

WHEREAS parks and recreation areas are fundamental to the environmental well-being of our community; and

WHEREAS our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors.

WHEREAS the U.S. House of Representatives has designated July as Parks and Recreation Month.

NOW, THEREFORE, BE IT RESOLVED BY the Wellington Board of Trustees that July is recognized as Park and Recreation Month in the Town of Wellington, Colorado.

Dated this 13th day of July 2021

_____
Troy Hamman, Mayor

Board of Trustees Meeting

Date: **July 13, 2021**
Submitted By:
Subject: **Minutes of the June 22, 2021 Board of Trustees Meeting**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. 06.22.21 BOT Draft Minutes

BOARD OF TRUSTEES
June 22, 2021
6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

MINUTES

A. CALL TO ORDER

Mayor Pro Tem Knutson called the meeting to order at 6:30 p.m.

1. Pledge of Allegiance

   Mayor Pro Tem Knutson asked that all rise for the pledge of allegiance.

2. Roll Call

   Mayor Troy Hamman - ABSENT
   Mayor Pro Tem Wyatt Knutson
   Trustee Jon Gaiter
   Trustee John Jerome – ABSENT
   Trustee Rebekka Kinney
   Trustee Ashley Macdonald
   Trustee Tim Whitehouse

   Also Present:
   Patti Garcia, Town Administrator
   Kelly Houghteling, Deputy Town Administrator
   Dan Sapienza, March & Olive, LLC, Town Attorney
   Cody Bird, Director of Planning
   Bob Gowing, Director of Planning
   Dave Myer, Engineer
   Hallie Sheldon, Management Analyst
   Krystal Eucker, Town Clerk

3. Amendments to Agenda

   Mayor Pro Tem Knutson asked if there was any amendment to the agenda this evening.

   Trustee Gaiter moved to remove item G.1, Executive Session from the agenda; Trustee Whitehouse seconded the motion. Roll call on the vote resulted as follows:

   Yeas – Gaiter, Kinney, Whitehouse, Knutson
   Nays – Macdonald
   Motion carried.

   Trustee Kinney moved to move the Liquor License Authority before the Community Participation portion of the agenda; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

   Yeas – Gaiter, Kinney, Macdonald, Whitehouse, Knutson
   Nays – None
   Motion carried.

Mayor Pro Tem Knutson closed the regular meeting and opened the Liquor License Authority at 6:33 p.m.

E. OTHER BOARDS

Roll Call
Mayor Troy Hamman - ABSENT
Mayor Pro Tem Wyatt Knutson
Trustee Jon Gaiter
Trustee John Jerome - ABSENT
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

1. American Legion Wellington Post 176 - Special Event Permit Application

Ms. Eucker informed the Board that the American Legion has submitted a Special Event Permit Application to serve liquor on July 4, 2021 during the Wellington Car Show. The American Legion has submitted all documentation for the permit along with permission for use of the premise.

Alcohol sales will take place on July 4, 2021 from 12:00 - 5:00 p.m. Alcohol has been donated to the event with only beer and hard seltzers being served. All servers of alcohol will be TIPS certified and will be a member of the America Legion or Veterans of Foreign War. Chips and pretzels will be available within the licensed premise. Security for the licensed premise will include deputies from the Larimer County Sheriff's Office. Wristbands will be placed on individuals over 21 years old and tickets for drinks will be sold with a maximum of 5 tickets per person.

The notice of the application was posted and there have been no protest of the application.

Roy Cook with the American Legion addressed the Board and informed them that there will be two Larimer County Sheriff's Officers that will be monitoring the beer garden as well as two private security members. Also available will be a first aid booth, free water, 20' x 60' shade tent, and Uber vouchers for individuals that need a ride home.

Mayor Pro Tem Knutson opened the meeting for public comment to which there was none.

Trustee Macdonald moved to move to approve the American Legion Special Event Liquor Permit Application; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Kinney, Macdonald, Whitehouse, Knutson
Nays – None
Motion carried.

2. Loaf 'N Jug - Renewal Application

Ms. Eucker informed the Board that Mini Mart Inc, d/b/a Loaf 'N Jug has submitted their annual renewal for their Fermented Malt Beverage liquor license. A review of the application found the establishment is in good standing with the Colorado Secretary of State, the establishment is current with sales tax and the Larimer County Sheriff's Office reported no issues directly related to the establishment's liquor license. There were no issues or concerns during the compliance inspection of the premise.

Mayor Pro Tem Knutson opened the meeting for public comment to which there was none.

Trustee Macdonald move to approve the Renewal Application; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Kinney, Macdonald, Whitehouse, Knutson
Nays – None
Motion carried.

Mayor Pro Tem Knutson closed the Liquor License Authority and resumed the regular meeting at 6:38 p.m.

B. COMMUNITY PARTICIPATION

1. Public Comment

Mayor Pro Tem Knutson opened the meeting for public comment to which there was none.

2. Presentation

a. Comprehensive Plan - Second Draft Presentation

Mr. Bird informed the Board that there have been a lot of work behind the scenes to reflect the comments that have been received from members of the public to revise the draft comprehensive plan. Many of the comments received have been incorporated into the second draft that is included in the packet material. The changes to the plan have been tracked in blue text to see where changes have been made. To date, over 2,000 comments have been received from 200 individuals. The second draft of the plan is available on the Town's website and comments are being received on the second draft. Hard copies of the plan are available for review at Town Hall as well as the Library. The Planning Commission is the official authority to adopt the plan and any revisions to it. The Planning Commission is scheduled to have a public hearing on the plan on July 12, 2021, at 6:30 p.m. at the Leeper Center.

Trustee Kinney commented that there has been extensive time and resources spent on the plan and the second draft and thanked staff for their effort.

C. CONSENT AGENDA

1. Minutes of the May 18, 2021 Special Meeting and of the June 8, 2021 Regular Meeting

Trustee Gaiter move to approve the consent calendar; Trustee Whitehouse seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Kinney, Macdonald, Whitehouse, Knutson
Nays – None
Motion carried.

D. ACTION ITEMS

1. Wastewater Treatment Plant Expansion: CMAR Contract Agreement for Phase 1 Preconstruction Services

Mr. Myer informed the Board that before them is phase 1 of the CMAR contract with Moltz Construction. The CMAR project delivery method was chosen in December 2020 and Moltz was selected as the contractor in February 2021. Since Moltz was selected, they have been participating in weekly meetings with staff and the design engineers and providing valuable information.

The contract is based off of Engineers Joint Contract Documents Committee (EJCDC) template and those are based off industry standards that are used throughout constructions projects between owners and contractors. EJCDC will remain consistent with project documents being used by Jacobs.

Contract negotiations began with Moltz and the Town Attorney in March of 2021 and there have been several meetings that have taken place to get to the agreed upon contact before the Board. There are three separate documents within the contract: General Conditions of the Construction Contract, Agreement and Attachment A to General Conditions.

The contract is for phase 1 preconstruction services with Moltz for a not to exceed amount of $127,204.00. The contract will be revisited in phase 2.

Trustee Macdonald inquired about the sludge field being removed and if that was an over engineered addition or will that need to be addressed at a later time.

Mr. Myer stated that would be the drying beds and they only work well in the summer months; it is pretty labor intensive to deal with that process. The Town went with a different type of process, a screw compactor that will ultimately save the Town money and staff time.

Trustee Gaiter inquired if there was a breakdown of the $127,204.00 for preconstruction services.

Mr. Myer stated Moltz will be billing the Town on an hourly basis for the efforts they will be putting in. The contract will be a lump sum although the invoices from Moltz will include all the work they have done to fulfill the contract.

Mayor Pro Tem Knutson opened the meeting for public comment to which there was none.

Trustee Kinney moved execute the Contract for Preconstruction Services with Moltz Construction in the not to exceed amount of $127,204.00; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Kinney, Macdonald, Whitehouse, Knutson
Nays – None
Motion carried.

2. Resolution No. 17-2021 - A Resolution Granting Extension of Approval of Conditional Annexation of Country Lane Acres

Mr. Bird informed the Board that there have been some development changes that the owner of County Lane Acres is needing to evaluate. One of those is that the Federal Emergency Management Agency (FEMA) has recently undertaken an effort to update the floodplain boundaries along and adjacent to Boxelder Creek. Additional time is needed for the owner to evaluate recently proposed changes to the FEMA Risk Map and floodplain boundary changes affecting the development of the property and to incorporate necessary changes into an annexation agreement.

The proposed resolution would extend the conditions of approval of the annexation to December 15, 2021.

Trustee Gaiter inquired if the only item causing this delay was the floodplain change.

Mr. Bird stated the owner is also looking at some other factors as well. Town staff has indicated that we would like to consider some timing of adequate public services including water and wastewater. The owner is agreeable to those services although that language is

not yet included in the agreement.

Truste Whitehouse commented that the floodplain process is not a quick process.

Mr. Bird stated it is not a quick process and one of the challenges is that the proposed floodplain changes are in draft form so the owners cannot make an official request to change a floodplain until it is adopted and official.

Mayor Pro Tem Knutson opened the meeting for public comment to which there was none.

Trustee Whitehouse moved to approve Resolution 17-2021; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Kinney, Macdonald, Whitehouse, Knutson
Nays – None
Motion carried.

F. REPORTS

1. Town Attorney
None.

2. Town Administrator
Ms. Garcia informed the Board that there were some projects that were started in 2020 and rolled into 2021 based on things like supply issues. The Town has some invoices that will need to be paid and several of them are under the $10,000 mark that is identified in the procurement policy. The two projects are for the backup generators and the crosswalk safety project. The $12,000 invoice will be brought before the Board on July 13, 2021 and there will be an overview of the invoices that are under $10,000 and then will be asking for consideration of the $12,000 invoice.

3. Staff Communications
None.

4. Board Reports
Trustee Gaiter commented that there was an election presentation at the work session and after that a question was asked if the Town was limited to only being able to do a mail ballot election. It turns out that the Town has the ability to do a polling place election this year. Trustee Gaiter commented that he feels the Board needs to discuss what they want to do for the 2021 election.

Trustee Kinney asked about what additional expense the Town would incur for doing a polling place and mail ballot.

Trustee Gaiter commented on the Governor passing gun laws to the municipalities and would like to ask the Town Attorney to look into that and would like to give the residents the maximum freedom.

Trustee Macdonald recommended getting an update on any legislative bills that may be affecting local governments and not just the gun laws.

Trustee Gaiter commented that a resident raised a concern for safety when asked to give their address for public comment and asked if they could give their neighborhood instead of giving a physical address.

Mr. Sapienza commented that he did not believe it was a code requirement to give an address and believed it was a general practice of the Board but will look into that and provide information to the Board.

Trustee Whitehouse commented that there are more crosswalk signals on 5th Street and Cleveland;

Thank you.

Trustee Kinney wanted to give the same thank you as this project has been a long time coming. Flashing crosswalks do not make cars stop so be aware of the pedestrians.

H. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:04 p.m.

_____

Krystal Eucker, Town Clerk

Board of Trustees Meeting

Date: **July 13, 2021**
Submitted By: **Jenny Jones, Public Works Executive Assistant**
Subject: **Wellington Senior Resource Center Contract Renewal**

- **Presentation: Jenny Jones, Executive Assistant**

EXECUTIVE SUMMARY

Wellington Senior Resource Center, Inc. (WSRC) has had a long standing relationship with the Town. Part of WSRC charter in connection with Larimer County Office on Aging Funding (LCOA) is to provide transportation to medical appointments for Wellington Seniors. Transportation is provided via the Senior Van which belongs to WSRC, Inc. The Town has historically provided fuel, maintenance, and vehicle insurance and registration for the Senior Van, and has provided the Leeper Center for their use for various activities through this annual contract. The purpose of this agenda item is to renew the annual contract between the WSRC, Inc. and the Town of Wellington.

The Town covers the cost of fuel and maintenance for the program as required by Larimer County Office on Aging. The Senior Van budget is currently housed in the Community Activities (CAC) budget. In 2020, the expense for the program was $3,410. The 2021 budget was estimated at $2,500; expenditures are currently at $5,541 due to the requirement to have a separate insurance policy for the van. The overage will be covered by other line items that are under budget for the CAC and the increase will be addressed in the 2022 budget.

BACKGROUND / DISCUSSION

This contract is the standard contract used for previous renewals with one significant change added to ensure the safety of our Seniors:

2j. Facilitate the volunteer driver selection. The WSRC agrees to not allow any person to operate any Town-insured vehicle(s) who has traffic infractions totaling more than four (4) points within the prior three (3) years. The WSRC shall require an initial driving record review upon volunteer sign up and an annual review thereafter. The WSRC shall promptly notify the Town of any new volunteer drivers. If the Town learns that any volunteer driver has a driving record that would disqualify him or her from volunteering, the Town will promptly notify WSRC.

STAFF RECOMMENDATION

Staff recommends to renew the contract between Wellington Senior Resources, Inc. and the Town of Wellington which includes support costs for fuel, maintenance, and vehicle insurance and registration for the senior vans for a contract year effective from July 13, 2021 through June 30, 2022 with subsequent renewals to be in line with LCOA fiscal/grant year.

ATTACHMENTS

1. WSRC Renewal Contract

Town of Wellington & Wellington Senior Resource Center Agreement

This agreement is made July 13, 2021, by and between the Town of Wellington, Colorado, herein referred to as the "Town", and Wellington Senior Resources, Inc., hereafter referred to as "WSRC", for the purpose of allocating space at the Leeper Community Center to serve as the Wellington Senior Resource Center and to renew the Town's historical commitment to provide maintenance, fuel, and vehicle registration and insurance costs for the WSRC Senior Van(s). This agreement shall be effective from July 13, 2021 through June 30, 2022. This contract aligns with the Larimer County Office on Aging Funding's, hereafter referred to as "LCOA", grant year. LCOA provides funding to support the Wellington Senior Resources, Inc. activities.

1. **Purpose of the Agreement**
   It is the intent of WSRC to assume partial maintenance, as defined in Section 3 of this agreement, of the community room and kitchen at the Leeper Community Center, 3800 Wilson Avenue, Wellington, Colorado, (herein referred to as the "Center") in lieu of rent to the Town.
2. **Services to be Provided by the Town**
   In return for the services outlined in this agreement, the Town agrees to provide, without charge, the following services to WSRC:
   a) Use of the community room, kitchen, and office at the southeast corner of the Center from 8:00AM to 2:30PM on Monday, Wednesday, and Friday each week.
   b) Use of the community room of the Center all day the 2nd Saturday of each June for the Town Garage Sale.
   c) Use of the community room for the 1st Saturday each December from 7:00AM to 2:30PM for the annual WSRC fund-raiser.
   d) Use of the lawn and patio outside the Center for lawn and outdoor activities on the days and times outlined above.
   e) Use of the kitchen and bathroom facilities on the days and times outlined above.
   f) Use of the Shed as needed.
   g) The Town will provide fuel, maintenance, and the required vehicle registration and insurance coverage costs for the Senior Van(s) (see Exhibit A).
   h) The Town will also continue to provide normal janitorial bathroom supplies such as toilet paper, paper towels and soap.
   i) Website assistance for all updates and special event notification.
   j) Facilitate the volunteer driver selection. The WSRC agrees to not allow any person to operate any Town-insured vehicle(s) who has traffic infractions totaling more than four (4) points within the prior three (3) years. The WSRC shall require an initial driving record review upon volunteer sign up and an annual review thereafter. The WSRC shall promptly notify the Town of any new volunteer drivers. If the Town learns that any volunteer driver has a driving record that would disqualify him or her from volunteering, the Town will promptly notify WSRC.

3. **Services to be Provided by WSRC**

Assist the Town to advertise and promote the use and availability of the Center through:

a) Newspaper articles and advertisements
b) Posters at strategic locations
c) Newsletters
d) Larimer County Office on Aging Services
e) Word of mouth to residents throughout the Town and surrounding community.

4. **Maintenance Provided by WSRC**

Cleaning and organization of:

a) Oven
b) Refrigerator and freezer
c) Chairs and tables
d) Floor “spot” cleaning
e) Vacuum if needed
f) Trash receptacles
g) Contents of kitchen cabinets
h) Bathrooms in community room, including tissues and towels, soap, and spot clean/mopping as needed
i) Dusting and wiping down kitchen, community room and WSRC office
j) Light snow removal (broomable dusting)
k) Outdoor perimeter clean-up of small trash.

5. **Maintenance provided by Town**

a) Painting and repair of interior and exterior
b) Lawn care and maintenance
c) Snow removal (other than item 4.j above)
d) Major floor maintenance including floor stripping and waxing
e) Light bulb and fixture replacement
f) Weekly cleaning as needed (other than items mentioned in 4. a-k)
g) Standard vehicle maintenance on the Senior Van(s), fuel for operations, and vehicle registration and insurance costs as required by the Larimer County Office on Aging Funding.

6. **Provisions**

a) This agreement shall be effective from ***July 13, 2021 through June 30, 2022.***
b) This agreement does not automatically renew and must be renewed annually under the following provision:

i. Prior to, but no later than the expiration date of this agreement, the designated representative or spokesperson for WSRC shall come before the Wellington Board of Trustees with an accounting of the WSRC activities for the previous year and their relation to the continued use of the facilities of the Center. The purpose of this provision is to ensure, in the least, an annual accounting of the status of the Center, and an opportunity for the WSRC to request any additional assistance from the Board or propose changes to this agreement.

c) Subsequent renewals shall take place no later than June 30th.
d) Expiration or renewal of this agreement is solely the responsibility of WSRC.
e) It shall be the sole responsibility of the Town to purchase supplies as needed to fulfill the maintenance obligations contained in this agreement.
f) The WSRC agrees to provide the Town with a schedule of cleaning hours and days as to prevent scheduling conflicts for the use of the Center.
g) The WSRC shall contact the Town Hall and request scheduling of the Center if the Center is needed for additional use other than the times stated in this agreement. The Town will work to accommodate additional requests beyond the normal M, W, F schedule within reason, and at no additional cost to WSRC.
h) The Town reserves the right to schedule the Center for use at any other time which do not conflict with the times and days of use as stated in this agreement, and shall be responsible for the inspection and use of the facility and equipment, and for the collection of rent, damage deposits, and admission of renters for using any or all of the center and its equipment.
i) All equipment within the WSRC office that is the property of WSRC will not be used or removed without the permission of the designated WSRC spokesperson.

SIGNATORS:

Wellington Senior Resources, Inc.

_____

Director

Town of Wellington

_____

Troy Hamman, Mayor

ATTEST: _____

Krystal Eucker, Town Clerk

Exhibit A

Town of Wellington
Compilation of Estimated Support
Wellington Senior Resource Center
June 30, 2021 – June 30, 2022

	Annual	Monthly
Fuel & Maintenance – Senior Van	**$5,500.00**	**$458.33**
Value of Leeper Center use	**$19,500.00**	**$1625.00**
Approximately 15 hrs a week		
(52 weeks $25.00 hour)		
Actual Insurance Premium – Progressive		
2010 Starcraft AllStar Van	**$1054.00**	**$87.83**
2021 Starcraft AllStar Van	**$2613.00**	**$217.75**
	$28,667.00	**$2,388.91**

Board of Trustees Meeting

Date: **July 13, 2021**
Submitted By: **Krystal Eucker, Town Clerk**
Subject: **Resolution No 18-2021 - A Resolution Approving Participation in the metroDPA Program**

- **Presentation: Scott Riffle, Managing Director at Stifel Public Finance**

EXECUTIVE SUMMARY

Scott Riffle, Managing Director with Stifel Public Finance will be reviewing a homeownership and down payment assistance program that is available in the Front Range. The metroDPA program is a self-funded program for borrowers that meet guidelines and credit qualifications. The metroDPA program will place no cost or administrative burden on the Town although an approval is needed to offer the program to Wellington's residents.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Resolution No. 18-2021 metroDPA Participation
2. Agreement - metroDPA
3. metroDPA Program Presentation

TOWN OF WELLINGTON

RESOLUTION NO. 18-2021

AUTHORIZING AND APPROVING WELLINGTON'S PARTICIPATION IN THE METRO MORTGAGE ASSISTANCE PLUS PROGRAM, AND AUTHORIZING THE EXECUTION OF THE DELEGATION AND PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the State of Colorado (the "State") Constitution Article XIV, Section 18(2)(a) provides that nothing in the Constitution shall prohibit any of the State's political subdivisions from cooperating with one another to provide any service lawfully authorized to each of the cooperating units; and

WHEREAS, the City and County of Denver, Colorado ("Denver") is authorized pursuant to its Home Rule Charter to promote the financing of mortgage loans for low- and moderate- income persons or families intended for use as the sole place of residence by the owners or intended occupants thereof; and

WHEREAS, Denver sponsors the Metro Mortgage Assistance Plus Program to provide competitive mortgage loans which will be coupled with down payment and closing cost assistance in connection with financing mortgage loans for low- and moderate- income persons or families intended for use as the sole place of residence by the owners or intended occupants thereof (the "Program"); and

WHEREAS, Denver has invited the Town of Wellington (the "Town") to participate in the Program; and

WHEREAS, the Town has the full legal authority to participate in the Program pursuant to the general powers granted to it in Title 29, Article 1, Section 203 of the Colorado Revised Statutes, as amended; and Title 31, Article 15, Section 101 *et seq.*, Colorado Revised Statutes, as amended (collectively, the "Act"); and

WHEREAS, the Town desires to delegate to Denver the authority of the Town to take action and exercise power under the Act on behalf of the Town with respect to the Program within the Town's boundaries;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON:

Section 1. In order to benefit the residents of the Town, the Board of Trustees authorizes and approves its participation in the Program in connection with the financing of mortgage loans for low–and moderate–income families or persons intended for use as the sole place of residence by the owners or intended occupants thereof, and the Town delegates to Denver the authority of the Town to take action and exercise power under the Act on behalf of the Town with respect to the Program.

Section 2. The Mayor of the Town is hereby authorized and directed to execute and deliver and the Board of Trustees is hereby authorized and directed to attest and deliver the Delegation and Participation Agreement attached hereto as Appendix A and such other agreements and certificates and to take such other actions as may be necessary or convenient to carry out and give effect to the Town's participation in the Program.

Section 3. Nothing contained in this Resolution or the Assignment shall constitute a debt, indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation of the Town within the meaning of the Constitution or statutes of the State of Colorado or the home rule charter of any political subdivision thereof, nor give rise to a pecuniary liability of the Town or a charge against its general credit or taxing powers.

Section 4. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect upon its passage and approval.

Passed and adopted by the Board of Trustees of the Town of Wellington, Colorado this 13th day of July, 2021.

Town of Wellington

_____

Troy Hamman, Mayor

ATTEST:

_____

Krystal Eucker, Town Clerk

DELEGATION AND PARTICIPATION AGREEMENT

This DELEGATION AND PARTICIPATION AGREEMENT, dated as of July 13, 2021 (this "Delegation and Participation Agreement"), is by and between the TOWN OF WELLINGTON, a town and political subdivision duly organized and existing under the laws and Constitution of the State of Colorado ("Wellington") and the CITY AND COUNTY OF DENVER, COLORADO, a legally and regularly created, established, organized and existing home rule charter town and political subdivision under the Constitution and statutes of the State of Colorado ("Denver");

R E C I T A L S:

WHEREAS, the State of Colorado (the "State") Constitution Article XIV, Section 18(2)(a) provides that nothing in the Constitution shall prohibit any of the State's political subdivisions from cooperating with one another to provide any service lawfully authorized to each of the cooperating units; and

WHEREAS, Denver is authorized pursuant to its Home Rule Charter to promote the financing of mortgage loans for persons or families that earn 150% or less of the area median income for Denver and to purchase homes intended for use as the sole place of residence by the owners or intended occupants thereof and to promote the health, welfare, safety, convenience and prosperity of the people of Denver; and

WHEREAS, Denver sponsors the Metro Mortgage Assistance Plus Program to provide competitive mortgage loans which will be coupled with down payment and closing cost assistance in connection with financing mortgage loans for persons or families that earn 150% or less of the area median income for Denver to purchase homes intended for use as the sole place of residence by the owners or intended occupants thereof (the "Program"); and

WHEREAS, Denver has invited Wellington to participate in the Program; and

WHEREAS, Wellington has the full legal authority to participate in the Program pursuant to the general powers granted to it in Title 29, Article 1, Section 203 of the Colorado Revised Statutes, as amended; Title 31, Article 15, Colorado Revised Statutes, as amended; and the Resolution adopted by Wellington Board of Trustees authorizing Wellington's participation in the Program pursuant to this Delegation and Participation Agreement (collectively the "Act"); and

WHEREAS, Wellington desires to delegate to Denver the authority of Wellington to take action and exercise power under the Act on behalf of Wellington with respect to the Program within Wellington's boundaries;

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, Wellington and Denver hereby agree as follows:

Section 1. Wellington hereby delegates to Denver the authority of Wellington to take action and exercise power under the Act on behalf of Wellington with respect to the Program within Wellington's boundaries.

Section 2. Denver hereby accepts the delegation of authority from Wellington pursuant to Section 1 hereof and agrees to abide by each of the terms and conditions of this Delegation and Participation Agreement in connection with the use of such delegation. Denver agrees to make the Program available to Wellington for the origination of home mortgages within Wellington's unincorporated boundaries.

Section 3. In the event that the Program is discontinued by Denver, this Delegation and Participation Agreement, and all duties, obligations and rights of Denver and Wellington hereunder, shall terminate. If the Program is terminated, Wellington agrees to hold Denver harmless for any costs or any other liabilities incurred by Wellington with respect to the adoption and approval of this Delegation and Participation Agreement or any other Wellington actions related thereto.

Section 4. Wellington's participation in the Program pursuant to this Delegation and Participation Agreement shall not be construed as creating or constituting a general obligation or multiple fiscal year direct or indirect indebtedness or other financial obligation whatsoever of Wellington nor a mandatory payment obligation of Wellington in any fiscal year during which this Delegation and Participation Agreement shall be in effect.

[Signatures on the following pages]

IN WITNESS WHEREOF, Wellington and Denver have caused this Delegation and Participation Agreement to be executed and be effective as of July 13, 2021.

Town of Wellington

_____
Troy Hamman, Mayor

Attest:

_____
Krystal Eucker, Town Clerk

CITY AND COUNTY OF DENVER,
COLORADO

By _____
Executive Director and Chief Housing Officer
Department of Housing Stability

[Signature Page to Delegation and Participation Agreement]

Homeownership & Down Payment Assistance Program

metroDPA
down payment assistance

Department of Housing Stability

An Introduction

Metro Mortgage Assistance Plus Program (rebranded as metroDPA) is a homeownership program **available in the Front Range.**

- What does metroDPA do?

✓ It provides a 30-year fixed rate mortgage loan (government or conventional)
✓ And assistance (up to 6% of the loan amount) for a down payment or closing costs

- metroDPA is for **qualified** homebuyers who

✓ Meet credit score requirements (min 620)
✓ Are within income limits ($150,000)
✓ And are purchasing a home in an approved area

metroDPA
down payment assistance

Current metroDPA Jurisdictions

Cities and Towns (within City limits)						Counties
Arvada	Centennial	Englewood	Golden	Lone Tree	Strasburg	Adams County
Aurora	Commerce City	Erie	Greeley	Longmont	Superior	Arapahoe County
Bennett	Conifer	Evans	Highlands Ranch	Loveland	Thornton	Boulder County
Berthoud	Dacono	Evergreen	Johnstown	Mead	Timnath	Broomfield County
Boulder	Deer Trail	Federal Heights	Keenesburg	Northglenn	Watkins	Denver County
Brighton	Denver	Firestone	Lakewood	Parker	Westminster	Douglas County
Broomfield	Edgewater	Fort Collins	Littleton	Platteville	Wheat Ridge	Jefferson County
Castle Rock	Elizabeth	Frederick	Lochbuie	Sheridan	Windsor	Larimer County

Counties are for the unincorporated areas outside of City limits.

Approved Areas

Intergovernmental Agreements with Denver and Front Range communities including the Metro Mayor's Caucus, allow the program to grow.

metroDPA is **continually self-supported** as a result of the funds raised in the national capital markets.

metroDPA creates a road to homeownership **without the use of taxpayer funds.**

There is **no cost and no administrative burden** for your community to participate. All that is needed is **approval** to offer this opportunity to your residents.

Requested Action

Approve and execute the Delegation and Participation Agreement for the Metro Mortgage Assistance Plus Program (aka metroDPA)

- Supports realtors, lenders and builders in your community
- Provides needed options for homebuyers
- Helps address Housing Affordability for your residents

Borrowers using metroDPA are people who have jobs, can pay their bills and qualify for the loan, they simply need help with the down payment.
An average borrower has as income of $78,300 (<80% of Denver Area Median Income)

Program Information

In existence since 2013, growing in popularity with real estate professionals due to low rates and beneficial assistance terms.

- 30 year fixed rate first mortgage (FHA/VA/Conventional) and
- 3-year forgivable second loan (0% interest, no monthly payments)
  Beneficial to borrowers, helps build equity
  Multiple assistance options

- Borrowers **must meet guidelines** and **credit qualifications**
- Not restricted to first-time homebuyers
- Provides lower Mortgage Insurance options
- Homebuyer education required
- More than 1,500 households helped

metroDPA Partnerships

metroDPA is brought to you by the City and County of Denver as Sponsor and its many partnerships including:

- Program Manager: Stifel
- Servicers: US Bank and Lakeview
- Agencies: FHA, VA, Freddie Mac and Fannie Mae

- Program Administrator: eHousing
- Bond Counsel: Kutak Rock, LLP
- City Housing Financial Advisor: CaineMitter

- **Local Lenders: 100+ approved**
- **Participating Municipalities: 50+ approved**

Board of Trustees Meeting

Date: **July 13, 2021**
Submitted By: **Patti Garcia, Town Administrator**
Subject: **Revitalizing Main Street Grant Presentation**

- **Presentation: Kallie Cooper, Executive Director of Wellington Main Streets Program**

EXECUTIVE SUMMARY

The Colorado Department of Transportation (CDOT) Revitalizing Main Street Opportunity 2 Grant Program has awarded Wellington $149,999. The grant funds are specifically geared for Downtown Improvement and Pedestrian Safety.

BACKGROUND / DISCUSSION

Grant funds will be used to address pedestrian safety, accessibility and the health of visitors and residents downtown Wellington. There is a 20% match requirement for the grant; the match will be met with a combination of Main Street mini-grant dollars, fundraising dollars and in-kind services provided by the Town of Wellington. The Town will be simply a pass-through related to funding; invoices will be paid by the Town of Wellington and then reimbursed by CDOT.

The scope of work for the project includes engineering and design, coordination with CDOT and Xcel Energy, removal of existing lighting fixtures and downtown furniture, sidewalk repair and base preparation for the installation of new fixtures and furniture. The location of the work will take place on Cleveland from 1st to 3rd Street.

The project is to be completed February 2022. Staff will be requesting approval of the use of $149,999 in reimbursable funds. The grant has a very short timeline of eight months from start to finish (June, 2021 to February 2022). Staff will be requesting to administratively approve invoices for the project within the $149,999 reimbursement as the Town is required to be the pass-through for the grant funds.

STAFF RECOMMENDATION

Staff recommends approval of the $149,999 in reimbursable grant funds for the CDOT Revitalizing Main Street Opportunity 2 Grant project and additionally recommends that staff have the authority to administratively approve invoices up to $149,999 for this project.

ATTACHMENTS

1. Attachment 1 - Power Point Presentation
2. Attachment 2 - Schedule - Revitalizing Mainstreet Grant
3. Attachment 3 - Plan Set-Mainstreet_DecorativeLandscape_Layout

CDOT Revitalizing Main Street

Opportunity 2 Grant Presentation and Finance Request

TOWN OF WELLINGTON

Grant Overview

- The Town of Wellington has been awarded $149,999 through the CDOT Revitalizing Main Street Opportunity 2 Grant Program.
- These grant funds are part of a $30 million allocation from the State of Colorado and will be directed towards the **Downtown Improvement and Pedestrian Safety Initiative Project.**
- The Wellington Main Street Program and the Town of Wellington will partner in purchasing and installing a series of equipment to address pedestrian safety, accessibility, and the health of visitors and residents in downtown Wellington.
- This is a reimbursement grant with a 20% match requirement. The matching fund requirement will be met with a combination of Main Street mini-grant dollars, fundraising dollars, and in-kind services provided by the Town of Wellington.

Project Scope

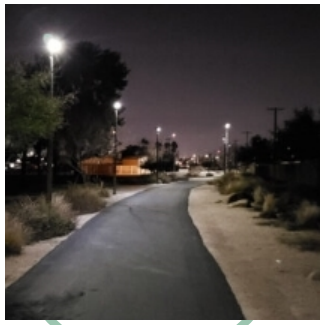


TOWN OF WELLINGTON

Scope of Work

- Engineering and Design
- Coordination with CDOT and Xcel Energy
- Removal of existing lighting fixtures and downtown furniture
- Sidewalk repair and base preparation for the installation of new fixtures and furniture
- Purchase and installation of new fixtures, which may include the following:
    - Solar-powered pedestrian lighting along Cleveland Ave and in and around Centennial Park
    - New trash/recycling containers
    - ADA accessible benches and picnic tables
    - Dog waste stations
    - Water-bottle filling stations
    - Replacement tree grates
    - Multi-unit bike racks

Project Design Elements



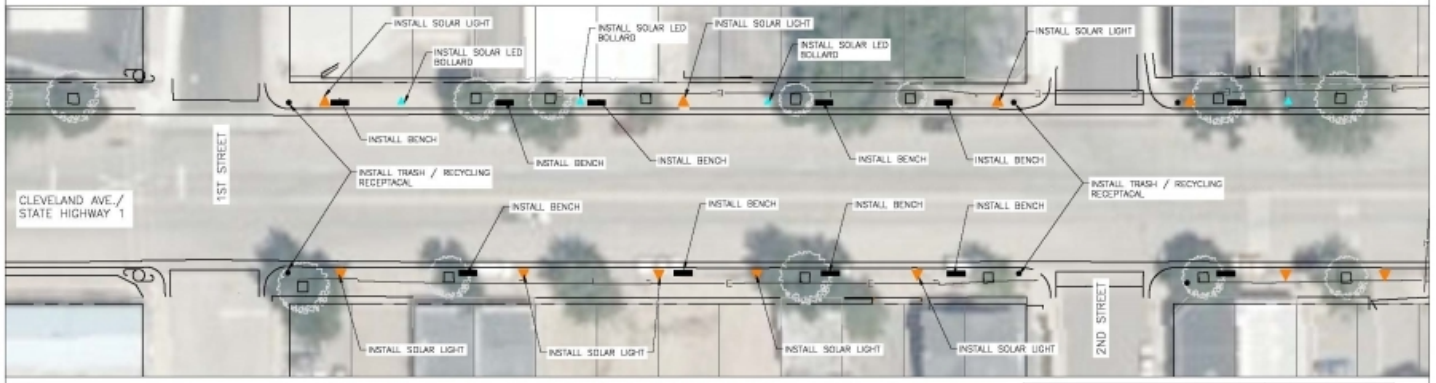










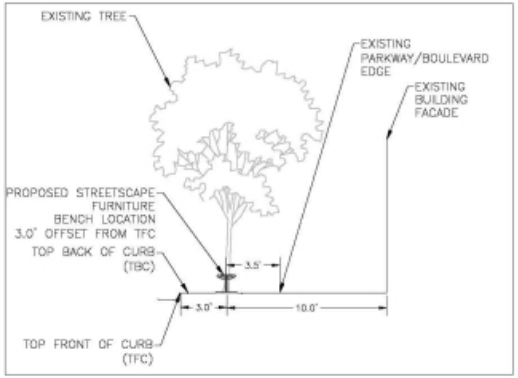


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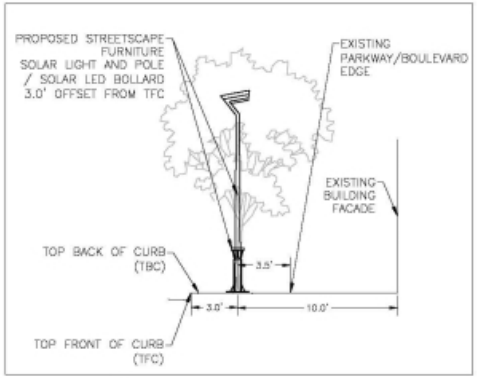
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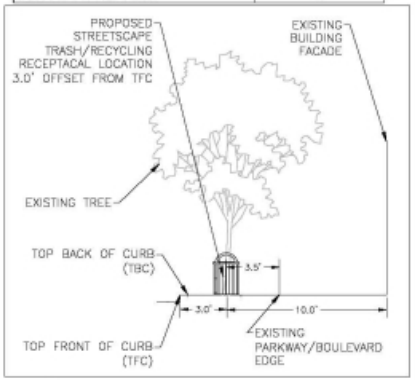
ITEMS	QUANTITIES 1st - 2nd
TRASH / RECYCLING	4
SOLAR LIGHT	8
BENCH	9
SOLAR LED BOLLARD	3



2 BENCH INSTALL DETAIL
N.T.S.



3 SOLAR LIGHT INSTALL DETAIL
N.T.S.



4 TRASH/RECYCLING INSTALL DETAIL
N.T.S.

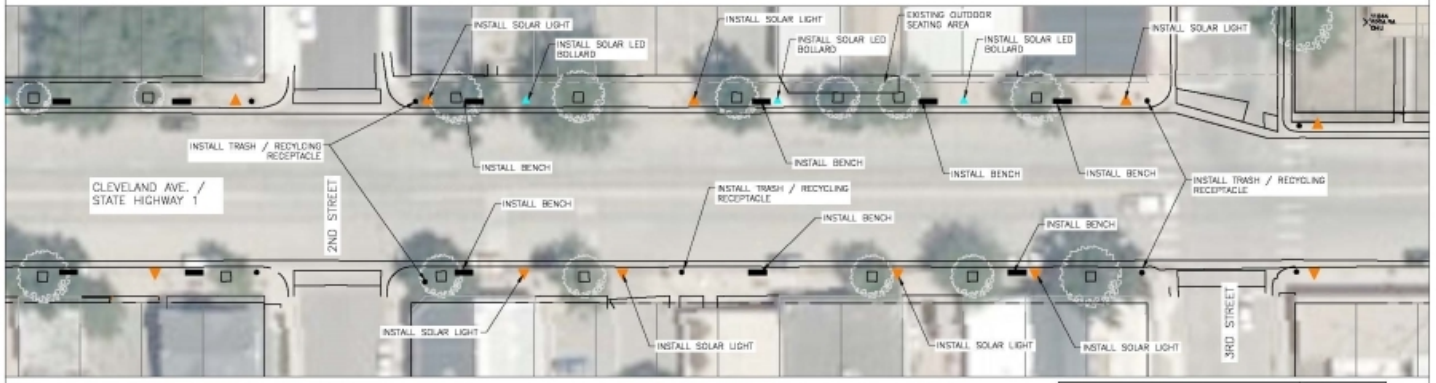
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FILE: MAIN STREET_DESIGN REVIEW_LANDSCAPE_LAYOUT

TOWN OF WELLINGTON

CLEVELAND AVENUE
PROPOSED STREETSCAPE
INSTALLATION PLAN

CLEVELAND AVENUE STREETSCAPE
TOWN OF WELLINGTON
WELLINGTON, COLORADO

SHEET 1 OF 4
REV A

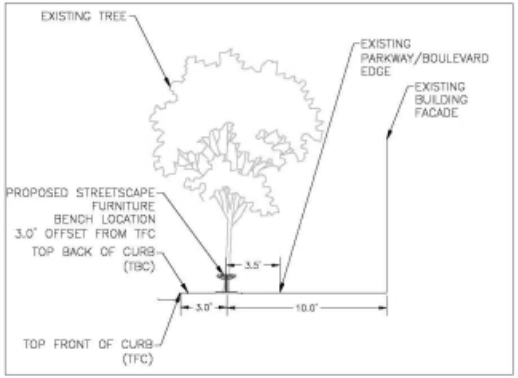


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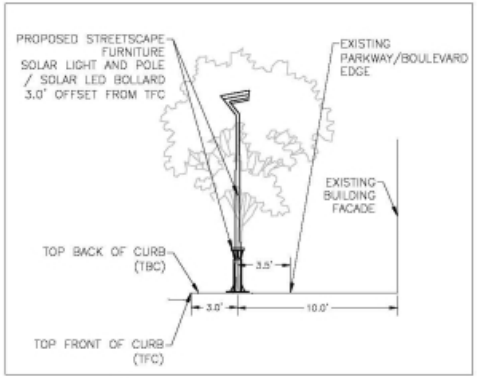
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SCALE 1" : 40'

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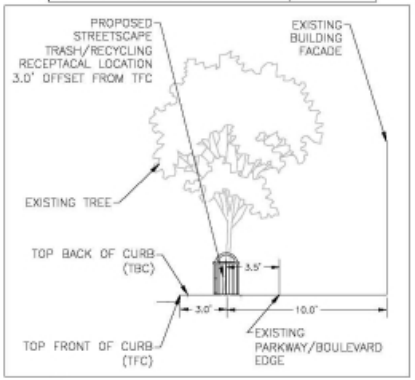
ITEMS	QUANTITIES 2nd - 3rd
TRASH / RECYCLING	5
SOLAR LIGHTS	7
BENCH	7
SOLAR LED BOLLARD	3



2 BENCH INSTALL DETAIL
N.T.S.



3 SOLAR LIGHT INSTALL DETAIL
N.T.S.



4 TRASH/RECYCLING INSTALL DETAIL
N.T.S.

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REVISIONS

CLEVELAND AVENUE
PROPOSED STREETSCAPE
INSTALLATION PLAN

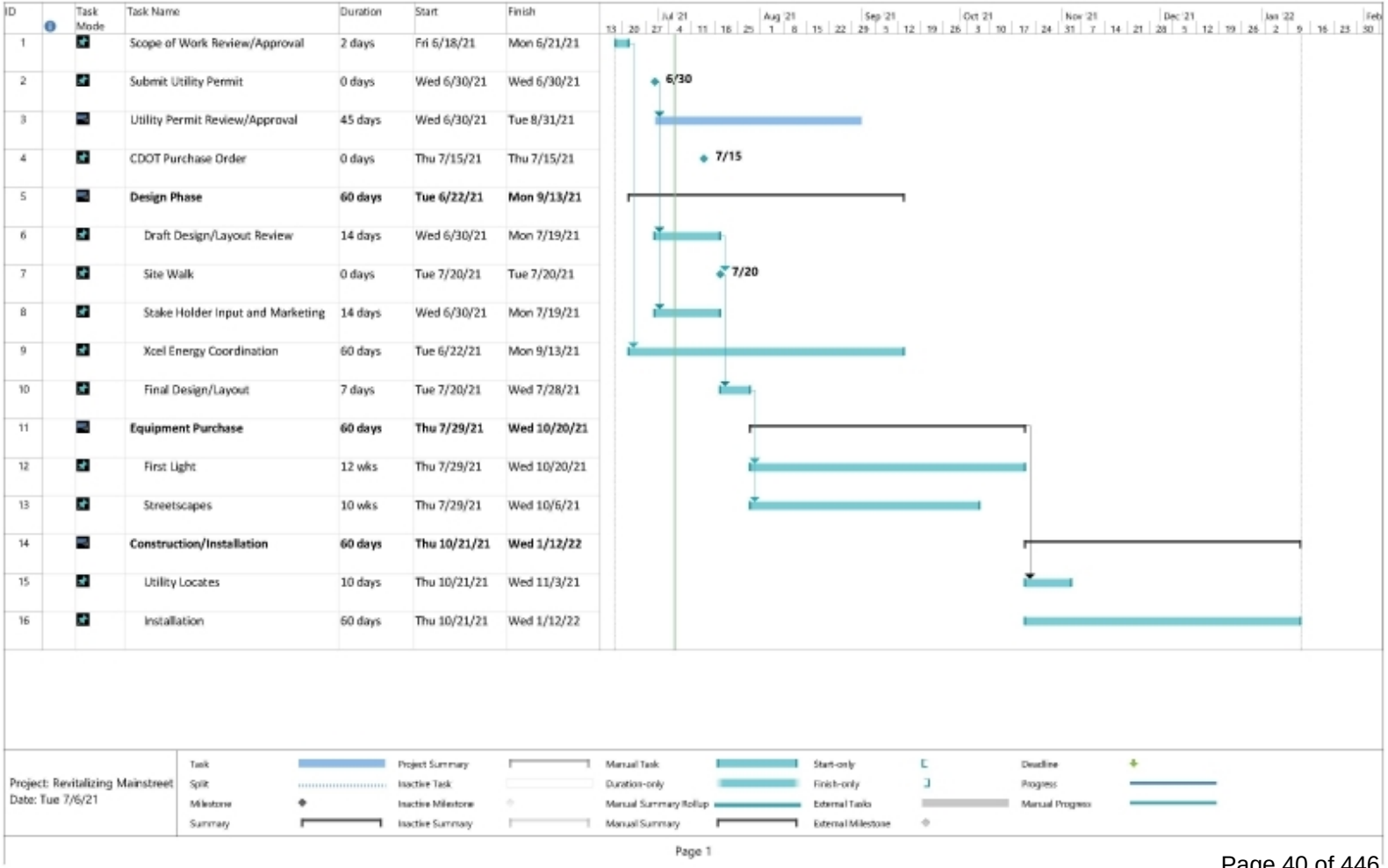
CLEVELAND AVENUE STREETSCAPE
TOWN OF WELLINGTON
WELLINGTON, COLORADO

SHEET 2 2 OF 4
REV A

Project Timeline

Milestones	Estimated Date
Approve Scope of Work	June 18 – 21
Utility Permit Submission	June 21 - 25
Utility Permit Approval	July 30
Purchase Order Received	July 15
Design Phase	June 21 – July 30
Stakeholder Input and Marketing	June 30 – July 30
Equipment Bid	June 30 – Aug 1
Procurement of Equipment	August 1 – 15
Construction	December 2021 – February 2022
Project Completion	February 2022

TOWN OF WELLINGTON


ID
Task Mode
Task Name
Duration
Start
Finish
Jul '21
Aug '21
Sep '21
Oct '21
Nov '21
Dec '21
Jan '22
1 Scope of Work Review/Approval 2 days Fri 6/18/21 Mon 6/21/21
2 Submit Utility Permit 0 days Wed 6/30/21 Wed 6/30/21
3 Utility Permit Review/Approval 45 days Wed 6/30/21 Tue 8/31/21
4 CDOT Purchase Order 0 days Thu 7/15/21 Thu 7/15/21
5 Design Phase 60 days Tue 6/22/21 Mon 9/13/21
6 Draft Design/Layout Review 14 days Wed 6/30/21 Mon 7/19/21
7 Site Walk 0 days Tue 7/20/21 Tue 7/20/21
8 Stake Holder Input and Marketing 14 days Wed 6/30/21 Mon 7/19/21
9 Xcel Energy Coordination 60 days Tue 6/22/21 Mon 9/13/21
10 Final Design/Layout 7 days Tue 7/20/21 Wed 7/28/21
11 Equipment Purchase 60 days Thu 7/29/21 Wed 10/20/21
12 First Light 12 wks Thu 7/29/21 Wed 10/20/21
13 Streetscapes 10 wks Thu 7/29/21 Wed 10/6/21
14 Construction/Installation 60 days Thu 10/21/21 Wed 1/12/22
15 Utility Locates 10 days Thu 10/21/21 Wed 11/3/21
16 Installation 60 days Thu 10/21/21 Wed 1/12/22
6/30
7/15
7/20
Project: Revitalizing Mainstreet
Date: Tue 7/6/21
Task
Split
Milestone
Summary
Project Summary
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
External Tasks
External Milestone
Deadline
Progress
Manual Progress
Page 1

Project Budget

Budget Line Item	Amount
Awarded Grant Funds	$149,999
WCMSP DOLA Mini-grant Matching Funds	$10,000
Town of Wellington In-Kind (Minimum)	$15,000
WCMSP Fundraising Dollars	Up to $7,000
Total Project Budget	**$175,000**

Funding Request

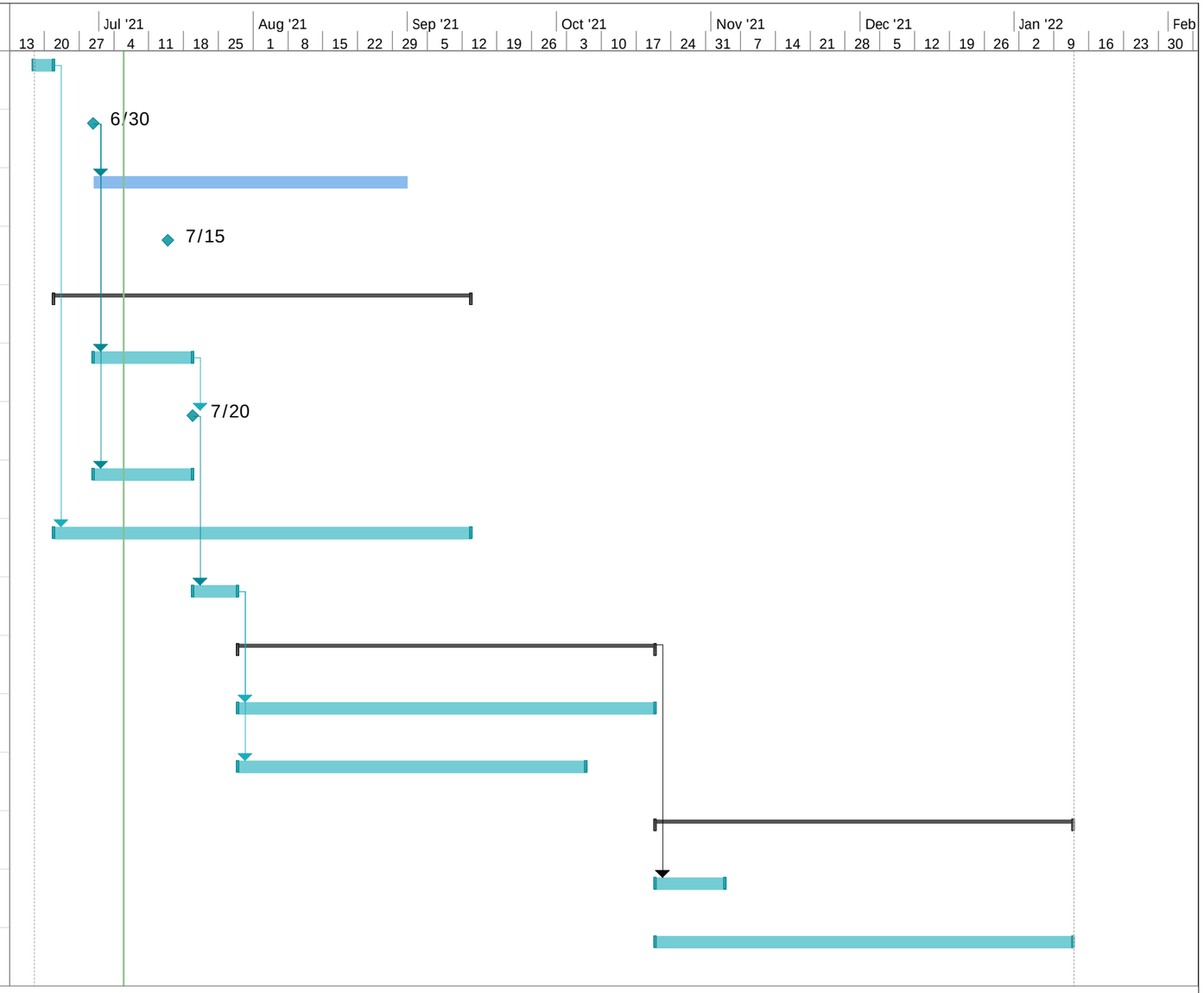
- The Town of Wellington Staff would like to request approval of the $149,999 in reimbursable funds
- Due to the eight-month deadline on this grant funding, the staff would like to request permission to spend these funds at their discretion so long as it meets grant requirements and reporting through the Finance Department

TOWN OF WELLINGTON

THANK YOU!

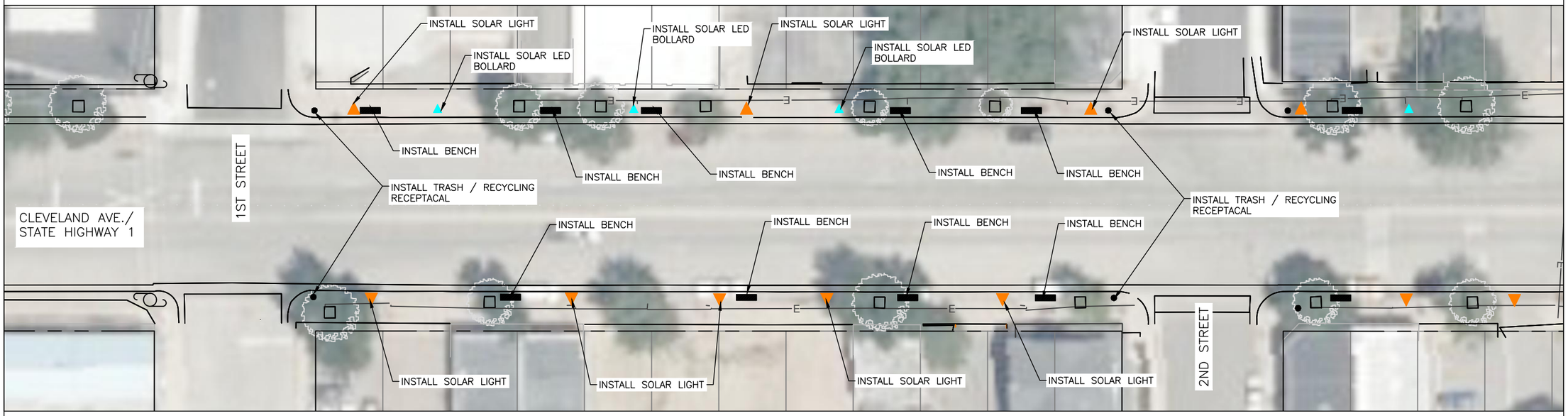
This is an exciting opportunity for our community, and we appreciate your support!

ID	Task Mode	Task Name	Duration	Start	Finish
1		Scope of Work Review/Approval	2 days	Fri 6/18/21	Mon 6/21/21
2		Submit Utility Permit	0 days	Wed 6/30/21	Wed 6/30/21
3		Utility Permit Review/Approval	45 days	Wed 6/30/21	Tue 8/31/21
4		CDOT Purchase Order	0 days	Thu 7/15/21	Thu 7/15/21
5		Design Phase	60 days	Tue 6/22/21	Mon 9/13/21
6		Draft Design/Layout Review	14 days	Wed 6/30/21	Mon 7/19/21
7		Site Walk	0 days	Tue 7/20/21	Tue 7/20/21
8		Stake Holder Input and Marketing	14 days	Wed 6/30/21	Mon 7/19/21
9		Xcel Energy Coordination	60 days	Tue 6/22/21	Mon 9/13/21
10		Final Design/Layout	7 days	Tue 7/20/21	Wed 7/28/21
11		Equipment Purchase	60 days	Thu 7/29/21	Wed 10/20/21
12		First Light	12 wks	Thu 7/29/21	Wed 10/20/21
13		Streetscapes	10 wks	Thu 7/29/21	Wed 10/6/21
14		Construction/Installation	60 days	Thu 10/21/21	Wed 1/12/22
15		Utility Locates	10 days	Thu 10/21/21	Wed 11/3/21
16		Installation	60 days	Thu 10/21/21	Wed 1/12/22



Project: Revitalizing Mainstreet
Date: Tue 7/6/21

Task	Project Summary	Manual Task	Start-only	Deadline	
Split	Inactive Task	Duration-only	Finish-only	Progress	
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress	
Summary	Inactive Summary	Manual Summary	External Milestone		



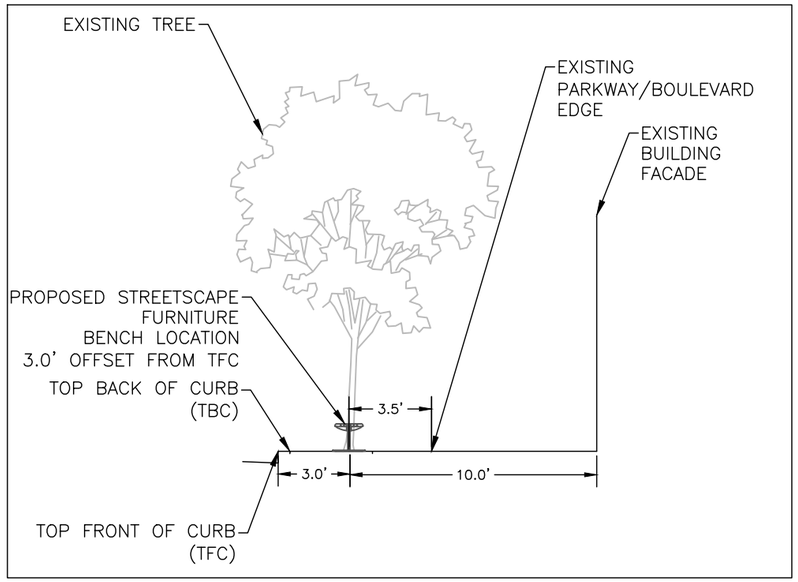
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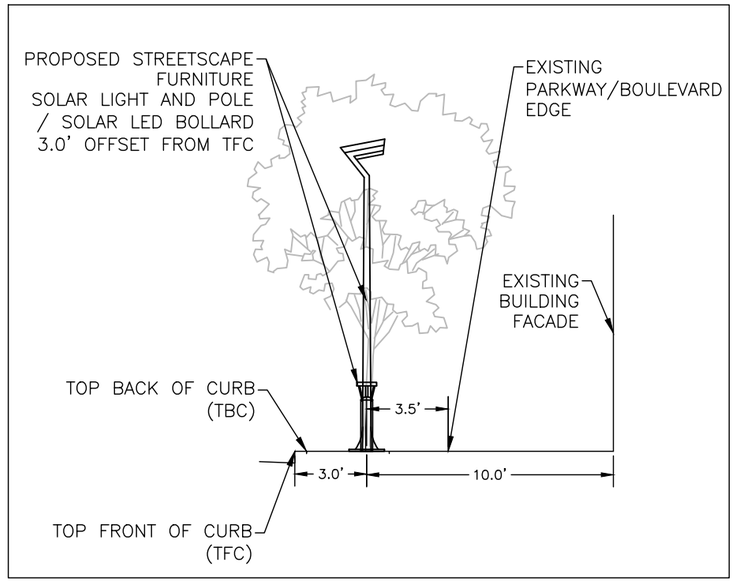
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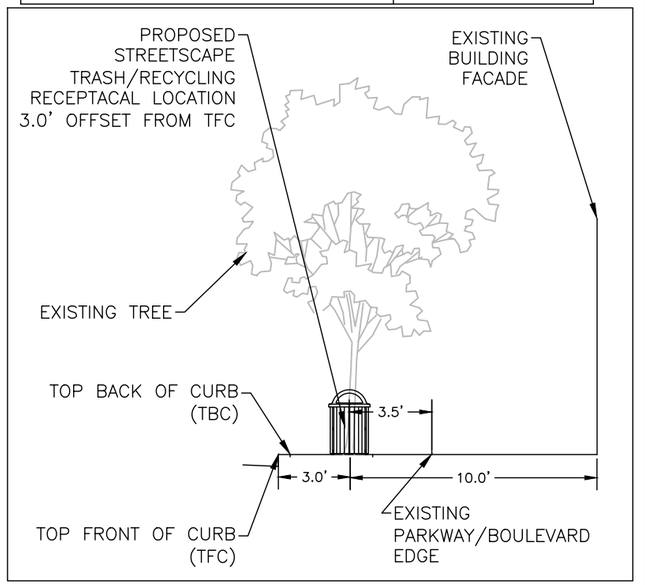
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TRASH / RECYLCING	4
SOLAR LIGHT	8
BENCH	9
SOLAR LED BOLLARD	3



2 BENCH INSTALL DETAIL
N.T.S.



3 SOLAR LIGHT INSTALL DETAIL
N.T.S.



4 TRASH/RECYCLING INSTALL DETAIL
N.T.S.

REV.	DATE	DESCRIPTION	BY	CHK'D
		REVISIONS		
A	05/14/2021	CDOT PERMIT	NE	AE

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DATE: 06/28/2021
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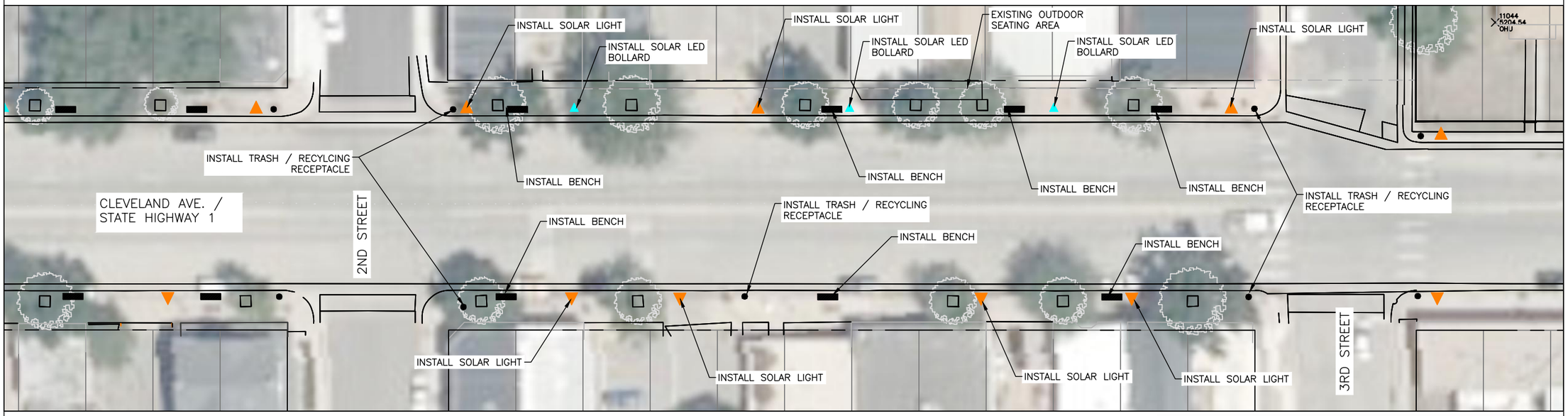
TOWN OF WELLINGTON

CLEVELAND AVENUE PROPOSED STREETSCAPE INSTALLATION PLAN

CLEVELAND AVENUE STREETSCAPE TOWN OF WELLINGTON WELLINGTON, COLORADO

SHEET 1 1 OF 4 REV: A

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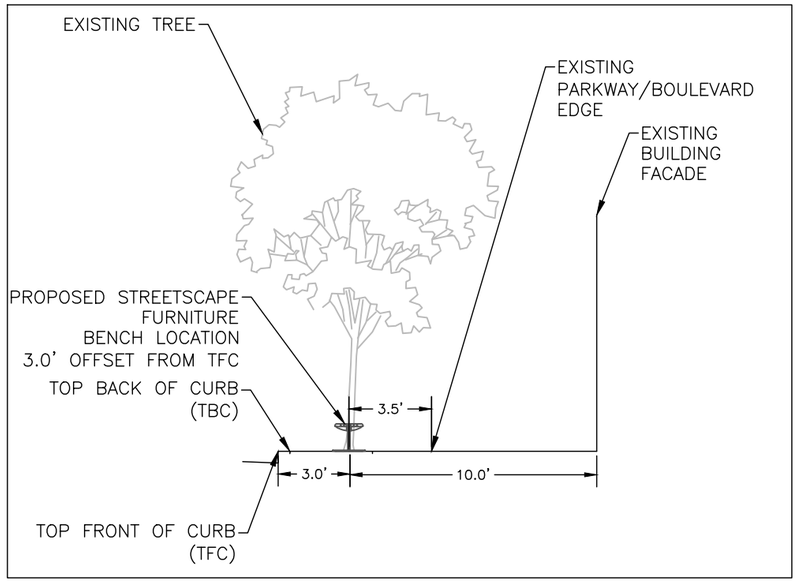
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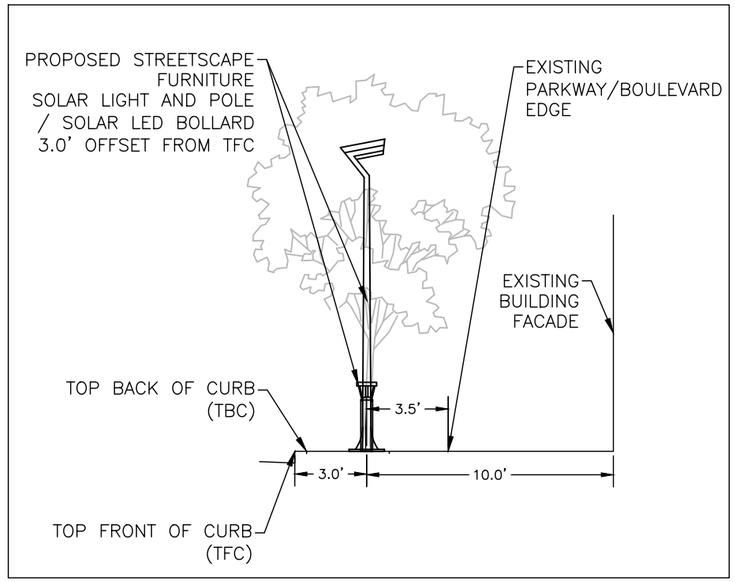
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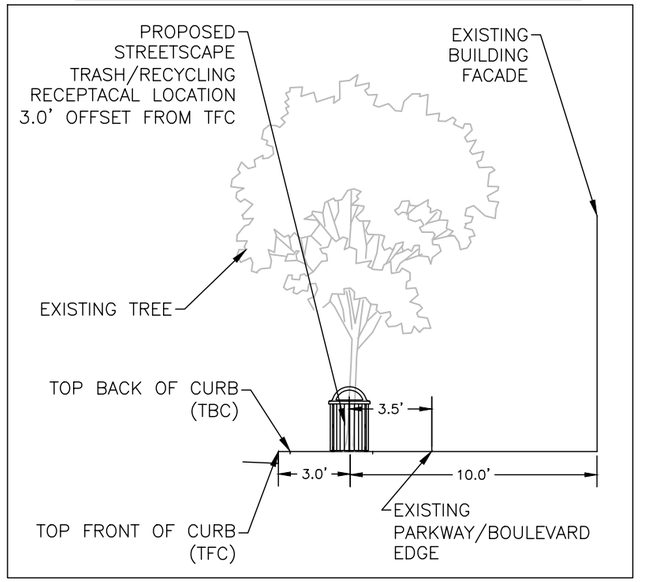
ITEMS	QUANTITIES 2nd - 3rd
TRASH / RECYLCING	5
SOLAR LIGHTS	7
BENCH	7
SOLAR LED BOLLARD	3



2 BENCH INSTALL DETAIL
N.T.S.



3 SOLAR LIGHT INSTALL DETAIL
N.T.S.



4 TRASH/RECYCLING INSTALL DETAIL
N.T.S.

REV.	DATE	DESCRIPTION	BY	CHK'D
A	05/14/2021	CDOT PERMIT	NE	AE

REVISIONS

DRAWN BY: NRE
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DATE: 06/28/2021
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TOWN OF WELLINGTON

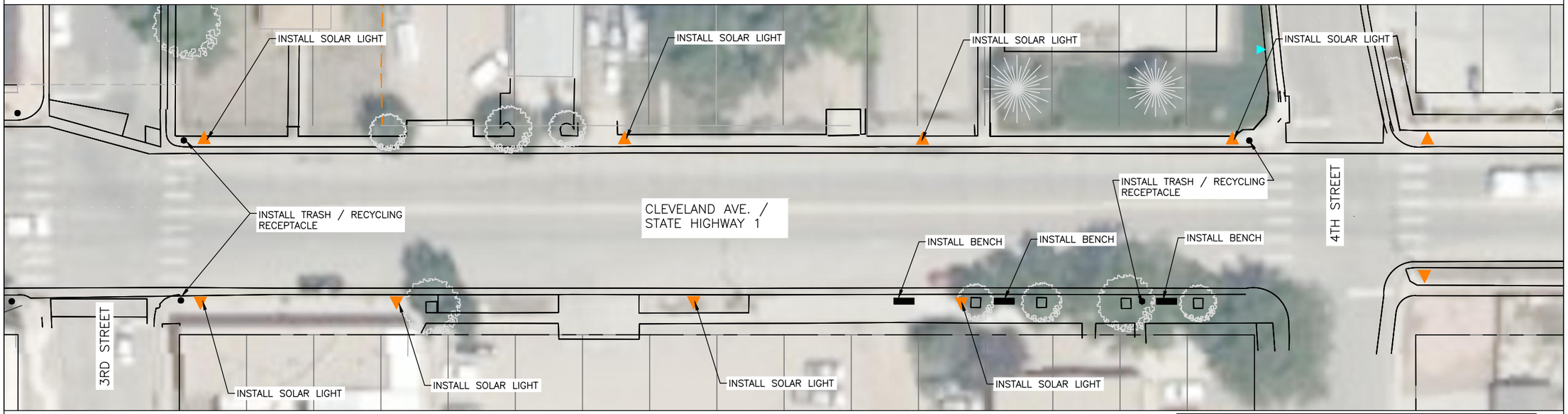
CLEVELAND AVENUE PROPOSED STREETSCAPE INSTALLATION PLAN

CLEVELAND AVENUE STREETSCAPE TOWN OF WELLINGTON WELLINGTON, COLORADO

SHEET 2 OF 4

REV: A

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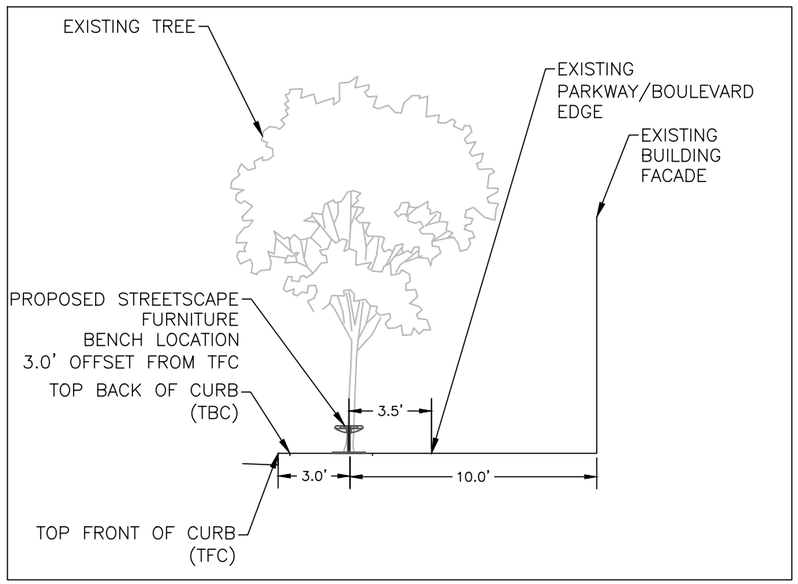
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1 CLEVELAND AVENUE - 3RD TO 4TH STREET
SCALE 1" : 40'

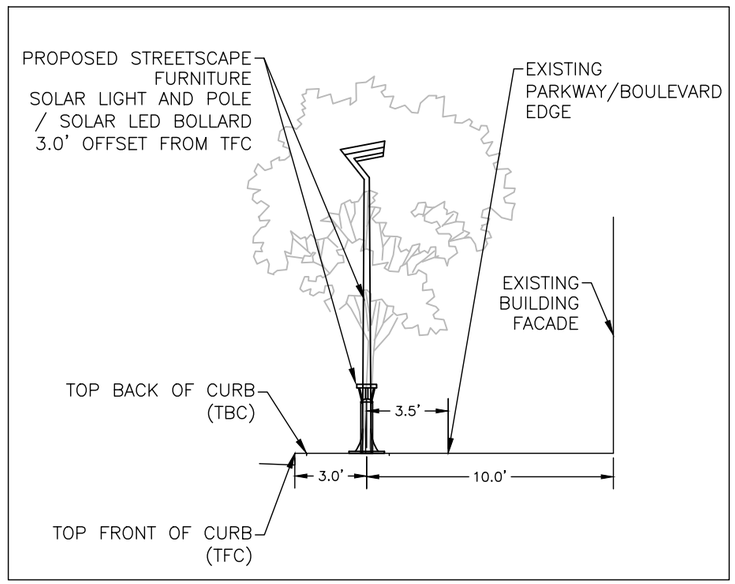
0 40'

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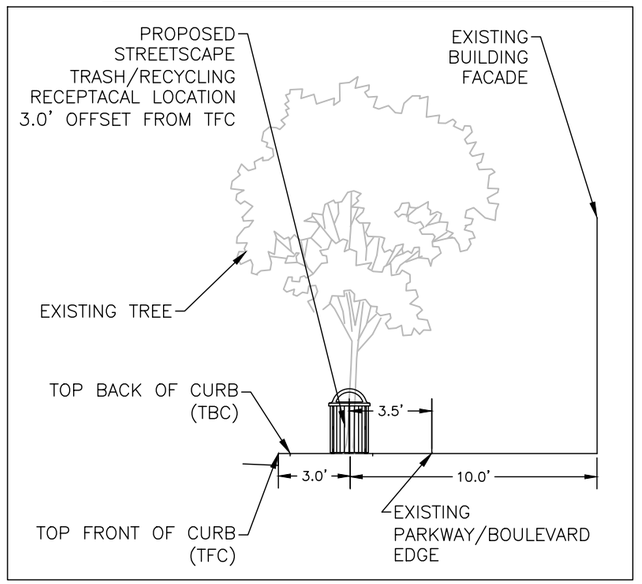
ITEMS	QUANTITIES 3rd - 4th
TRASH / RECYLCING	4
SOLAR LIGHTS	8
BENCH	3
SOLAR LED BOLLARD	0



2 BENCH INSTALL DETAIL
N.T.S.



3 SOLAR LIGHT INSTALL DETAIL
N.T.S.



4 TRASH/RECYCLING INSTALL DETAIL
N.T.S.

REV.	DATE	DESCRIPTION	BY	CHK'D
A	05/14/2021	CDOT PERMIT	NE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 06/28/2021
SCALE: AS SHOWN
FILE: MAINSTREET_DECORATIVELANDSCAPE_LAYOUT

TOWN OF WELLINGTON

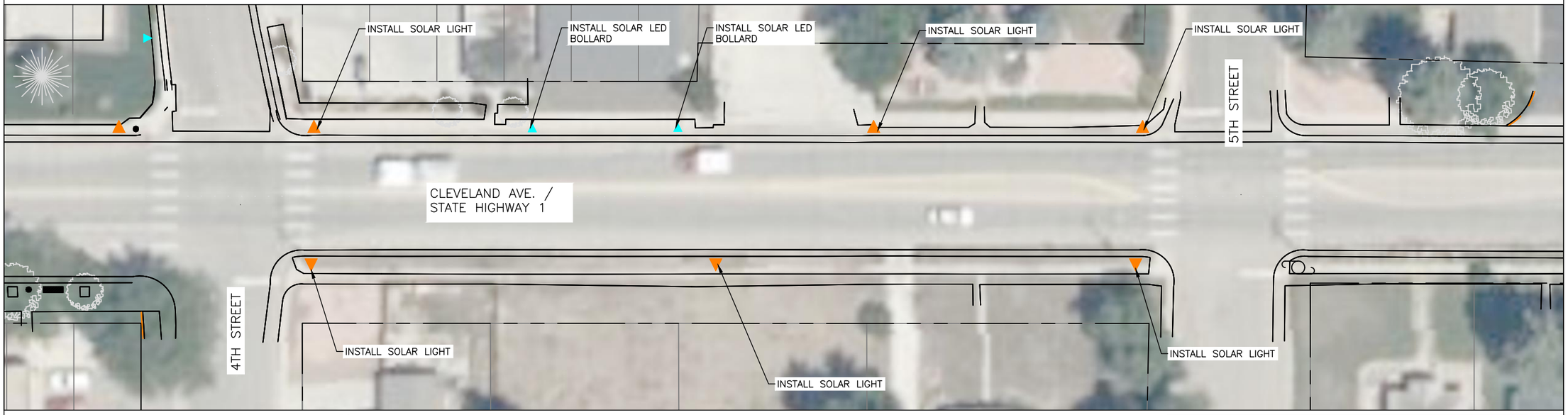
CLEVELAND AVENUE PROPOSED STREETSCAPE INSTALLATION PLAN

CLEVELAND AVENUE STREETSCAPE TOWN OF WELLINGTON WELLINGTON, COLORADO

SHEET 3 3 OF 4

REV.: A

C:\USERS\NATHANEWERT\ONEDRIVE - TOWN OF WELLINGTON\CAD\MAINSTREET\SHEETS\MAINSTREET_DECORATIVELANDSCAPE_LAYOUT



NOTE:
INSTALL LOCATION AS SHOWN ARE PROPOSED. ACTUAL LOCATIONS MAY VARY BASED ON LOCATION OF UTILITIES OR OTHER EXISTING CONFLICTS.

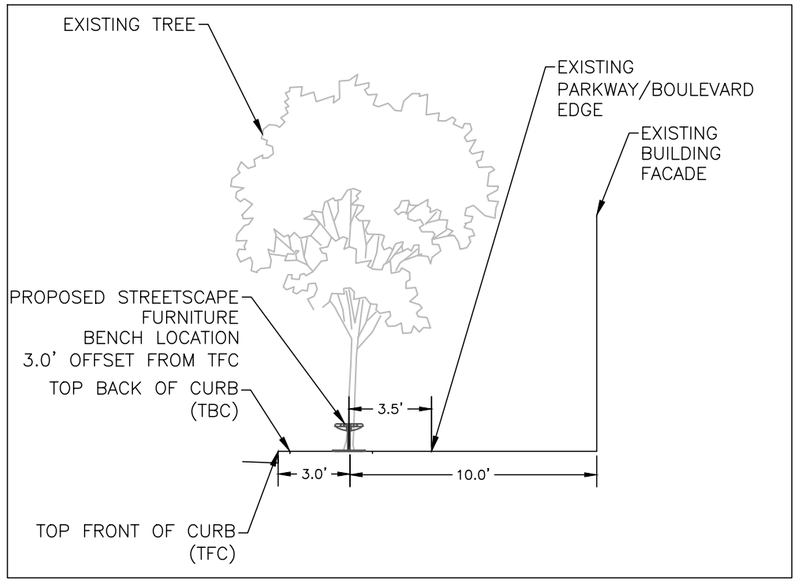
1 CLEVELAND AVENUE - 4TH TO 5TH STREET

SCALE 1" : 40'

0 40'

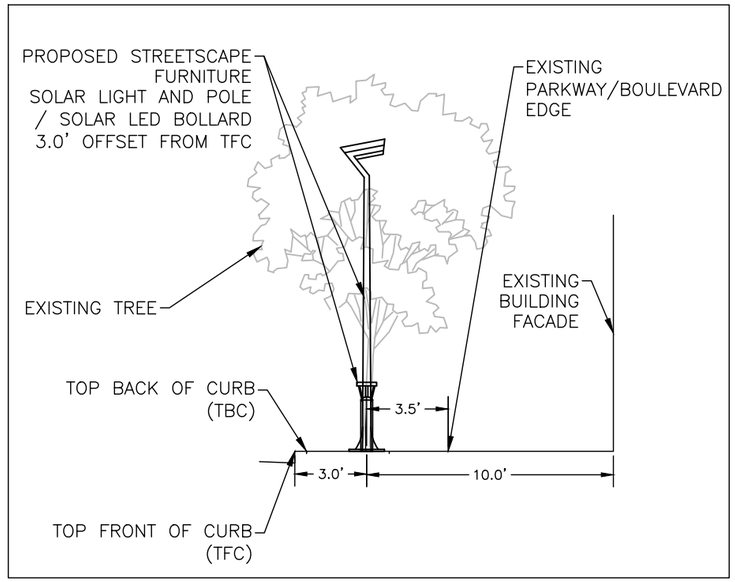
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ITEMS	QUANTITIES 4th - 5th
TRASH / RECYLCING	0
SOLAR LIGHTS	6
BENCH	0
SOLAR LED BOLLARD	2



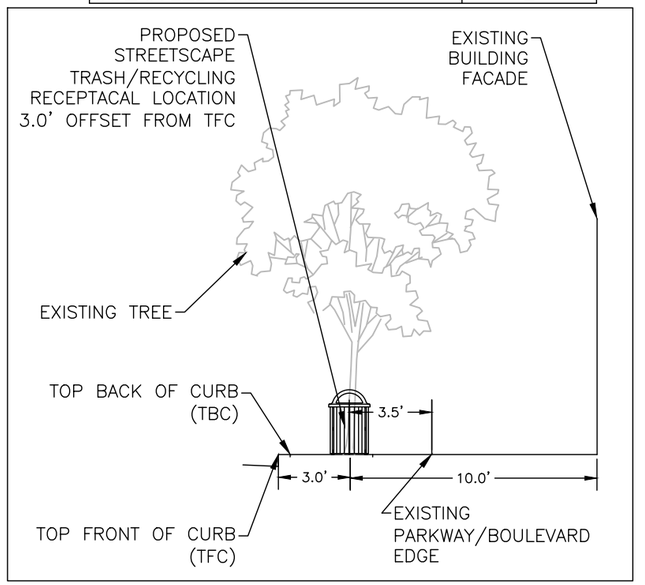
2 BENCH INSTALL DETAIL

N.T.S.



3 SOLAR LIGHT INSTALL DETAIL

N.T.S.



4 TRASH/RECYCLING INSTALL DETAIL

N.T.S.

REV.	DATE	DESCRIPTION	BY	CHK'D
A	05/14/2021	CDOT PERMIT	NE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 06/28/2021
SCALE: AS SHOWN
FILE: MAINSTREET_DECORATIVELANDSCAPE_LAYOUT

TOWN OF WELLINGTON

CLEVELAND AVENUE PROPOSED STREETSCAPE INSTALLATION PLAN

CLEVELAND AVENUE STREETSCAPE TOWN OF WELLINGTON WELLINGTON, COLORADO

SHEET 4 4 OF 4

REV.: A

C:\USERS\NATHANEWERT\ONEDRIVE - TOWN OF WELLINGTON\CAD\MAINSTREET\SHEETS\MAINSTREET_DECORATIVELANDSCAPE_LAYOUT

Board of Trustees Meeting

Date: **July 13, 2021**
Submitted By: **Nathan Ewert**
Subject: **Authorize the Execution of Two Construction Contracts for the 2021 Old Town Streets Repair Project.**

- **Presentation: Nathan Ewert, Engineer**

EXECUTIVE SUMMARY

Town staff solicited bids from qualified contractors and professional firms for the work required to complete the 2021 Old Town Streets Repair Project. The work is proposed to be completed through four separate contracts: asphalt repair, concrete repair, materials testing and tree removal. The concrete repair and asphalt contracts exceed staff signing authority and are presented here for Board approval.

BACKGROUND / DISCUSSION

In April of 2021, with the guidance of the Street Superintendent, three blocks within the Old Town area of Town were identified for mill and overlay repair work, concrete sidewalk replacement, curb and gutter replacement, and ADA ramp upgrades. In areas where trees are located within the existing right-of-way, the trees will be removed as needed and new sidewalk will be installed or the existing sidewalk will be repaired.

An additional three locations were identified as add alternate work if bids came in below budget. In May of 2021 staff solicited bids for the four areas of work to be handled with separate contracts: asphalt repair, concrete repair, materials testing, and tree removal. Generally, the work for each project includes:

Asphalt repair project:
- Traffic control
- Placement of asphalt patching as needed
- Removal of asphalt in designated areas and placement of asphalt patches to repair pavement failures
- Edge and butt milling the existing asphalt surface
- Placement of asphalt leveling courses to smooth road for final paving
- One hydrant replacement
- Placement of the top lift asphalt course
- Project cleanup

Concrete repair project:
- Traffic control
- The removal and replacement of concrete curbs, gutters, sidewalks, cross pans, and pedestrian ADA ramps
- Placement of granular base patching adjacent to new concrete edge
- Project cleanup

Construction materials testing:
- Materials testing for all elements of the Old Town Street Repair project

Tree Removal:
- Traffic control

- Stump grinding
- Removal and haul away of six existing trees

The location for the work is generally identified as follows. These locations are also shown on the attached map:

- 3rd Street (Wilson Ave to Franklin Ave) - Mill and Overlay, sidewalk, ADA ramps, cross pan, curb and gutter repair
- 5th Street (Cleveland Ave to Roosevelt Ave) - Mill and Overlay, sidewalk, ADA ramps, cross pan, curb and gutter repair
- 1st Street (Kennedy Ave to Tyler Ave) - Mill and Overlay, ADA ramps, sidewalk, curb and gutter repair
- Harrison Avenue (4th Street to 5th Street) (Add Alt.) - Mill and Overlay, ADA ramps, sidewalk, curb and gutter repair
- Adams Drive and Kit Fox (Add Alt.) - Cross Pan, asphalt patching
- Wellington Blvd (both entrances to the Commercial buildings on the east side of the street). (Add Alt.) - Cross Pan, asphalt patching

Bids were opened in May and came in under budget allowing for the inclusion of the add alternate work.

Budget Summary:

G/L Number	Name	2021 Budget
211-80-4006	Old Town Street Repairs	$449,440.00
211-80-4038	Old Town Street Rehabilitation	$59,551.00
211-80-4039	Storm Drain & Pan Replacements	$31,800.00
211-80-4021	Distribution Improvements and Oversizing	$15,000.00
	Total	$555,791.00

Bid Summary:

Contract	Bid Price
Asphalt Repair Base Bid (Connell)	$149,820.50
Asphalt Repair Add Alt Bid (Connell)	$36,465.30
Concrete Repair Base Bid (Northstarr)	$153,850.00
Concrete Repair Add Alt. Bid (Northstarr)	$53,215.00
Tree Removal (Tree Top)	$15,375.00
Materials Testing (CTL Thompson)	$7,653.00
Total Bid Costs	$416,378.80

STAFF RECOMMENDATION

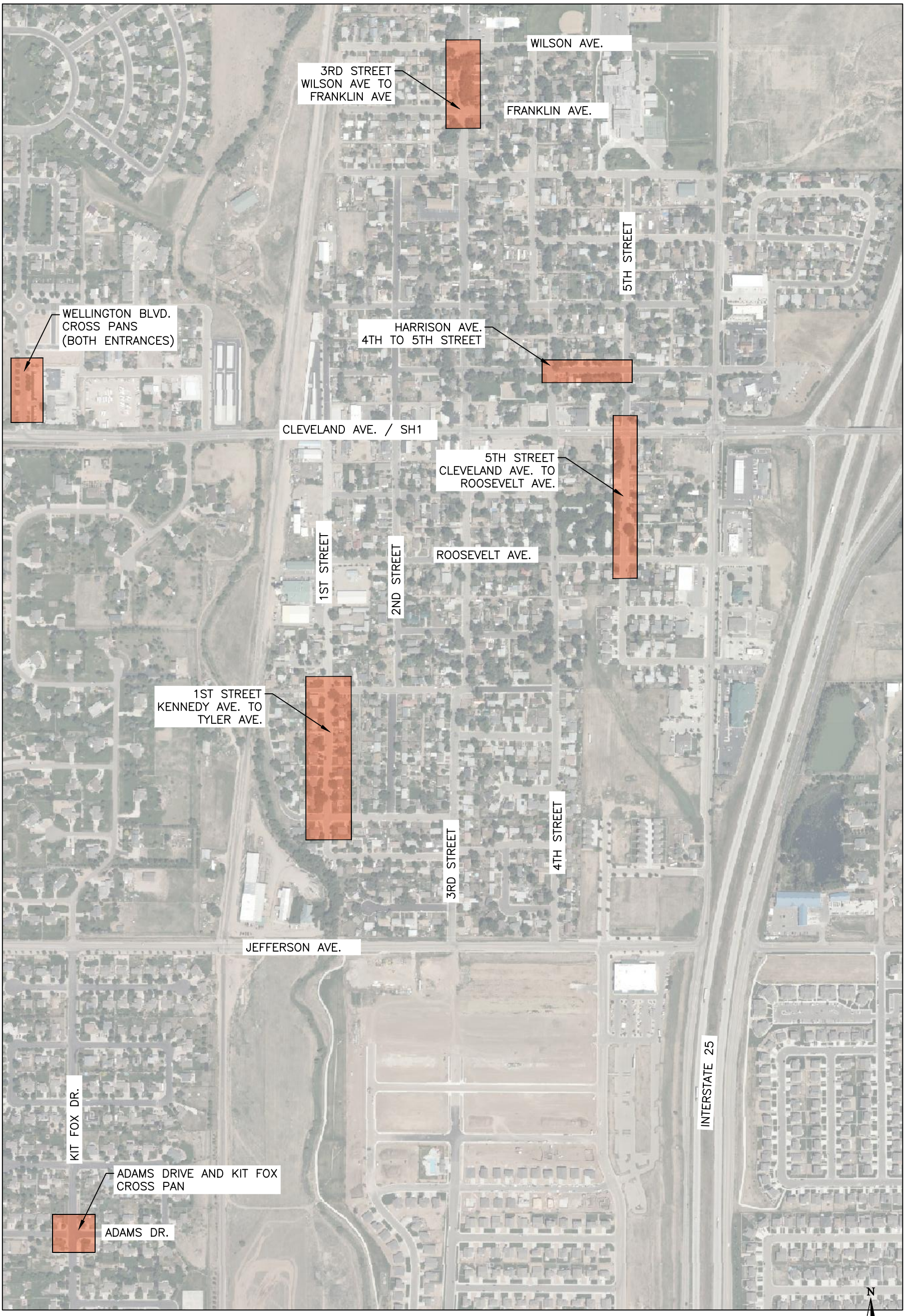
Town staff has reviewed the bids and proposals and contacted various references. Staff recommends that the board authorize execution of contracts with the selected professionals:

- NorthStar Concrete for the 2021 Old Town Streets Concrete repair project in the amount of $207,065.00 (G/L's 211-80-4006, 211-80-4038, 211-80-4039)
- Connell Resources Inc. for the 2021 Old Town Streets Asphalt repair project in the amount of $186,285.80 (G/L's 211-80-4006 and 211-80-4021)

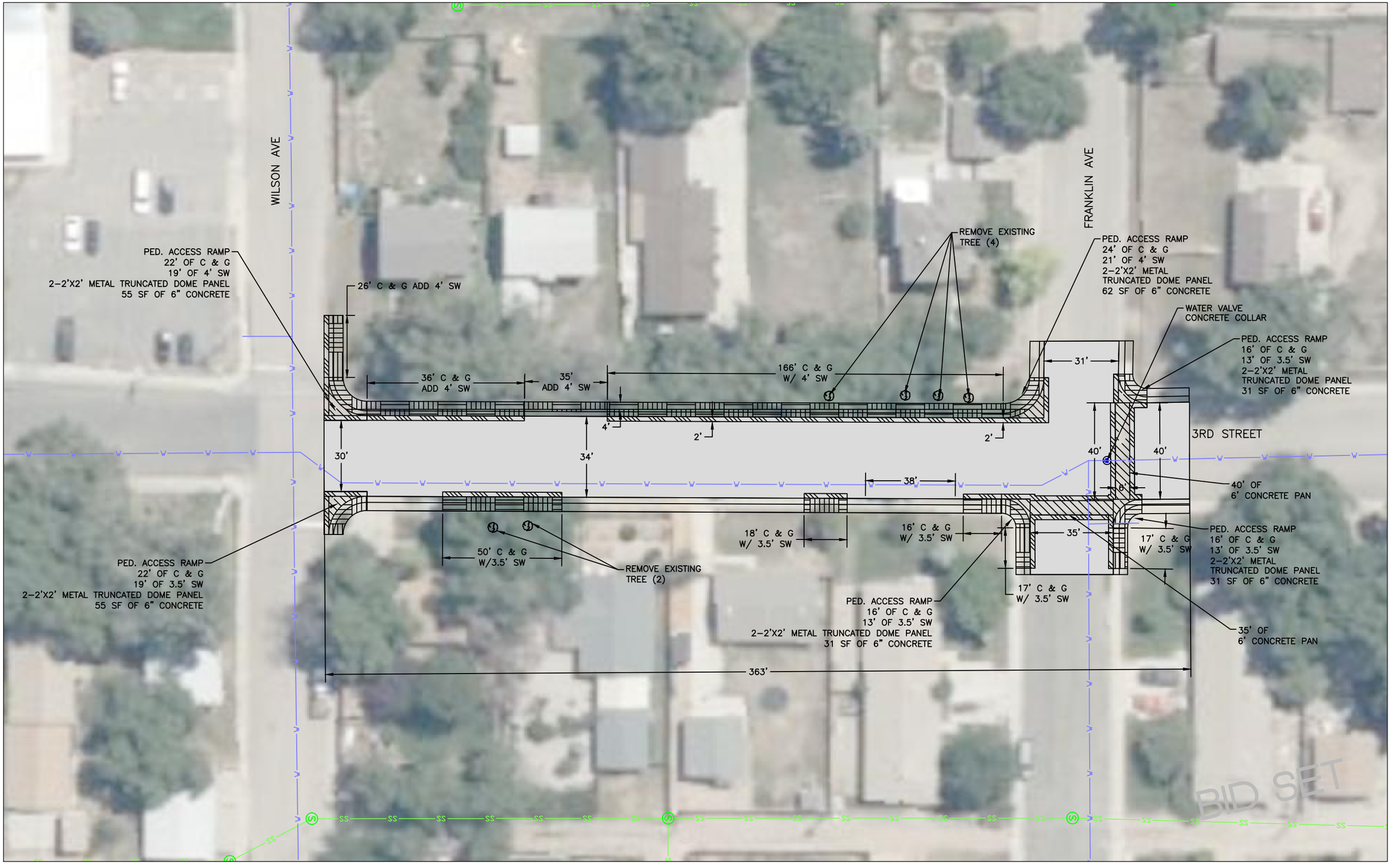
ATTACHMENTS

1. OTS_Figure1pdf
2. OTS-Plan-BidSet
3. 2021 OTS Bid break down
4. 00000-Asphalt Contract Documents
5. 00000-Concrete Contract Documents

C:\USERS\NATHANEWERT\ONEDRIVE - TOWN OF WELLINGTON\CAD\OTS_CAD\SHEETS\OTS-OVERVIEW



SHEET 1 1 OF 1	**FIGURE 1 OLD TOWN STREETS WORK LOCATIONS**		DRAWN BY: NRE			
			CHECKED BY: NRE			
			DATE: 06/15/2021			
			SCALE: 1" : 500'			
REV: **A**	**OLD TOWN STREETS TOWN OF WELLINGTON**	TOWN OF WELLINGTON	FILE: OTS-OVERVIEW	REV.	DATE	DESCRIPTION / BY / CHK'D — REVISIONS



EXPLANATION

- MILL AND OVERLAY ASPHALT REPAIR (LEVELING)
- UP TO 4 - INCH HAND PATCHING ASPHALT REPAIR (REMOVE AND REPLACE)
- CONCRETE TO BE REMOVED AND REPLACED
- CONCRETE ALLEY APPROACH
- CONCRETE CROSSPAN

N

0 40'

REV.	DATE	DESCRIPTION	BY	CHK'D
A	4/09/21	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 04/09/2021
SCALE: AS SHOWN
FILE: OTS-PLAN-SHEETS

TOWN OF WELLINGTON

3RD STREET - WILSON AVE TO FRANKLIN AVE

**OLD TOWN STREETS
TOWN OF WELLINGTON**

SHEET 1 1 OF 7

REV: A

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CLEVELAND STREET / HIGHWAY 1

ROOSEVELT STREET

5TH STREET

677'

8" AC WATER LINE

PED. ACCESS RAMP
21' OF C & G
10' OF 4' SW
2–2'X2' METAL TRUNCATED DOME PANEL
70 SF OF 6" CONCRETE

13' C & G
W/4' SW

14' ALLEY APPROACH

163' C & G
ADD 4' SW

30'

2'

10' ALLEY APPROACH

SANITARY SEWER MANHOLE
CONCRETE COLLAR

8" AC WATER LINE

20' C & G
W/3.5' SW

41' C & G
W/3.5' SW

3.5'

32'

PED. ACCESS RAMP
32' OF C & G
29' OF 4' SW
2–2'X2' METAL TRUNCATED DOME PANEL
104 SF OF 6" CONCRETE

30' OF
6' CONCRETE PAN

ADD ALTERNATE
REMOVE AND REPLACE
HYDRANT ASSEMBLY

PED. ACCESS RAMP
11' OF C & G
8' OF 4' SW
2–2'X2' METAL TRUNCATED DOME PANEL
18 SF OF 6" CONCRETE

24' C & G
W/3.5' SW

24' C & G
W/3.5' SW

30'

16' C & G
W/3.5' SW

2'

33'

163' C & G
ADD 4' SW

23' C & G
W/4' SW

56' C & G
W/3.5' SW

26' C & G
W/3.5' SW

15' C & G
W/3.5' SW

10' C & G
W/3.5' SW

WATER VALVE (2)
CONCRETE COLLAR

WATER VALVE
CONCRETE COLLAR

WATER VALVE (2)
CONCRETE COLLAR

SANITARY SEWER MANHOLE
CONCRETE COLLAR

30'

PED. ACCESS RAMP
21' OF C & G
10' OF 4' SW
2–2'X2' METAL TRUNCATED DOME PANEL
70 SF OF 6" CONCRETE

PED. ACCESS RAMP
11' OF C & G
8' OF 4' SW
2–2'X2' METAL TRUNCATED DOME PANEL
18 SF OF 6" CONCRETE

WATER VALVE (4)
CONCRETE COLLAR

30' OF
6' CONCRETE PAN

PED. ACCESS RAMP
11' OF C & G
8' OF 4' SW
2–2'X2' METAL TRUNCATED DOME PANEL
106 SF OF 6" CONCRETE

NOTE:
Hydrant assembly includes excavation, backfill, selected material, branch line pipe, tracer wire, thrust block, polyethelene, fittings including the swivel tee on the mainline, valve, joint restraints, and restoration of existing site.

BID SET

EXPLANATION

- MILL AND OVERLAY ASPHALT REPAIR (LEVELING)
- UP TO 4 - INCH HAND PATCHING ASPHALT REPAIR (REMOVE AND REPLACE)
- CONCRETE TO BE REMOVED AND REPLACED
- CONCRETE ALLEY APPROACH
- CONCRETE CROSSPAN

N

0 50'

REV.	DATE	DESCRIPTION	BY	CHK'D
A	4/09/2021	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 4/09/2021
SCALE: AS SHOWN
FILE: OTS-PLAN-SHEETS

TOWN OF WELLINGTON

5TH STREET - CLEVELAND AVE TO ROOSEVELT AVE

**OLD TOWN STREETS
TOWN OF WELLINGTON**

SHEET 2 2 OF 7

REV: A

C:\USERS\NATHANEWERT\ONEDRIVE - TOWN OF WELLINGTON\CAD\OTS_CAD\SHEETS\OTS-PLAN-SHEETS

KENNEDY AVE

TYLER AVE

1ST STREET

105' C & G
W/3.5' SW

16' C & G
W/3.5' SW

41' C & G
W/3.5' SW

26' C & G
W/3.5' SW

313' C & G
W/3.5' SW

PED. ACCESS RAMP
27' OF C & G
21' OF 3.5' SW
2–2'X2' METAL TRUNCATED DOME PANEL
62 SF OF 6" CONCRETE

WATER VALVE
CONCRETE COLLAR

32'

2'

3.5'

2.5'

30'

20' C & G
W/4' SW

25' C & G
W/4' SW

17' C & G
W/4' SW

9' C & G
W/4' SW

17' C & G
W/4' SW

22' C & G
W/4' SW

592'

EXPLANATION

MILL AND OVERLAY ASPHALT REPAIR (LEVELING)

UP TO 4 - INCH HAND PATCHING ASPHALT REPAIR (REMOVE AND REPLACE)

CONCRETE TO BE REMOVED AND REPLACED

CONCRETE ALLEY APPROACH

CONCRETE CROSSPAN

BID SET

N

0 50'

REV.	DATE	DESCRIPTION	BY	CHK'D
A	04/09/2021	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE

CHECKED BY: AE

DATE: 4/09/2021

SCALE: AS SHOWN

FILE: OTS-PLAN-SHEETS

TOWN OF WELLINGTON

1ST STREET - KENNEDY AVE TO TYLER AVE

**OLD TOWN STREETS
TOWN OF WELLINGTON**

SHEET **3** 3 OF 7

REV: A

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EXPLANATION

- MILL AND OVERLAY ASPHALT REPAIR (LEVELING)
- UP TO 4 - INCH HAND PATCHING ASPHALT REPAIR (REMOVE AND REPLACE)
- CONCRETE TO BE REMOVED AND REPLACED
- CONCRETE ALLEY APPROACH
- CONCRETE CROSSPAN

NOT FOR CONSTRUCTION

N

0 50'

REV.	DATE	DESCRIPTION	BY	CHK'D
A	04/09/2021	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 4/09/2021
SCALE: AS SHOWN
FILE: OTS-PLAN-SHEETS

TOWN OF WELLINGTON

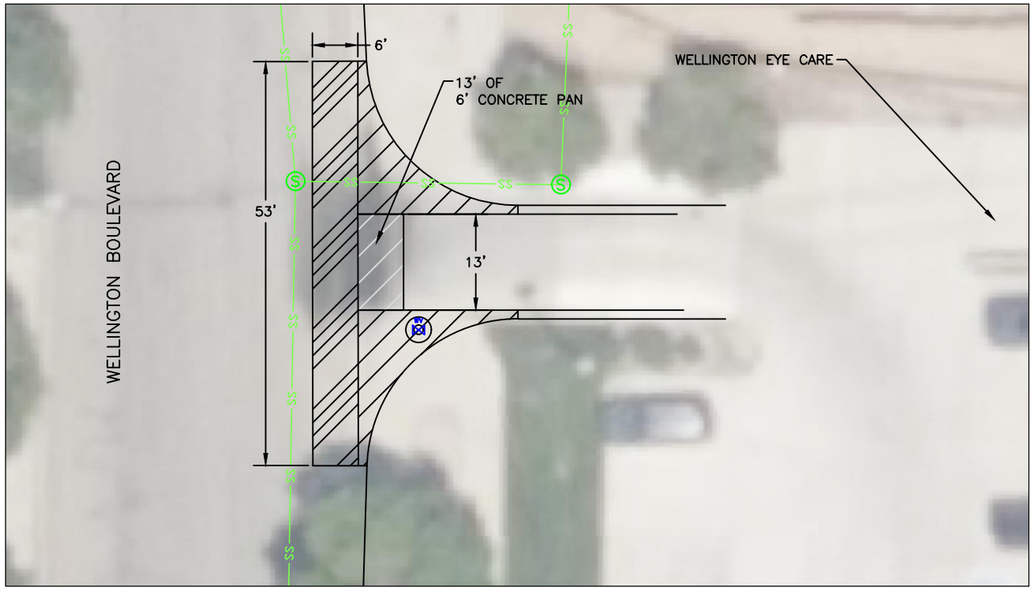
HARRISON AVE- 4TH ST. TO 5TH ST.

OLD TOWN STREETS
TOWN OF WELLINGTON

SHEET 4 4 OF 7

REV: A

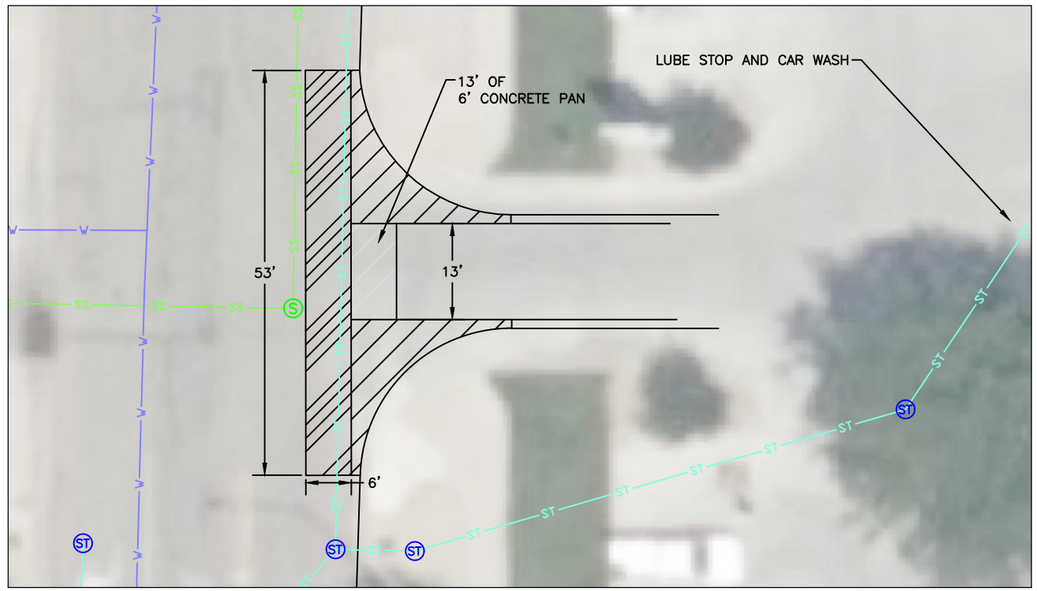
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N

0 20'

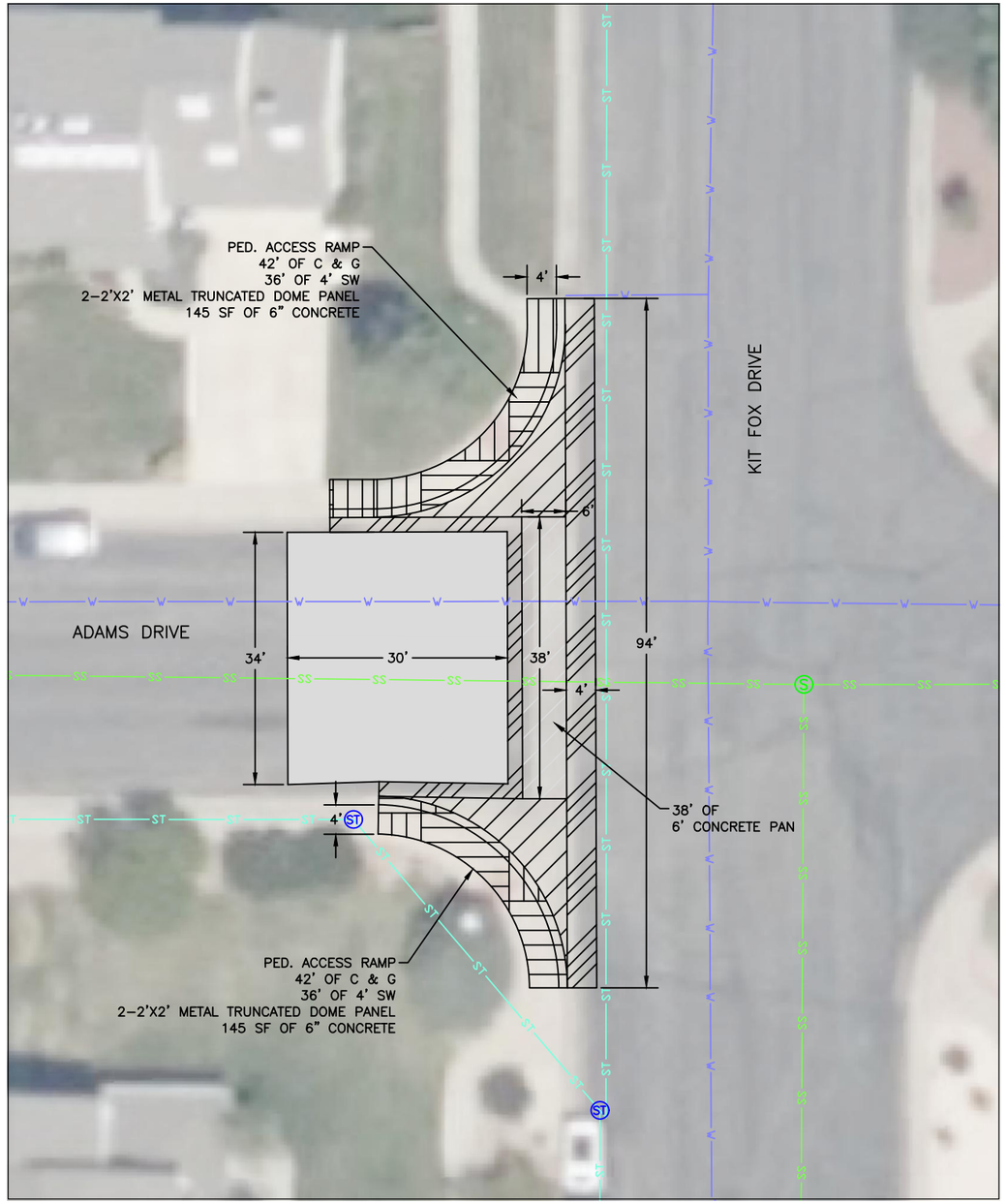
ADD ALTERNATE - WELLINGTON BLVD NORTH INTERSECTION



N

0 20'

ADD ALTERNATE - WELLINGTON BLVD SOUTH INTERSECTION



N

0 20'

ADD ALTERNATE - ADAMS DRIVE AND KIT FOX INTERSECTION

EXPLANATION

- MILL AND OVERLAY ASPHALT REPAIR (LEVELING)
- UP TO 4 - INCH HAND PATCHING ASPHALT REPAIR (REMOVE AND REPLACE)
- CONCRETE TO BE REMOVED AND REPLACED
- CONCRETE ALLEY APPROACH
- CONCRETE CROSSPAN

BID SET

REV.	DATE	DESCRIPTION	BY	CHK'D
A	04/09/2021	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE
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TOWN OF WELLINGTON

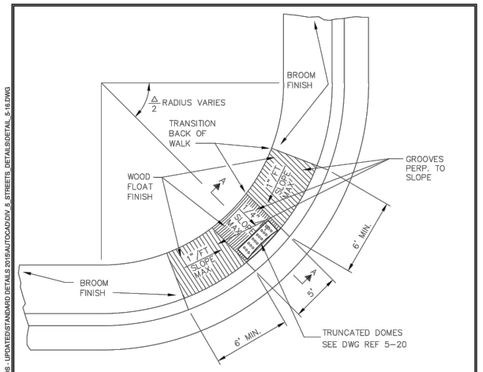
1ST STREET - KENNEDY AVE TO TYLER AVE

OLD TOWN STREETS
TOWN OF WELLINGTON

SHEET 5 5 OF 7

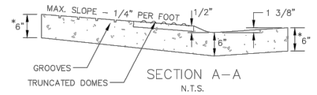
REV: A

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CONSTRUCTION NOTES:

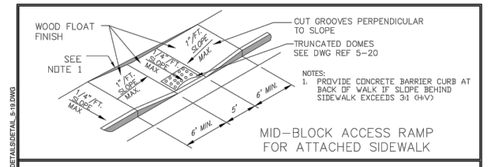
1. RAMP LANDING SHOULD BE CONCRETE COLORED WITH 4 LBS/SACK DAVIS NO.1117 (TILE RED) PIGMENT OR APPROVED EQUAL. DAVIS CLEAR SEALANT OR APPROVED EQUAL SHALL BE APPLIED ON ALL COLORED CONCRETE SURFACES
2. COLORED PORTION OF THE RAMP SHALL BE POURED SEPARATELY AND DOWELED INTO ADJACENT CONCRETE WITH MINIMUM OF 8 EQUALLY SPACED, 18-INCH #4 DEFORMED BARS DRIVEN 8-INCHES MINIMUM.
3. TRANSITIONS ARE TO BE SCORED PERPENDICULAR TO TRAVEL DIRECTION WITH 3/4-INCH DEEP TOOLED JOINTS AT 6-INCH ON CENTER



*6" DEPTH APPLIES FOR ENTIRE CURB RETURN AREA (PC TO PC)

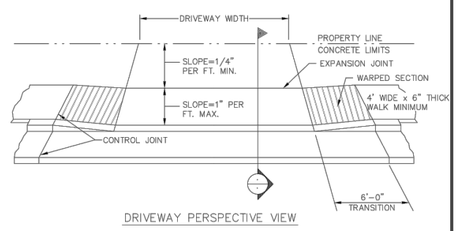
LATEST REV.	ACCESS RAMP DETAIL – ATTACHED WALK	DWG. REF.
APRIL 2017	TOWN OF WELLINGTON, COLORADO	5-16

Plot Date:4/21/2017 8:47 AM Plotted By: Chesnshmit, Mark
Date Created:2/27/2015 V:\5387nP\ACTIVE\18731005\2014 DEVELOPMENT STANDARDS - UPDATED\STANDARD DETAILS 2015\AUTOCAD\DIV 5 STREETS\DETAILS\DETAIL 5-16.DWG

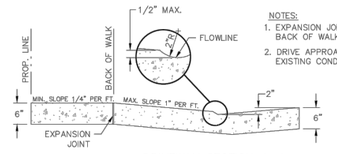


NOTES:
1. PROVIDE CONCRETE BARRIER CURB AT BACK OF WALK IF SLOPE BEHIND SIDEWALK EXCEEDS 3:1 (H:V)

MID-BLOCK ACCESS RAMP FOR ATTACHED SIDEWALK



DRIVEWAY PERSPECTIVE VIEW

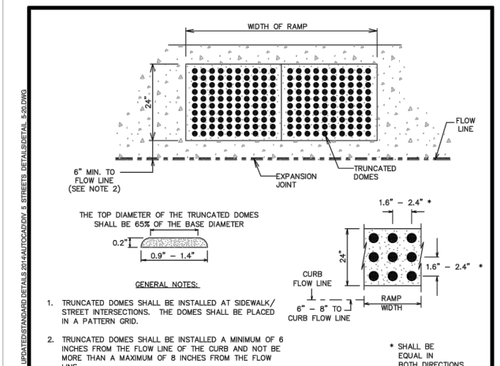


NOTES:
1. EXPANSION JOINT TO BE PROVIDED AT BACK OF WALK.
2. DRIVE APPROACHES SHALL MATCH EXISTING CONDITIONS.

DRIVEWAY SECTION A–A

LATEST REV.	DRIVEWAY APPROACH & MID-BLOCK ACCESS RAMP	DWG. REF.
NOV 2016	TOWN OF WELLINGTON, COLORADO	5-19

Plot Date:11/22/2016 1:17 PM Plotted By: Chesnshmit, Mark
Date Created:2/27/2015 V:\5387nP\ACTIVE\18731005\2014 DEVELOPMENT STANDARDS - UPDATED\STANDARD DETAILS 2015\AUTOCAD\DIV 5 STREETS\DETAILS\DETAIL 5-19.DWG

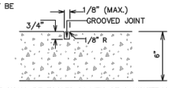


GENERAL NOTES:

1. TRUNCATED DOMES SHALL BE INSTALLED AT SIDEWALK/ STREET INTERSECTIONS. THE DOMES SHALL BE PLACED IN A PATTERN GRID.
2. TRUNCATED DOMES SHALL BE INSTALLED A MINIMUM OF 6 INCHES FROM THE FLOW LINE OF THE CURB AND NOT BE MORE THAN A MAXIMUM OF 8 INCHES FROM THE FLOW LINE.
3. ALL TRUNCATED DOMES SHALL BE 24 INCHES IN LENGTH AND COVER THE COMPLETE WIDTH OF THE RAMP AREA.
4. RAMP SLOPES SHALL NOT BE STEEPER THAN 1" PER FOOT (12:1) THE TRUNCATED DOME SLOPE SHALL NOT BE STEEPER THAN 0.6" PER FOOT(20:1).

* SHALL BE EQUAL IN BOTH DIRECTIONS

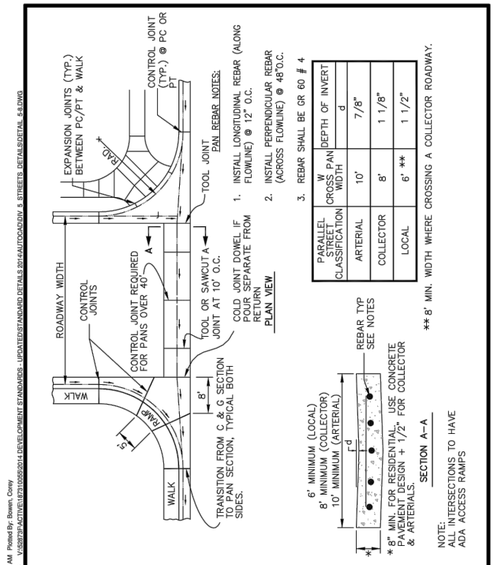
CONSTRUCTION NOTES:
THE RAMP AREA SHALL RECEIVE A COARSER BRUSH TREATMENT THAN THE SIDEWALK.



JOINT SHALL BE TOOLED IN LIEU OF SAWCUTTING AT TIME OF RAMP INSTALLATION BEFORE CONCRETE HAS HARDENED.

LATEST REV.	CURB RAMP DETECTABLE WARNING & CONTRACTION JOINT DETAIL	DWG. REF.
March 2015	TOWN OF WELLINGTON, COLORADO	5-20

Plot Date:3/3/2015 9:05 AM Plotted By: Brown, Corey
Date Created:2/27/2015 V:\5387nP\ACTIVE\18731005\2014 DEVELOPMENT STANDARDS - UPDATED\STANDARD DETAILS 2014\AUTOCAD\DIV 5 STREETS\DETAILS\DETAIL 5-20.DWG



PAN REBAR NOTES:
1. INSTALL LONGITUDINAL REBAR (ALONG FLOWLINE) @ 12" O.C.
2. INSTALL PERPENDICULAR REBAR (ACROSS FLOWLINE) @ 48"O.C.
3. REBAR SHALL BE GR 60 # 4

PARALLEL STREET CLASSIFICATION	W CROSS PAN WIDTH	DEPTH OF INVERT d
ARTERIAL	10'	7/8"
COLLECTOR	8'	1 1/8"
LOCAL	6' **	1 1/2"

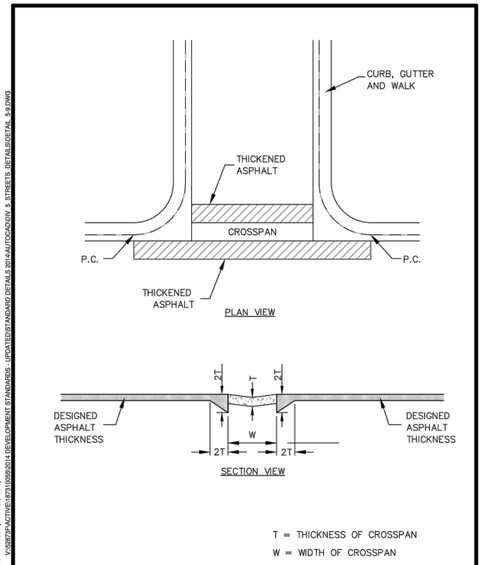
** 8' MIN. WIDTH WHERE CROSSING A COLLECTOR ROADWAY.

* 8" MIN. FOR RESIDENTIAL. USE CONCRETE PAVEMENT DESIGN + 1/2" FOR COLLECTOR & ARTERIALS.

NOTE:
ALL INTERSECTIONS TO HAVE ADA ACCESS RAMPS

LATEST REV.	STREET INTERSECTION CROSSPAN	DWG. REF.
March 2015	TOWN OF WELLINGTON, COLORADO	5-8

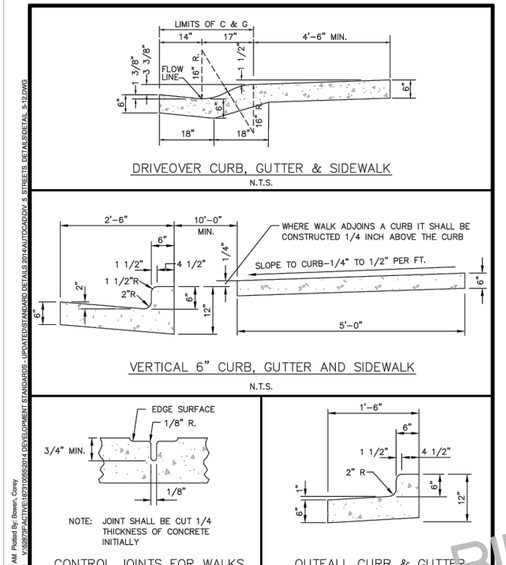
Plot Date:3/3/2015 9:01 AM Plotted By: Brown, Corey
Date Created:2/27/2015 V:\5387nP\ACTIVE\18731005\2014 DEVELOPMENT STANDARDS - UPDATED\STANDARD DETAILS 2014\AUTOCAD\DIV 5 STREETS\DETAILS\DETAIL 5-8.DWG



T = THICKNESS OF CROSSPAN
W = WIDTH OF CROSSPAN

LATEST REV.	ASPHALT PAVING DETAIL (CROSS PAN)	DWG. REF.
March 2015	TOWN OF WELLINGTON, COLORADO	5-9

Plot Date:3/3/2015 9:03 AM Plotted By: Brown, Corey
Date Created:2/27/2015 V:\5387nP\ACTIVE\18731005\2014 DEVELOPMENT STANDARDS - UPDATED\STANDARD DETAILS 2014\AUTOCAD\DIV 5 STREETS\DETAILS\DETAIL 5-9.DWG



LATEST REV.	CURB AND GUTTER DETAILS	DWG. REF.
March 2015	TOWN OF WELLINGTON, COLORADO	5-12

Plot Date:3/3/2015 9:04 AM Plotted By: Brown, Corey
Date Created:2/27/2015 V:\5387nP\ACTIVE\18731005\2014 DEVELOPMENT STANDARDS - UPDATED\STANDARD DETAILS 2014\AUTOCAD\DIV 5 STREETS\DETAILS\DETAIL 5-12.DWG

BID SET

REV.	DATE	DESCRIPTION	BY	CHK'D
A	04/08/2021	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 04/08/2021
SCALE: NTS
FILE: OTS-DETAIL-SHEETS

TOWN OF WELLINGTON

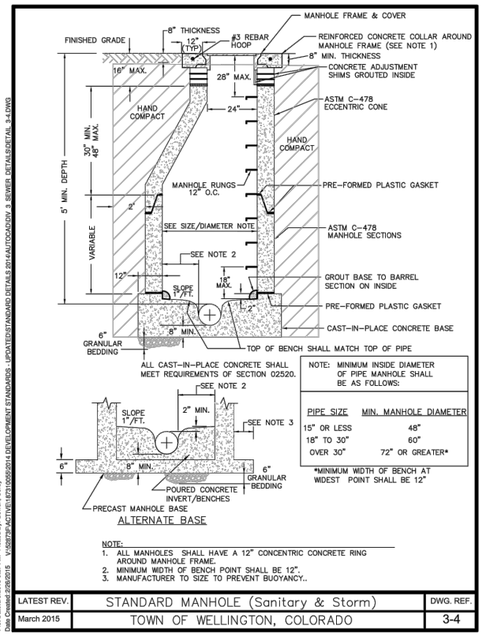
DETAILS 1 OF 2

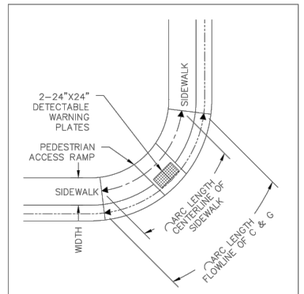
OLD TOWN STREETS
TOWN OF WELLINGTON

SHEET 6 OF 7

REV: A

C:\USERS\NATHANEWERT\ONEDRIVE - TOWN OF WELLINGTON\CAD\OTS_CAD\SHEETS\OTS-DETAIL-SHEETS





NOTES:

PEDESTRIAN ACCESS RAMPS SHALL BE CALCULATED IN THREE QUANTITIES.

1. PEDESTRIAN ACCESS RAMP, REMOVE AND REPLACE.
2. DRIVEOVER CURB AND GUTTER, REMOVE AND REPLACE.
3. WET SET METAL TRUNCATED DOMES.

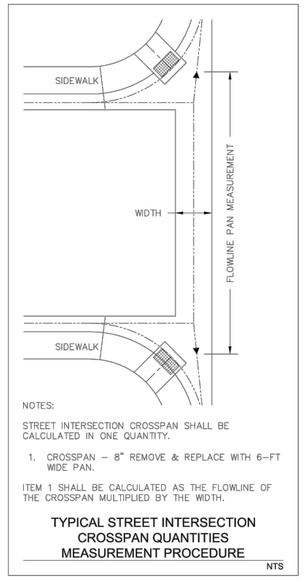
ITEM 1 SHALL BE CALCULATED AS THE CENTERLINE OF THE SIDEWALK MULTIPLIED BY THE WIDTH.

ITEM 2 SHALL BE CALCULATED AS THE LINER FEET OF CURB AND GUTTER MEASURED AT THE FLOWLINE.

ITEM 3 SHALL BE CALCULATED AS THE SETTING OF TWO (2) 24"X24" DETECTABLE WARNING PLATES.

TYPICAL PEDESTRIAN RAMP QUANTITIES MEASUREMENT PROCEDURE

NTS



NOTES:

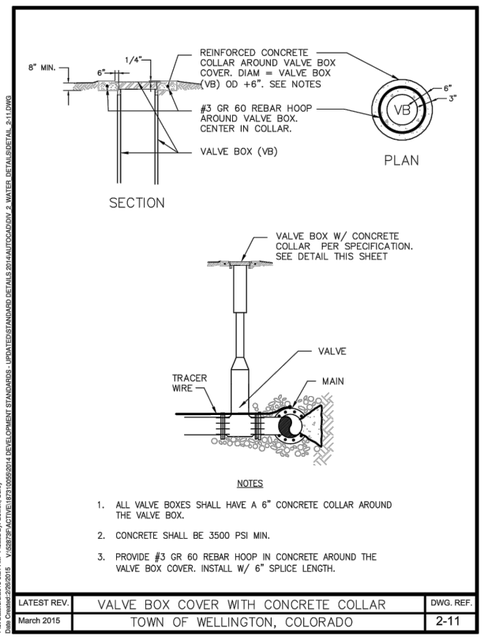
STREET INTERSECTION CROSSPAN SHALL BE CALCULATED IN ONE QUANTITY.

1. CROSSPAN – 8" REMOVE & REPLACE WITH 6-FT WIDE PAN.

ITEM 1 SHALL BE CALCULATED AS THE FLOWLINE OF THE CROSSPAN MULTIPLIED BY THE WIDTH.

TYPICAL STREET INTERSECTION CROSSPAN QUANTITIES MEASUREMENT PROCEDURE

NTS



NOTES

1. ALL VALVE BOXES SHALL HAVE A 6" CONCRETE COLLAR AROUND THE VALVE BOX.
2. CONCRETE SHALL BE 3500 PSI MIN.
3. PROVIDE #3 GR 60 REBAR HOOP IN CONCRETE AROUND THE VALVE BOX COVER. INSTALL W/ 6" SPLICE LENGTH.

LATEST REV. | VALVE BOX COVER WITH CONCRETE COLLAR | DWG. REF.
March 2015 | TOWN OF WELLINGTON, COLORADO | 2-11

BID SET

REV.	DATE	DESCRIPTION	BY	CHK'D
A	04/08/2021	FOR BID	NRE	AE

REVISIONS

DRAWN BY: NRE
CHECKED BY: AE
DATE: 04/08/2021
SCALE: NTS
FILE: OTS-DETAIL-SHEETS

TOWN OF WELLINGTON

DETAILS 2 OF 2

OLD TOWN STREETS
TOWN OF WELLINGTON

SHEET 7 OF 7

REV: A

C:\USERS\NATHANEWERT\ONEDRIVE - TOWN OF WELLINGTON\CAD\OTS_CAD\SHEETS\OTS-DETAIL-SHEETS

2021 Asphalt Contract

Company	Base Bid	Additional Alternate	Total
Engineers Estimate	$247,182.71	$30,462.65	$ 277,645.36
Connell Resources	$149,820.50	$36,465.30	$ 186,285.80
Coulson	$153,236.00	$33,989.50	$ 187,225.50

2021 Concrete Contract

Company	Base Bid	Additional Alternate	Total
Engineers Estimate	$193,892.02	$65,862.51	$259,754.53
NorthStar Concrete	$153,850.00	$53,215.00	$ 207,065.00
Lightfield Enterprises	$158,924.00	$50,895.50	$ 209,819.50
Can Do	$207,920.00	$88,963.75	$ 296,883.75
NORRA	$223,495.00	$74,944.00	$ 298,439.00

2021 Testing Contract

	Base Bid	Additional Alternate	Total
Engineers Estimate	$7,200.00	$2,500.00	$9,700.00
CTL Thompson	$5,387.00	$2,266.00	$ 7,653.00
EEC	$7,466.90	$2,643.20	$ 10,110.10
Terracon	$6,670.00	$3,500.00	$ 10,170.00

2021 Trees Contract

Company	Removal, Grinding, Haul	Total
Tree Top	$15,375.00	**$ 15,375.00**

SECTION 00520

AGREEMENT

THIS AGREEMENT is dated as of the ___ day of July in the year of 2021. The Town of Wellington (hereinafter called OWNER) and Connell Resources Inc. (hereinafter called CONTRACTOR), in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work under the Contract Documents is generally described as the **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT** or part thereof as defined in the Notice of Award.

ARTICLE 2. ENGINEER

The Project has been designed by the Town of Wellington who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Work will be substantially completed on or before Friday October 15, 2021 and completed and ready for final payment in accordance with paragraph 14.07 of the General conditions on or before Friday October 22, 2021.

3.2 Early completion and time extensions.

OWNER explicitly states that the time stated in the agreement for Substantial Completion has been considered in respect to OWNER's use of the facilities. An early completion time shall not entitle CONTRACTOR to additional monies should events, construction, or any other events not allow CONTRACTOR to complete work in accordance with an accelerated construction schedule.

Float or slack time in the schedule is for the exclusive use of OWNER and at no additional cost to the OWNER. CONTRACTOR acknowledges and agrees that delays in activities which do not in fact actually affect the date or time of contract completion, or any milestone completion dates listed in the contract, will not be the basis for a change. Extensions of time will be granted only to the extent that an activity or activities effect exceeds the total float or slack along the channels involved at the time notice to proceed was used for the change.

3.3 Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving 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) CONTRACTOR shall pay OWNER $ 500 for each day that expires after the date specified above for Substantial Completion for each Schedule until the

Work is substantially complete, (but not to be additive if more than one Schedule is not complete at the same time). After Substantial Completion if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the time specified for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER $ 500 for each day that expires after the time specified for completion and readiness for final payment for each Schedule, (but not to be additive if more than one Schedule is not complete at the same time).

The foregoing liquidated damages pertain solely to OWNER's costs and not to damages claimed against the OWNER or CONTRACTOR by any other third party. CONTRACTOR is responsible for third party damages.

ARTICLE 4. CONTRACT PRICE

4.1. OWNER shall pay CONTRACTOR for performance of the work in accordance with the CONTRACT DOCUMENTS in current funds as follows: $ One hundred eighty-six thousand two hundred eighty-five dollars and eighty cents ($186,285.80), in accordance with the Bid Form, Section 00300 and the Notice of Award, Section 00580, attached.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. PROGRESS PAYMENTS. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER, once each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1 RETAINAGE. Retainage from progress payments shall be withheld as stated below. Owner OWNER shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

Retention of 5 percent of payments authorized until the Work is 50 percent complete.

After the Work is 50 percent complete, no further retainage shall be withheld from subsequent progress payment unless, in the opinion of the ENGINEER, satisfactory progress is not being made. When the Work is 50 percent complete and, in the opinion of the ENGINEER, satisfactory progress is not being made retainage may continue to be withheld at 10 percent of payments. At any time after the Work is 50 percent complete and, in the opinion of the ENGINEER, satisfactory progress is not being made retainage may be reinstated to 5 percent of the total amount of all progress payments.

After the Work is substantially complete the retained amount will continue to be 5 percent of the total Contract Price until Final Completion.

5.2. FINAL PAYMENT. Upon final completion and acceptance of the work in accordance with the General Conditions and the Supplementary Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER.

ARTICLE 6. CONTRACTOR'S REPRESENTATION

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

6.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

6.2. CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in the General Conditions.

6.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to above) which pertain to the subsurface or physical condition at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

6.4. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provision of the General Conditions.

6.5. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Document.

6.6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 7. CONTRACT DOCUMENTS

7.1 The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the work consisting of the following documents:

7.1.1 This Agreement (0520)

7.1.2 Construction Performance Bond (0610)

7.1.3 Construction Payment Bond (0615)

7.1.4 Notice of Award (0580)

7.1.5 Notice to Proceed (0590)

7.1.6 General Conditions (C-700)

7.1.7 Supplementary Conditions (0800)

7.1.8 Consent of Surety Form (0660)

7.1.9 Certificates of Insurance (0630)

7.1.10 Certificate of Substantial Completion (0635)

7.1.11 Certificate of Final Acceptance (0640)

7.1.12 Lien Waiver Release (Contractor) (0650)

7.1.13 Lien Waiver Releases (Subcontractors) (0651)

7.1.14 Application of Exemption Certificate

7.1.15 Application for Payment

7.1.16 Technical specifications as listed in Table of Contents.

7.1.17 Addenda Numbers _1 to_2_, inclusive.

7.1.18 Contractor's Bid.

7.1.19 Documentation submitted by Contractor prior to Notice of Award.

7.1.20 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

7.1.21 The documents listed in this Article 7 are attached to this Agreement (except as expressly noted otherwise above).

7.1.22 Prohibition Against Employing Illegal Aliens (0600)

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

7.2. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

ARTICLE 8. MISCELLANEOUS

8.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and

specifically but not without limitations, moneys that may become due and moneys that are 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 that assignor from any duty or responsibility under the Contract Documents.

8.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreement and obligations contained in the Contract Documents.

8.4 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.

8.5 Special provision relating to contract interpretation. The parties hereto agree that in the event it becomes necessary to determine the meaning, scope or interrelationship of any of the provisions of this contract, the doctrine of contra proferentum, that is that the contract documents shall be construed against the OWNER, shall not be used. On the contrary, the standard for interpretation dictates that the meaning of a questionable contract passage is that which a reasonably intelligent person acquainted with all operative usages and knowing all the facts and circumstances of the contract prior to and contemporaneously with the making of the contract would assign to it.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in four counterparts. Two counterparts have been delivered to CONTRACTOR who shall deliver one counterpart to the Surety and one counterpart delivered to OWNER and one counterpart has been retained by ENGINEER.

This Agreement will be effective on _____, 20__. (Which is the Effective Date of the Agreement).

OWNER:	CONTRACTOR:
Town of Wellington	_____
By_____	By_____
_____	_____
Signature	Signature
Title Town Administrator	Title_____
	(CORPORATE SEAL)
Attest_____	Attest_____

Address for giving notices:	Address for giving notices
_____	_____
_____	_____
_____	_____
Telephone	Telephone

END OF AGREEMENT

SECTION 00580

NOTICE OFAWARD

SECTION 00580

NOTICE OF AWARD

July 6 , 2021

TO: Connell Resources Inc.

Address: 7785 Highlands Meadows Parkway Suite 100, Fort Collins, CO 80528

Project: **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT**

The Town of Wellington, Colorado (hereinafter called "the OWNER") has considered the bids submitted for referenced work in response to its Advertisement for Bids.

You are hereby notified that your Bid dated May 28, 2021_ has been considered. You are the apparent Successful Bidder and have been awarded a contract for the work (or part there of as described as follows): Asphalt Paving within the Old Town portion of Wellington as indicated in the construction drawings and generally described as:

- 3rd Street (Kennedy Ave to Tyler Ave)
- 5th Street (Cleveland Ave to Roosevelt Ave)
- 1st Street (Kennedy Ave to Tyler Ave)

Add Alternate Locations:

- Harrison Avenue (4th Street to 5th Street)
- Adams Drive and Kit Fox (Cross Pan)
- Wellington Blvd (Cross Pan at both entrances to the Commercial buildings on east side of the street).

The Contract Price of your contract is One hundred eighty six thousand, two hundred eighty-five dollars and eighty cents. ($186,285.80)

__2___ copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

__2___ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

1. You must deliver to the OWNER __2_ fully executed counterparts of the Agreement including all the Contract Documents, this includes the Drawings.

2. You must deliver with the executed Agreement the Contract Security (bonds) as specified in the General Conditions and Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

OWNER will return to you _1__ fully signed counterpart of the Agreement with the Contract Documents attached.

By: _____

Title: Town Administrator_____

ACCEPTANCE OF AWARD
By: _____

Title: _____

Date: _____

END OF SECTION

SECTION 00590

NOTICE TO PROCEED

SECTION 00590

NOTICE TO PROCEED

Dated _____

TO: _____

Address: _____

_____

Project: **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT**

You are notified that the Contract Times under the above contract will commence to run on _____, 20___. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement, the date of Substantial Completion is _____ and the date for completion and readiness for final payment is _____

Before you may start any Work at the site, you and OWNER must each deliver to the other (with copies to ENGINEER and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

OWNER: _____

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Contractor: _____

By: _____

Title: _____

Date: _____

END OF SECTION

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SECTION 00600

PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

SECTION 00600

PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Contractor represents and agrees that:

1. As of the date of this Agreement:

    a. Contractor does not knowingly employ or contract with an illegal alien; and

    b. Contractor has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to confirm the employment eligibility of all newly hired employees.

2. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.

3. Contractor shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

4. Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

    a. Notify such subcontractor and the Town within three 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 days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

7. If Contractor violates a provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

8. The Town will notify the Office of the Secretary of State if Contractor violates this provision of this Agreement and the Town terminates the Agreement for such breach.

END OF SECTION

SECTION 00610

CONSTRUCTION PERFORMANCE BOND

Construction Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):
The Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
ATTN: Bob Gowing, Public Works Director
Telephone: 970-568-0447

CONSTRUCTION CONTRACT

Date:

Amount:_____

Description (Name and Location): **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT,** Wellington, Colorado, Larimer County.

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature:_____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature:_____

Name and Title:

EJCDC No. 1910-28A (1984 Edition)
Prepared through the joint efforts of the Surety Association of America, Engineer's Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the contractor and the Surety agree, the contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contracts; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the Contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and , as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract. to the limit of the amount of this
Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damage on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default; and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner of the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to

the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY - Name, Address and Telephone)	
AGENT or BROKER:	OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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SECTION 00615

CONSTRUCTION PAYMENT BOND

Construction Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):
The Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
ATTN: Bob Gowing, Public Works Director
Telephone: 970-568-0447

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location): **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT,** Wellington, Colorado, Larimer County.

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form: interest at the rate of eight percent (8%) per annum will be paid on all payments becoming due.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature:_____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature:_____

Name and Title:

EJCDC No. 1910-28B (1984 Edition)
Prepared through the joint efforts of the Surety Association of America, Engineer's Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract,, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were finished or supplied or for whom the labor was dome or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bind, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under his Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were finished by anyone under the Construction Contract, whichever of (1) or (2) occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be acceptable.

12. Notice to the Surety, the Owner of the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions.

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of

the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY - Name, Address and Telephone)	
AGENT or BROKER:	OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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SECTION 00630

CERTIFICATE OF INSURANCE

SECTION 00630

CERTIFICATE OF INSURANCE

Contractor shall insert his own standard form for Certificate of Insurance.

SECTION 00635

CERTIFICATE OF SUBSTANTIAL COMPLETION

SECTION 00635

CERTIFICATION OF SUBSTANTIAL COMPLETION

TO: **The Town of Wellington** (OWNER)

DATE OF SUBSTANTIAL COMPLETION: _____

PROJECT TITLE:

2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT

PROJECT OR SPECIFIED PART SHALL INCLUDE:

LOCATION: Town of Wellington, CO

The Town of Wellington,

CONTRACTOR:

CONTRACT DATE: _____

The Work performed under this contract has been inspected by authorized representatives of the OWNER, CONTRACTOR, and the ENGINEER and the project (or specified part of the project, as indicated above) is hereby declared to be substantially completed on the above date.

A tentative list of items to be completed of corrected is appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the CONTRACTOR to complete all the Work in accordance with the Contract Documents.

_____ By: _____

ENGINEER AUTHORIZED REPRESENTATIVE DATE

The CONTRACTOR accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the tentative list within the time indicated.

_____ By: _____

CONTRACTOR AUTHORIZED REPRESENTATIVE DATE

The OWNER accepts the project or specified area of the project as substantially complete and will assume full possession of the project or specified area of the project at 12:01 a.m., on _____. The responsibility for heat, utilities, security, and insurance under the Contract Documents shall be set forth under "Remarks" below.

The Town of Wellington By: _____

AUTHORIZED REPRESENTATIVE DATE

REMARKS:

SECTION 00640

CERTIFICATE OF FINAL ACCEPTANCE

SECTION 00640

CERTIFICATE OF FINAL ACCEPTANCE

_____, 20___

TO: _____

_____

_____

Gentlemen:

You are hereby notified that on the ___ day of _____, 20____, the **Town of Wellington**, Colorado, has accepted the Work completed by _____ for the project, **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT.** A check is attached hereto in the amount of $_____ as Final Payment for all Work done, subject to the terms of the Contract Documents which are dated: _____

In conformance with the Contract Documents for this project, your obligations and guarantees will continue for the specified time from the following date:_____.

Sincerely,

OWNER: T**he Town of Wellington**

By:

Title:

ATTEST:

Title:

SECTION 00650 & 00651

LIEN WAIVER RELEASE

SECTION 00650

LIEN WAIVER RELEASE
(Contractor)

TO: **The Town of Wellington**
(hereinafter referred to as "Owner").

FROM: _____

PROJECT: That portion of **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT** described as follows:_____

1. The undersigned does hereby release all claims, Mechanic's Liens Rights, Miller Act Claims (40 USCA 270), Stop Notice, Equitable Liens and Labor and Material Bond Rights resulting from labor and/or materials, subcontract work, equipment or other work, rents, services or supplies heretofore furnished in and for the construction, design, improvement, alteration, additions to or repair of the above described project.

2. This release is given for and in consideration of the sum of $_____and other good and valuable consideration. If no dollar consideration is herein recited, it is acknowledged that other adequate consideration has been received by the undersigned for this release.

3. The undersigned agrees to defend and hold harmless the Owner, lender, if any, and Surety from any claim or claims hereinafter made by the undersigned or its Suppliers, Subcontractors or employees, servants, agents or assigns of such persons against the Project. The undersigned agrees to indemnify or reimburse all persons so relying upon this release for any and all sums, including attorney's fees and costs, which may be incurred as the result of any such claims.

4. It is acknowledged that the designation of the above Project constitutes an adequate description of the property and improvements for which the undersigned has received consideration for this release.

5. It is further warranted and represented that all such claims against the undersigned or the undersigned's Subcontractors or Suppliers have been paid or that arrangements, satisfactory to the Owner, have been made for such payments.

6. It is acknowledged that this release is for the benefit of and may be relied upon by the Owner, the lender, if any, and the principal and Surety on any labor and material bond for the Project.

7. In addition to the foregoing, this instrument shall constitute a ***(full, final and complete)***(partial) release of all rights, claims and demands of the undersigned against the Contractor arising out of or pertaining to the above referenced project. If partial, all rights and claims on the project are released up to and including the _____ day of _____ 20___.

Dated this _____day of_____, 20_____.

FIRM_____
Name of firm or person giving release

By

Title

STATE OF_____)
)ss.
COUNTY OF_____)

The foregoing release was subscribed and sworn to before me this _____ day of _____, 20___ by _____ (as_____of_____).

_____
NOTARY PUBLIC
_____

_____

My commission expires: _____.

SECTION 00651

LIEN WAIVER RELEASE
(Sub-Contractor)

TO: **The Town of Wellington**
(hereinafter referred to as "Owner").

FROM: _____

PROJECT: That portion of **2010 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT** described as follows:_____

_____

1. The undersigned does hereby release all claims, Mechanic's Liens Rights, Miller Act Claims (40 USCA 270), Stop Notice, Equitable Liens and Labor and Material Bond Rights resulting from labor and/or materials, subcontract work, equipment or other work, rents, services or supplies heretofore furnished in and fort the construction, design, improvement, alteration, additions to or repair of the above described project.

2. This release is given for and in consideration of the sum of $_____and other good and valuable consideration. If no dollar consideration is herein recited, it is acknowledged that other adequate consideration has been received by the undersigned for this release.

3. The undersigned agrees to defend and hold harmless the Owner, lender, if any, and Surety from any claim or claims hereinafter made by the undersigned or its Suppliers, Subcontractors or employees, servants, agents or assigns of such persons against the Project. The undersigned agrees to indemnify or reimburse all persons so relying upon this release for any and all sums, including attorney's fees and costs, which may be incurred as the result of any such claims.

4. It is acknowledged that the designation of the above Project constitutes an adequate description of the property and improvements for which the undersigned has received consideration for this release.

5. It is further warranted and represented that all such claims against the undersigned or the undersigned's Subcontractors or Suppliers have been paid or that arrangements, satisfactory to the Owner, have been made for such payments.

6. It is acknowledged that this release is for the benefit of and may be relied upon by the Owner, the lender, if any, and the principal and Surety on any labor and material bond for the Project.

7. In addition to the foregoing, this instrument shall constitute a ***(full, final and complete)***(partial) release of all rights, claims and demands of the undersigned against the Contractor arising out of or pertaining to the above referenced project. If partial, all rights and claims on the project are released up to and including the _____ day of _____ 20___.

Dated this _____day of_____, 20_____.

FIRM_____
Name of firm or person giving release

By

Title

STATE OF_____)
)ss.
COUNTY OF_____)

The foregoing release was subscribed and sworn to before me this _____ day of _____, 20____ by _____ (as_____of_____).

_____
NOTARY PUBLIC

_____

_____

My commission expires: _____.

SECTION 00660

CONSENT OF SURETY

SECTION 00660

CONSENT OF SURETY

TO: **The Town of Wellington**
(hereinafter referred to as "OWNER").

CONTRACTOR: _____

PROJECT: **2021 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT**

CONTRACT DATE:_____

In accordance with the provisions of the Contract between OWNER and CONTRACTOR as indicated above, for_____on bond of (Surety)_____
_____

Hereby approves of the final payment to CONTRACTOR, and agrees that final payment to the CONTRACTOR shall not relieve the Surety company of any of its obligations to OWNER, as set forth in the said Surety company's Bond.

IN WITNESS WHEREOF, the surety Company has hereunto to set its hand this _____day of _____, 20_____.

_____
(Surety Company)

By_____

ATTACH: Power of Attorney and Certificate of Authority of Attorney(s)-in-Fact.

SECTION 00800

SUPPLEMENTARY CONDITIONS

SECTION 00800

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (1910-8, 2007 edition) as indicated below. All provisions not so amended, supplemented or modified remain in full force and effect.

SC-1.01 The following information is applicable to Article 1 – Definitions and Terminology. The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions, unless a modification of that definition is made herein.

Add the following definitions to paragraph 1.01:

Legal Holidays - those days observed as holidays by the Town/OWNER.

Regular Working Hours - hours defined as 7:00 a.m. to 6:00 p.m. unless otherwise specified in the General Requirements.

Reviewed - Shop Drawings that have been marked by ENGINEER, "No Exceptions Taken".

Town, TOWN, or OWNER – The Town of Wellington, Colorado.

Add the following language to Paragraph 1.01.A.19 of the General Conditions:

The ENGINEER shall mean the Town of Wellington Engineering Department, attn Alex Evonitz

SC-2.03 Delete the last sentence of Paragraph 2.03 of the General Conditions.

SC-2.05 *Before Starting Construction*:

Add the following language to item A.2 of the General Conditions:

“In no case will a schedule be acceptable which allows less than 14 calendar days for each review by ENGINEER and its subconsultants.”

Add paragraph 2.05.B to the of the General Conditions:

“B. *Evidence of Insurance*: Before any work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to the ENGINEER, certificates (and other evidence of insurance requested by the OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.”

SC-2.07 *Initial acceptance of schedules:* Delete the first sentence of paragraph 2.06 of the General Conditions and substitute the following:

“Unless otherwise provided in the Contract Documents, before work begins a conference attended by CONTRACTOR, ENGINEER, and others as designated by OWNER will be held to review for acceptability to ENGINEER the schedules submitted in accordance with the Conditions of the Contract and Division 1, General Requirements.”

SC-3.04 *Amending and Supplementing Contract Documents*. In paragraph B.2. of the General Conditions, delete the word "approval" and substitute in its place the word "review".

SC-4.01 *Availability of Lands:* Delete subparagraph B.

SC-4.02 *Subsurface and Physical Conditions:*

None

SC-4.03 *Differing subsurface or physical conditions*: Delete the paragraph following subpart A.4 of the General Conditions in its entirety and insert the following:

"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 permitted by paragraph 6.16), notify OWNER and ENGINEER about such condition. CONTRACTOR shall document the changed condition and in writing advise OWNER and ENGINEER of changes that CONTRACTOR believes should be made in the operation of the project due to such conditions. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until an agreement can be reached on the course of action. Said course of action shall be transmitted to CONTRACTOR in writing."

SC-4.04 *Underground Facilities*.

In paragraph A.2.b of the General Conditions., delete the words shown or indicated in the Contract Documents.

Delete subpart B. of paragraph 4.04 of the General Conditions in its entirety and insert the following:

"B. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents during construction and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated, CONTRACTOR shall promptly after becoming aware thereof (except in an emergency as required by paragraph 6.16), identify the OWNER of such Underground Facility and give notice to that OWNER and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.13. CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Article 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project."

SC-4.*06 Hazardous Environmental Condition at Site.*

Delete the first two sentences of Paragraph 4.06 B of the General Conditions and in Paragraph 4.06B of the General Conditions delete:

"Except for such reliance on such "technical data".

Delete supports E, F, and G under this paragraph.

SC-5.01 *Performance, Payment and Other Bonds.* Add the following sentence to paragraph 5.1 of the General Conditions:

"All Bonds must be countersigned by an agent who is a resident of the State of Colorado and must be accompanied by a certified copy of the authority to act for the Surety and authority to transact business in the State of Colorado."

SC 5.03 *Conditions of Insurance.* In paragraph B delete the word "with' in the first sentence, " Owner shall deliver to Contractor, ~~**with**~~ copies …"

SC-5.04 CONTRACTOR's *Liability Insurance.* The limits of liability for the insurance required by Article 5.04 of the General Conditions shall provide the following coverages for not less than the following amounts or greater amounts where required by Laws and Regulations:

A.1 and A.2 Workers' Compensation, etc.

(1)	State	Statutory
(2)	Applicable Federal	Statutory
(3)	Employer's Liability	$ **600,000** each person

A.3, A.4, and A.5. CONTRACTOR's Liability Insurance, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR:

(1)	General Aggregate (Except Products-Completed Operations)	$ **1,000,000**
(2)	Products - Completed Operations Aggregate	$ **1,000,000**
(3)	Personal and Advertising Injury (per person/ Organization)	$ **600,000**
(4)	Each Occurrence (Bodily Injury and Property Damage)	$ **600,000**
(5)	Property Damage Liability	

Insurance Will Provide
Explosion, Collapse, and
Underground Coverages
Where Applicable.

(6) Excess Liability

General Aggregate	$ **1,000,000**
Each Occurrence	$ **600,000**

A.6 Automobile Liability:

(1) Bodily Injury:

Each person	$ **600,000**
Each Accident	$ **600,000**
Property Damage:	
Each Accident	$ **600,000**
or	
(2) Combined Single Limit (Bodily Injury and Property Damage):	$ **1,000,000**

B.1 Add "and B.3 Completed Operations Insurance "after "A.6. inclusive" in the first line of item B.1. The following are to be included as additional insureds on the CONTRACTOR's Liability Insurance Policy:

OWNER: Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
Attn: Kelly Houghteling and Alex Evonitz

B.4 The contractual liability coverage required by paragraph 5.04.B.4. of the General Conditions shall provide coverage for not less than the following amounts. Greater amounts shall be provided where required by laws and regulations.

(1) General Aggregate	$ **1,000,000**
(2) Each Occurrence (Bodily Injury and Property Damage)	$ **600,000**

SC-5.06 *Property Insurance*. Delete Article 5.06.A. of the General Conditions in its entirety and insert the following:

"5.06 CONTRACTOR shall purchase and maintain property insurance upon the Work at the site

in the amount of the full replacement cost thereof (subject to such deductible amounts as may be required by Laws and Regulations). This insurance shall:

A.1 include the interests of OWNER, CONTRACTOR, SubCONTRACTORs, ENGINEER, ENGINEER's consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

A.2 be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, hail, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.

A.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of ENGINEERs and architects);

A.4 cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

A.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued."

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 5.06.A. shall comply with the requirements of paragraph C.

B. Delete Paragraph 5.06 B of the General Conditions.

E. Delete this subpart in its entirety and insert the following:

"E. If CONTRACTOR desires special insurance be included in the property insurance policies provided under paragraphs 5.06.A. or B., said coverages may be purchased at CONTRACTOR's expense. CONTRACTOR shall advise OWNER of said special insurance provisions."

SC-5.09 *Acceptance of Bonds and Insurance*. Delete in its entirety and substitute the following:

"If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the CONTRACTOR in accordance with Article 5 on the basis of its not complying with the Contract Documents, OWNER will notify the CONTRACTOR in writing within 15 days of the date of delivery of such certificates to OWNER."

SC-6.05 *Substitutes or "Or-Equal"*. Delete the words "approved" from all of paragraph and substitute the word "reviewed".

.

A. Delete the last sentence of 6.05.A. and add the following:

"Product Options Defined:

Products Specified by Reference Standards or by Description Only: Any product meeting

those standards.

Products Specified by Naming One or More Manufacturers: Products of named manufacturers meeting specifications. Submit request for substitution and "or equal" for any manufacturer not specifically named. Products of acceptable manufacturers are subject to requirements of specifications for specified product.

Products Specified by Naming One or More Manufacturers, No Substitutes: Products of named manufacturers meeting specifications; no options, no substitutions. Products of acceptable manufacturers are subject to requirements of specifications for specified product."

A.2. *Substitute Items*

Add to subparagraph 2.a:

"A product is considered as a substitute if it involves a change in the requirements of the design or the physical requirements. The ENGINEER shall determine whether a product is a substitute or an "or equal". Requests for substitutions of products will be considered only in case of product unavailability, other conditions beyond control of CONTRACTOR, or if a benefit to OWNER.

Substitutions:

(1) Will not be considered when indicated on Shop Drawings or Product Data submittals without separate formal request, when requested directly by SubCONTRACTOR or supplier, or when acceptance will require substantial revision of Contract Documents.
(2) Do not order or install substitute products without written acceptance.
(3) Only one request for substitution for each product will be considered. When substitution is not accepted, provide specified product.
(4) ENGINEER will determine acceptability of substitutions."

Add to 2.b.:
"Request for substitution

(1) Submit two copies of each request. Submit separate request for each substitution.
(2) Identify products by Specification Section and Article numbers.
(3) Provide manufacturer's name and address, trade name of products, and model or catalog number.
(4) List fabricators and suppliers as appropriate.
(5) Document each request with complete data substantiating compliance of proposed substitution with requirements of Contract Documents:

- Submit complete Shop Drawings as specified in Section 01340.
- Give itemized comparison of proposed substitution with specified product, listing variation, and reference to specification section and article numbers.
- Give quality and performance comparison between proposed substitution and specified product.
- List availability of maintenance services and replacement materials.
- State effect of substitution on construction schedule, and changes required in other work or products."

Add to 2.d:
"CONTRACTOR Representation

(1) Request for review of Substitute and "or equal" products is a representation that CONTRACTOR has investigated proposed product and has determined that it is equal to or superior in all respects to specified product.

(2) CONTRACTOR will provide same warranty for substitute and "or equal" product as for specified product.

(3) CONTRACTOR will coordinate installation of accepted substitute and "or equal" product, making such changes as may be required for work to be complete in all respects.

(4) CONTRACTOR waives claims for additional costs related to substitute and "or equal" product which may later become apparent.

(5) If substituted and "or equal" products do not meet or exceed above requirements, whether before, during, or after incorporated into Work, CONTRACTOR shall, at no additional cost to OWNER, replace substituted and "or equal" products with products originally specified."

Add to *C. ENGINEER's Evaluation.*
"ENGINEER will review CONTRACTOR's requests for substitutions and "or equal" product with reasonable promptness. ENGINEER will not make exhaustive attempt to determine that products proposed for substitution and "or equal" are equal to, or can be modified in order to be equal to specified products."

SC-6.06 *Concerning Subcontracting Suppliers and Others*: Delete subparagraph B. and substitute the following:

"B. Each Bidder shall identify any subCONTRACTORs and suppliers identified and all subCONTRACTORs and all suppliers who will provide 5 percent or more of the cost of the project on a form following the Bid Form. OWNER may require that subCONTRACTORs and suppliers submit Statements of Qualifications. OWNER'S or ENGINEER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) will constitute a condition of the contract requiring the use of the named subCONTRACTORs, suppliers or other persons or organization on the work and they may not be changed without the written acceptance of the OWNER. No acceptance by OWNER or ENGINEER of any subCONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective work."

C. Add the following language to the end of subparagraph C.:

"OWNER or ENGINEER may furnish to any subCONTRACTOR supplier or other person or organization evidence of amounts paid to CONTRACTOR in accordance with CONTRACTOR's Applications for Payment."

SC-6.10 *Taxes*. Delete in its entirety and substitute the following:

"A. OWNER is exempt from Colorado state and local sales and use taxes on materials to be permanently incorporated into the project. Said taxes shall not be included in the Contract Price. CONTRACTOR must apply for, and receive, a Certificate of Exemption from the Colorado Department of Revenue for construction materials to be physically

incorporated into the project. This Certification of Exemption provides that the CONTRACTOR shall neither pay nor include in his Bid, Sales and Use Taxes on those building and construction materials physically incorporated into the project.

Address: Colorado Department of Revenue
State Capital Annex
1375 Sherman Street
Denver, Colorado 80261

Sales and Use Taxes for the State of Colorado, Regional Transportation District (RTD) and certain Colorado counties are collected by the State of Colorado and are included in the Certification of Exemption. All applicable Sales and Use Taxes (including State collected taxes), on any items other than construction and building materials physically incorporated into the project are to be paid by CONTRACTOR and are to be included in appropriate bid items."

SC-6.12 *Record Documents*

Delete the word "approved" from the text of paragraph and substitute in each place the work "reviewed".

Delete the last sentence of paragraph 6.12 of the General Conditions and substitute the following:

"Upon completion of the Work and prior to release of final payment, these recorded documents, Samples and Shop Drawings will be delivered to ENGINEER and OWNER."

SC-6.13 *Safety & Protection.* Add the following:

"CONTRACTOR shall comply with the requirements of the versions of the International Fire Code adopted by the Town and the Wellington Fire District including permitting, notification, signage, material use and storage limitations, and inspections."

SC-6.17 *Shop Drawings and Samples.* Delete the words "and approval" and "and approve" from the entire article. The ENGINEER will "review the shop drawings or sample as required by the General Requirements."

SC-8.10 Delete paragraph 8.10 of the General Conditions.

SC-8.11 Delete paragraph 8.11 of the General Conditions.

SC-10.06 Add the following Paragraph 10.06 to Article 10 of the General Conditions:

"10.6 By the execution of a Change Order, a Work Change Directive, or Written Agreement, OWNER and CONTRACTOR expressly acknowledge and agree that said Change Order or Written Agreement provides for a fair and equitable adjustment in Contract Price and/or Contract Time for the additions, deletions, or revisions in the work as authorized by said Change Order, a Work Change Directive or Written Agreement. OWNER and CONTRACTOR further expressly acknowledge and agree that further claims for adjustments to the Contract Price and/or Contract Time covered by a Change Order, a Work Change Directive or Written Agreement are not valid."

SC-11.01.A.1 *Cost of the Work*. Delete the words "and retirement", "bonuses, sick leave, vacation and holiday pay".

SC-13.07 *Correction Period.*

Paragraph A, delete: “one year” in the first sentence and insert “two (2) years”.

Add: “During the two (2) year correction period the OWNER shall work directly with the CONTRACTOR and such work as is required to be corrected shall not be coordinated through the ENGINEER. Conversely, the CONTRACTOR shall work directly with the OWNER on correction work.”

SC-14.02 *Documentation to Accompany Applications for Payment*. Add to A.1 “CONTRACTOR's Applications for Payment shall be accompanied by the documentation specified herein.

Materials and Equipment. If payment is requested for 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 Progress Payment shall be accompanied by such data, satisfactory to OWNER, as will establish OWNER's title to the material and equipment and protect the interest therein, including applicable insurance.

Payments for such materials and equipment shall be based only upon the actual cost of the materials and equipment to CONTRACTOR and shall not include any overhead or profit to CONTRACTOR. Retainage shall apply to such materials and equipment.

Receipts and Releases. Each Application for Payment shall include evidence as required in the General Conditions, that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR's obligations reflected in prior Applications for Payment. Each subsequent Applications for Payment shall include receipts or other evidence that previous progress payments received on account of the Work more than 30 days prior to the date of the current Application for Payment have been applied to discharge CONTRACTOR's obligations reflected in prior Applications for Payment. In lieu thereof, CONTRACTOR may furnish complete and legally effective release or waivers conforming to the format of OWNER's standard form of all liens that could arise out of the Contract Documents and the labor and services performed and the materials and equipment furnished thereunder. CONTRACTOR's Application for Substantial Completion shall also be accompanied by complete and legally effective releases or waivers of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder as required for Substantial Completion, reference Section 01700, Contract Closeout. Releases or waivers of liens are to be submitted on forms acceptable to OWNER.

Schedules and Data. Each Application for Progress Payment shall be accompanied by CONTRACTOR's updated progress schedule or progress report, with such Shop Drawings schedules, procurement schedules, and other data specified in Division 1 or reasonably required by ENGINEER.

Certificates. Each Application for Payment shall be accompanied by such certificates as may be required by governmental agencies.”

Documentation to Accompany Final Application for Payment. Add to A.2.: “CONTRACTOR's Application for Final Payment shall be accompanied by consent of the Surety to Final Payment. CONTRACTOR's Application for Final Payment shall also

be accompanied by complete and legally effective releases or waivers of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. Releases or waivers of liens and the consent of the Surety to Final Payment are to be submitted on forms acceptable to OWNER. If releases or waivers were provided and accepted by OWNER for Substantial Completion they will not be required again for Final Completion."

C. *Payment Becomes Due*. Add to C.1:
"…subject to Paragraph 17.7.2 of the Supplementary Conditions."

SC-17 MISCELLANEOUS Add the following language to Article 17 of the General Conditions:

"17.05 The laws of the State of Colorado apply to this Agreement. Reference to two pertinent Colorado statutes are as follows:

A. Colorado Revised Statutes (CRS 8-17-101) requires that Colorado labor be employed to perform the work to the extent of not less than 80 percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the project. Colorado labor means any person who is a bona fide resident of the State of Colorado at the time or employment, without discrimination as to race, color, creed, age, religion or sex.

B If a claim is filed, OWNER is required by law (CRS 38-26-107) to withhold from all payments to CONTRACTOR sufficient funds to insure the payment of all claims for labor, materials, team hire, substance, provisions, provender, or other supplies used or consumed by CONTRACTOR or his subCONTRACTORs in or about the performance of the work. Such funds must be withheld until said claims have been paid or such claims as filed have been withdrawn, such payment or withdrawn to be evidenced by filing with OWNER a receipt in full or an order for withdrawal in writing and signed by the person filing such a claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement, as published in a public newspaper in accordance with the law, unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the OWNER. At the expiration of such ninety (90) day period, OWNER shall pay to CONTRACTOR such moneys and funds as are not the subject of suit and lis pendens notices, and shall retain only sufficient funds to insure the payment of judgements which may result from the suit.

17.06 Forms. CONTRACTOR shall be required to use forms included in these Contract Documents and where not so included forms that are acceptable to OWNER and ENGINEER."

END OF SECTION

C-700

GENERAL CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
American Council of Engineering Companies

The Associated General Contractors of America — Skill Responsibility Integrity

ASCE American Society of Civil Engineers

PE National Society of Professional Engineers
Professional Engineers in Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by

CONSTRUCTION SPECIFICATIONS INSTITUTE

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.

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. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

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12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

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27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given 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 under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *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.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *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.

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40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *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 at the Site.

44. *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.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *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 Subcontractor.

48. *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 those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F 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 Paragraph 9.09 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 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

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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. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

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. 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 Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *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 Agreement 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 Agreement. 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 Agreement, whichever date is earlier.

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2.04 *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 the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;

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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *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 2.05.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

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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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, 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, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, 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 Contract Documents. 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 Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

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1. *Contractor's Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

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3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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

2. 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.

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.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

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Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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 the Work is to be performed 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.

4.02 *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 contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed 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 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and

   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 Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. Contractor knew of the existence of such conditions at the time Contractor made a final 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

   b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

   c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

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4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous 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 shall not be responsible for 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 such information and data;

   b. locating all Underground Facilities shown or indicated in the Contract Documents;

   c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

   d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

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4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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

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permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, either party may make a Claim therefor as provided in Paragraph 10.05.

F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

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ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, 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 Documents. 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, 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 requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

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C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which 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:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

   a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

   b. by any other person for any other reason;

5. 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; and

6. 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.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners,

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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;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

   a. Such insurance shall remain in effect for two years after final payment.

   b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, 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.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full 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 interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of

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

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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies 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 of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.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, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

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5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

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ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

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.

6.02 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *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.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, 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.

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6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "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 specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion 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, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, 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; and

3) it has a proven record of performance and availability of responsive service.

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.

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2. *Substitute Items:*

   a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

   b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

   c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

   d. 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:

      1) shall certify that the proposed substitute item will:

         a) perform adequately the functions and achieve the results called for by the general design,

         b) be similar in substance to that specified, and

         c) be suited to the same use as that specified;

      2) will state:

         a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

         b) 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

         c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

      3) will identify:

         a) all variations of the proposed substitute item from that specified, and

         b) available engineering, sales, maintenance, repair, and replacement services; and

      4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

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B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.

F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or

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entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. 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. 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. 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.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *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

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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.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner

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and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. 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 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 by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other 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 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 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 property to stresses or pressures that will endanger it.

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6.12 *Record Documents*

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

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. 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, 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 owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

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 6.13.A.2 or 6.13.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 (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

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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 for protection of the Work 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *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.

6.15 *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.

6.16 *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.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

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 6.17.D.

2. *Samples:*

a. Submit number of Samples specified in the Specifications.

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b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated each 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 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 and approval of that 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 both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the

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Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval 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 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

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.

6.18 *Continuing the Work*

A. 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, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 representation of 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;

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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 or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. 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 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 6.20.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 6.20.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.

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6.21 *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 law.

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, Shop Drawings 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 6.21, 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 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe

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access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

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ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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

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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.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *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.

8.12 *Compliance with Safety Program*

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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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 9.09. 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.

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9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with 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, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. 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

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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 Paragraph 10.05.

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 14.07.A will only be to determine generally that their content complies with the requirements of,

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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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. 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; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of

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executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *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.

10.05 *Claims*

A. *Engineer's Decision Required*: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

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E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs 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 11.01.B, 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, 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 11.01.

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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 5.06.D), 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 telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

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

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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, expediters, 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which 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 Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work 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 or when a Claim for an 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 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, 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.

11.02 *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:*

1. Contractor agrees that:

a. 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

b. 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

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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:*

1. 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.

11.03 *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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 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; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor 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 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   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 12.01.C.2.a through 12.01.C.2.e, inclusive.

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12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests 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.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

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E. 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.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, 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.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

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architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

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 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. 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) will be paid by Contractor.

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 13.07, 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 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *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 in accordance with Paragraph 13.06.A, 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, 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 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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.

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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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

14.02 *Progress Payments*

A. *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 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.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, 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

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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 9.07, 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 Documents; 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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

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a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. 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;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.

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 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

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14.04 *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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. 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 tentative list.

14.05 *Partial Utilization*

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:

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1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

   b. consent of the surety, if any, to final payment;

   c. a list of all Claims against Owner that Contractor believes are unsettled; and

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d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. 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 14.09. 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. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

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2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *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;

3. 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

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dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) 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 15.03.

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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

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2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *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 to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents 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.

17.03 *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 Documents. 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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SECTION 00520

AGREEMENT

THIS AGREEMENT is dated as of the __ day of __July___in the year of 2021. The Town of Wellington (hereinafter called OWNER) and NORTHSTARR Concrete Inc._____
_____ (hereinafter called CONTRACTOR),
in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work under the Contract Documents is generally described as the **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT** or part thereof as defined in the Notice of Award.

ARTICLE 2. ENGINEER

The Project has been designed by the Town of Wellington who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Work will be substantially completed on or before Friday October 15, 2021 and completed and ready for final payment in accordance with paragraph 14.07 of the General conditions on or before Friday October 22, 2021.

3.2 Early completion and time extensions.

OWNER explicitly states that the time stated in the agreement for Substantial Completion has been considered in respect to OWNER's use of the facilities. An early completion time shall not entitle CONTRACTOR to additional monies should events, construction, or any other events not allow CONTRACTOR to complete work in accordance with an accelerated construction schedule.

Float or slack time in the schedule is for the exclusive use of OWNER and at no additional cost to the OWNER. CONTRACTOR acknowledges and agrees that delays in activities which do not in fact actually affect the date or time of contract completion, or any milestone completion dates listed in the contract, will not be the basis for a change. Extensions of time will be granted only to the extent that an activity or activities effect exceeds the total float or slack along the channels involved at the time notice to proceed was used for the change.

3.3 Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving 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) CONTRACTOR shall pay OWNER $ 500 for each day that expires after the date specified above for Substantial Completion for each Schedule until the

Work is substantially complete, (but not to be additive if more than one Schedule is not complete at the same time). After Substantial Completion if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the time specified for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER $ 500 for each day that expires after the time specified for completion and readiness for final payment for each Schedule, (but not to be additive if more than one Schedule is not complete at the same time).

The foregoing liquidated damages pertain solely to OWNER's costs and not to damages claimed against the OWNER or CONTRACTOR by any other third party. CONTRACTOR is responsible for third party damages.

ARTICLE 4. CONTRACT PRICE

4.1. OWNER shall pay CONTRACTOR for performance of the work in accordance with the CONTRACT DOCUMENTS in current funds as follows: $ Two hundred seven thousand, and sixty five dollars and zero cents ($207,065.00), in accordance with the Bid Form, Section 00300 and the Notice of Award, Section 00580, attached.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. PROGRESS PAYMENTS. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER, once each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1 RETAINAGE. Retainage from progress payments shall be withheld as stated below. Owner OWNER shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

Retention of 5 percent of payments authorized until the Work is 50 percent complete.

After the Work is 50 percent complete, no further retainage shall be withheld from subsequent progress payment unless, in the opinion of the ENGINEER, satisfactory progress is not being made. When the Work is 50 percent complete and, in the opinion of the ENGINEER, satisfactory progress is not being made retainage may continue to be withheld at 10 percent of payments. At any time after the Work is 50 percent complete and, in the opinion of the ENGINEER, satisfactory progress is not being made retainage may be reinstated to 5 percent of the total amount of all progress payments.

After the Work is substantially complete the retained amount will continue to be 5 percent of the total Contract Price until Final Completion.

5.2. FINAL PAYMENT. Upon final completion and acceptance of the work in accordance with the General Conditions and the Supplementary Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER.

ARTICLE 6. CONTRACTOR'S REPRESENTATION

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

6.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

6.2. CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in the General Conditions.

6.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to above) which pertain to the subsurface or physical condition at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

6.4. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provision of the General Conditions.

6.5. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Document.

6.6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 7. CONTRACT DOCUMENTS

7.1 The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the work consisting of the following documents:

7.1.1 This Agreement (0520)

7.1.2 Construction Performance Bond (0610)

7.1.3 Construction Payment Bond (0615)

7.1.4 Notice of Award (0580)

7.1.5 Notice to Proceed (0590)

7.1.6 General Conditions (C-700)

7.1.7 Supplementary Conditions (0800)

7.1.8 Consent of Surety Form (0660)

7.1.9 Certificates of Insurance (0630)

7.1.10 Certificate of Substantial Completion (0635)

7.1.11 Certificate of Final Acceptance (0640)

7.1.12 Lien Waiver Release (Contractor) (0650)

7.1.13 Lien Waiver Releases (Subcontractors) (0651)

7.1.14 Application of Exemption Certificate

7.1.15 Application for Payment

7.1.16 Technical specifications as listed in Table of Contents.

7.1.17 Addenda Numbers ____ to____, inclusive.

7.1.18 Contractor's Bid.

7.1.19 Documentation submitted by Contractor prior to Notice of Award.

7.1.20 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

7.1.21 The documents listed in this Article 7 are attached to this Agreement (except as expressly noted otherwise above).

7.1.22 Prohibition Against Employing Illegal Aliens (0600)

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

7.2. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

ARTICLE 8. MISCELLANEOUS

8.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and

specifically but not without limitations, moneys that may become due and moneys that are 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 that assignor from any duty or responsibility under the Contract Documents.

8.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreement and obligations contained in the Contract Documents.

8.4 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.

8.5 Special provision relating to contract interpretation. The parties hereto agree that in the event it becomes necessary to determine the meaning, scope or interrelationship of any of the provisions of this contract, the doctrine of contra proferentum, that is that the contract documents shall be construed against the OWNER, shall not be used. On the contrary, the standard for interpretation dictates that the meaning of a questionable contract passage is that which a reasonably intelligent person acquainted with all operative usages and knowing all the facts and circumstances of the contract prior to and contemporaneously with the making of the contract would assign to it.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in four counterparts. Two counterparts have been delivered to CONTRACTOR who shall deliver one counterpart to the Surety and one counterpart delivered to OWNER and one counterpart has been retained by ENGINEER.

This Agreement will be effective on _____, 20__. (Which is the Effective Date of the Agreement).

OWNER:	CONTRACTOR:
Town of Wellington	_____
By_____	By_____
_____	_____
Signature	Signature
Title_____	Title_____
	(CORPORATE SEAL)
Attest_____	Attest_____

Address for giving notices:	Address for giving notices
_____	_____
_____	_____
_____	_____
Telephone	Telephone

END OF AGREEMENT

SECTION 00580

NOTICE OFAWARD

SECTION 00580

NOTICE OF AWARD

July 13, 2021

TO: NORTHSTARR Concrete Inc.

Address:1220 S. Garfield Ave. Loveland, CO 80537

Project: **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT**

The Town of Wellington, Colorado (hereinafter called "the OWNER") has considered the bids submitted for referenced work in response to its Advertisement for Bids.

You are hereby notified that your Bid dated May 28, 2021 has been considered. You are the apparent Successful Bidder and have been awarded a contract for the work (or part there of as described as follows):

- 3rd Street (Kennedy Ave to Tyler Ave)
- 5th Street (Cleveland Ave to Roosevelt Ave)
- 1st Street (Kennedy Ave to Tyler Ave)

Add Alternate Locations:

- Harrison Avenue (4th Street to 5th Street)
- Adams Drive and Kit Fox (Cross Pan)
- Wellington Blvd (Cross Pan at both entrances to the Commercial buildings on east side of the street).

The Contract Price of your contract is two hundred seven thousand, and sixty five dollars and zero cents. ($207,065.00)

__2___ copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

__2____ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

1. You must deliver to the OWNER __2__ fully executed counterparts of the Agreement including all the Contract Documents, this includes the Drawings.

2. You must deliver with the executed Agreement the Contract Security (bonds) as specified in the General Conditions and Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

OWNER will return to you ___1 fully signed counterpart of the Agreement with the Contract Documents attached.

By: _____

Title: _____

ACCEPTANCE OF AWARD
By: _____

Title: _____

Date: _____

END OF SECTION

SECTION 00590

NOTICE TO PROCEED

SECTION 00590

NOTICE TO PROCEED

Dated _____

TO: _____

Address: _____

_____

Project: **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT**

You are notified that the Contract Times under the above contract will commence to run on _____, 20___. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement, the date of Substantial Completion is _____ and the date for completion and readiness for final payment is _____

Before you may start any Work at the site, you and OWNER must each deliver to the other (with copies to ENGINEER and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

OWNER: _____

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Contractor: _____

By: _____

Title: _____

Date: _____

END OF SECTION

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SECTION 00600

PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

SECTION 00600

PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Contractor represents and agrees that:

1. As of the date of this Agreement:

    a. Contractor does not knowingly employ or contract with an illegal alien; and

    b. Contractor has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to confirm the employment eligibility of all newly hired employees.

2. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.

3. Contractor shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

4. Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

    a. Notify such subcontractor and the Town within three 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 days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

7. If Contractor violates a provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

8. The Town will notify the Office of the Secretary of State if Contractor violates this provision of this Agreement and the Town terminates the Agreement for such breach.

END OF SECTION

SECTION 00610

CONSTRUCTION PERFORMANCE BOND

Construction Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):
The Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
ATTN: Bob Gowing, Public Works Director
Telephone: 970-568-0447

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location): **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT,** Wellington, Colorado, Larimer County.

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature:_____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature:_____

Name and Title:

EJCDC No. 1910-28A (1984 Edition)
Prepared through the joint efforts of the Surety Association of America, Engineer's Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the contractor and the Surety agree, the contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contracts; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the Contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and , as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefor.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract. to the limit of the amount of this
Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damage on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default; and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner of the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to

the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY - Name, Address and Telephone)	
AGENT or BROKER:	OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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SECTION 00615

CONSTRUCTION PAYMENT BOND

Construction Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):
The Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
ATTN: Bob Gowing, Public Works Director
Telephone: 970-568-0447

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location): **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT,** Wellington, Colorado, Larimer County.

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form: interest at the rate of eight percent (8%) per annum will be paid on all payments becoming due.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature:_____

Name and Title:

SURETY

Company: (Corp. Seal)

Signature:_____

Name and Title:

EJCDC No. 1910-28B (1984 Edition)
Prepared through the joint efforts of the Surety Association of America, Engineer's Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract,, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were finished or supplied or for whom the labor was dome or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bind, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under his Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were finished by anyone under the Construction Contract, whichever of (1) or (2) occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be acceptable.

12. Notice to the Surety, the Owner of the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions.

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of

the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY - Name, Address and Telephone)	
AGENT or BROKER:	OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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SECTION 00630

CERTIFICATE OF INSURANCE

SECTION 00630

CERTIFICATE OF INSURANCE

Contractor shall insert his own standard form for Certificate of Insurance.

SECTION 00635

CERTIFICATE OF SUBSTANTIAL COMPLETION

SECTION 00635

CERTIFICATION OF SUBSTANTIAL COMPLETION

TO: **The Town of Wellington** (OWNER)

DATE OF SUBSTANTIAL COMPLETION: _____

PROJECT TITLE:

2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT

PROJECT OR SPECIFIED PART SHALL INCLUDE:

LOCATION: Town of Wellington, CO

The Town of Wellington,

CONTRACTOR:

CONTRACT DATE: _____

The Work performed under this contract has been inspected by authorized representatives of the OWNER, CONTRACTOR, and the ENGINEER and the project (or specified part of the project, as indicated above) is hereby declared to be substantially completed on the above date.

A tentative list of items to be completed of corrected is appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the CONTRACTOR to complete all the Work in accordance with the Contract Documents.

_____ By: _____

ENGINEER AUTHORIZED REPRESENTATIVE DATE

The CONTRACTOR accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the tentative list within the time indicated.

_____ By: _____

CONTRACTOR AUTHORIZED REPRESENTATIVE DATE

The OWNER accepts the project or specified area of the project as substantially complete and will assume full possession of the project or specified area of the project at 12:01 a.m., on _____. The responsibility for heat, utilities, security, and insurance under the Contract Documents shall be set forth under "Remarks" below.

The Town of Wellington By: _____

AUTHORIZED REPRESENTATIVE DATE

REMARKS:

SECTION 00640

CERTIFICATE OF FINAL ACCEPTANCE

SECTION 00640

CERTIFICATE OF FINAL ACCEPTANCE

_____, 20___

TO: _____

_____

_____

Gentlemen:

You are hereby notified that on the ___ day of _____, 20____, the **Town of Wellington**, Colorado, has accepted the Work completed by _____ for the project, **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT.** A check is attached hereto in the amount of $_____ as Final Payment for all Work done, subject to the terms of the Contract Documents which are dated: _____

In conformance with the Contract Documents for this project, your obligations and guarantees will continue for the specified time from the following date:_____.

Sincerely,

OWNER: T**he Town of Wellington**

By:

Title:

ATTEST:

Title:

SECTION 00650 & 00651

LIEN WAIVER RELEASE

SECTION 00650

LIEN WAIVER RELEASE
(Contractor)

TO: **The Town of Wellington**
(hereinafter referred to as "Owner").

FROM: _____

PROJECT: That portion of **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT** described as follows:_____

1. The undersigned does hereby release all claims, Mechanic's Liens Rights, Miller Act Claims (40 USCA 270), Stop Notice, Equitable Liens and Labor and Material Bond Rights resulting from labor and/or materials, subcontract work, equipment or other work, rents, services or supplies heretofore furnished in and for the construction, design, improvement, alteration, additions to or repair of the above described project.

2. This release is given for and in consideration of the sum of $_____and other good and valuable consideration. If no dollar consideration is herein recited, it is acknowledged that other adequate consideration has been received by the undersigned for this release.

3. The undersigned agrees to defend and hold harmless the Owner, lender, if any, and Surety from any claim or claims hereinafter made by the undersigned or its Suppliers, Subcontractors or employees, servants, agents or assigns of such persons against the Project. The undersigned agrees to indemnify or reimburse all persons so relying upon this release for any and all sums, including attorney's fees and costs, which may be incurred as the result of any such claims.

4. It is acknowledged that the designation of the above Project constitutes an adequate description of the property and improvements for which the undersigned has received consideration for this release.

5. It is further warranted and represented that all such claims against the undersigned or the undersigned's Subcontractors or Suppliers have been paid or that arrangements, satisfactory to the Owner, have been made for such payments.

6. It is acknowledged that this release is for the benefit of and may be relied upon by the Owner, the lender, if any, and the principal and Surety on any labor and material bond for the Project.

7. In addition to the foregoing, this instrument shall constitute a ***(full, final and complete)***(partial) release of all rights, claims and demands of the undersigned against the Contractor arising out of or pertaining to the above referenced project. If partial, all rights and claims on the project are released up to and including the _____ day of _____ 20___.

Dated this _____day of_____, 20_____.

FIRM_____
Name of firm or person giving release

By

Title

STATE OF_____)
)ss.
COUNTY OF_____)

The foregoing release was subscribed and sworn to before me this _____ day of _____, 20___ by _____ (as_____of_____).

_____
NOTARY PUBLIC
_____

_____

My commission expires: _____.

SECTION 00651

LIEN WAIVER RELEASE
(Sub-Contractor)

TO: **The Town of Wellington**
(hereinafter referred to as "Owner").

FROM: _____

PROJECT: That portion of **2010 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT** described as follows:_____

_____

1. The undersigned does hereby release all claims, Mechanic's Liens Rights, Miller Act Claims (40 USCA 270), Stop Notice, Equitable Liens and Labor and Material Bond Rights resulting from labor and/or materials, subcontract work, equipment or other work, rents, services or supplies heretofore furnished in and fort the construction, design, improvement, alteration, additions to or repair of the above described project.

2. This release is given for and in consideration of the sum of $_____and other good and valuable consideration. If no dollar consideration is herein recited, it is acknowledged that other adequate consideration has been received by the undersigned for this release.

3. The undersigned agrees to defend and hold harmless the Owner, lender, if any, and Surety from any claim or claims hereinafter made by the undersigned or its Suppliers, Subcontractors or employees, servants, agents or assigns of such persons against the Project. The undersigned agrees to indemnify or reimburse all persons so relying upon this release for any and all sums, including attorney's fees and costs, which may be incurred as the result of any such claims.

4. It is acknowledged that the designation of the above Project constitutes an adequate description of the property and improvements for which the undersigned has received consideration for this release.

5. It is further warranted and represented that all such claims against the undersigned or the undersigned's Subcontractors or Suppliers have been paid or that arrangements, satisfactory to the Owner, have been made for such payments.

6. It is acknowledged that this release is for the benefit of and may be relied upon by the Owner, the lender, if any, and the principal and Surety on any labor and material bond for the Project.

7. In addition to the foregoing, this instrument shall constitute a ***(full, final and complete)***(partial) release of all rights, claims and demands of the undersigned against the Contractor arising out of or pertaining to the above referenced project. If partial, all rights and claims on the project are released up to and including the _____ day of _____ 20___.

Dated this _____day of_____, 20_____.

FIRM_____
Name of firm or person giving release

By

Title

STATE OF_____)
)ss.
COUNTY OF_____)

The foregoing release was subscribed and sworn to before me this _____ day of _____, 20____ by _____ (as_____of_____).

_____
NOTARY PUBLIC

My commission expires: _____.

SECTION 00660

CONSENT OF SURETY

SECTION 00660

CONSENT OF SURETY

TO: **The Town of Wellington**
(hereinafter referred to as "OWNER").

CONTRACTOR: _____

PROJECT: **2021 TOWN OF WELLINGTON ROAD CONCRETE REPAIR PROJECT**

CONTRACT DATE:_____

In accordance with the provisions of the Contract between OWNER and CONTRACTOR as indicated above, for_____on bond of (Surety)_____
_____

Hereby approves of the final payment to CONTRACTOR, and agrees that final payment to the CONTRACTOR shall not relieve the Surety company of any of its obligations to OWNER, as set forth in the said Surety company's Bond.

IN WITNESS WHEREOF, the surety Company has hereunto to set its hand this _____day of _____, 20_____.

_____
(Surety Company)

By_____

ATTACH: Power of Attorney and Certificate of Authority of Attorney(s)-in-Fact.

SECTION 00800

SUPPLEMENTARY CONDITIONS

SECTION 00800

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (1910-8, 2007 edition) as indicated below. All provisions not so amended, supplemented or modified remain in full force and effect.

SC-1.01 The following information is applicable to Article 1 – Definitions and Terminology. The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions, unless a modification of that definition is made herein.

Add the following definitions to paragraph 1.01:

Legal Holidays - those days observed as holidays by the Town/OWNER.

Regular Working Hours - hours defined as 7:00 a.m. to 6:00 p.m. unless otherwise specified in the General Requirements.

Reviewed - Shop Drawings that have been marked by ENGINEER, "No Exceptions Taken".

Town, TOWN, or OWNER – The Town of Wellington, Colorado.

Add the following language to Paragraph 1.01.A.19 of the General Conditions:

The ENGINEER shall mean the Town of Wellington Engineering Department, attn Alex Evonitz P.E.

SC-2.03 Delete the last sentence of Paragraph 2.03 of the General Conditions.

SC-2.05 *Before Starting Construction*:

Add the following language to item A.2 of the General Conditions:

“In no case will a schedule be acceptable which allows less than 14 calendar days for each review by ENGINEER and its subconsultants.”

Add paragraph 2.05.B to the General Conditions:

“B. *Evidence of Insurance*: Before any work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to the ENGINEER, certificates (and other evidence of insurance requested by the OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.”

SC-2.07 *Initial acceptance of schedules:* Delete the first sentence of paragraph 2.06 of the General Conditions and substitute the following:

“Unless otherwise provided in the Contract Documents, before work begins a conference attended by CONTRACTOR, ENGINEER, and others as designated by OWNER will be held to review for acceptability to ENGINEER the schedules submitted in accordance with the Conditions of the Contract and Division 1, General Requirements.”

SC-3.04 *Amending and Supplementing Contract Documents*. In paragraph B.2. of the General Conditions, delete the word "approval" and substitute in its place the word "review".

SC-4.01 *Availability of Lands:* Delete subparagraph B.

SC-4.02 *Subsurface and Physical Conditions:*

None

SC-4.03 *Differing subsurface or physical conditions*: Delete the paragraph following subpart A.4 of the General Conditions in its entirety and insert the following:

"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 permitted by paragraph 6.16), notify OWNER and ENGINEER about such condition. CONTRACTOR shall document the changed condition and in writing advise OWNER and ENGINEER of changes that CONTRACTOR believes should be made in the operation of the project due to such conditions. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until an agreement can be reached on the course of action. Said course of action shall be transmitted to CONTRACTOR in writing."

SC-4.04 *Underground Facilities*.

In paragraph A.2.b of the General Conditions., delete the words shown or indicated in the Contract Documents.

Delete subpart B. of paragraph 4.04 of the General Conditions in its entirety and insert the following:

"B. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents during construction and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated, CONTRACTOR shall promptly after becoming aware thereof (except in an emergency as required by paragraph 6.16), identify the OWNER of such Underground Facility and give notice to that OWNER and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.13. CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Article 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project."

SC-4.*06 Hazardous Environmental Condition at Site.*

Delete the first two sentences of Paragraph 4.06 B of the General Conditions and in Paragraph 4.06B of the General Conditions delete:

"Except for such reliance on such "technical data".

Delete supports E, F, and G under this paragraph.

SC-5.01 *Performance, Payment and Other Bonds*. Add the following sentence to paragraph 5.1 of the General Conditions:

"All Bonds must be countersigned by an agent who is a resident of the State of Colorado and must be accompanied by a certified copy of the authority to act for the Surety and authority to transact business in the State of Colorado."

SC 5.03 *Conditions of Insurance.* In paragraph B delete the word "with' in the first sentence, " Owner shall deliver to Contractor, ~~**with**~~ copies …"

SC-5.04 CONTRACTOR's *Liability Insurance.* The limits of liability for the insurance required by Article 5.04 of the General Conditions shall provide the following coverages for not less than the following amounts or greater amounts where required by Laws and Regulations:

A.1 and A.2 Workers' Compensation, etc.

(1)	State	Statutory
(2)	Applicable Federal	Statutory
(3)	Employer's Liability	$ **600,000** each person

A.3, A.4, and A.5. CONTRACTOR's Liability Insurance, which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR:

(1)	General Aggregate (Except Products-Completed Operations)	$ **1,000,000**
(2)	Products - Completed Operations Aggregate	$ **1,000,000**
(3)	Personal and Advertising Injury (per person/ Organization)	$ **600,000**
(4)	Each Occurrence (Bodily Injury and Property Damage)	$ **600,000**
(5)	Property Damage Liability	

Insurance Will Provide
Explosion, Collapse, and
Underground Coverages
Where Applicable.

(6) Excess Liability

General Aggregate	$ **1,000,000**
Each Occurrence	$ **600,000**

A.6 Automobile Liability:

(1) Bodily Injury:

Each person	$ **600,000**
Each Accident	$ **600,000**
Property Damage:	
Each Accident	$ **600,000**
or	
(2) Combined Single Limit (Bodily Injury and Property Damage):	$ **1,000,000**

B.1 Add "and B.3 Completed Operations Insurance "after "A.6. inclusive" in the first line of item B.1. The following are to be included as additional insureds on the CONTRACTOR's Liability Insurance Policy:

OWNER: Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington, CO 80549
Attn: Kelly Houghteling and Alex Evonitz

B.4 The contractual liability coverage required by paragraph 5.04.B.4. of the General Conditions shall provide coverage for not less than the following amounts. Greater amounts shall be provided where required by laws and regulations.

(1) General Aggregate	$ **1,000,000**
(2) Each Occurrence (Bodily Injury and Property Damage)	$ **600,000**

SC-5.06 *Property Insurance*. Delete Article 5.06.A. of the General Conditions in its entirety and insert the following:

"5.06 CONTRACTOR shall purchase and maintain property insurance upon the Work at the site

in the amount of the full replacement cost thereof (subject to such deductible amounts as may be required by Laws and Regulations). This insurance shall:

A.1 include the interests of OWNER, CONTRACTOR, SubCONTRACTORs, ENGINEER, ENGINEER's consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

A.2 be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, hail, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.

A.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of ENGINEERs and architects);

A.4 cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

A.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued."

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 5.06.A. shall comply with the requirements of paragraph C.

B. Delete Paragraph 5.06 B of the General Conditions.

E. Delete this subpart in its entirety and insert the following:

"E. If CONTRACTOR desires special insurance be included in the property insurance policies provided under paragraphs 5.06.A. or B., said coverages may be purchased at CONTRACTOR's expense. CONTRACTOR shall advise OWNER of said special insurance provisions."

SC-5.09 *Acceptance of Bonds and Insurance*. Delete in its entirety and substitute the following:

"If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the CONTRACTOR in accordance with Article 5 on the basis of its not complying with the Contract Documents, OWNER will notify the CONTRACTOR in writing within 15 days of the date of delivery of such certificates to OWNER."

SC-6.05 *Substitutes or "Or-Equal"*. Delete the words "approved" from all of paragraph and substitute the word "reviewed".

.

A. Delete the last sentence of 6.05.A. and add the following:

"Product Options Defined:

Products Specified by Reference Standards or by Description Only: Any product meeting

those standards.

Products Specified by Naming One or More Manufacturers: Products of named manufacturers meeting specifications. Submit request for substitution and "or equal" for any manufacturer not specifically named. Products of acceptable manufacturers are subject to requirements of specifications for specified product.

Products Specified by Naming One or More Manufacturers, No Substitutes: Products of named manufacturers meeting specifications; no options, no substitutions. Products of acceptable manufacturers are subject to requirements of specifications for specified product."

A.2. *Substitute Items*

Add to subparagraph 2.a:

"A product is considered as a substitute if it involves a change in the requirements of the design or the physical requirements. The ENGINEER shall determine whether a product is a substitute or an "or equal". Requests for substitutions of products will be considered only in case of product unavailability, other conditions beyond control of CONTRACTOR, or if a benefit to OWNER.

Substitutions:

(1) Will not be considered when indicated on Shop Drawings or Product Data submittals without separate formal request, when requested directly by SubCONTRACTOR or supplier, or when acceptance will require substantial revision of Contract Documents.
(2) Do not order or install substitute products without written acceptance.
(3) Only one request for substitution for each product will be considered. When substitution is not accepted, provide specified product.
(4) ENGINEER will determine acceptability of substitutions."

Add to 2.b.:
"Request for substitution

(1) Submit two copies of each request. Submit separate request for each substitution.
(2) Identify products by Specification Section and Article numbers.
(3) Provide manufacturer's name and address, trade name of products, and model or catalog number.
(4) List fabricators and suppliers as appropriate.
(5) Document each request with complete data substantiating compliance of proposed substitution with requirements of Contract Documents:

- Submit complete Shop Drawings as specified in Section 01340.
- Give itemized comparison of proposed substitution with specified product, listing variation, and reference to specification section and article numbers.
- Give quality and performance comparison between proposed substitution and specified product.
- List availability of maintenance services and replacement materials.
- State effect of substitution on construction schedule, and changes required in other work or products."

Add to 2.d:
"CONTRACTOR Representation

(1) Request for review of Substitute and "or equal" products is a representation that CONTRACTOR has investigated proposed product and has determined that it is equal to or superior in all respects to specified product.

(2) CONTRACTOR will provide same warranty for substitute and "or equal" product as for specified product.

(3) CONTRACTOR will coordinate installation of accepted substitute and "or equal" product, making such changes as may be required for work to be complete in all respects.

(4) CONTRACTOR waives claims for additional costs related to substitute and "or equal" product which may later become apparent.

(5) If substituted and "or equal" products do not meet or exceed above requirements, whether before, during, or after incorporated into Work, CONTRACTOR shall, at no additional cost to OWNER, replace substituted and "or equal" products with products originally specified."

Add to *C. ENGINEER's Evaluation.*
"ENGINEER will review CONTRACTOR's requests for substitutions and "or equal" product with reasonable promptness. ENGINEER will not make exhaustive attempt to determine that products proposed for substitution and "or equal" are equal to, or can be modified in order to be equal to specified products."

SC-6.06 *Concerning Subcontracting Suppliers and Others*: Delete subparagraph B. and substitute the following:

"B. Each Bidder shall identify any subCONTRACTORs and suppliers identified and all subCONTRACTORs and all suppliers who will provide 5 percent or more of the cost of the project on a form following the Bid Form. OWNER may require that subCONTRACTORs and suppliers submit Statements of Qualifications. OWNER'S or ENGINEER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) will constitute a condition of the contract requiring the use of the named subCONTRACTORs, suppliers or other persons or organization on the work and they may not be changed without the written acceptance of the OWNER. No acceptance by OWNER or ENGINEER of any subCONTRACTOR, supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective work."

C. Add the following language to the end of subparagraph C.:

"OWNER or ENGINEER may furnish to any subCONTRACTOR supplier or other person or organization evidence of amounts paid to CONTRACTOR in accordance with CONTRACTOR's Applications for Payment."

SC-6.10 *Taxes*. Delete in its entirety and substitute the following:

"A. OWNER is exempt from Colorado state and local sales and use taxes on materials to be permanently incorporated into the project. Said taxes shall not be included in the Contract Price. CONTRACTOR must apply for, and receive, a Certificate of Exemption from the Colorado Department of Revenue for construction materials to be physically

incorporated into the project. This Certification of Exemption provides that the CONTRACTOR shall neither pay nor include in his Bid, Sales and Use Taxes on those building and construction materials physically incorporated into the project.

Address: Colorado Department of Revenue
State Capital Annex
1375 Sherman Street
Denver, Colorado 80261

Sales and Use Taxes for the State of Colorado, Regional Transportation District (RTD) and certain Colorado counties are collected by the State of Colorado and are included in the Certification of Exemption. All applicable Sales and Use Taxes (including State collected taxes), on any items other than construction and building materials physically incorporated into the project are to be paid by CONTRACTOR and are to be included in appropriate bid items."

SC-6.12 *Record Documents*

Delete the word "approved" from the text of paragraph and substitute in each place the work "reviewed".

Delete the last sentence of paragraph 6.12 of the General Conditions and substitute the following:

"Upon completion of the Work and prior to release of final payment, these recorded documents, Samples and Shop Drawings will be delivered to ENGINEER and OWNER."

SC-6.13 *Safety & Protection.* Add the following:

"CONTRACTOR shall comply with the requirements of the versions of the International Fire Code adopted by the Town and the Wellington Fire District including permitting, notification, signage, material use and storage limitations, and inspections."

SC-6.17 *Shop Drawings and Samples.* Delete the words "and approval" and "and approve" from the entire article. The ENGINEER will "review the shop drawings or sample as required by the General Requirements."

SC-8.10 Delete paragraph 8.10 of the General Conditions.

SC-8.11 Delete paragraph 8.11 of the General Conditions.

SC-10.06 Add the following Paragraph 10.06 to Article 10 of the General Conditions:

"10.6 By the execution of a Change Order, a Work Change Directive, or Written Agreement, OWNER and CONTRACTOR expressly acknowledge and agree that said Change Order or Written Agreement provides for a fair and equitable adjustment in Contract Price and/or Contract Time for the additions, deletions, or revisions in the work as authorized by said Change Order, a Work Change Directive or Written Agreement. OWNER and CONTRACTOR further expressly acknowledge and agree that further claims for adjustments to the Contract Price and/or Contract Time covered by a Change Order, a Work Change Directive or Written Agreement are not valid."

SC-11.01.A.1 *Cost of the Work*. Delete the words "and retirement", "bonuses, sick leave, vacation and holiday pay".

SC-13.07 *Correction Period.*

Paragraph A, delete: “one year” in the first sentence and insert “two (2) years”.

Add: “During the two (2) year correction period the OWNER shall work directly with the CONTRACTOR and such work as is required to be corrected shall not be coordinated through the ENGINEER. Conversely, the CONTRACTOR shall work directly with the OWNER on correction work.”

SC-14.02 *Documentation to Accompany Applications for Payment*. Add to A.1 “CONTRACTOR's Applications for Payment shall be accompanied by the documentation specified herein.

Materials and Equipment. If payment is requested for 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 Progress Payment shall be accompanied by such data, satisfactory to OWNER, as will establish OWNER's title to the material and equipment and protect the interest therein, including applicable insurance.

Payments for such materials and equipment shall be based only upon the actual cost of the materials and equipment to CONTRACTOR and shall not include any overhead or profit to CONTRACTOR. Retainage shall apply to such materials and equipment.

Receipts and Releases. Each Application for Payment shall include evidence as required in the General Conditions, that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR's obligations reflected in prior Applications for Payment. Each subsequent Applications for Payment shall include receipts or other evidence that previous progress payments received on account of the Work more than 30 days prior to the date of the current Application for Payment have been applied to discharge CONTRACTOR's obligations reflected in prior Applications for Payment. In lieu thereof, CONTRACTOR may furnish complete and legally effective release or waivers conforming to the format of OWNER's standard form of all liens that could arise out of the Contract Documents and the labor and services performed and the materials and equipment furnished thereunder. CONTRACTOR's Application for Substantial Completion shall also be accompanied by complete and legally effective releases or waivers of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder as required for Substantial Completion, reference Section 01700, Contract Closeout. Releases or waivers of liens are to be submitted on forms acceptable to OWNER.

Schedules and Data. Each Application for Progress Payment shall be accompanied by CONTRACTOR's updated progress schedule or progress report, with such Shop Drawings schedules, procurement schedules, and other data specified in Division 1 or reasonably required by ENGINEER.

Certificates. Each Application for Payment shall be accompanied by such certificates as may be required by governmental agencies.”

Documentation to Accompany Final Application for Payment. Add to A.2.: “CONTRACTOR's Application for Final Payment shall be accompanied by consent of the Surety to Final Payment. CONTRACTOR's Application for Final Payment shall also

be accompanied by complete and legally effective releases or waivers of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. Releases or waivers of liens and the consent of the Surety to Final Payment are to be submitted on forms acceptable to OWNER. If releases or waivers were provided and accepted by OWNER for Substantial Completion they will not be required again for Final Completion."

C. *Payment Becomes Due*. Add to C.1:
"…subject to Paragraph 17.7.2 of the Supplementary Conditions."

SC-17 MISCELLANEOUS Add the following language to Article 17 of the General Conditions:

"17.05 The laws of the State of Colorado apply to this Agreement. Reference to two pertinent Colorado statutes are as follows:

A. Colorado Revised Statutes (CRS 8-17-101) requires that Colorado labor be employed to perform the work to the extent of not less than 80 percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the project. Colorado labor means any person who is a bona fide resident of the State of Colorado at the time or employment, without discrimination as to race, color, creed, age, religion or sex.

B If a claim is filed, OWNER is required by law (CRS 38-26-107) to withhold from all payments to CONTRACTOR sufficient funds to insure the payment of all claims for labor, materials, team hire, substance, provisions, provender, or other supplies used or consumed by CONTRACTOR or his subCONTRACTORs in or about the performance of the work. Such funds must be withheld until said claims have been paid or such claims as filed have been withdrawn, such payment or withdrawn to be evidenced by filing with OWNER a receipt in full or an order for withdrawal in writing and signed by the person filing such a claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement, as published in a public newspaper in accordance with the law, unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the OWNER. At the expiration of such ninety (90) day period, OWNER shall pay to CONTRACTOR such moneys and funds as are not the subject of suit and lis pendens notices, and shall retain only sufficient funds to insure the payment of judgements which may result from the suit.

17.06 Forms. CONTRACTOR shall be required to use forms included in these Contract Documents and where not so included forms that are acceptable to OWNER and ENGINEER."

END OF SECTION

C-700

GENERAL CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
American Council of Engineering Companies

The Associated General Contractors of America
Skill · Responsibility · Integrity

ASCE American Society of Civil Engineers

National Society of Professional Engineers
Professional Engineers in Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by

CONSTRUCTION SPECIFICATIONS INSTITUTE

EJCDC C-700 Standard General Conditions of the Construction Contract
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.

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. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*—The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.

10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

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12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*—See Paragraph 11.01 for definition.

17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—The individual or entity named as such in the Agreement.

20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*—Sections of Division 1 of the Specifications.

22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

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27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*—A written notice given 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 under the Contract Documents.

29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*—Polychlorinated biphenyls.

31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *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.

33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *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.

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40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *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 at the Site.

44. *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.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *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 Subcontractor.

48. *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 those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F 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 Paragraph 9.09 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 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

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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. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

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. 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 Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *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 Agreement 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 Agreement. 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 Agreement, whichever date is earlier.

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2.04 *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 the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;

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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *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 2.05.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

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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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, 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, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, 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 Contract Documents. 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 Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

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1. *Contractor's Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

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3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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

2. 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.

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.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

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Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

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 the Work is to be performed 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.

4.02 *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 contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed 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 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and

   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 Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. Contractor knew of the existence of such conditions at the time Contractor made a final 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

   b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

   c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

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4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous 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 shall not be responsible for 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 such information and data;

   b. locating all Underground Facilities shown or indicated in the Contract Documents;

   c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

   d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

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4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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

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permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, either party may make a Claim therefor as provided in Paragraph 10.05.

F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

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ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, 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 Documents. 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, 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 requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

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C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which 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:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

   a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

   b. by any other person for any other reason;

5. 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; and

6. 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.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners,

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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;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

   a. Such insurance shall remain in effect for two years after final payment.

   b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, 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.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full 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 interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of

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

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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies 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 of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.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, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

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5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

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ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

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.

6.02 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *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.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, 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.

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6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "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 specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion 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, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, 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; and

3) it has a proven record of performance and availability of responsive service.

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.

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2. *Substitute Items:*

   a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

   b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

   c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

   d. 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:

      1) shall certify that the proposed substitute item will:

         a) perform adequately the functions and achieve the results called for by the general design,

         b) be similar in substance to that specified, and

         c) be suited to the same use as that specified;

      2) will state:

         a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

         b) 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

         c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

      3) will identify:

         a) all variations of the proposed substitute item from that specified, and

         b) available engineering, sales, maintenance, repair, and replacement services; and

      4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

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B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.

F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or

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entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. 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. 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. 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.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *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

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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.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner

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and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. 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 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 by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other 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 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 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 property to stresses or pressures that will endanger it.

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6.12 *Record Documents*

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

6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. 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, 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 owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

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 6.13.A.2 or 6.13.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 (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

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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 for protection of the Work 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *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.

6.15 *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.

6.16 *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.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

a. Submit number of copies specified in the General Requirements.

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 6.17.D.

2. *Samples:*

a. Submit number of Samples specified in the Specifications.

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b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated each 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 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 and approval of that 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 both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the

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Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval 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 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

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.

6.18 *Continuing the Work*

A. 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, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 representation of 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;

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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 or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. 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 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 6.20.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 6.20.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.

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6.21 *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 law.

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, Shop Drawings 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 6.21, 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 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe

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access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

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ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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

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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.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *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.

8.12 *Compliance with Safety Program*

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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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 9.09. 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.

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9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with 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, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. 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

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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 Paragraph 10.05.

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 14.07.A will only be to determine generally that their content complies with the requirements of,

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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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. 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; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of

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executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *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.

10.05 *Claims*

A. *Engineer's Decision Required*: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

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E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs 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 11.01.B, 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, 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 11.01.

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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 5.06.D), 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 telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

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

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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, expediters, 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which 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 Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work 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 or when a Claim for an 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 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, 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.

11.02 *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:*

1. Contractor agrees that:

a. 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

b. 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

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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:*

1. 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.

11.03 *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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 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; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor 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 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   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 12.01.C.2.a through 12.01.C.2.e, inclusive.

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12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests 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.

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

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E. 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.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, 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.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

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architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

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 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. 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) will be paid by Contractor.

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 13.07, 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 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *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 in accordance with Paragraph 13.06.A, 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, 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 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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.

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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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

14.02 *Progress Payments*

A. *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 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.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, 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

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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 9.07, 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 Documents; 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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

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a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. 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;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.

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 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

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14.04 *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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. 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 tentative list.

14.05 *Partial Utilization*

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:

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1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

   b. consent of the surety, if any, to final payment;

   c. a list of all Claims against Owner that Contractor believes are unsettled; and

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d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. 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 14.09. 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. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

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2. 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

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *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;

3. 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

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dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) 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 15.03.

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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

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2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *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 to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents 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.

17.03 *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 Documents. 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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Board of Trustees Meeting

Date: July 13, 2021
Submitted By: Nathan Ewert, Civil Engineer II
Subject: Authorize the Execution of the 2021 Stormwater Masterplan Contract

- **Presentation: Nathan Ewert, Engineer**

EXECUTIVE SUMMARY

Town staff requested proposals from qualified engineering firms for the work required to prepare a Stormwater Masterplan for the Town. The Stormwater Masterplan will include Data Collection and Review, Baseline Hydrologic and Hydraulic modeling of the Town and the GMA, Alternatives Development, Master Plan Development, and Storm Drainage Criteria Manual Review and Update. After reviewing seven (7) proposals the top two (2) were selected and interviewed by the selection committee. Icon Engineering is recommended for award of the Stormwater Masterplan contract.

BACKGROUND / DISCUSSION

In August 2020 the Town was awarded a Flood Mitigation Assistance Program Grant (19FMA21TOW) from the Colorado Division of Homeland Security & Emergency Management (DHSEM). The award was for a total project amount of $150,000 with $112,500 from Federal Funds and $37,500 from local (matching) funds (75/25 split). Matching funds were budgeted for 2021.

In April 2021 Town staff requested proposals from qualified Engineering firms to prepare a Stormwater Masterplan for the Town. Seven (7) proposals were received and were reviewed based on the following criteria:

- Proposal Quality: overall quality, appearance, organization, and clarity of the proposal
- Project Team and Experience: Technical capabilities, qualifications, ability and experience of the firm and the proposed staff.
- Location of firm and key personnel: preferences may be given to firms with location(s) of key personnel that are conducive to proper and efficient management of the project.
- Approach and Methodology: Grasp of project requirements and understanding of the project scope of work and defined approach to stormwater master planning.
- Work Plan & Project Schedule: Schedule and plan for managing and delivering the desired project and time frames.
- Proposed Fees: reasonableness of fee for proposed scope and schedule.

Based on the proposal criteria the submissions were scored and ranked with the top two proposal teams invited for interviews. Following the interviews, the winning proposal team was selected for the Stormwater Masterplan. The selected proposal is included as an attachment.

The Stormwater Masterplan project will produce a comprehensive document that meets the following objectives:

- Provide a hydrologic and hydraulic analysis of the existing town limits and the GMA area
- Identify existing stormwater problem areas and issues within the Town and provide conceptual level

alternatives to address the issues
- Provide budgetary level cost estimates for alternatives as well as a prioritized list for inclusion with the Town's long range Capital Improvements Program List
- Provide Benefit Cost Analysis (BCA) for the various alternatives as data for pursuit of project grant opportunities.
- Document tasks and summarize assumptions, calculations, and decisions made during the course of the project.

Additional work carried out under this contract will include a review of the existing Storm Drainage Design Criteria along with recommended updates and changes.

The project is scheduled to commence following contract approval with final documents due in August of 2022.

STAFF RECOMMENDATION

Staff recommends that the board approve the contract for Icon Engineering for the 2021 Stormwater Masterplan project in the amount of $139,815.00. (G/L 211-80-4041)

ATTACHMENTS

1. Wellington StormWater Master Plan Services Contract
2. Exhibit A -Wellington Stormwater Master Plan Scope of Services ICON
3. ICON_Wellington Stormwater MP_FINAL

Town of Wellington
3735 Cleveland Avenue
P.O. Box 127
Wellington, CO 80549
PUBLIC WORKS (970) 568-0447
TOWN HALL (970) 568-3381

STORMWATER MASTER PLAN
ENGINEERING DESIGN AND CONSTRUCTION SERVICES

CONSULTANT CONTRACT FOR SERVICES, GL No. 211-80-4041

Parties: The parties to this Contract are the Town of Wellington, 3735 Cleveland Avenue, Wellington, Colorado 80549 (Town) and Icon Engineering Inc., 7000 S. Yosemite Street, Suite 120, Centennial, Colorado 80112 (Consultant).

Purpose of Contract: The purpose of this Contract is for the Town of Wellington to retain the services of the Consultant to render certain technical or professional services hereinafter described.

Term of Contract and Required Approvals: This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from the Effective Date through September 30, 2022. All services shall be completed during this term.

If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within this Contract period, the Consultant may be granted an extension of time upon submission of evidence of the causes of delay satisfactory to the Town.

Responsibilities of the Consultant:

Scope of Services: The scope of services shall be as defined within the Consultant's proposal and any further stipulation of the terms specified in Attachment A.

The Consultant shall perform the specific services required under this Contract in a satisfactory and proper manner. The standard of care for the Consultant under this Contract will be the care and skill ordinarily used by members of the Consultant's profession providing similar services for projects of similar size, location, scope, and complexity to this project.

Personnel: All services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized, licensed, or permitted under state law to perform such services if state law requires such authorization, license, or permit.

Records Administration: The Consultant shall maintain or supervise the maintenance of all records necessary to properly account for the payments made to the Consultant for costs authorized by this Contract. The Consultant shall be responsible and responsive to the Town in its requests and requirements related to the scope of this Contract. The Consultant shall select and analyze all data in a systematic and meaningful manner to contribute directly in meeting the objectives of the project and shall present this information clearly and concisely in a professional and workmanlike manner.

Subcontracts:

(i) Approval Required for Subcontracts: Any subcontractors required by the Consultant in connection with the services, work performed or rendered under this Contract will be limited to such individuals or firms as were specifically identified in the proposal and agreed to during negotiations or are specifically authorized by the Town during the performance of this Contract. During the performance of the Contract, substitutions in or additions to such subcontracts will be subject to the prior approval by the Town. The Consultant shall be responsible for the actions of the subcontractors.

(ii) Billing for Subcontracts: Billings for subcontractor services shall include any mark up as set forth in Attachment A. Subcontract costs shall be documented by attaching subcontractor billings to the Consultant's billing submittals.

Responsibilities of the Town:

Data to be Furnished: Information, data, drawings, reports, maps, as are available to the Town and necessary for the carrying out of the scope of services shall be furnished to the Consultant without charge, prior to the Consultant beginning work or on request and the Town shall cooperate with the Consultant in the carrying out of the project.

Report Reviews and Criteria: The Town shall examine all studies, reports, sketches, drawings, opinions of costs, and other documents presented by the Consultant and shall render the Town's decisions pertaining thereto in a timeframe as defined in this Contract or as agreed to by the Parties. The Town shall provide all criteria and full information regarding its requirements for the project.

General Provisions:

Amendments: Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument executed by all parties to this Contract.

Assignment Prohibited and Contract Shall Not Be Used as Collateral: Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Consultant shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

Audit and Access to Records: The Town shall have access to any books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Contract. The

Consultant shall, upon receiving reasonable written notice from the Town, make available to the Town and its independent auditor or accountant, all books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Contract.

Authority: Provisions of this Contract are pursuant to the authority set forth in the Town of Wellington Municipal Code and applicable state and federal regulations also apply.

Colorado Governmental Immunity: The Town is entitled assert rights under the Colorado Governmental Immunity Act, C.R.S. Title 24, Article 10 and waives no rights that it may have thereunder.

Compliance with Laws: The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

Confidentiality: Each party shall retain as confidential all information and data furnished to it by the other party which are designated in writing by such other party as confidential at the time of transmission and are obtained or acquired by the receiving party in connection with this Contract, and said parties shall not reveal such information to any third party. However, nothing herein is meant to preclude either disclosing and/or otherwise using confidential information (i) when the confidential information is actually known to the receiving party before being obtained or derived from the transmitting party; or (ii) when confidential information is generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; or (iii) where the confidential information is obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereof; or (iv) when required by federal, state, and local law, including the Colorado Open Records Act, or court order to be disclosed.

Conflicts of Interest: The Consultant stipulates that none of its officers or employees are officers or employees of the Town of Wellington unless disclosure has been made in accordance with Town ordinances and policies. Furthermore, the Consultant certifies that it has not offered or given any gift or compensation prohibited by local, state, or federal law, to any officer or employee of the Town of Wellington to secure favorable treatment with respect to being awarded this Contract. The Consultant shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the Town or a disclosure which would adversely affect the interests of the Town. The Consultant shall notify the Town of any potential or actual conflicts of interest arising during this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation and data are provided to the Town or its designee. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists. A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the Town or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition, or quo warranto.

Contract Jurisdiction, Choice of Law, and Venue: The provisions of the Contract shall be governed by the laws of the State of Colorado. The parties will submit to the jurisdiction of the courts of the State of Colorado. Venue shall be Larimer County, Colorado.

Contract Renegotiation, Modifications and Award of Related Contracts: This Contract may be amended, modified, or supplemented only by written amendment to the Contract, executed by the parties hereto, and attached to the original signed copy of the Contract. The Town may undertake or award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Consultant shall cooperate fully with other contractors and the Town in all such cases. The Town, at its sole discretion and through duly authorized contract amendments, may request the Consultant to complete additional phases beyond the scope of services included in this Contract.

Disbarment: The Consultant certifies that neither it nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. If the Consultant cannot certify this statement, a written explanation for review by the Town shall be provided.

Entirety of Contract: This Contract, consisting of twelve (12) pages, inclusive of Attachment A, represents the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.

Equal Opportunity Clause: The Consultant agrees to abide by the provisions under Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on a basis of race, religion, color, or national origin. This includes abiding to Executive Order 11246 which prohibits discrimination on the basis of sex, and 45 CFR which prohibits discrimination on the basis of age, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of a disability.

Force Majeure: Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays.

Indemnification: The Consultant agrees to indemnify, save harmless, and release the Town of Wellington and all of its officers, agents, volunteers, and employees from and against any and all loss, damage, injury, liability, suits, and proceedings arising out of the performance of this Contract to the extent caused by the negligence or intentional misconduct of the Consultant's officers, agents, volunteers, or employees, but not for claims from the Town's negligence.

Independent Contractor: The Consultant shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Town for any purpose and as such, have no authorization, express or implied to by the Town of Wellington, to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as an agent for the Town except as expressly set forth herein. The Consultant shall be responsible for the payment of all income tax and social security amounts due because of payments received from the Town. Persons employed by the Town and acting under the direction of the Town shall not be deemed to be employees or agents of the Consultant. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents or employees to act as an agent or representative or to incur any obligation of any kind for or on behalf of the Town. The Consultant agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to Town employees will inure to the benefit of the Consultant or the Consultant's agents or employees because of this Contract.

Insurance Coverage: The Consultant shall not commence work under this Contract until it has obtained all the insurance required by the Town. The Consultant shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth below and shall provide the Town with proofs of these insurance upon request:

(i) Automobile Liability Insurance: The Consultant shall maintain automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of $1,000,000 each accident combined single limit.

(ii) Commercial, General Liability Insurance: The Consultant shall maintain commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as stated below. The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

(a) $1,000,000 each occurrence;
(b) $1,000,000 personal injury and advertising injury;
(c) $2,000,000 general aggregate; and
(d) $2,000,000 products and completed operations.

(iii) Professional Liability or Errors and Omissions Liability Insurance: The Consultant shall maintain professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Consultant's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as stated below.

(a) $2,000,000 each claim; and
(b) $2,000,000 general aggregate.

(iv) Unemployment Insurance: The Consultant shall be duly registered with the Colorado Department of Labor and Employment and obtain such unemployment insurance coverage as required.

(v) Workers' Compensation and Employer's Liability Insurance: Employees hired in Colorado to perform work under this Contract shall be covered by workers' compensation coverage per the Colorado Department of Labor and Employment's Workers' Compensation program as statutorily required. Employees brought into Colorado from Consultant's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the same or other state or private workers' compensation insurance approved by the Colorado Department of Labor and Employment as statutorily required.

Insurance Requirements:

(i) During the term of this Contract, the Consultant shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage above.

(ii) All policies (except for Workers' Compensation and Professional Liability) shall be primary over any insurance or self-insurance program carried by the Consultant or the Town. All policies (except for Professional Liability) shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Consultant or the Town, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

(iii) The Consultant shall provide Certificates of Insurance to the Town, verifying each type of coverage required herein.

(iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Town. A copy of the policy endorsement shall be provided with the Certificate of Insurance.

(v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Town may, at the Town's option, obtain and maintain, at the expense of the Consultant, such insurance in the name of the Consultant, or subcontractor, as the Town may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Consultant under this Contract.

(vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.

(vii) The Town reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

Limitation of Liability: Excluding the Consultant's liability for bodily injury or damage to the property of third parties, the total aggregate liability of the Consultant arising out of the performance or breach of this Contract shall not exceed the compensation paid to the Consultant under this Contract. Notwithstanding any other provision of this Contract, the Consultant shall have no liability to the Town for contingent, consequential, or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility downtime, however the same may be caused. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of the Consultant, its employees, or subconsultants.

Notice of Sale or Transfer: The Consultant shall provide the Town with notice of any sale, transfer, merger, or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Town determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory

performance of the Consultant's obligations under this Contract, then the Town may, at its discretion, terminate or renegotiate the Contract.

Ownership of Documents and Information: The Town owns all documents, data compilations, reports, computer programs, photographs, drawings, data, and other work provided to or produced by the Consultant in the performance of this Contract. Upon termination of services for any reason and payment to Consultant, the Consultant agrees to return all such original and derivative information and documents to the Town in a useable format. Any use or reuse other than for the purposes set forth herein shall be at the Town's sole risk and liability.

Patent or Copyright Protection: The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Consultant or its subcontractors will violate any such restriction. The Consultant shall defend and indemnify the Town for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Severability: A declaration by any court or any other binding legal source that any provision of this contract is illegal and void shall not affect the legality and enforceability of any provision of this Contract unless the provisions are mutually dependent.

Taxes: The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

Termination of Contract: This Contract may be terminated with cause by either party in advance of the specified termination date upon written notice being provided by the other party. Unless the Town determines a default is not remediable, there have been prior violations with notice, or a default is determined to be detrimental to public safety, the party in violation will be given thirty (30) working days after notification to correct and cease the violations after which the Contract may be terminated for cause. This Contract may be terminated without cause in advance of a specified expiration date by either party upon thirty (30) days prior written notice being given by the other party.

Prohibition Against Employing Illegal Aliens: This paragraph shall apply to all Consultants whose performance of work under this Contract does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Consultant represents and agrees that:

(i) As of the date of this Contract:

(a) Consultant does not knowingly employ or contract with an illegal alien; and

(b) Consultant has participated or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "Basic Pilot Program") in order to confirm the employment eligibility of all newly hired employees.

(ii) Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Contract.

(iii) Consultant shall continue to apply to participate in the Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Consultant is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Basic Pilot Program is discontinued.

(iv) Consultant is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(v) If Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Consultant shall:

(a) Notify such subcontractor and the Town within three days that Consultant 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 this section the subcontractor does not cease employing or contracting with the illegal alien; except that Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Consultant violates a provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Consultant shall be liable for actual and consequential damages to the Town arising out of Consultant's violation of Subsection 8-17.5-102,C.R.S.

(viii) The Town will notify the Office of the Secretary of State if Consultant violates this provision of this Contract and the Town terminates the Contract for such breach.

Project Requirements:

Final Deliverables and Stamping: The Consultant shall use the Contract Scope of Services as the outline for draft and final reports or technical memoranda so that Consultant compliance with Contract provisions can be verified. If the final report or technical memoranda contain information of an engineering nature, the cover of the final report, memoranda, all plates, and any executive summary must be stamped and signed by a Professional Engineer licensed in the State of Colorado.

In addition to the paper submittal, the Consultant shall provide the final documents, computer models, and related materials in a digital format. This digital report shall be contained on CD(s), USB drive(s), or other media as approved by the Town and shall be in Adobe Acrobat (PDF) format.

Project Access: The Consultant shall be responsible for obtaining access as required for project tasks.

Stand-By Time: The Town will not reimburse the Consultant for stand-by time charges for the Consultant's supervisory personnel.

Payment and Billing:

Reimbursement of Expenses: Subject to annual appropriation by the Town Board, The Town agrees to pay the Consultant an amount based on the approved hourly rates and reimbursable expenses for the duration of this Contract for the services described in Attachment A. Payment shall be made directly to the Consultant. The Consultant shall maintain hourly records of time worked by its personnel. Payment under this Contract shall be on a time and materials basis and shall not exceed one hundred thirty nine thousand eight hundred fifteen dollars, ($139,815)

Project Budget: The anticipated project budget for the task(s) included in Attachment A is as stated below. The amounts shown for each task are not to be exceeded unless authorized by the Town.

Task		Estimated Cost
Task A	Project Coordination	$ 14,544.00
Task B	Data Collection and Review	$ 7,712.00
Task C	Baseline Hydrology & Hydraulics	$ 30,104.00
Task D	Alternatives Analysis	$ 47,427.00
Task E	Master Plan Development	$ 31,824.00
Task F	Criteria Manual Update	$ 8,204.00
Total Project Cost		**$ 139,815.00**

Billing Statements: Billing statements shall be submitted no more often than monthly, on or before the 10th calendar day of each billing month, for activities and costs accrued since the last billing report and shall be made on forms approved by the Town. Each billing statement must include written justification of the cost items contained in the billing statement by task, including names, hours, etc. as requested by the Town. Billing statements shall be transmitted electronically to the Town's project manager: Nathan Ewert, ewertna@wellingtoncolorado.gov.

Monthly Progress Reports: The Consultant shall submit a brief monthly progress report outlining the project status, progress, and activities within the billing period, regardless of whether a billing statement is submitted, on or before the 10th calendar day of each month. The monthly progress report may be used as the justification for the billing statement if all cost items covered in the billing statement are addressed in the progress report. Monthly progress reports shall be transmitted electronically to the Town's project manager: Nathan Ewert, ewertna@wellingtoncolorado.gov.

Payment Procedures: Subject to appropriation, the Town shall pay the Consultant upon receipt of payment from Colorado Division of Homeland Security & Emergency Management (DHSEM) the state grant management agency. The Town will submit to DHSEM for payment upon receipt of the billing reports as the services are performed for the task(s) outlined in Attachment A, and a verified statement of services. Payment shall be made within thirty (30) days following receipt of payment from DHSEM.

Money Withheld: If the Town has reasonable grounds to believe that the Consultant will be unable to perform this Contract fully and satisfactorily within the time fixed for performance, then the Town may withhold payment of such portion of any amount otherwise due and payable to the Consultant reasonably deemed appropriate. These amounts may be withheld until the cause for the withholding is cured to the Town's satisfaction or this Contract is terminated per the General Provisions above. No interest shall be payable by the Town on any amounts withheld under this provision.

Withholding of Payment: If a work element has not been received by the Town by the dates established in Attachment A, the Town may withhold all payments beginning with the month following that date until such deficiency has been corrected.

Final Payment: The final payment shall be made upon acceptance of the final work product and receipt of the final billing.

Signatures:

The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this Contract. The Effective Date of this Contract is the date of the signature last affixed to this page.

TOWN OF WELLINGTON

Signature	Date
Printed Name	Title
Primary Contact Printed Name	Contact Info. (email, phone, etc.)
Witness Signature (if required)	Date
Printed Name	Title

ICON ENGINEERING INC.

Signature	Date
Printed Name	Title
Primary Contact Printed Name	Contact Info. (email, phone, etc.)
Witness Signature (if required)	Date
Printed Name	Title

Scope of Services:

The Town accepts the scope of services and fees as defined within the Consultant's proposal attached to this Contract with the exception and further stipulation of the following terms:

1. None.

EXHIBIT A – SCOPE OF SERVICES

TO: Nathan Ewert, Town of Wellington

FROM: ICON Engineering, Inc.

DATE: 7/2/21

RE: Wellington Stormwater Master Plan – Scope of Services

Background

Items below reflect ICON's proposed scope of services for the Town of Wellington's Stormwater Master Plan. The Town wishes to complete the stormwater master plan by the end of 2022, with a preliminary report submitted by August 2022 for budgeting decisions and discussions. A schedule is provided along with a project fee estimate at the end of this document.

Task A. Project Coordination

Project meetings are anticipated to occur monthly between ICON's management staff and the Town's project manager. ICON will prepare and distribute project agendas and meeting minutes. These meeting will be a combination of in-person and virtual meetings depending on availability and agendas. Additional members from the town may be asked to attend meetings as direct by the Town's project manager. Twelve (12) project meetings have been assumed with this scope of services. Additional correspondence is anticipated via phone conferences and email. No public meetings are anticipated with this work, although work sessions with the Town's Board of Trustees may occur periodically through adoption.

Task B. Data Collection and Review

In general, project base mapping for the Town and GMA is anticipated from current regional LiDAR acquired in 2011 by the Box Elder Basin Stormwater Authority (BBSA). This LiDAR will be supplemented with regional USGS DEM's as needed for hydrology computations beyond the LiDAR limits. In addition, ICON will:

- Collect and assemble data from the FEMA/Larimer County RiskMap files.
- Assemble data from any recent stormwater improvements for public works or local development.
- Obtain recent GIS data from the town for stormwater and other utilities.
- Assemble baseline hydrology as available from ICON's Hydrologic Update for the Box Elder Master Plan.

Note, as a supplement to the Town's GIS and hydrology development, we do anticipate collecting limited field elevations using survey grade GPS equipment to verify ground or pipe elevations. We are assuming that the GIS data available from the Town includes existing pipe sizes, pipe materials, invert elevations, and manhole or inlet elevations for the exiting stormwater system necessary for this study and our work will be limited to supplemental data. We will also work with the Town's surveyors to collect this data upon the Town's discretion. The total budget assumed for survey tasks is 20 hours, or $2,531 total.

Task C. Baseline Hydrology and Hydraulics

Goals for this Master Plan are to identify flood risk and stormwater alternatives from local drainage within the Town's GMA. Hydrology will be developed using CUHP 2.0 and EPA-SWMM for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year recurrence intervals, or as determined to be necessary for the study. Consideration will be given to existing conditions as well as future buildout in the GMA to detention criteria. For both existing and future land use conditions, hydraulic data will be developed at appropriate locations using a combination of EPA-SWMM, HEC-RAS, or HY8 hydraulic modeling programs, as appropriate. In addition. Within the GMA, FLO-2D or

2D HEC-RAS modeling may be used to review flood risk and potential impact on existing structures and infrastructure.

Task D. Alternative Analysis

Alternative solutions will be presented to address areas of flooding with Town, areas of inadequate storm drainage capacity, roadway overtopping and flooding, and locations where storm-water improvements will assist community revitalization. A full range of stormwater improvements opportunities will be explored, including: inlet collection and storm sewer improvements, regional detention, drainageways, and water quality. Rehabilitation of existing aging infrastructure will also be a consideration. Managing the local basin runoff through regional drainageways along Box Elder Creek and Indian Creek will be given consideration within the improvement plan development. Based on the flood inundation maps developed in the hydraulics stage, ICON will review flood reduction opportunities and level of service (i.e. minor versus major storms) needed to achieve the Town's goals for flood reduction.

On-site development criteria and planning will be considered with the master plan to determine the more restrictive of existing and future impacts. This will help confirm future development criteria and hydrologic conditions necessary for design.

The management and mitigation of FEMA floodplains may also be considered, as appropriate for this study. FEMA floodplain will be considered in areas with overlapping storm drainage (i.e. Coal Creek) or for means of mitigating local flooding. This scope does not include master plans for the major drainageways, as developed by the BBSA.

Alternatives will be identified conceptually on plan exhibits with accompanying profiles (as necessary) to verify feasibility and cost estimates will be prepared. Our team will work with Town staff to recommend alternatives with consideration to feasibility, flood reduction, costs, MS4 needs, water quality, and level of service. Compatibility with future development needs in the GMA, social equity, and other town values as presented in the Comprehensive Plan (CP) may be part of the alternative selection process. This work may include limited collaboration with Logan Simpson Landscape Architects, as a sub-consultant, to discuss compatibility with the CP goals.

Task E. Master Plan Development

Following alternative selection, a stormwater master plan will be developed. Goals for the master plan are to develop a plan for CIP recommendations for short term and long-term needs. Identification of project costs and phasing strategies will be presented such that a sequence of funding and implementation can be made. We will work with the Town to select an outline and format for the final master plan delivery product. Currently, this is assumed to be an 8.5"x11" electronic PDF report, with attached workmaps and exhibits. This work may include limited collaboration with Logan Simpson Landscape Architects, as a sub-consultant, to discuss compatibility with recommendations in the CP, Land-use Code, or landscape design standards, as appliable.

Task F. Criteria Manual Update

ICON will assist the Town with an update to the Storm Drainage Criteria Manual. The level of effort proposed includes adopting a criteria manual with modifications the Urban Storm Drainage Criteria Manual (USDCM) developed by the MHFD, similar to what the Town currently regulates. Consistency and compatibility with the current Larimer County Urban Area Street Standards (LCUASS) will also be a consideration for criteria recommendations. ICON will be able to discuss options for the criteria manual update with the Town staff to determine the needs and best approach for the budget available.

Budget:

This work will be completed for an estimated fee of $139,815. Our fee breakdown, billing rates, and staff assignments are shown on the rate schedule.

Schedule: Our proposed work schedule is shown below.

ICON
ENGINEERING, INC.

PROJECT NAME: Wellington Stormwater Master Plan
CLIENT: Town of Wellington

	PREPARED BY: CDJ CHECKED BY: JYM DATE: April 20, 2021	Principal Engineer $189	Project Manager $169	Engineer II $122	GIS Specialist $105	Admins Assistant $70	Misc. Direct Costs	
	Description	Hours	Hours	Hours	Hours	Hours		TOTALS
A	**PROJECT COORDINATION**							
1.	Kick-Off Meeting / Monthly Progress Meetings (6 Assumed) & Monthly Conference Calls (6 Assumed)		24.0	34.0			$540	$8,744
2.	General Correspondence with Client		4.0	10.0				$1,896
3.	Town Board Meetings (2 Assumed)	8.0	8.0		8.0		$200	$3,904
							Task Subtotal	**$14,544**
B	**DATA COLLECTION & REVIEW**							
1.	Collect & Assemble City's Base GIS Data		1.0		2.0			$379
2.	Download FEMA 2011 LiDAR, DEM, Develop 1' Contour Mapping		1.0		12.0			$1,429
3.	Assemble Aerial Imagery		1.0		2.0			$379
4.	Complete Limited Ground Survey		1.0	16.0	2.0		$200	$2,531
5.	Miscellaneous Utility Research for Dry Utilities		2.0	8.0	16.0			$2,994
							Task Subtotal	**$7,712**
C	**BASELINE HYDROLOGY & HYDRAULICS**							
1.	Identify NOAA14 Rainfall		2.0					$338
2.	Hydrologic Modeling (2-, 5-, 10-, 25-, 50-, 100-year, EX & FUT)							
	Develop Hydrology Basins		8.0	18.0				$3,548
	Develop Basin Parameters		4.0	14.0				$2,384
	Routing Elements and Assemble SWMM Model		6.0	20.0				$3,454
	Develop Diversion Rating Curves / Existing Detention Ponds		4.0	12.0				$2,140
	Field Review		4.0	6.0			$100	$1,508
3.	Inlet Inventory and Storm Sewer Capacity Verification		4.0	10.0				$1,896
4.	RAS2D Hydraulic Modeling		8.0	24.0			$100	$4,380
	Identify Inundation Limits for Baseline Conditions (all frequencies)		6.0	24.0	10.0		$50	$5,042
5.	Prepare Baseline Hydrology & Hydraulics Report Section of Master Plan		18.0	4.0	4.0	4.0	$50	$4,280
6.	Internal QA/QC Reviews	6.0						$1,134
							Task Subtotal	**$30,104**
D	**ALTERNATIVES ANALYSIS**							
1.	Identify Baseline Problem Locations		4.0	4.0	4.0			$1,584
2.	Prepare Alternatives to Address Stormwater Conveyance / Flooding of Buildings							
	Stormwater Conveyance Alternatives		12.0	32.0				$5,932
	Detention Alternatives		4.0	16.0				$2,628
	Development Criteria		4.0	14.0				$2,384
	Environmental Considerations			2.0	4.0			$664
3.	Hydraulic Modeling of Proposed Infrastructure		10.0	48.0			$50	$7,596
4.	Determination of Project Benefits / Flood Reduction		10.0	20.0	12.0			$5,390
5.	Water Quality / MS4 Considerations							
	Regional Water Quality Ponds & Solutions		2.0	10.0				$1,558
	Point of Service Water Quality Solutions		2.0	4.0				$826
	Low-impact-development Water Quality Solutions		2.0	4.0				$826
6.	Coordination with CP (Logan Simpson)		2.0				$6,000	$6,338
8.	Detailed Cost Estimates		10.0	16.0				$3,642
9.	Alternative Decision Making & Recommendations		6.0					$1,014
10.	Prepare Alternatives Analysis Report Section of Master Plan		16.0	14.0	4.0	4.0	$43	$5,155
11.	Internal QA/QC Reviews	10.0						$1,890
							Task Subtotal	**$47,427**
E	**MASTER PLAN DEVELOPMENT**							
1.	Hydrologic and Hydraulic Adjustments		8.0	16.0				$3,304
2.	Update Cost Estimates		8.0	6.0				$2,084
3.	Graphics and Presentation		10.0	32.0	32.0		$52	$9,006
4.	Prioritization & Phasing (Including input from Logan Simpson)		10.0	4.0			$2,500	$4,678
5.	Prepare Master Plan Report		16.0	28.0	8.0	4.0	$54	$7,294
6.	Internal QA/QC Reviews	14.0						$2,646
7.	Technical Appendix		6.0	12.0		4.0	$54	$2,812
							Task Subtotal	**$31,824**
F	**CRITERIA MANUAL UPDATE**							
1.	Criteria Review for Northern Colorado Communities	2.0	8.0				$25	$1,755
2.	Criteria Manual Recommendations and Guidance	2.0	32.0		2.0	6.0	$33	$6,449
							Task Subtotal	**$8,204**
	Total Hours	**42.0**	**288.0**	**482.0**	**122.0**	**22.0**	**10051.0**	***$139,815***
	Total Cost	**$7,938**	**$48,672**	**$58,804**	**$12,810**	**$1,540**	**$10,051**	**$139,815**

https://iconengcom-my.sharepoint.com/personal/cjacobson_iconeng_com/Documents/proposals/Wellington MP/Wellington Fees & Schedule.xlsx

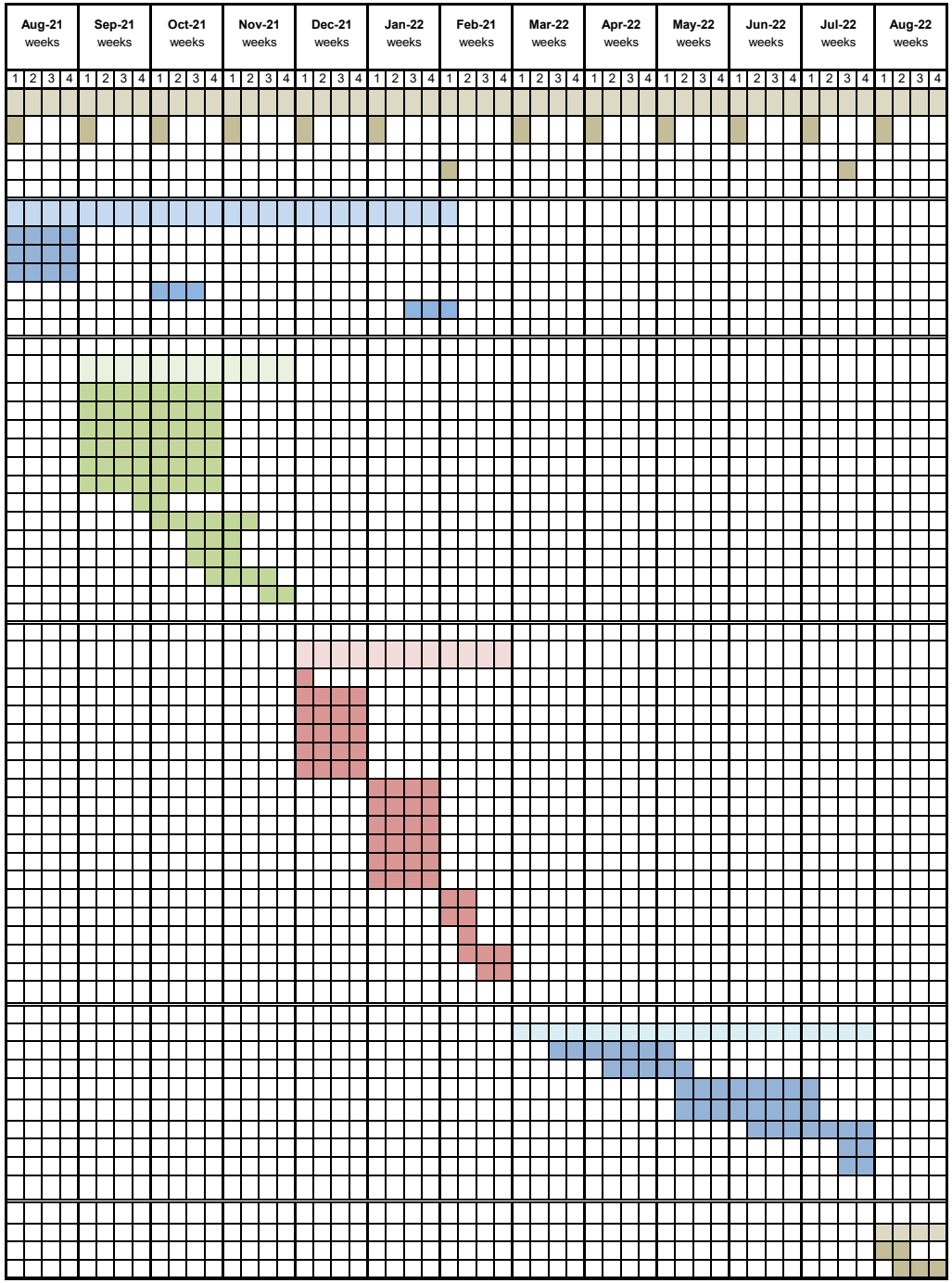
ICON
ENGINEERING, INC.

PROJECT NAME: Wellington Stormwater Master Plan
CLIENT: Town of Wellington

PREPARED BY: CDJ
CHECKED BY: JYM
DATE: April 20, 2021

30 %
50 %

	Description
A	**PROJECT COORDINATION**
1.	Kick-Off Meeting / Monthly Progress Meetings (6 Assumed) & Monthly Conference Calls (6 Assumed)
2.	General Correspondence with Client
3.	Town Board Meetings (2 Assumed)
B	**DATA COLLECTION & REVIEW**
1.	Collect & Assemble City's Base GIS Data
2.	Download FEMA 2011 LiDAR, DEM, Develop 1' Contour Mapping
3.	Assemble Aerial Imagery
4.	Complete Limited Ground Survey
5.	Miscellaneous Utility Research for Dry Utilities
C	**BASELINE HYDROLOGY & HYDRAULICS**
1.	Identify NOAA14 Rainfall
2.	Hydrologic Modeling (2-, 5-, 10-, 25-, 50-, 100-year, EX & FUT)
	Develop Hydrology Basins
	Develop Basin Parameters
	Routing Elements and Assemble SWMM Model
	Develop Diversion Rating Curves / Existing Detention Ponds
	Field Review
3.	Inlet Inventory and Storm Sewer Capacity Verification
4.	RAS2D Hydraulic Modeling
	Identify Inundation Limits for Baseline Conditions (all frequencies)
5.	Prepare Baseline Hydrology & Hydraulics Report Section of Master Plan
6.	Internal QA/QC Reviews
D	**ALTERNATIVES ANALYSIS**
1.	Identify Baseline Problem Locations
2.	Prepare Alternatives to Address Stormwater Conveyance / Flooding of Buildings
	Stormwater Conveyance Alternatives
	Detention Alternatives
	Development Criteria
	Environmental Considerations
3.	Hydraulic Modeling of Proposed Infrastructure
4.	Determination of Project Benefits / Flood Reduction
5.	Water Quality / MS4 Considerations
	Regional Water Quality Ponds & Solutions
	Point of Service Water Quality Solutions
	Low-impact-development Water Quality Solutions
6.	Coordination with CP (Logan Simpson)
8.	Detailed Cost Estimates
9.	Alternative Decision Making & Recommendations
10.	Prepare Alternatives Analysis Report Section of Master Plan
11.	Internal QA/QC Reviews
E	**MASTER PLAN DEVELOPMENT**
1.	Hydrologic and Hydraulic Adjustments
2.	Update Cost Estimates
3.	Graphics and Presentation
4.	Prioritization & Phasing (Including input from Logan Simpson)
5.	Prepare Master Plan Report
6.	Internal QA/QC Reviews
7.	Technical Appendix
F	**CRITERIA MANUAL UPDATE**
1.	Criteria Review for Northern Colorado Communities
2.	Criteria Manual Recommendations and Guidance



2021 Hourly Rates

ICON ENGINEERING

BILLABLE HOURLY RATES

Principal ..(Craig Jacobson)	$189.00
Professional Engineer V	$184.00
Professional Engineer IV	$179.00
Professional Engineer III.(Jaclyn Michaelsen)	$169.00
Professional Engineer II..(Jeremy Deischer)	$159.00
Professional Engineer I...(Heather Seitz)	$149.00
Engineer IV	$148.00
Engineer III	$140.00
Engineer II ..(Amanda Blair)	$122.00
Engineer I	$108.00
Senior Field Representative	$144.00
Field Representative	$122.00
Senior Design Professional	$158.00
Design Professional	$140.00
GIS Specialist II	$115.00
GIS Specialist I ..(John Klier)	$105.00
CAD Technician II	$110.00
CAD Technician I	$95.00
Administrative	$70.00
Mileage	IRS Rate/Mile
Miscellaneous Direct Expenses	Actual Cost

2021 Hourly Rates

LOGAN SIMPSON

BILLABLE HOURLY RATES

Jana McKenzie, FASLA, LEED AP	$184.00
Megan Moore, ASLA, Assoc. AIA	$156.00
Support Staff	$65.00—$90.00

TOWN OF
WELLINGTON



Proposal to Provide Design Services for a Comprehensive

STORMWATER MASTER PLAN

ICON
ENGINEERING

April 30, 2021

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April 30, 2021

Nathan Ewert, PE, CFM
Town of Wellington
3735 Cleveland Avenue
Wellington, CO 80549

RE: 2021 STORMWATER MASTER PLAN

Dear Nathan and Selection Committee Members:

ICON Engineering is pleased to submit this proposal to prepare the Stormwater Master Plan for the Town of Wellington. We believe our experience working with both large and small communities in Northern Colorado, in addition to experience with guidelines and criteria developed by the Mile High Flood District (MHFD), will provide the perfect merger to meet current goals for this project. ICON brings an unmatched balance of technical expertise, creative solutions, and the use of cutting-edge technology to our master plan studies, which we feel will strongly benefit the Town both today and into the future. With that said, *Why Select ICON?*

Northern Colorado Experience. With our current clients, including the Cities of Fort Collins, Greeley, Loveland and Longmont, ICON brings a presence and long history working in Northern Colorado. We truly understand the region and expectations from a variety of clients. Based in Fort Collins, this work will be led by Jaclyn Michaelsen who is in close proximity to Wellington.

ICON's largest client is the Mile High Flood District (MHFD). The MHFD exemplifies innovation in Colorado and across the front range. Our work with the MHFD remains on the cutting edge and includes all facets of stormwater engineering from planning through design and construction. Although we anticipate that the goals for Wellington will be different than the MHFD, the work will still rely on appropriate application of the District's hydrology and hydraulic standards.

Client Focused Approach: ICON has a long-standing and strong history working with both big and small clients on both major drainage and maintenance/repair level projects. Our multidisciplined staff is familiar with the ancillary mitigation techniques common to stormwater solutions often needed to meet MS4 requirements, including utility modifications, roadway design, pipeline rehabilitation, and water quality treatment.

Cutting Edge Technology: ICON's current planning studies incorporate today's cutting edge technology. ICON routinely integrates 2-dimensional flood modeling in the form of FLO-2D, HEC-RAS, and dynamic SWMM modeling to thoroughly understand and manage complex drainage situations. This work helps display flood reduction attributes of recommendations and is often used to support future grant requests for project funding.

Criteria: Our work as principal engineers for local communities brings familiarity with stormwater criteria and MS4 permitting needs for both large and small communities. ICON is often involved in criteria updates as part of these activities.

Project Partners: Our amazing subconsultants are always a key to our success. For this project we have engaged **Logan Simpson** who has worked with ICON on other Northern Colorado projects, including our stormwater improvement project for the Town of Milliken. Logan Simpson is currently updating Wellington's Comprehensive Plan. They bring a strong understanding of future needs for the community and will help ensure that the stormwater plan addresses key values for the Town.

Our experienced key staff members are described in detail within our proposal, and we are well supported from a staffing and capacity perspective. This should bring you comfort in knowing we are committed to this project's success for the Town of Wellington. Thank you for your time and we look forward to working with you on this important project for your community.

Sincerely,
ICON Engineering, Inc.

Jaclyn Michaelsen, PE , CFM
Project Manager | jmichaelsen@iconeng.com

Craig Jacobson, PE, CFM
Principal | cjacobson@iconeng.com

ICON ENGINEERING – FIRM PROFILE

ICON is a civil engineering firm serving primarily public sector clients for over 24 years. Our planning, design, and management of civil engineering projects is most notably expressed through ICON's stormwater and stream restoration, municipal engineering, and roadway design services. We have a total of 32 employees including 16 registered Professional Engineers and 9 Certified Floodplain Managers, with additional support engineers, GIS specialists, CAD technicians, and administrative personnel, who have the time and availability to work on this project. ICON is proficient in producing engineering plans that are efficient, easy to understand, and minimize risk.

ICON has a strong commitment to making improvements within the state of Colorado. Below are the services ICON Engineering excels at providing our Clients.

- Flood Risk Management
- Hydrology & Hydraulics / 2D Analysis
- Floodplain Delineation
- Drainage Infrastructure
- Stream Stabilization
- Habitat Enhancement
- Flood Documentation, Damage Assessment & Recovery
- Stormwater Quality
- Master Planning and Civil Design
- Parks & Trails
- FEMA Map Revisions
- Benefit Cost Analysis
- GIS Inventory & Analysis
- Roadway Design

ICON'S KEY PERSONNEL

Below is a brief description of the key personnel assigned to this project. For additional details, resumes can be found at the end of this proposal in the *Additional Information* section.

Craig Jacobson, PE, CFM — *Centennial, CO*

Principal | Contract Manager



Craig will be responsible for the overall management of this contract. He brings over 25 years of experience in water resource engineering in the Rocky Mountain Region, including design of public sector infrastructure, flood control measures, drainage improvement, floodplain delineation, master planning, water quality, and design of stabilization and restoration improvements along rivers and major drainageways. He has managed all of ICON's master planning efforts and many design projects for MHFD, City of Greeley, and the City of Boulder. He is an expert modeler using both one dimensional (HEC-RAS) and two dimensional (HEC-RAS and FLO-2D) analyses. Craig's repertoire includes stormwater rehabilitation projects which focus on cost effective technologies used to add service life without the cost of full replacement. He has also performed dozens of LOMR/CLOMR's throughout Colorado. Lastly, Craig frequently speaks at floodplain management conferences and participates as a co-instructor for floodplain management courses offered through the Colorado Association of Stormwater and Floodplain Managers (CASFM) and the Urban Watersheds Research Institute (UWRI).

- Old Town Fort Collins Hydrology Update—Ft. Collins
- Sharktooth Basin Master Plan—Greeley
- Upper Cooper Slough Master Plan—Ft. Collins
- Boxelder Creek Basin Hydrology Update—Ft. Collins
- North Greeley and Downtown Stormwater Master Plan

Jaclyn Michaelsen, PE, CFM — *Fort Collins, CO*

Project Manager



Serving as Project Manager for this contract, Jaclyn brings expertise in hydraulic engineering, focusing on master planning and design of drainageway and stormwater projects used for flood mitigation. She specializes in drainage analysis and design, hydrologic and hydraulic modeling (including 2-dimensional modeling), river analysis, dam design and analysis, floodplain delineation, stream stability, groundwater modeling and analysis, and construction observation. She has successfully helped obtain grant funds for Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance (FMA) and Pre-Disaster Mitigation (PDM) projects as well as from the Economic Development Administration. Jaclyn is based in ICON's Fort Collins home office, with is in close proximity to the job site. She has worked for nearly all departments within the City of Fort Collins, including preparing significant LOMRs, CLOMRs, floodplain analysis, and floodplain permit development projects.

- Canal Importation Stormwater Improvements—Ft. Collins
- Josephine Stormwater Improvements—Milliken
- Upper Cooper Slough Master Plan Update—Ft. Collins
- Clark Reservoir Diversion & Eastside Detention—Boxelder Stormwater Authority

A. Project Team

Jeremy Deischer, PE *Centennial, CO*

Hydraulics & Hydrology, Master Planning



Jeremy brings expertise in hydrologic and hydraulic engineering, focusing on master planning and design of drainageway and stormwater projects used for flood mitigation. With nine years of experience, his projects have included developing hydrologic and hydraulic models using geo-referenced data, creating the ability to seamlessly transition between the modeling program and a GIS interface. Jeremy has experience with all components of a master planning study including delineating basins utilizing GIS geoprocessing tools, creating hydrologic and hydraulic models for multiple frequency storms, designing alternatives to help mitigate flood damage and report production. Jeremy is very experienced in 2D hydraulic modeling, including RAS2D, FLO-2D and SRH-2D analysis, and rain-on-grid both with and without embedded storm sewer and hydrologic models.

- Old Town Fort Collins Hydrology Update—Ft. Collins
- Boxelder Hydrology Modeling Update—Ft. Collins
- 7th Avenue Drainage Improvements—Greeley
- North Greeley and Downtown Storm Drainage Master Plan—Greeley

TOWN OF WELLINGTON

ICON CONTRACT MANAGER

Craig Jacobson, PE, CFM

ICON PROJECT MANAGER

Jaclyn Michaelsen, PE, CFM

ICON ENGINEERING—KEY PERSONNEL

Stormwater Management Planning, Hydraulics & Hydrology, QA/QC

–HYDRAULICS & HYDROLOGY, MASTER PLANNING
Jeremy Deischer, PE

–PROJECT ENGINEER
Morgan Ross, EI

–QUALITY CONTROL / QUALITY ASSURANCE
Heather Seitz, PE, CFM

LOGAN SIMPSON—KEY PERSONNEL

Conceptual Design, Landscape Architecture, and Green Infrastructure

–COMMUNITY LIAISON / PLANNING
Megan Moore, PLA

–LANDSCAPE & G.I. STANDARDS COORDINATION
Jana McKenzie, PLA

Morgan Ross, EI *Centennial, CO*

Project Engineer



Morgan is experienced with hydrologic analyses, storm sewer and inlet design, hydraulic modeling and floodplain delineations, and channel design projects. She collaborates on modeling, CAD design, and quantity calculations/cost estimating.

- South Carlan Court Storm Outfall – Denver
- Big Dry Creek Otero Tributary, Reach 3—Centennial
- Poudre River Floodplain Improvements—Ft. Collins

Heather Seitz, PE, CFM, LEED AP *Jacksonville, FL*

Project Specialist, QA/QC



As the former Stormwater Engineer and Manager for the City of Greeley, Heather managed Capital Improvement Projects in the 28th Avenue Basin and the future Downtown Greeley Master Plan Implementation. Working with ICON as a client, Heather supported and managed projects including the Sunrise Stormwater Improvement project and the North Greeley and Downtown Master Plan. Her experience includes stormwater utilities, stormwater management, drainage, permitting, green infrastructure, project management, community outreach, and client engagement. Heather's strength is combining her communication, organization, and people skills with her technical expertise to produce quality engineering products within a specified time range.

- Sunrise Neighborhood Drainage Improvements—Greeley
- North Greeley and Downtown Storm Drainage Master Plan
- Brighton North Outfall, Phase 3—Brighton

LOGAN SIMPSON'S KEY PERSONNEL

ICON's project team includes engineers and specialists who have an established, collaborative working relationship and are excited to work on this project. To create continuity with the Town of Wellington's Comprehensive Plan, we will be working with Logan Simpson in a limited role for the stormwater master plan and to help review stormwater criteria standards as they relate to other standards in the town. For more than three decades, Logan Simpson has provided environmental consulting, cultural resources, community planning, and landscape architecture design services throughout the West. All of their proposed staff work out of their Fort Collins location.

Megan Moore, ASLA, Assoc. AIA — *Fort Collins, CO*

Community Liaison & Planning — **Logan Simpson Design**



Megan is an urban designer with extensive experience in planning and design at a wide range of scales. She specializes in comprehensive, subarea, and corridor planning with a key focus on urban revitalization and redevelopment. With more than 15 years of experience, she is already the recipient of more than 30 design and planning awards. Her planning capabilities are enhanced by her background in architecture and landscape architecture, giving her a unique perspective into urban design strategies and solutions and implementing policy guidance to create human-scale places. Megan carries a deep understanding of the use and development of graphics to convey intent, procedures, and processes necessitated by planning guidelines.

As the project manager for the Town's ongoing Comprehensive Plan, Megan will provide advisory knowledge to support the continuation and implementation of ideas as well as build on successes from outreach.

- *PlanWellington* Comprehensive Plan, Colorado
- Wellington Land Use Code Update, Colorado
- Timnath Comprehensive Plan Update and Parks, Recreation, Open Space, and Trails (PROST) Plan Update, CO
- Larimer County Comprehensive Plan and Mountain Resiliency Plan, Colorado

Jana McKenzie, PLA — *Fort Collins, CO*

Landscape & GI Standards — **Logan Simpson Design**



Jana is a landscape architect skilled in facilitating decision-making processes, and planning and design of sites associated with drainages, trails, parks and recreation facilities, public buildings, streetscapes, and many other types of site development. Many of her projects involve creating restoration plans for and providing aesthetic and recreational amenities associated with detention facilities, lakes and reservoirs, irrigation ditches/canals, drainages, and floodplains. She understands the interrelationship between large-scale planning, and detailed design solutions, and has been responsible for design and oversight of construction of more than 65 projects that total more than $250 million in construction value. She was recognized by the American Society of Landscape Architects for her projects' contribution to excellence in the profession by receiving the title of "Fellow". She was one of the first LEED accredited landscape architects in the United States, and was one of the five originators of the Sustainable Sites Initiative, which has become a nationally recognized design tool and rating system.

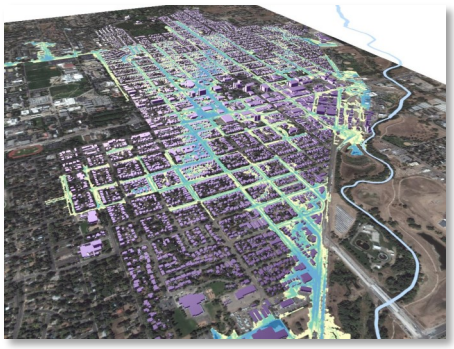
As the Principal Landscape Architect for Wellington's Landscape and Irrigation Standards (in progress) she will provide consistency between these and the standards for any proposed stormwater criteria.

- Big Thompson and Little Thompson Rivers Restoration Master Plans, 2013-2014, Colorado
- Wellington Landscape and Irrigation Standards (in progress), Colorado
- River's Edge Natural Area, Loveland, Colorado
- Centerra Design Guidelines, Loveland, Colorado
- Viestenz-Smith Mountain Park, Loveland/Larimer County, Colorado
- Fossil Creek Reservoir Natural Area, Fort Collins/Larimer County, Colorado

> *"In all aspects of their work, the staff of ICON Engineering has shown remarkable dedication to client satisfaction. I have experienced situations in several of our projects when unforeseen circumstances could have resulted in significant scheduling delays and cost overruns. In each and every case, ICON demonstrated creativity, hard work, and determination that prevented these situations from escalating. They have demonstrated unmatched technical vision to go along with their leadership and reliability."*
>
> Kevin Houck, PE, CFM
> Flood Control and Management Section
> Colorado Water Conservation Board

SIMILAR PROJECT EXPERIENCE

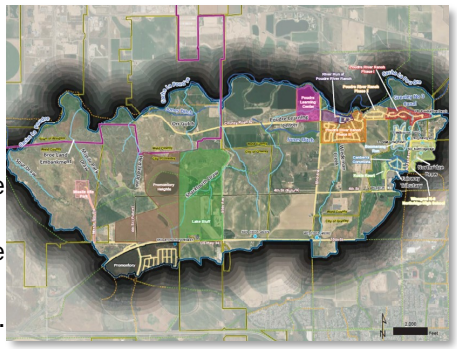
OLD TOWN FORT COLLINS HYDROLOGY UPDATE—Fort Collins



ICON updated hydrology in the Old Town Basin using FLO-2D and EPA-SWMM modeling. The Basin is 2.5 square miles in size, completely urban and located in the heart of Fort Collins. This study brought hydrologic modeling from an older MODSWWM platform into the most current version of EPA-SWMM. ICON's study was prepared in a geo-referenced format, including the development of a project specific web-map for presentation and simplified review by the City. As part of the study, a basin wide FLO-2D (rain-on-grid) model was prepared to assist in sub-basin layout and to help define connectivity of the floodplain routing. FLO-2D modeling was also completed at roadway intersections to define rating curves for major split flow paths. Overall, the study included over 200 sub-basins, over 1,000 links and nodes, and 50 FLO-2D diversions at intersections.

Reference: Dan Evans | City of Fort Collins | (970) 416-2217 | daevans@fcgov.com
Key ICON Staff: Craig Jacobson, Jeremy Deischer
Budgeted and Actual Cost / Dates: Base Hydrology (2016-2017) $218,640 | Damage Assessment (2018-2019) $99,880

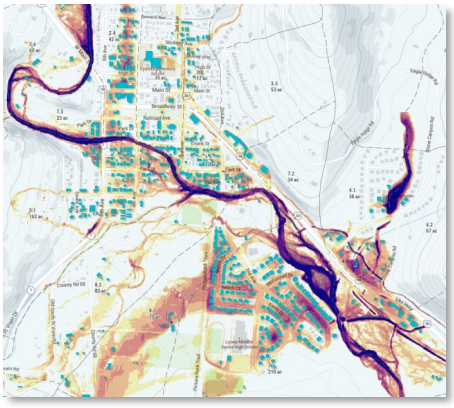
SHARKTOOTH BASIN MASTER PLAN—Greeley



ICON assisted the City of Greeley with the development of a storm water master plan for the Sharktooth Bluffs Basin. The seven square mile watershed is located within the City of Greeley, Town of Windsor, and unincorporated Weld County. The basin was in need of a plan to responsibly manage stormwater with the basin is expected to grow up by up to fifty percent in the next twenty years. Baseline hydrologic analysis included over one hundred subwatersheds encompassing the eleven different tributaries. Alternatives were developed to provide guidance on improved roadway crossings with proposed street improvements as the basin develops and eliminating existing flooding hazards on insurable structures. A benefit-cost analysis was performed using FLO-2D inundation for all design return intervals. The selected plan of improvements will be refined to a 20% design level.

Reference: Andrew Fisher, PE, CFM | City of Greeley | (970) 350-9797 | andrew.fisher@greeleygov.com
Key ICON Staff: Craig Jacobson, Jaclyn Michaelsen, Jeremy Deischer
Budgeted Cost: $172,215 **Actual Cost:** $184,215 ($12,000 additional alternative evaluation with Orr Property/ Sharktooth Draw and geomorphic evaluations for future channel restoration along Sharktooth Draw, Poudre Learning Ctr, and Weideman Creek)
Completion Date: 2019

LYONS STORMWATER MASTER PLAN – Lyons

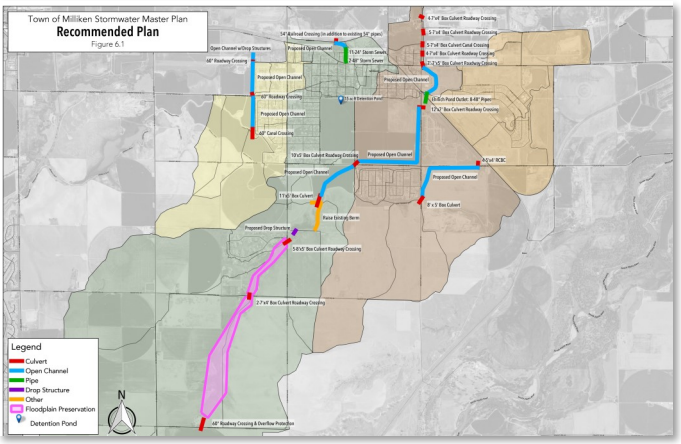


ICON was tasked to create a master watershed study and master drainage plan for this 8.6 mile study area within the Town of Lyons and its immediate upstream tributary drainages. The study identified and quantified the tributary drainage basins to the Town and the existing drainage improvements in Town; researched historic issues; calculated and determined needs for runoff conveyance and potential mitigation including the quality of the runoff from the drainage basins; evaluates and established methods for regional and localized mitigation measures, created budgets for implementation and identified permitting requirements. The result was a Watershed Master Drainage Plan for the Town and Immediate Upstream Tributary basins which included the analysis, plans and recommendations, provisions for standards and codes, budgets and implementation schedules for the systems necessary to provide a safe, sustainable and resilient Town. This plan enabled Lyons to move toward implementation of critical projects to reduce the potential damages from localized flooding.

Reference: Victoria Simonsen | Lyons Town Administrator | (303) 823-6622 x19 | vsimonsen@townoflyons.com
Key ICON Staff: Troy Carmann, Craig Jacobson, Jeremy Deischer
Budgeted Cost: $249,800 **Actual Cost:** $249,800 **Completion Date:** March to December 2016

MILLIKEN STORMWATER MASTER PLAN & JOSEPHINE STORMWATER IMPROVEMENTS—Milliken, CO

In September 2014, ICON Engineering completed a stormwater masterplan for the town. The plan provided important basin delineation, hydrologic, hydraulic engineering and 2D floodplain analysis for the Town's watersheds. The master plan identified function of existing stormwater facilities, existing flood hazards, and proposed improvements to mitigate those hazards. The resulting benefit cost analysis provided valuable input to prioritizing improvements known as the Josephine Storm Sewer Outfall. The Master Plan work was also useful in establishing current stormwater criteria and the Town's storm water utility fee that was codified in 2015. The Town's master plan work was developed in hardcopy and online formats. Refer to link: http://www.iconeng.com/project/milliken-stormwater

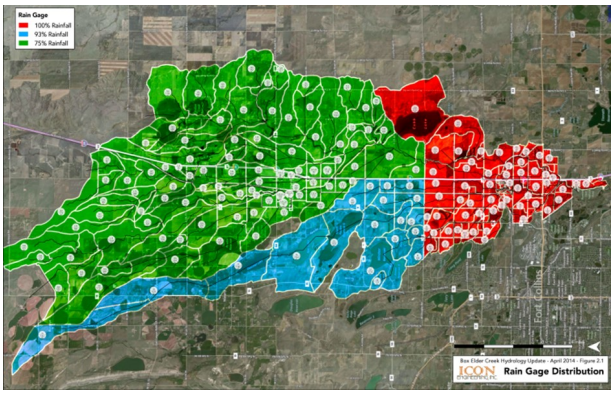


The Josephine Storm Water Improvements Project results in the reduction of local flood hazards in the Town of Milliken's largest sub-watershed running through one of the oldest portions of Milliken. ICON Engineering designed a storm sewer system will reduce flood damages from storm water flows that exceed the limited capacity of what remains of Lola Tributary. Sheet flows, ponding, and dangerous flood conditions affecting public and private property will be reduced. And the modern storm sewer improvements to Lola Tributary will increase the natural and beneficial use of the floodplain. Overall, the project mitigates a significant hazard in the Old Town neighborhoods of Milliken. The project also reduces the overtopping if the Highway from approximately 155 cfs to approximately 30 cfs. **This work included Logan Simpson as a sub-consultant to ICON for environmental and cultural resources.**

Reference: Mr. Kent Brown | Town of Georgetown | (303) 569-2555 | townadmin@townofgeorgetown.us
Key ICON Staff: Troy Carmann, Jaclyn Michaelsen, and Jeremy Deischer
Budgeted & Actual Cost: Master Plan $140,000 | Josephine Stormwater Improvements $108,000 **Dates:** 2014-2019

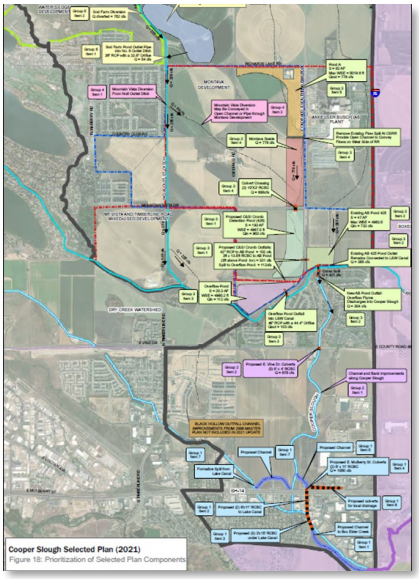
BOX ELDER CREEK/COOPER SLOUGH HYDROLOGIC MODELING AND LOMR DEVELOPMENT
Fort Collins & Larimer County, CO

The Box Elder Creek/Cooper Slough watershed is a 265 square-mile watershed located in and north of the City of Fort Collins. In 2014, ICON completed an update to the hydrologic modeling for the Box Elder Creek Watershed, extending to Wyoming. This project involved conversion of the effective FEMA hydrologic modeling to EPA SWMM 5.0, model updates for changes in the basin, and updates in including detailed modeling of the lower portion of the watershed. All elements of the model were geo-referenced allowing consistency between a GIS and SWMM interface. An unsteady HEC-RAS model was used to model the overtopping of an irrigation canal in the area. This model served as the basis for future FEMA Conditional and Letters of Map Revisions (CLOMRs/LOMRs) and floodplain updates along Box Elder Creek, Cooper Slough and other tributaries. As part of work with Ayres Associates, ICON's project manager, Jaclyn Michaelsen prepared and completed CLOMRs and LOMRs using this new hydrology for Box Elder Creek and tributaries on behalf of the City of Fort Collins, Larimer County, Boxelder Stormwater Authority and FEMA. The CLOMR/LOMR revised 14 FEMA FIS panels, eliminated the floodplain through the Town of Timnath, and greatly reduced the floodplain from ESDF to the Larimer and Weld Canal Crossing Structure (LWCCS). ICON served as a reviewer for the City of Fort Collins for proposed FEMA map changes using this information.



Reference: Beck Anderson | City of Fort Collins | (970) 221-6682 | banderson@fcgov.com
Key ICON Staff: Craig Jacobson, Jeremy Deischer, Jaclyn Michaelsen
Budgeted Cost: $85,550 **Actual Cost:** $111,050 (Changes in scope for modeling approach and inclusions)
Completion Date: April 2014

UPPER COOPER SLOUGH MASTER PLAN UPDATE—Fort Collins, CO



The purpose of the study was to review the changes in hydrology along Cooper Slough, given the inclusion of past master planning solutions and future development potential. Following the hydrology updates in the Box Elder Watershed, this update to the proposed master plan improvements became necessary. For this project, ICON collaborated the City and key stakeholders, including active development groups and the Larimer and Weld Irrigation Company. Project work included hydrologic and hydraulic modeling (EPA-SWMM kinematic and dynamic methods), 2D floodplain assessments, alternative development, benefit costs comparisons, cost estimating and project phasing recommendations. The selected plan of improvements resulted in a combination of stormwater, detention, water quality, and roadway improvements that functions both for City stormwater management and future development needs.

Reference: Dan Evans | City of Fort Collins | (970) 416-2217 | daevans@fcgov.com
Key ICON Staff: Craig Jacobson, Jaclyn Michaelsen
Project Costs: $85,250 Initial Master Plan Update (2016); $38,021 (2020) – updates for development changes, $32,829 (2020) – added BCA and additional project scope
Project Date: 2016-2020

CLARK RESERVOIR IMPROVEMENTS and LOMR—Wellington

The purpose of this project was to divert 100-year stormwater prior to the Town of Wellington to reduce the FEMA regulated floodplain that was impacting the town. The project consisted of collecting the storm flows in the Clark inlet ditch and re-routing them to the Clark Reservoir. Clark Reservoir was dredged to increase the storage volume in the reservoir for the 100-yr storm flows. The spillway out of the reservoir was modified to safely convey any excess flow through the reservoir and safely downstream. The project re-directed the storm flows upstream of the Town, leaving only local runoff in Wellington. As part of work with *Ayres Associates*, ICON's Project Manager, Jaclyn Michaelsen, assisted on the design of this project and was responsible for the hydrologic and hydraulic analysis including completing a FEMA CLOMR and LOMR on behalf of the Boxelder Stormwater Authority.

PLANWELLINGTON: COMPREHENSIVE PLAN AND LAND USE CODE UPDATE – Wellington



Logan Simpson is currently working with the Town of Wellington to update their Comprehensive Plan and Land Use Code. The Comprehensive Plan Update focuses on honoring the small-town atmosphere of the community by providing safe and attractive neighborhoods oriented around parks, amenities, and public spaces; and by offering local options for the community to shop, gather, and celebrate in Town. The Plan Update gives special attention to Downtown, offering recommendations to enhance the area's vibrancy by preserving its distinctive charm, supporting its local flair, and enhancing its atmosphere and amenities for residents and visitors alike. One last but key consideration in Wellington's Plan Update is balancing continued growth with an outstanding provision of public services that contribute to the community's health and wellbeing.

To ensure seamless integration of development standards with the Comprehensive Plan, the Land Use Code is being updated concurrently. Elements of the code update include: simplifying code language to ensure a more user-friendly document; clarifying and streamlining application processes; updating the subdivision process; modernizing standards; defining mixed use zone districts to provide a more sustainable approach to development of commercial areas; defining downtown specific design standards to correlate with the Comprehensive Plan goals; integrating sustainability; and creating design standards to preserve neighborhood character. http://www.townofwellington.com/451/Comprehensive-Plan

Reference: Cody Bird, AICP | Planning Director, Town of Wellington | 970-568-3554 | birdca@wellingtoncolorado.gov
Logan Simpson Staff: Megan Moore and Jana McKenzie
Cost: $200,000 with anticipated final project cost of $200,000 **Dates:** August 2019 – ongoing with expected completion September 2021

C. Detailed Work Plan

PROJECT UNDERSTANDING

Since 2014, the Town of Wellington has grown by approximately 46% in size. With new development under construction and plans for future annexation, there is an increasing demand on public infrastructure. Drainage is one aspect of that need. Not only is proper planning needed to accommodate future changes from development; from a stormwater perspective, the Town's infrastructure is either inadequate, or aging. Therefore, Wellington requires a guide to help plan for stormwater needs both now and long term. Similarly, this master plan should address immediate drainage and flooding problems, as well as promote revitalization for community centers, such as the downtown areas, and locations expected to continue to grow through development.



Complicating the local drainage in Wellington is the presence of major drainageways, including Boxelder Creek to the west, the Coal Creek Overflow which drains through Central Wellington and downtown, as well as Indian Creek located along the easter edge of town. Stormwater in these tributaries develops from larger drainage basins upstream of town, with confluences in and around Wellington. These drainageways are designated floodplains by the Federal Emergency Management Agency (FEMA) and therefore are subject to floodplain management requirements and flood insurance for property owner. The recent FEMA/Larimer County RiskMap updates added 130 properties alone to the Boxelder Creek floodplain. Although the purpose of Wellington's stormwater master plan is not focused on mitigating FEMA floodplain areas, the impacts to the town and property owners do need to be recognized, as opportunities for collaborative solutions between local flooding issues and these major watershed issues may become apparent.

Goals for this stormwater master plan are to bring a Wellington focused approach to reducing flood risk for the community. Since the town does not currently have a stormwater plan, proposed projects are expected to help build a list of Capital Improvement Projects (CIP) with phasing for short to long terms (needs over a 5-, 10-, or 20-year planning cycle). Similarly, with current population growth, this plan will also integrate current needs for water quality and MS4 compliance.

It should be noted that the Town of Wellington is part of the regional Boxelder Bain Stormwater Authority (BBSA), an intergovernmental agency authority between Larimar County, Fort Collins and Wellington. This new stormwater plan is not expected to be reviewed, approved, or accepted by the BBSA, however similar to the FEMA floodplains, it is anticipated that the current migration plan be used in consultation with alternative development.

Finally, it needs to be recognized that Wellington is currently undergoing a new Comprehensive Plan (CP) update. Goals from this plan include: revitalization to historic and central areas of town (i.e. downtown) and planning for future growth in targeted areas. As referenced by the proposed CP, implementation serves to strengthen the local economy overtime, and much of this work goes hand in hand with stormwater which when unmanaged can have a adverse impact on both existing land uses and future changes. For this project we have added Logan Simpson to our team, as they are currently preparing the CP update. Logan Simpson brings a strong understating of the goals for the CP and future needs for the community. They will help our team ensure that key CP goals for the Growth Management Area (GMA) are addressed with the stormwater plan.

PROJECT APPROACH

As discussed in the RFP and subsequent addendums. This project is partially funded by a FEMA grant application. To meet the grant requirements, the Town wishes to complete the stormwater master plan by the end of 2022, with a preliminary report submitted by June 2022 and final report by December 2022. April 2023 is the grant funding deadline. We find that this schedule is very suitable for this project. As noted in our subsequent sections, we are proposing to complete the work ahead of time with a preliminary submittal by the end of 2021 and final submittal by summer 2022. This will provide the town time to approve and adopt the findings prior to the grant close out process.

Project Management and Meetings

Project meetings are anticipated to occur monthly between ICON's management staff and the Town's project manager. Additional members from the town may be asked to attend meetings as direct by the Town's project manager. ICON will prepare and distribute project agenda's and meeting minutes. Additional correspondence is anticipated via phone conferences and email. Noting the impact from COVID, consideration will be given to remote meetings as deemed necessary by Town staff and policy.

No public meetings are anticipated with the this work, although work sessions with the Town's Board of Trustees may occur periodically through adoption.

Base Mapping and Data Collection

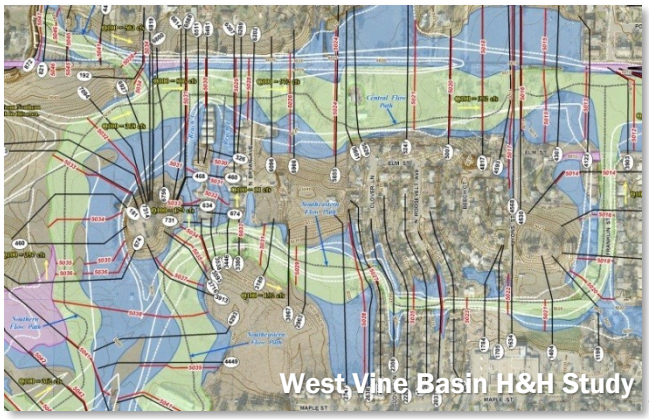
In general, project base mapping for the Town and GMA is anticipated from current regional LiDAR acquired in 2011 by the BBSA. This LiDAR will be supplemented with regional USGS DEM's as needed for hydrology computations beyond the LiDAR limits. In addition, ICON will:

- Collect and assemble data from the FEMA/Larimer County RiskMap files. *Note we already have this data.*
- Assemble data from any recent stormwater improvements for public works or local development,
- Obtain recent GIS data from the town for stormwater and other utilities,
- Assemble baseline hydrology as available from ICON's Hydrologic Update for the Box Elder Master Plan, prepared for the City of Fort Collins and used for recent FEMA map changes and BBSA stormwater improvements. *See below.*

Note, as a supplement to the Town's GIS and hydrology development, we do anticipate collecting limited field elevations using survey grade GPS equipment to verify ground or pipe elevations. We are assuming that the GIS data available from the Town includes existing pipe sizes, pipe materials, invert elevations, and manhole or inlet elevations for the exiting stormwater system necessary for this study and our work will be limited to supplemental data.

Hydrology and Hydraulic Analysis

Although ICON has not worked directly for the Town of Wellington, in 2014, for the City of Fort Collins, We prepared a hydrologic update for the Boxelder/Cooper Slough watershed, include analysis for basins and current infrastructure within the Town of Wellington. This data was used as the basis for stormwater improvements completed by the BBSA and FEMA floodplain updates along Boxelder Creek and Cooper Slough downstream of Wellington. This data was developed under the direction of ICON staff assigned to this project. We fully understand the approach of the modeling at that time, and limitations such that appropriate and more importantly "justifiable" adjustments can be recommended to best meet the Town's needs. Examples include: updates to NOAA 14 rainfall values; a shift from EPA-SWMM runoff blocks to CUHP 2.0 hydrograph development; site specific infiltration determination; sub-watershed dissertation to MHFD standards; identification of design points for local project needs; and consideration to dynamic flow modeling (versus kinematic) – *this can help identify more realistic flow values and flood risk.*


West Vine Basin H&H Study

Goals for this Master Plan are to identify flood risk and stormwater alternatives from local drainage within the Town's GMA. Hydrology will be developed using CUHP 2.0 and EPA-SWMM for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year recurrence intervals, as determined necessary for the Town. Consideration will be given to existing conditions as well as future buildout in the GMA to detention criteria. For both existing and future land use conditions, hydraulic data will be developed at appropriate locations using a combination of EPA-SWMM, HEC-RAS, or HY8 hydraulic modeling programs, as appropriate. In addition. Within the GMA, we are proposing to utilize 2D HEC-RAS modeling to review flood risk and potential impact on existing structures and infrastructure. We have from that this additional effort adds considerable value to locating the most impactful alternatives and establishing a baseline level of risk often needed for Grant documentation and benefit-cost-calculations. In addition, we have found 2D flood mapping useful in refining critical hydrologic design points.

Alternative Development

The development of alternatives will generally follow the scope-of-work outlined in the RFP. Alternative solutions will be presented to address areas of flooding with Town, areas of inadequate storm drainage capacity, roadway overtopping and flooding, and locations where stormwater improvements will assist community revitalization. A full range of stormwater improvements opportunities will be explored, including: inlet collection and storm sewer improvements, regional detention, drainageways, and water quality. Rehabilitation of existing aging infrastructure will also be a consideration. Managing the local basin runoff through regional drainageways along Box Elder Creek and Indian Creek will be given consideration within the improvement plan development. Based on the flood inundation maps developed in the hydraulics stage, ICON will review flood reduction opportunities and level of service (i.e. minor versus major storms) needed to achieve the Town's goals for flood reduction.

C. Detailed Work Plan

This project is very similar to several of our other projects, specifically in Fort Collins (upper Cooper Slough), Aurora (Westerly Creek Basin), Milliken (Josephine Outfall Planning), and the Town of Lyons, as examples. In these cases, on-site development criteria and planning was integrated with the overall basin master planning to determine the more restrictive of existing and future impacts. Post-development release rates were managed through simulated detention for each development within the SWMM models. It was found that in cases where regional detention was involved, the future conditions often controlled the detention volume, whereas the existing conditions hydrology controlled the maximum runoff rates expected within the watershed. Often, interim planning solutions were made to document to the more restrictive of the flooding potential.

Consideration for management and mitigation of FEMA floodplains may also be considered, as appropriate for this study. As an example, we believe that flows along the Coal Creek overflow are more driven by local basin flow than the FEMA flows and that alternatives may lead to both stormwater management from local contributions as well as floodplain mitigation that affects the downtown areas.

Alternatives will be identified conceptually on plan exhibits with accompanying profiles (as necessary) to verify feasibility and cost estimates will be prepared. Our team will work with Town staff to recommend alternatives with consideration to feasibility, flood reduction, costs, and level of service. Compatibility with future development needs in the GMA, social equity, and other town values as presented in the CP may be part of the alternative selection process.

Water Quality and MS4

As noted, the Town of Wellington is growing. With that adds more specific MS4 and water quality requirements. Stormwater alternatives will provide recommendations for stormwater outfall management and water quality, acknowledging future changes in MS4 requirements. Through our work with the Town of Columbine Valley, ICON assists with MS4 program documentation throughout the year and preparation of annual reports. As part of an organization called SPLASH, ICON and the Town attend regular meetings and stay current with changing MS4 requirements.

Master Plan Preparation

Following alternative selection, a stormwater master plan will be developed. Goals for the master plan are to develop a plan for CIP recommendations for short term and long-term needs. Identification of project costs and phasing strategies will be presented such that a sequence of funding and implementation can be made. Although this type of work is standard in most of our master plan studies, similar projects include our Upper Cooper Slough master plan for the City of Fort Collins, where both public and private stormwater needs were combined with sequential planning to identify a selected plan for stormwater needs in the watershed.

Criteria Updates

With this project, the Town has requested that the consultant provide an update to the Storm Drainage Criteria Manual. As a result of our other municipality experience, ICON is very familiar with the means and methods for adopting new criteria and codes. For this task, we see that the town would also have several options:

- Updating and managing an independent criteria manual,
- Adopting with modifications the Urban Storm Drainage Criteria Manual (USDCM) developed by the MHFD.
- Adopting with modifications from neighboring communities as the City of Fort Collins, Greeley, or Larimer County.

Each option has distinct advantages and disadvantages. ICON will be able to present these key points to the Town Staff to make the best decision for the Town. In past experiences, ICON has found that the town may find it advantageous to work through the USDCM in that periodic updates will be managed through the MHFD. Outdated criteria manuals can become as much of a burden to flood-safe development as development without a drainage criteria manual. Furthermore, adopting the manual can ensure consistency with other Northern Colorado Communities. Exceptions for items specific to the Town of Wellington can also be addressed through the adoption ordinance. Consistency and compatibility with the current Larimer County Urban Area Street Standards (LCUASS) will also be a consideration for criteria recommendations.

"ICON has a long history of teaming with the MHFD on a variety of project levels. Their strength comes from their experienced personnel, and ability to adapt their services to what each individual project requires. Their technical knowledge combined with their strong leadership skills makes ICON a strong choice."

David Bennetts, PE, CFM | Manager, Design, Construction and Maintenance Program | Mile High Flood District

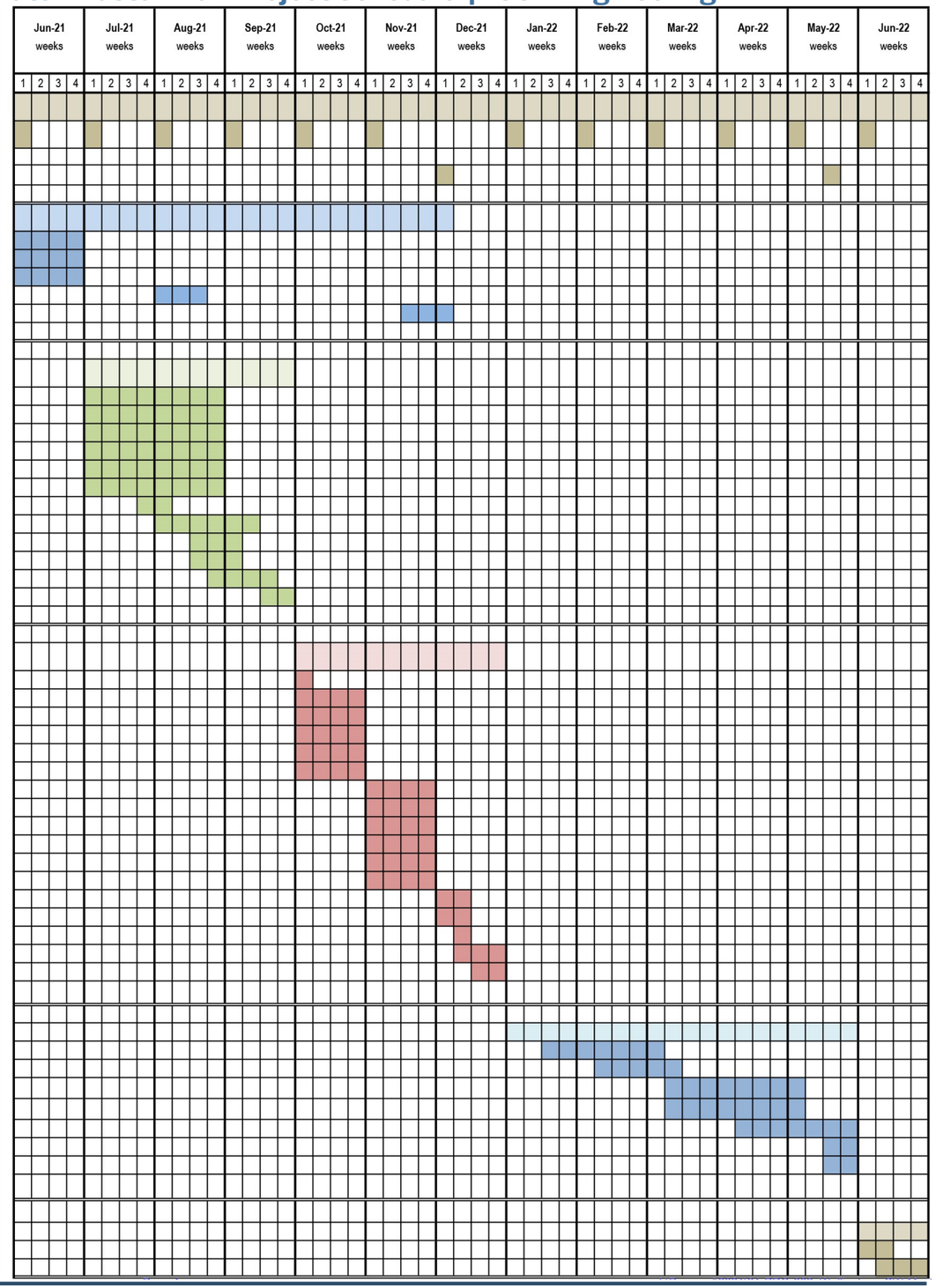
PROJECT SCHEDULE

ICON has set a realistic timeline and reasonably adequate budgets to provide the level of service that the Town of Wellington merits for this project. Our staff will follow the comprehensive, sequential task schedule located in our Proposed Project Schedule. **We are proposing to complete the work ahead of schedule** with a preliminary submittal by the end of 2021 and final submittal by summer 2022. This will provide the town time to approve and adopt the findings prior to the grant close out process.

Town of Wellington: Stormwater Master Plan Project Schedule | ICON Engineering

PREPARED BY: CDJ
CHECKED BY: JYM
DATE: April 20, 2021

	Description
A	**PROJECT COORDINATION**
1.	Kick-Off Meeting / Monthly Progress Meetings (6 Assumed) & Monthly Conference Calls (6 Assumed)
2.	General Correspondence with Client
3.	Town Board Meetings (2 Assumed)
B	**DATA COLLECTION & REVIEW**
1.	Collect & Assemble City's Base GIS Data
2.	Download FEMA 2011 LiDAR, DEM, Develop 1' Contour Mapping
3.	Assemble Aerial Imagery
4.	Complete Limited Ground Survey
5.	Miscellaneous Utility Research for Dry Utilities
C	**BASELINE HYDROLOGY & HYDRAULICS**
1.	Identify NOAA14 Rainfall
2.	Hydrologic Modeling (2-, 5-, 10-, 25-, 50-, 100-year, EX & FUT)
	Develop Hydrology Basins
	Develop Basin Parameters
	Routing Elements and Assemble SWMM Model
	Develop Diversion Rating Curves / Existing Detention Ponds
	Field Review
3.	Inlet Inventory and Storm Sewer Capacity Verification
4.	RAS2D Hydraulic Modeling
	Identify Inundation Limits for Baseline Conditions (all frequencies)
5.	Prepare Baseline Hydrology & Hydraulics Report Section of Master Plan
6.	Internal QA/QC Reviews
D	**ALTERNATIVES ANALYSIS**
1.	Identify Baseline Problem Locations
2.	Prepare Alternatives to Address Stormwater Conveyance / Flooding of Buildings
	Stormwater Conveyance Alternatives
	Detention Alternatives
	Development Criteria
	Environmental Considerations
3.	Hydraulic Modeling of Proposed Infrastructure
4.	Determination of Project Benefits / Flood Reduction
5.	Water Quality / MS4 Considerations
	Regional Water Quality Ponds & Solutions
	Point of Service Water Quality Solutions
	Low-impact-development Water Quality Solutions
6.	Coordination with CP (Logan Simpson)
8.	Detailed Cost Estimates
9.	Alternative Decision Making & Recommendations
10.	Prepare Alternatives Analysis Report Section of Master Plan
11.	Internal QA/QC Reviews
E	**MASTER PLAN DEVELOPMENT**
1.	Hydrologic and Hydraulic Adjustments
2.	Update Cost Estimates
3.	Graphics and Presentation
4.	Prioritization & Phasing (Including input from Logan Simpson)
5.	Prepare Master Plan Report
6.	Internal QA/QC Reviews
7.	Technical Appendix
F	**CRITERIA MANUAL UPDATE**
1.	Criteria Review for Northern Colorado Communities
2.	Criteria Manual Recommendations and Guidance



ICONENGINEERING

PROJECT NAME: Wellington Stormwater Master Plan
CLIENT: Town of Wellington

	PREPARED BY: CDJ CHECKED BY: JYM DATE: April 20, 2021 **Description**	Principal Engineer $189 Hours	Project Manager $169 Hours	Engineer II $122 Hours	GIS Specialist $105 Hours	Admins Assistant $70 Hours	Misc. Direct Costs	TOTALS
A	**PROJECT COORDINATION**							
1.	Kick-Off Meeting / Monthly Progress Meetings (6 Assumed) & Monthly Conference Calls (6 Assumed)		24.0	34.0			$540	$8,744
2.	General Correspondence with Client		4.0	10.0				$1,896
3.	Town Board Meetings (2 Assumed)	8.0	8.0		8.0		$200	$3,904
							Task Subtotal	***$14,544***
B	**DATA COLLECTION & REVIEW**							
1.	Collect & Assemble City's Base GIS Data		1.0		2.0			$379
2.	Download FEMA 2011 LiDAR, DEM, Develop 1' Contour Mapping		1.0		12.0			$1,429
3.	Assemble Aerial Imagery		1.0		2.0			$379
4.	Complete Limited Ground Survey		1.0	16.0	2.0		$200	$2,531
5.	Miscellaneous Utility Research for Dry Utilities		2.0	8.0	16.0			$2,994
							Task Subtotal	***$7,712***
C	**BASELINE HYDROLOGY & HYDRAULICS**							
1.	Identify NOAA14 Rainfall		2.0					$338
2.	Hydrologic Modeling (2-, 5-, 10-, 25-, 50-, 100-year, EX & FUT)							
	Develop Hydrology Basins		8.0	18.0				$3,548
	Develop Basin Parameters		4.0	14.0				$2,384
	Routing Elements and Assemble SWMM Model		6.0	20.0				$3,454
	Develop Diversion Rating Curves / Existing Detention Ponds		4.0	12.0				$2,140
	Field Review		4.0	6.0			$100	$1,508
3.	Inlet Inventory and Storm Sewer Capacity Verification		4.0	10.0				$1,896
4.	RAS2D Hydraulic Modeling		8.0	24.0			$100	$4,380
	Identify Inundation Limits for Baseline Conditions (all frequencies)		6.0	24.0	10.0		$50	$5,042
5.	Prepare Baseline Hydrology & Hydraulics Report Section of Master Plan		18.0	4.0	4.0	4.0	$50	$4,280
6.	Internal QA/QC Reviews	6.0						$1,134
							Task Subtotal	***$30,104***
D	**ALTERNATIVES ANALYSIS**							
1.	Identify Baseline Problem Locations		4.0	4.0	4.0			$1,584
2.	Prepare Alternatives to Address Stormwater Conveyance / Flooding of Buildings							
	Stormwater Conveyance Alternatives		12.0	32.0				$5,932
	Detention Alternatives		4.0	16.0				$2,628
	Development Criteria		4.0	14.0				$2,384
	Environmental Considerations			2.0	4.0			$664
3.	Hydraulic Modeling of Proposed Infrastructure		10.0	48.0			$50	$7,596
4.	Determination of Project Benefits / Flood Reduction		10.0	20.0	12.0			$5,390
5.	Water Quality / MS4 Considerations							
	Regional Water Quality Ponds & Solutions		2.0	10.0				$1,558
	Point of Service Water Quality Solutions		2.0	4.0				$826
	Low-impact-development Water Quality Solutions		2.0	4.0				$826
6.	Coordination with CP (Logan Simpson)		2.0				$6,000	$6,338
8.	Detailed Cost Estimates		10.0	16.0				$3,642
9.	Alternative Decision Making & Recommendations		6.0					$1,014
10.	Prepare Alternatives Analysis Report Section of Master Plan		16.0	14.0	4.0	4.0	$43	$5,155
11.	Internal QA/QC Reviews	10.0						$1,890
							Task Subtotal	***$47,427***
E	**MASTER PLAN DEVELOPMENT**							
1.	Hydrologic and Hydraulic Adjustments		8.0	16.0				$3,304
2.	Update Cost Estimates		8.0	6.0				$2,084
3.	Graphics and Presentation		10.0	32.0	32.0		$52	$9,006
4.	Prioritization & Phasing (Including input from Logan Simpson)		10.0	4.0			$2,500	$4,678
5.	Prepare Master Plan Report		16.0	28.0	8.0	4.0	$54	$7,294
6.	Internal QA/QC Reviews	14.0						$2,646
7.	Technical Appendix		6.0	12.0		4.0	$54	$2,812
							Task Subtotal	***$31,824***
F	**CRITERIA MANUAL UPDATE**							
1.	Criteria Review for Northern Colorado Communities	2.0	8.0				$25	$1,755
2.	Criteria Manual Recommendations and Guidance	2.0	32.0		2.0	6.0	$33	$6,449
							Task Subtotal	***$8,204***
	Total Hours	**42.0**	**288.0**	**482.0**	**122.0**	**22.0**	**10051.0**	***$139,815***
	Total Cost	**$7,938**	**$48,672**	**$58,804**	**$12,810**	**$1,540**	**$10,051**	**$139,815**

2021 Hourly Rates

ICON ENGINEERING

BILLABLE HOURLY RATES

Principal	$190.00
Professional Engineer V	$184.00
Professional Engineer IV	$179.00
Professional Engineer III	$169.00
Professional Engineer II	$159.00
Professional Engineer I	$149.00
Engineer IV	$148.00
Engineer III	$140.00
Engineer II	$122.00
Engineer I	$108.00
Senior Field Representative	$144.00
Field Representative	$122.00
Senior Design Professional	$158.00
Design Professional	$140.00
GIS Specialist II	$115.00
GIS Specialist I	$105.00
CAD Technician II	$110.00
CAD Technician I	$95.00
Administrative	$70.00
Mileage	IRS Rate/Mile
Miscellaneous Direct Expenses	Actual Cost

2021 Hourly Rates

LOGAN SIMPSON

BILLABLE HOURLY RATES

Jana McKenzie, FASLA, LEED AP	$184.00
Megan Moore, ASLA, Assoc. AIA	$156.00
Support Staff	$65.00—$90.00

ADDITIONAL INFORMATION

The following provides additional information regarding our proposed scope of services for the Town of Wellington's stormwater master plan. As noted in our detailed work plan, ICON often incorporates 2D hydraulic modeling to define stormwater runoff within the watershed. This added modeling helps define design points and stormwater impacts to the local community. Although not specifically requested in the RFQ scope of work, we propose to utilize 2D modeling to assist in the study and have included this work in our base fees.

For further explanation, we have included the following exhibits to depict the benefits of this added modeling. Each exhibit uses a rain-on-grid simulation, similar to a 10-year storm event in HEC-RAS 2D. These exhibits 1) display the accuracy in flood modeling using the existing LiDAR terrain available for the Town; 2) identify how 2D modeling can be utilized as a quick and efficient tool to identify alternatives and stormwater solutions; and 3) can be used to identify flood risk in detail at key areas of concern. Although rain-in-grid simulations can be effective in identifying flooding patterns, as we have it proposed, the final models will be correlated with the CUHP/SWMM basin analysis to depict flood risk associated with key design frequencies.

- Figure 1 shows a large overall view of Wellington Town Limits in RAS2D with RiskMap Floodplains.
- Figure 2 depicting Central Wellington, shows our thoughts on Alternatives using 2D Modeling as a Guide.
- Figure 3 shows Cleveland Avenue through Wellington and the Expected Inundation limits / Mitigation Alternatives.

FIGURE 1:
Wellington Town Limits RAS2D with RiskMap Floodplains

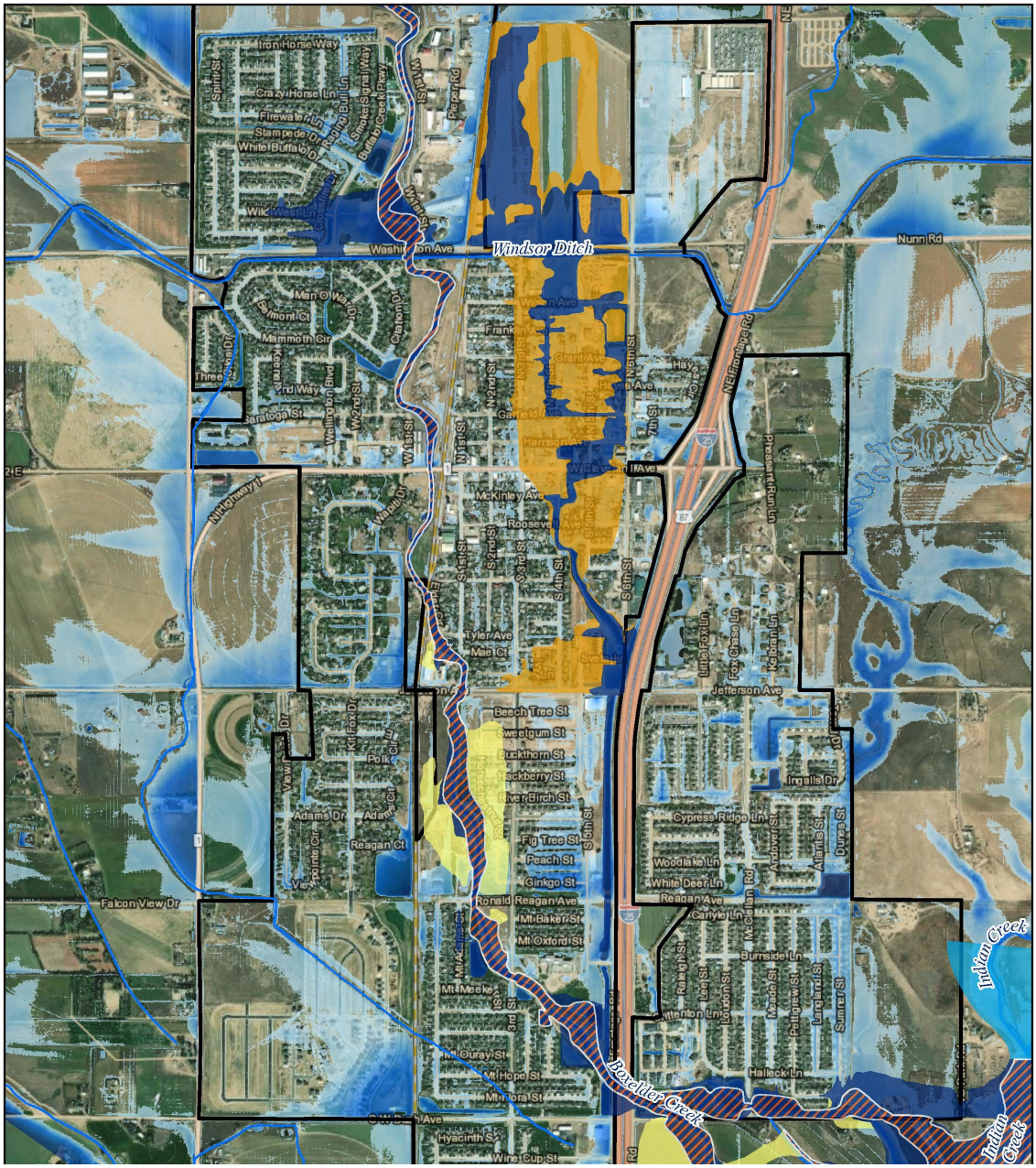


FIGURE 2:
Central Wellington – Thoughts on Alternatives Using 2D Modeling as a Guide

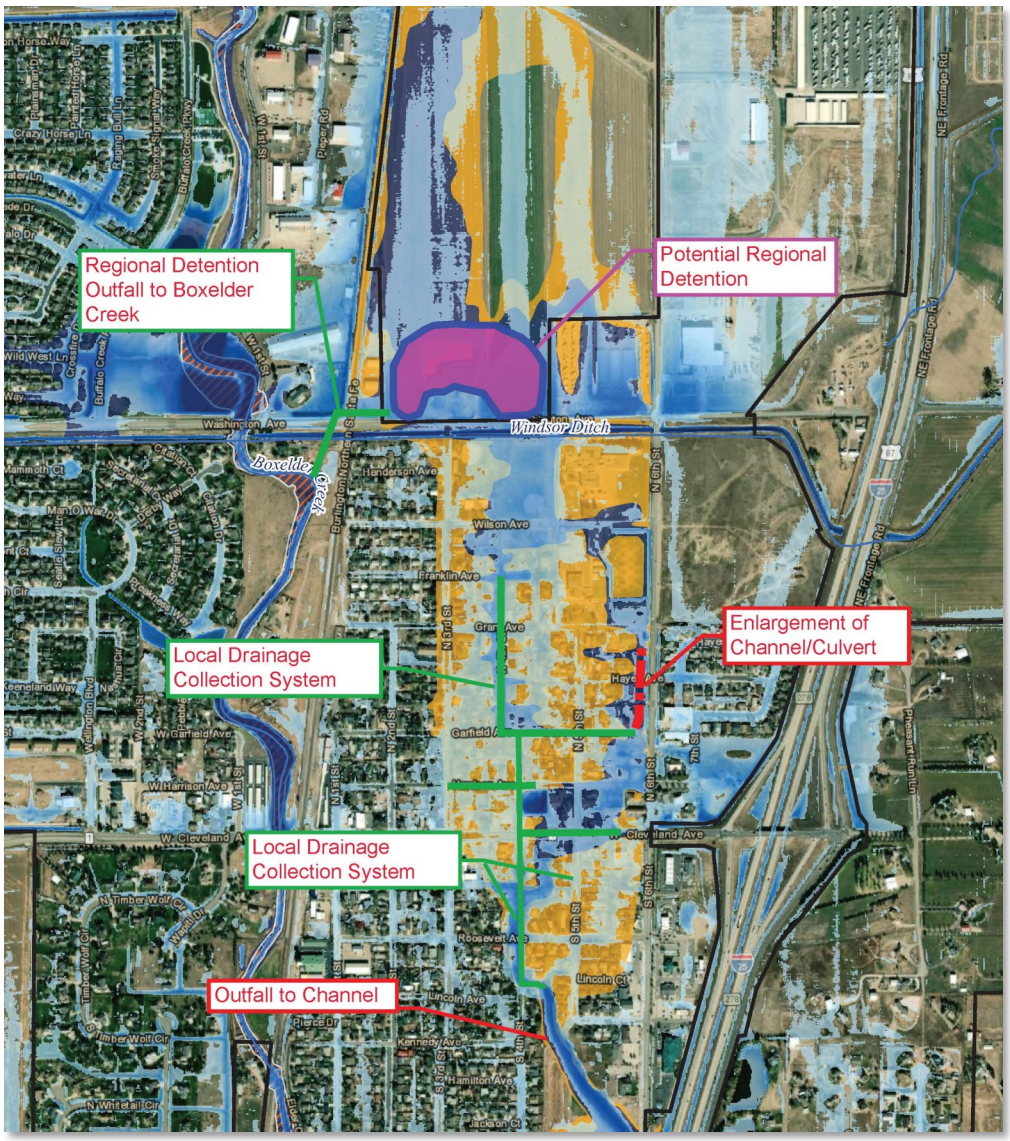
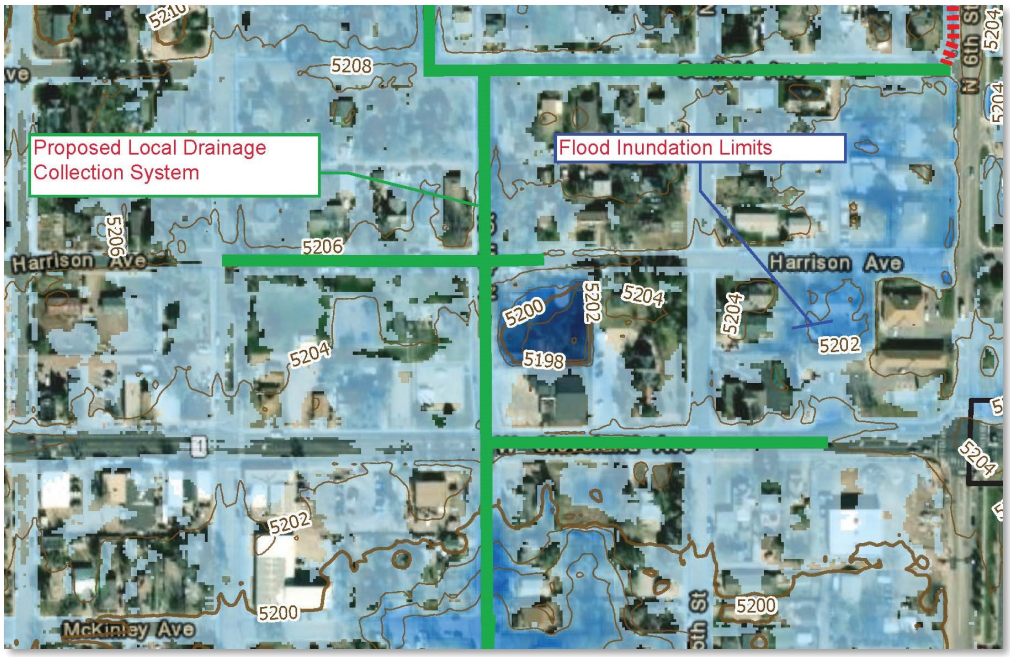


FIGURE 3:
Cleveland Avenue Through Wellington – Expected Inundation Limits/Mitigation Alternatives



CRAIG JACOBSON, PE, CFM

PRINCIPAL | CONTRACT MANAGER



YEARS OF EXPERIENCE

25

PROFESSIONAL REGISTRATION

PE | Colorado

CFM | Certified Floodplain Manager

EDUCATION

BS | Civil Engineering | 1997

University of Wisconsin, Madison

CONTACT

cjacobson@iconeng.com

(303) 221-0802

Craig's strength lies in his background in water resource engineering with an emphasis in stormwater design, channel stabilization and restoration, floodplain management, hydrologic and hydraulic analyses, and master planning. Along with his design experience, Craig's projects routinely involve the preparation of specifications and project documents, cost estimating, quantity take-offs, and construction management. Additionally, he has completed benefit-cost analyses for use in FEMA PDM grant applications and instructs classes on the ASFPM certification through CASFM.

PROJECT EXPERIENCE

Mulberry-Riverside Outfall Improvements | City of Fort Collins, CO Craig served as Principal-in-Charge for the Mulberry-Riverside storm sewer improvements. This project improved overall drainage capacity and reduce the effects of flooding up to a 25- to 50-year level of protection. In general, this project includes the following improvements: (1) extension of the existing 48" RCP located in Myrtle Street, north on Cowan Street to Mulberry Street; (2) new inlets and lateral along the existing 24" storm sewer located north of Mulberry Street; (3) addition of inlets along the existing 48" RCP in Myrtle at Endicott and Lesser Streets; (4) improvement of the existing outfall in the Springer Natural Area.

Sharktooth Basin Master Plan | Greeley, CO As Project Manager, Craig was responsible for the development of a storm water master plan for the Sharktooth Bluffs Basin. The seven square mile watershed is located within the City of Greeley, Town of Windsor, and unincorporated Weld County. The basin was in need of a plan to responsibly manage stormwater with the basin expected to grow up to fifty percent in the next 20 years. Baseline hydrologic analysis included over one hundred sub watersheds encompassing the 11 different tributaries. Alternatives were developed to provide guidance on improved roadway crossings with proposed street improvements as the basin develops and eliminating existing flooding hazards on insurable structures. A benefit-cost analysis was performed using FLO-2D inundation for all design return intervals.

First Street Outfall and Roadway Improvements | Fort Collins, CO Craig served as Project Manager responsible for the design of storm water and roadway improvements for the Buckingham neighborhood, located near 1st Street and Lincoln Avenue. For this project, ICON prepared drawings for storm sewer replacement and roadway reconstruction. The design initiated in February 2015 and included a hydrologic and hydraulic analysis of the watershed, using EPA-SWMM and FLO-2D, alternatives analysis, design reports, and preparation of the storm sewer construction drawings for 1st Street and Logan Street. Construction followed shortly and was completed in August 2015. This short time frame for the project required consistent and effective communication with the City and project contractors. ICON is currently working with the City to complete an outfall planning study from the Buckingham neighborhood and Lincoln Street to the Poudre River.

Sunrise Drainage Basin Improvements | Greeley, CO Principal and Project Manager responsible for the preparation of a drainage planning study and final design of stormwater improvements within the Sunrise Neighborhood in the City of Greeley.

Box Elder Creek SWMM Conversion | Fort Collins, CO
Craig served as the Principal and Project Manager responsible for the completion of a hydrology update for the Box Elder Creek Watershed in the City of Fort Collins. This project focused on detailed modeling of the lower half of Box Elder Creek's 265 square mile watershed. The purpose of this study was to update the hydrologic modeling from MODSWWM to current versions of EPA-SWMM.

ICON ENGINEERING

JACLYN MICHAELSEN, PE, CFM

PROJECT MANAGER



YEARS OF EXPERIENCE

20

PROFESSIONAL REGISTRATION

PE | Colorado

CFM | Certified Floodplain Manager

EDUCATION

MS | Civil Engineering | 2009

Colorado State University

BS | Civil Engineering | 2001

Colorado State University

CONTACT

jmichaelsen@iconeng.com

(303) 221-0802

Jaclyn's expertise is in hydraulic engineering focusing on master planning and design of large storm sewer projects used for flood mitigation. She specializes in master planning, drainage analysis and design, hydrologic and hydraulic modeling (including 2-D modeling), river analysis, dam design and analysis, floodplain delineation, stream stability, groundwater modeling and analysis, and construction observation. Jaclyn has worked on the design and analysis of high hazard dams, large storm sewer systems, detention facilities, passive and active flood protection measures and channel improvements. She has also been the project engineer for several groundwater mitigation systems involving complex SCADA systems.

PROJECT EXPERIENCE

Josephine Storm Water Improvements | Milliken, CO Project manager responsible for the design of stormwater infrastructure for the Town of Milliken. During the September 2013 flood, the Town of Milliken experienced road closures, impacts to the municipal infrastructure, water and sewer complications, and damages to private property. One aspect of the recovery was development of a Stormwater Master Plan for the Town (ICON Engineering, 2014). The master plan confirmed a significant stormwater infrastructure need along the Lola Tributary. ICON designed a new storm sewer system to reduce flood damages from storm flows that exceeding the limited capacity of what remains of Lola Tributary. Sheet flows, ponding, and dangerous flood conditions affecting public and private property will be reduced with the project.

Upper Cooper Slough Master Plan Update | Fort Collins, CO This study reviewed the changes in hydrology along Cooper Slough, given the inclusion of past master planning solutions and future development potential. Following the hydrology updates, grading concepts and positioning of the proposed C&S/Crumb regional detention basin were refined with this study. New pond grading was developed for the pond to reduce the footprint on AB property, maximize the use of City property, and keep the proposed 100-year water surface below existing grades in order to avoid or reduce potential State jurisdictional dam requirements.

Garfield-Harrison Outfall | Loveland, CO Project Manager responsible for improving the capacity of the existing storm sewer system and providing the Garfield & Harrison basin with five-year protection. This project includes over 10,000 LF of proposed storm sewer, providing a new storm sewer outfall to the Big Thompson River, addressing nuisance problem drainage areas, improving water quality in the basin area, design of a multiple waterlines, and a few blocks of parallel sanitary sewer. Tasks include hydrologic and hydraulic analysis, value engineering alternatives, public coordination, water quality features, final design, permitting, and construction observation.

Boxelder Flood Protection Projects, ESDF and LWCCS | Fort Collins, CO The Boxelder Flood Protection Projects consist of two projects, the East Side Detention Facility (ESDF) and the Larimer and Weld Canal Crossing Structure (LWCCS). ESDF is a high hazard dam based on its proposed height of 31 ft and storage volume of 1,163 ac-ft. The dam was designed to minimize the flow downstream in order to eliminate a spill on Boxelder Creek that floods the Town of Timnath. The LWCCS spill structure was designed to spill the stormflows out of the Larimer and Weld Canal, maximizing the available volume for irrigation flows by reducing the stormwater flows in the ditch. Jaclyn was the Hydraulic Engineer that hydraulically analyzed the dam and spill structure. A CLOMR/LOMR was submitted to the City of Fort Collins, Larimer County and FEMA. The CLOMR/LOMR revised 14 FEMA FIS panels, eliminated the floodplain through the Town of Timnath, and reduced the floodplain from ESDF to LWCCS.

ICON ENGINEERING

JEREMY DEISCHER, PE

HYDRAULICS & HYDROLOGY | MASTER PLANNING



YEARS OF EXPERIENCE

9

PROFESSIONAL REGISTRATION

PE | Colorado

EDUCATION

MS | Civil Engineering (Hydraulics & Hydrology) | 2014
University of Colorado

BS | Civil Engineering | 2012
University of Colorado, Denver

CONTACT

jdeischer@iconeng.com
(303) 221-0802

ICON ENGINEERING

Jeremy has an incredible amount of knowledge of floodplain information development and design techniques. His strength is developing hydrologic and hydraulic models using geo-referenced data, and creating the ability to seamlessly transition between the modeling program and a GIS interface. Jeremy knows all the components of master planning studies including delineating basins utilizing GIS geoprocessing tools, creating hydrologic and hydraulic models for multiple frequency storms, and designing alternatives to help mitigate flood damage. Jeremy also manages FEMA LOMC floodplain hydraulic study reviews and is an expert in the use of GIS systems, EPA SWMM 5, FLO-2D, HEC-RAS, and AutoCAD.

PROJECT EXPERIENCE

Upper Coal Creek Master Plan | Jefferson and Boulder Counties, CO
This project, studying Coal Creek west of Highway 93, addressed immediate needs due to the damage sustained in the September 2013 flooding, as well as plans to mitigate future damages. Jeremy assisted with field work that included creating an inventory of existing crossings, which was incorporated into a GIS environment.

Box Elder/Cooper Slough SWMM 5.0 Conversion | Fort Collins, CO
The Box Elder Creek/Cooper Slough watershed is a 265 square-mile watershed located in Fort Collins. This project converted the hydrologic model to EPA SWMM 5.0, including detailed modeling of the lower portion of the watershed. All elements of the model were geo-referenced allowing consistency between a GIS and SWMM interface. An unsteady HEC-RAS model was used to model the overtopping of an irrigation canal in the area.

North Greeley and Downtown Storm Drainage Master Plan | Greeley, CO
Jeremy served as the Project Engineer responsible for the preparation of the North Greeley and Downtown Storm Drainage Master Plan. This study involved a wide range of engineering tasks including city-wide watershed delineation accounting for existing drainage infrastructure (inlets and storm sewer capacity, detention and water quality ponds), hydrologic and hydraulic modeling using CUHP/SWMM, two-dimensional hydrodynamic modeling using FLO-2D, HEC-RAS analysis for irrigation ditch flows and lateral spills identification and damage assessment for existing and future flooding problems, alternatives analysis for flood hazard mitigation including proposed conduits, culverts, inlet systems, roadway improvements, detention and stormwater quality enhancement, control of overflow spills from City Ditches, and non-structural methods. An economic analysis was completed for benefits vs. costs to help determine the recommended/best alternative plan. The analysis used a combination of the current version of FEMA's Benefit-Cost-Analysis (BCA) software to evaluate over 5000 structures in the floodplain. Costs for each alternative were estimated and divided into capital costs, property acquisition, contingencies and life-cycle costs.

Stormwater Master Plan | Milliken, CO
The Town of Milliken located in Weld County sustained damaged during the September 2013 flooding event. This master plan updated the previous Master Plan (1982), including hydrologic and hydraulic analysis for the watershed contributing to any flows tributary to the Town. Basins were delineated within a GIS interface then georeferenced into the SWMM program. Hydraulic analysis utilizing FLO-2D was conducted to help mitigate the flooding experienced in the event. Jeremy prepared the benefit-cost analysis the HMGP grant application and added into a GIS environment.

HEATHER SEITZ, PE, CFM

INDEPENDENT QA/QC | WATER QUALITY



YEARS OF EXPERIENCE

13

PROFESSIONAL REGISTRATION

PE | Colorado

CFM | Certified Floodplain Manager

LEED AP

EDUCATION

MS | Civil Engineering | 1998

Colorado State University

BS | Civil Engineering | 1996

Colorado State University

CONTACT

hseitz@iconeng.com

(303) 221-0802

ICON ENGINEERING

As the former Stormwater Engineer and Manager for the City of Greeley, Heather managed Capital Improvement Projects in the 28th Avenue Basin and the future Downtown Greeley Master Plan Implementation. Working with ICON, as a client, Heather supported and managed projects including the Sunrise Stormwater Improvement project and the North Greeley and Downtown Master Plan. Given her location in Florida, Heather will support this contract by assisting the project team through providing *independent* Quality Control and Constructability reviews on items including design plans, specifications, quantities, and costs. In addition, Heather's strong background in water quality will be an asset in water quality selection for each project.

PROJECT EXPERIENCE

Sunrise Neighborhood Drainage Improvements | Greeley, CO

Heather worked with ICON to improve the local drainage in the Sunrise neighborhood. Baseline data collection included development of project base mapping, surveying of the existing storm sewer network, utility identification and potholing. Coordinated the hydrologic and hydraulic analysis, development of storm sewer alternatives, inlet layout and utility conflict resolution.

Woodbriar Neighborhood Park Renovation & Stormwater Improvements| Greeley, CO

For the City of Greeley, Heather managed the Woodbriar Park Capital Improvement project. This project included the renovation of a neighborhood park to add 5.68 acre-feet of stormwater storage and reduce neighborhood flooding. This project also included a new playground, picnic shelter/restroom building, an art installation and new water efficient landscaping. A creative and multi-faceted outreach program helped garner resident support. Coordination of the CMAR team and funding sources required significant attention to detail. At the project kickoff, she also led a team building exercise which fostered trust and cooperation between team members, leading to stronger communications throughout construction.

Constructability Reviews & QA | ICON Engineering

Heather assists ICON by completing independent constructability reviews and Quality Assurance of design documents and reports prior to submittals and project completion. Her experience in preparing and executing contract documents from both a consultant and client perspective provides unique perspective on responsibility and risk for construction projects.

North Greeley and Downtown Storm Drainage Master Plan | Greeley, CO

While with the City of Greeley, Heather managed this study which involved a wide range of engineering tasks including city-wide watershed delineation accounting for existing drainage infrastructure (inlets and storm sewer capacity, detention and water quality ponds), hydrologic and hydraulic modeling using CUHP/SWMM, two-dimensional hydrodynamic modeling using FLO-2D, HEC-RAS analysis for irrigation ditch flows and lateral spills identification and damage assessment for existing and future flooding problems, alternatives analysis for flood hazard mitigation including proposed conduits, culverts, inlet systems, roadway improvements, detention and stormwater quality enhancement, control of overflow spills from City Ditches, and non-structural methods. An economic analysis was completed for benefits vs. costs to help determine the recommended/best alternative plan. The analysis used a combination of the current version of FEMA's Benefit-Cost-Analysis (BCA) software to evaluate over 5000 structures in the floodplain. Costs for each alternative were estimated and divided into capital costs, property acquisition, contingencies and life-cycle costs.

MORGAN ROSS, EI

PROJECT ENGINEER



YEARS OF EXPERIENCE

5

PROFESSIONAL REGISTRATION

Engineering Intern

Professional Engineer—NV

EDUCATION

MS | Civil Engineering (Water Resources & Hydraulics) | 2015

University of Arizona

MS | Natural Resources (Watershed Management & Ecohydrology)

2013 | University of Arizona

BA | Geology (Minor in Geography)

2007 | Vassar College

CONTACT

mross@iconeng.com

(303) 221-0802

ICON ENGINEERING

A bright and well studied engineer, Morgan has a vast amount of design and research experience that focuses on river restoration, channel design, hydraulic modeling, drainage design, storm sewers, floodplain analysis, watershed assessments, grassland ecology, field vegetation, and flood modeling. She is talented at preparing plans from preliminary design through construction documents, preparing technical reports, obtaining 404 permits, and has a keen eye for designing important details on all of her stormwater projects. Morgan is well versed in the latest modeling software including AutoCAD Civil 3D, HEC-RAS, ArcGIS, LISFLOOD-FP.

PROJECT EXPERIENCE

Niver Creek at Ruston Park | Federal Heights, CO

Morgan is the Project Engineer for this neighborhood drainage study and improvement design of Ruston Park at Niver Creek and Zuni Street. This project incorporated park improvements including an education and recreation area, improved stormwater drainage, and the design of a driveway/parking lot area. ICON designed the replacement of grouted riprap channel with a low impact, low maintenance channel design for increased vegetation, water quality and natural stream function. A step-pool sequence was also designed to flow into a large detention facility and storm outfalls were modified into the park to allow for better drainage. She assisted in planning the construction BMP's, developed the SWMP, and is now assisting with construction oversight.

Miller-Coors at Kenny's Run | Golden, CO

Coors Brewery and the City of Golden worked together to restore a quarter-mile of Kenny's Run that had been underground in a series of culverts and pipes installed over the last 150 years. ICON led a multi-disciplinary team through planning and design of an open channel with 100-year flood capacity. The resulting flood risk mitigation allows for a modernization of the brewery that removes over 12 acres of industrial facility and approximately 5 acres of downtown business district from 1 to 3 feet of flood depth. The plan provides a balanced retrofit of existing parking lots and industrial land into a natural armor stone bottom channel with two roadway crossings, two pedestrian crossings, improved low flow trail access and protection of existing irrigation ditch headworks. Morgan served as Project Engineer.

Big Dry Creek Otero Tributary, Reach 3 | Centennial, CO

This project addresses rapid downcutting and failing streambanks due to an increase of water volume moving through this particular reach of Big Dry Creek. ICON is designing culvert inlet and outlet improvements, a reinforced soft surface trail, grade control structures that hold upstream step-pool configurations, and water quality elements of street inlets, trail underdrains, and overbank wetlands.

South Carlan Court Storm Outfall | Denver, CO

To create a feasible storm drain system for the Carlan Street Outfall, ICON performed a hydrologic and alternatives analysis to determine the minimal amount of storm sewer improvements required to drain the watershed to Sanderson Gulch while meeting the City of Denver's drainage criteria. A system of inlets will be installed just west of Carlan Court to collect stormwater in an area where water ponds tend to overflow and water quality features were incorporated as well.

Willow Creek at Sterling Ranch | Douglas County, CO

Morgan was the Project Engineer on the design of over 1 mile of stream restoration improvements. This project included the design of geomorphic sized, high function, low maintenance stream system. The design greatly increases floodplain connectivity, has a natural pool and riffle morphology, and establishes wetlands and diverse plant communities. Tasks completed include; geomorphic assessment, high function low maintenance stream design, optimization of wildlife crossing structure, hydraulic analysis, CLOMR, and design deliverables.

MEGAN MOORE, ASLA, Assoc. AIA

COMMUNITY LIAISON & PLANNING



YEARS OF EXPERIENCE

20

EDUCATION

Master of Architecture, University of Colorado at Denver, 2005

Master of Landscape Architecture, University of Colorado at Denver, 2005

Graduate Certificate in Historic Preservation, University of Colorado at Denver, 2005

B.S. in Architectural Studies, University of Illinois at Urbana-Champaign, 2001

PROFESSIONAL AFFILIATIONS

American Institute of Architects (AIA)

American Society of Landscape Architects (ASLA)

CONTACT

213 Linden Street, Suite 300

Fort Collins, Colorado

(970) 227-6542

mmoore@logansimpson.com

Megan is an urban designer with extensive experience in planning and design at a wide range of scales. She specializes in comprehensive, subarea, and corridor planning with a key focus on urban revitalization and redevelopment. With more than 15 years of experience, she is already the recipient of more than 30 design and planning awards. Her planning capabilities are enhanced by her background in architecture and landscape architecture, giving her a unique perspective into urban design strategies and solutions and implementing policy guidance to create human-scale places. Megan carries a deep understanding of the use and development of graphics to convey intent, procedures, and processes necessitated by planning guidelines.

PROJECT EXPERIENCE

- PlanWellington Comprehensive Plan, Colorado
- Wellington Land Use Code Update, Colorado
- Timnath Comprehensive Plan Update and Parks, Recreation, Open Space, and Trails (PROST) Plan Update, Colorado
- *Create Loveland* Comprehensive Plan Update and subsequent Zoning Code Update, Colorado
- Larimer County Comprehensive Plan and Mountain Resiliency Plan, Colorado
- Town of Mead Comprehensive Plan and Transportation Master Plan, Colorado
- *Imagine Winter Park* Town Master Plan, Colorado
- *Plan**COS*** Comprehensive Plan, Colorado Springs, Colorado
- *Westminster Forward* Comprehensive Plan Update, Colorado
- City and County of Broomfield Comprehensive and Transportation Plan Updates, Colorado
- *Plan GMF*, Green Mountain Falls Comprehensive Plan, Colorado
- Castle Pines Comprehensive Plan and Five-Year Plan Update, Colorado
- *Generation Casper* Comprehensive Plan, Wyoming
- Town of Jackson/Teton County Comprehensive Plan and Character Districts; Land Development Regulations Update; Workforce Housing Action Plan; and Integrated Transportation Plan, Wyoming
- Cody Comprehensive Plan, Wyoming
- Douglas Master Plan, Wyoming
- Seven Trails Master Plan and Town Center Development Plan, Douglas, Wyoming
- South of the River Subarea Plan, Star Idaho
- *ReEnvision Victor* Comprehensive Plan, Idaho
- *Uniquely Driggs* Comprehensive, Idaho
- Teton County Comprehensive Plan, Idaho
- *My Meridian* Comprehensive Plan, Fields Subarea and Town Center Plan, Idaho
- McCall Downtown Master Plan Update; *McCall in Motion* Comprehensive Plan and Transportation Plan Updates, Idaho
- Teton View Regional Plan for Sustainable Development, Idaho and Wyoming
- *Envision Three Forks* Growth Policy, Montana
- *Plan Manhattan* Growth Policy, Montana
- Our Big Sky Community Vision and Strategy, Montana

JANA McKENZIE, FASLA, LEED AP

PRINCIPAL LANDSCAPE ARCHITECT / GREEN INFRASTRUCTURE



YEARS OF EXPERIENCE

20

EDUCATION

BS, Landscape Architecture, Colorado State University

PROFESSIONAL AFFILIATIONS

CLARB Certified Landscape Architect # 20259/5456

LEED-AP, US Green Building Council (lifetime accreditation)

Registered Landscape Architect Chair, Colorado State Board of Landscape Architects, Colorado Department of Regulatory Agencies (DORA)

CONTACT

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jmckenzie@logansimpson.com

Jana is an award-winning landscape architect skilled in facilitating decision-making processes, and planning and design of sites associated with drainages, detention ponds, trails, parks and recreation facilities, public buildings, streetscapes, and many other types of site development. Jana understands the interrelationship between large-scale planning, and detailed design solutions, and has been responsible for design and oversight of construction of more than 65 projects that total more than $250 million in construction value. Many of her projects involve creating restoration plans for and providing aesthetic and recreational amenities associated with detention facilities, lakes and reservoirs, irrigation ditches/canals, drainages, and floodplains. She was recognized by the American Society of Landscape Architects for her projects' contribution to excellence in the profession by receiving the title of "Fellow". She was one of the first LEED accredited landscape architects in the United States, and was one of the five originators of the Sustainable Sites Initiative, which has become a nationally recognized design tool and rating system.

PROJECT EXPERIENCE

- Planning, Design and Construction Manual. Parks and Recreation Department, City and County of Denver, Colorado.
- Fall River Trail Extension. Estes Park, Colorado.
- River's Edge Natural Area on the Big Thompson River. Loveland, Colorado.
- Viestenz-Smith Mountain Park on the Big Thompson River. Loveland, Colorado.
- Locust Street Storm Drain Outfall, Fort Collins, Colorado.
- Sheldon Lake Stormwater Detention Modifications, City Park, Fort Collins, Colorado.
- Genesee Outdoor Experiential Center. City and County of Denver, Colorado.
- Ford Park Renovations (on Gore Creek). Vail, Colorado.
- Big Thompson/Lincoln Ave (US287) Flood Mitigation Study. Loveland, Colorado.
- Centerra Development Design Guidelines. Loveland, Colorado
- 25/34 Development Design Guidelines. Johnstown, Colorado
- East Big Thompson River Natural Area Management Plan. Loveland, Colorado.
- Steamboat Springs Parks, Recreation, Open Space, and Trails Plan, and Yampa River Master Plan. Colorado.
- Greeley Conceptual Trails Plan. Greeley, Colorado.
- Pagosa Springs Sports Complex Master Plan (on the San Juan River). Pagosa Springs, Colorado
- Stephens Park (on Gore Creek). Vail, Colorado.
- Fossil Creek Reservoir. Larimer County and Fort Collins, Colorado.
- Bigger Vision for the Big Thompson River. Loveland and Larimer County, Colorado.
- Big Thompson and Little Thompson River Restoration Plans. Boulder, Larimer and Weld Counties, Colorado.
- Poudre River Restoration Design. Public Service Company of Colorado in downtown Fort Collins, Colorado.
- SH9/Iron Springs Road and Trail Landscape and Aesthetics. Frisco and Summit County, Colorado.
- McCall Downtown Master Plan Update; *McCall in Motion* Comprehensive Plan and Transportation Plan Updates, Idaho
- Teton View Regional Plan for Sustainable Development, Idaho and Wyoming
- Bozeman Community Plan and Climate Action Plan, Montana



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Board of Trustees Meeting

Date: July 13, 2021
Submitted By: Dan Sapienza
Subject: Resolution No. 19-2021 - A Resolution Approving the Fourth Amended Intergovernmental Agreement for the Establishment of the Larimer Emergency Telephone Authority (LETA 911)

- **Presentation: Dan Sapienza, Town Attorney**

EXECUTIVE SUMMARY

The Larimer Emergency Telephone Authority (LETA) and its stakeholders have negotiated a proposed amended intergovernmental agreement to increase the participating agencies (from 24 to 30 members) and to enable LETA the powers needed to operate.

BACKGROUND / DISCUSSION

The Larimer Emergency Telephone Authority (LETA or LETA 911) was created in 1990 to implement a community-wide 911 emergency telephone service. Members of the IGA are cities, towns, the county, fire authorities and districts, health entities, and Colorado State University. The IGA allowed for the creation of a separate legal entity to serve as the governing body and to establish and collect emergency telephone charges (the current charge is $0.70 per month per phone line). Through the years, the demands on LETA have grown both due to population growth and to technological change. The organization has kept up with demands to serve the community and this 4th amended IGA is intended to continue that success.

Significant changes from the 3rd amended IGA include:

- **Membership changes.** The total number of members has increased from 24 to 30, with the addition of a number of fire districts.
- **Board membership.** Representation on the board will change for small towns such as Wellington. Currently, of the 7 board members, two are appointed to represent towns and Colorado State University together. Those seats are currently held by Estes Park and Colorado State University, due to those entities having their own PSAPs (Public Safety Answering Point or call center). This 4th amended IGA will give Estes a permanent seat on the board and the remainder of the towns and CSU will have one joint representative.
- **Powers of the Authority.** These changes are primarily administrative in nature, but reflect the growing complexity of LETA operations. Some additions include policies on fiber optic cables, PSAP insurance, computer aided dispatch systems, and more.

STAFF RECOMMENDATION

Adopt Resolution No. 19-2021 - A Resolution Approving the Fourth Amended Intergovernmental Agreement for the Establishment of the Larimer Emergency Telephone Authority.

ATTACHMENTS

1. Resolution 19-2021 - Approving the 4th Amended LETA IGA
2. 4th Amended LETA IGA - Proposed

3. 3rd Amended LETA IGA - 2009

TOWN OF WELLINGTON

RESOLUTION NO. 19-2021

A RESOLUTION TO AMEND THE 2009 THIRD AMENDED INTERGOVERNMENTAL AGREEMENT OF LARIMER EMERGENCY TELEPHONE AUTHORITY AND TO AUTHORIZE A SIGNATURE ON THE PROPOSED 2021 FOURTH AMENDED IGA OF LETA

WHEREAS, the Town of Wellington is authorized under C.R.S. § 29-1-203 to cooperate or contract with others to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the provision of emergency telephone service;

WHEREAS, the Town of Wellington is a signatory to the 2009 Third Amended Intergovernmental Agreement ("IGA") of Larimer Emergency Telephone Authority ("LETA") establishing LETA as a separate legal entity for the purpose of providing emergency telephone service; and

WHEREAS, the 2009 Third Amended IGA of LETA states that it may be amended upon an affirmative vote of three-quarters (3/4) of the signatories, and the signatories desire to update it to reflect changes in federal and state law, the signatories to the IGA, advancements in 9-1-1 call technology and infrastructure, and the intent and purposes as to LETA's operations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. Per Article XVII of the 2009 Third Amended IGA of LETA, the Board of Trustees of the Town of Wellington votes to amend the 2009 Third Amended IGA;

2. the Board of Trustees of the Town of Wellington approves the proposed 2021 Fourth Amended IGA of LETA attached hereto and agrees to become a signatory thereto; and

3. the Board of Trustees of the Town of Wellington authorizes Mayor Troy Hamman to sign the proposed 2021 Fourth Amended IGA of LETA on its behalf.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 13th day of July, 2021.

TOWN OF WELLINGTON, COLORADO

By:_____
Troy Hamman, Mayor

ATTEST:

_____
Krystal Eucker, Town Clerk

FOURTH AMENDED INTERGOVERNMENTAL AGREEMENT FOR THE ESTABLISHMENT OF LARIMER EMERGENCY TELEPHONE AUTHORITY

This Fourth Amended Intergovernmental Agreement ("Agreement") is entered into effective November 1, 2021, by and between the following political subdivisions and public entities of the State of Colorado, which are referred to herein collectively as "Parties" and are referred to herein individually by name or as "Party."

County (1)/Cities (2)/Towns (6)
County of Larimer
City of Fort Collins
City of Loveland
Town of Berthoud
Town of Estes Park
Town of Johnstown
Town of Timnath
Town of Wellington
Town of Windsor

Hospital/Health Services Districts (3)
Health District of Northern Larimer County
Park Hospital District
Thompson Valley Health Services District

State (1)
Colorado State University

Fire Authorities (2)
Loveland Fire Rescue Authority
Poudre Fire Authority

Fire Protection Districts (15)
Allenspark Fire Protection District
Berthoud Fire Protection District
Crystal Lakes Fire Protection District
Estes Valley Fire Protection District
Front Range Fire Rescue Fire Protection District (f/k/a Johnstown Fire Protection District)
Glacier View Fire Protection District
Livermore Fire Protection District
Loveland Rural Fire Protection District
Lyons Fire Protection District
Pinewood Springs Fire Protection District
Poudre Canyon Fire Protection District
Poudre Valley Fire Protection District
Red Feather Lakes Fire Protection District
Wellington Fire Protection District
Windsor-Severance Fire Protection District

WHEREAS, on or about November 14, 1990, multiple political subdivisions entered into an "Intergovernmental Agreement concerning the implementation of an E-911 Emergency Telephone Service" ("the IGA") to form a separate legal entity to serve as a governing body to provide emergency telephone service and to establish, collect, and disperse the emergency telephone charge in Larimer County, and they named the new entity Larimer Emergency Telephone Authority;

WHEREAS, the IGA was thereafter amended three times effective July 7, 1999, April 5, 2002, and July 21, 2009, the July 21, 2009 amendment being known as the "Third Amended IGA";

WHEREAS, subject to an affirmative vote of three-quarters (3/4) of the 25 signatories to the Third Amended IGA, the Parties desire to update the IGA, as amended, to reflect changes in federal and state law, the signatories to the IGA, advancements in 911 call technology and infrastructure, and the intent and purposes as to Larimer Emergency Telephone Authority's

operations;

WHEREAS, the Parties are authorized by Colorado statute (Title 29, Article 11, Part 1) to enter into a contract to establish a separate legal entity that serves as a governing body for the purpose of providing emergency telephone service and to establish and collect an emergency telephone charge in Larimer County;

WHEREAS, the Colorado Constitution (Article XIV, Section 18) and Colorado statutes (Title 29, Article 1, Part 2) permit and encourage governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, C.R.S. § 29-1-203 authorizes government, as defined in C.R.S. § 29-1-202, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units if:

1. such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

2. any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties and may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

I. PREAMBLE

The Parties agree that the recitals set forth above are true and correct and those recitals are hereby incorporated into the body of this Agreement.

II. SUPERSEDING PRIOR AGREEMENTS

The Parties agree that this Agreement shall supersede the IGA dated November 14, 1990, the amendments thereto dated July 7, 1999, and April 5, 2002, and the Third Amended IGA.

III. DEFINITIONS

As used herein:

A. The definitions for the following terms shall be the same as set forth in C.R.S. § 29-11-101, as may be amended: "emergency telephone charge," "911 access connection," "911 call," "911 surcharge," "emergency notification service" "emergency service provider," "public

agency," "public safety answering point" ("PSAP"), which is interchangeable with emergency communications center ("ECC"), "service supplier," and "service user."

B. "Agreement" means this Fourth Amended Intergovernmental Agreement for the Establishment of Larimer Emergency Telephone Authority;

C. "Board" means the Board of Directors described in Section V in which the powers of the Governing Body are vested.

D. "Bylaws" means the bylaws of the Governing Body as described in Section V(7).

E. "Emergency telephone service" means the receipt and processing of 911 calls by the PSAP for the purpose of providing responses from emergency service providers, and may include providing 911 call-related applications, services, programs, and systems.

F. "Governing Body" means Larimer Emergency Telephone Authority, per the definition set forth in C.R.S. § 29-11-101(16), as may be amended.

G. "Governing Body's jurisdiction" means within the geographic boundary of Larimer County, per the definition set forth in C.R.S. § 29-11-101(17), as may be amended. The Governing Body's jurisdiction differs from the Governing Body's emergency telephone service area.

H. "Governing Body's emergency telephone service area" means the collective boundaries of the emergency service providers that are used by the PSAPs for call routing and emergency response.

I. "Parties" means the signatories hereto, but, in the future, will not include any Party after the effective date of such Party's withdrawal in accordance with Section X, and will include any new signatory admitted to this Agreement by the Board in accordance with Section VI(2)(q).

J. "Proportional basis" as used in Section X(3) means a percentage determined by the following formula: the number of 911 access connections within each boundary of the Identified Political Subdivisions divided by the total number of 911 access connections in the Governing Body's jurisdiction. The Board shall determine the data to use for this calculation based on the Board's determination of the most reliable source(s) and representative timeframes. For the purpose of this definition only: (1) "Identified Political Subdivisions" means Larimer County and each city and town that is a Party, and (2) the boundary of Larimer County means within the unincorporated areas of the County. If, at the time of the calculation, Larimer County, a city, or a town is not a Party, then the Board shall establish the formula to allocate its percentage among the Identified Political Subdivisions who are Parties.

IV. ESTABLISHMENT OF LARIMER EMERGENCY TELEPHONE AUTHORITY

The Parties establish the separate legal entity and Governing Body known as Larimer Emergency Telephone Authority. The Governing Body may have also been referred to in prior intergovernmental agreements as the Larimer County Emergency Telephone Authority, which is hereby corrected. The Governing Body is created as a nonprofit, public entity established pursuant to C.R.S. §§ 29-1-203 and 29-11-102(1)(b), as may be amended. The Parties intend that the Governing Body be formed under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 through 120, as may be amended, and meet the Act's definition of a "public entity." The Parties further intend that the Governing Body meet the definition of a "nonprofit organization" under C.R.S. § 13-21-115.5, as may be amended (the Volunteer Service Act), C.R.S. § 13-21-115.7, as amended, and C.R.S. § 13-21-116, as may be amended.

The Governing Body is an independent legal entity, separate and distinct from the Parties. No debt, liability, or obligation of the Governing Body shall extend to or be an obligation of a Party, unless agreed to in writing.

The Governing Body is responsible for the installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service in the Governing Body's jurisdiction. The Parties will provide reasonable assistance and cooperation to the Governing Body as it carries out the functions, services, and facilities described in this Agreement for the Parties.

The Parties believe that governing bodies created pursuant to Part 1 of Title 29, Article 11, including the Governing Body, are not subject to the revenue and spending limitations imposed by Article X, Section 20 of the Colorado Constitution ("Amendment 1"), and, to the extent that Amendment 1 may be deemed to apply to governing bodies, the Governing Body created hereby shall operate as an enterprise within the meaning of Amendment 1 and shall thereby be exempt from all revenue and spending limitations imposed by said Amendment.

The Governing Body is formed in conformity with C.R.S. § 29-1-203.5. The provisions of C.R.S. § 29-1-203.5 apply to the Governing Body.

A Party whose boundaries include portions of Larimer County and another county may be signatories on another intergovernmental agreement related to emergency telephone service and emergency notification service in such other county.

V. THE BOARD OF DIRECTORS

1. **Board.** The business and affairs of the Governing Body shall be managed by a Board of Directors consisting of seven (7) directors, each serving without compensation. The Board shall have the power to perform all acts necessary, to fulfill the purposes for which the Governing Body was established, whether express or implied.

2. **Qualifications of Directors.** Each director shall be either (a) a resident of Larimer County, or (b) an elected official or full-time employee of a Party with an established scope of responsibility and delegated authority to make and implement policy-making or management-level decisions for the Party.

3. **Appointment to the Board.** Each director shall be appointed as follows:

a. The Larimer County Board of County Commissioners shall choose one (1) individual who meets the qualifications to serve as the director to represent Larimer County. The Larimer County Board of County Commissioners may determine the method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

b. The City of Fort Collins appoints the City Manager or the City Manager's designee as its one (1) individual who meets the qualifications to serve as the director to represent the City of Fort Collins. The City Council of the City of Fort Collins may change its method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

c. The City Council of the City of Loveland shall choose one (1) individual who meets the qualifications to serve as the director to represent the City of Loveland. The City Council of the City of Loveland may determine the method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

d. The Town of Estes Park appoints the Town Administrator or the Town Administrator's designee as its one (1) individual who meets the qualifications to serve as the director to represent the Town of Estes Park. The Board of Trustees of the Town of Estes Park may change its method for appointment from time to time and shall give to the Governing Body notice of any change in its method for appointment.

e. The Board as then-comprised at the time of the appointment shall solicit nominees, nominate individually or as a slate, and appoint three (3) additional qualified directors as follows:

1. A director to represent the Parties that are fire districts and fire authorities;
2. A director to represent the Parties that are hospital and health services districts; and
3. A director to represent the Parties that are Colorado State University and towns not otherwise represented on the Board, with preference given to a Party with a PSAP.

4. **Term and Removal.** Directors shall serve a term of two (2) calendar years. There is no prohibition on consecutive terms or on the number of terms. A director may be removed if

permitted by and pursuant to the procedures set forth in the Bylaws.

5. **Voting and Quorum.** Each director shall have one (1) vote. No proxy voting shall be permitted. Directors may participate in a meeting remotely by means of telecommunication that permits the director to hear and be heard by all individuals in attendance (audio and/or video) and shall be deemed present for a quorum and entitled to vote at the meeting. A quorum of the Board shall consist of four (4) directors, except that, should there be four (4) or more vacancies at any time, then during that time, a quorum shall consist of three (3) directors. No official action may be taken by the Board on any matter unless a quorum is present. The affirmative vote of a majority of the Board shall be required for the Board to take action.

6. **Vacancy.** Any vacancy occurring as a result of a director's resignation, removal, death, disqualification, or any other reason shall be filled for the balance of that director's unfinished term in accordance with the applicable provision of the appointment process set forth in Section V(3).

7. **Bylaws.** The Board has promulgated Bylaws detailing all governance matters it deems necessary, including but not limited to: the scheduling and conduct of Board meetings, voting, and director removal; establishment and responsibilities of officer positions, their terms, and the filling of any vacancies; the establishment and responsibilities of committees; and Governing Body operating and fiscal procedures. Such Bylaws may be amended by the Board in accordance with the procedures set forth therein. In the event of a conflict, direct or indirect, between a provision the Bylaws and this Agreement, this Agreement shall control.

VI. POWERS OF THE GOVERNING BODY

1. **Plenary Powers.** The Governing Body may carry out all purposes of this Agreement and may exercise all powers related thereto, including all incidental, implied, expressed, or such other powers as necessary, except as expressly limited in this Agreement. The Governing Body shall not have the power to levy taxes or the power of eminent domain.

2. **Enumerated Powers.** Without in any way limiting the plenary powers set forth in subsection (1) above, the Governing Body is specifically authorized to undertake all actions for the installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service within the Governing Body's jurisdiction that the Governing Body believes are necessary and appropriate and consistent with applicable law, including but not limited to:

a. imposing, collecting, and auditing all charges and surcharges in the Governing Body's jurisdiction as set forth in Part 1 of Title 29, Article 11, as may be amended, and expending such funds as authorized by statute and this Agreement.

b. owning, operating, maintaining, leasing (as Lessor or Lessee), selling, or otherwise disposing of any legal or equitable interest in real and personal property.

c. adopting budgets, maintaining bank accounts, and investing funds.

d. carrying over funds which have not been used in a given fiscal year to the following fiscal year.

e. negotiating, entering into, amending (if necessary), and performing contracts.

f. adopting, reviewing, and amending the Bylaws and passing resolutions not in conflict with this Agreement.

g. adopting, reviewing on an annual basis, and amending (if necessary) the Governing Body's intergovernmental agreements other than this Agreement, as well as policies, protocols, procedures, or rules and regulations (collectively, "Policies") related to the provision of emergency telephone service and emergency notification service within the Governing Body's jurisdiction on subjects including but not limited to:

- Human Resources
- cost sharing
- street naming
- pictometry
- geographic information systems (GIS)
- Master Street Address Guide (MSAG)
- 911 Call Flow/Routing
- use of the backup PSAP
- 911 network
- fiber optic cable (leasing and owning)
- customer-premises equipment (CPE) and other equipment
- computer aided dispatch (CAD) system
- Combined Regional Information Systems Project (CRISP)
- insurance for PSAP equipment owned by the Governing Body and located at a facility owned by a Party
- emergency alert systems (selection and use)
- complex emergency events
- records retention and compliance with applicable law
- training, accreditation, and certification
- Emergency Medical Dispatch (EMD)
- call boxes
- finances and investments

In the event of a conflict, direct or indirect, between a provision the Policies and this Agreement, this Agreement shall control.

h. determining who is authorized to send emergency alerts and the circumstances

under which they may be sent.

i. adopting a policy regarding street naming after collaboration with the Parties in whose jurisdiction the street is located.

j. adopting systems (software, hardware, and protocols) for Emergency Medical Dispatch (EMD).

k. conducting joint, partnership, cooperative, or other operations with other individuals and entities.

l. employing agents, accountants, attorneys, engineers, consultants, and other advisors.

m. incurring and paying debts, liabilities, or obligations, including borrowing and executing documents incidental thereto.

n. issuing bonds, notes, or other obligations payable from the revenues derived or to be derived from the revenue of the Governing Body as permitted by applicable law.

o. suing and being sued in its own name.

p. receiving contributions, gifts, bequests, grants, cash, equipment, or services from the Parties or any other public or private individual or entity.

q. after a formal Resolution of the Board, admitting a new signatory to this Agreement who becomes a Party without formal amendment of this Agreement, so long as each new signatory qualifies under C.R.S. §§ 29-1-202 and 203, has the approval of its legislative body or other authority having the power to so approve, and signs a document memorializing its admission.

r. participating in committees, groups, and organizations at the federal, state, and local level whose work relates to emergency telephone service and emergency notification service, including laws, regulations, and rules related thereto.

s. any other act which the Governing Body believes is reasonably necessary for the exercise of its powers and the performance of its obligations under this Agreement.

VII. BOOKS AND RECORDS

The Governing Body shall keep accurate and correct books of account on a modified accrual basis, showing in detail the capital costs, costs of services, installation, maintenance and operating costs, and the financial transactions of the Governing Body. The Governing Body's books of account shall also correctly show any and all revenues, fund balances, costs, or charges,

as well as all funds received by and all funds expended by the Governing Body. The Governing Body's books and records shall be open to inspection during normal business hours upon reasonable notice by a Party, its attorneys, accountants, or agents. The books and records of the Governing Body shall also be made available to the public in accordance with the provisions of Colorado's Open Records Act, as may be amended.

The Governing Body shall cause an annual audit to be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado. The Governing Body shall comply with the Colorado Local Government Audit Law, C.R.S. § 29-1-601 through 608, as may be amended. The Governing Body shall comply with all other applicable federal and state financial reporting requirements.

The Governing Body shall maintain an asset inventory list for any and all real and personal property acquired by the Governing Body in whole or in part.

VIII. REPORTS TO PARTIES

On an annual basis, the Governing Body shall submit a comprehensive annual report to the Parties summarizing the activities of the Governing Body during the preceding year and make available information concerning the finances of the Governing Body.

IX. DURATION OF AGREEMENT

The Agreement and the Governing Body shall have perpetual existence as permitted by C.R.S. § 29-1-203(1), as may be amended, unless sooner terminated in accordance with this Agreement.

X. WITHDRAWAL, TERMINATION, AND DISSOLUTION

1. **Withdrawal.** Any Party may withdraw from this Agreement by providing notice to each other Party and to the Governing Body. The withdrawal shall not be effective until at least one calendar year after the last notice is delivered.

2. **Termination by Mutual Agreement of the Parties.** Upon a three quarters (3/4) majority vote of all then-Parties, this Agreement shall be terminated and the Governing Body dissolved so long as, at the time of the vote, at least three quarters (3/4) of the Parties have also agreed in writing as to one or more entities who will succeed the Governing Body and undertake all actions for the continued installation, administration, management, operation, maintenance, upgrade, and enhancement of emergency telephone service and emergency notification service within the Governing Body's jurisdiction. The effective date of termination shall be December 31st in the calendar year ending no less than six months after the three quarters (3/4) majority vote for termination.

3. **Dissolution of Governing Body.** Upon the termination of this Agreement pursuant to subsection (2) above, the Board and the Parties shall take such actions necessary to finalize and conclude the Governing Body's operations, effect the orderly dissolution of the Governing Body, and transition emergency telephone service and emergency notification service to the entity or entities who will succeed the Governing Body, at the discretion of the Board. All assets of the Governing Body shall be distributed on a proportional basis either in-kind or after liquidation, at the discretion of the Board, except for any assets that the Board determines should be distributed to the entity or entities who will succeed the Governing Body. The Board shall be responsible for inventorying the assets of the Governing Body, distributing or liquidating any assets as appropriate, concluding the affairs of the Governing Body, and transitioning emergency telephone service and emergency notification service to the entity or entities who will succeed the Governing Body. Subject to the exercise of the Board's discretion, a Party which has previously made a contribution toward the purchase of a jointly owned asset may receive full ownership of the asset upon termination; however, the Party must account to the Governing Body for the amount that the Governing Body contributed toward purchase of the asset upon distribution of the other assets of the Governing Body. The Parties' rights related to distribution of assets shall survive termination of this Agreement.

XI. LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS, AND EMPLOYEES OF THE GOVERNING BODY

The Governing Body and its directors, officers, and employees shall be immune from suit and civil liability as provided by applicable law because the Governing Body is a nonprofit, public entity and political subdivision of the State of Colorado established pursuant to C.R.S. §§ 29-1-203 and 29-11-102(1)(b), as amended; the Governing Body is a public entity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 through 120, as amended; and the Governing Body is a "nonprofit organization" under C.R.S. § 13-21-115.5, as amended (the Volunteer Service Act), C.R.S. § 13-21-115.7, as amended, and C.R.S. § 13-21-116, as amended.

In addition, the Governing Body shall purchase insurance for the Governing Body and its Board, officers and employees which insurance will provide reasonable coverage against any claims, suit or proceeding arising out of or relating to any act or omission under this Agreement.

XII. AMENDMENTS

This Agreement may be amended upon the affirmative vote of three-quarters (3/4) of the then-Parties to this Agreement.

XIII. NOTICE

Notice to a Party is given by delivering a writing to its current address as listed by the Department of Local Affairs. The Notice shall be addressed as follows: (a) to the Board in the case of Larimer County, (b) to the Board and its Chief Executive Officer in the case of a special district, a fire authority, or the Governing Body, (c) to the City Council in the case of cities, and (d) to the Town Board, Town Council, or Board of Trustees in the case of Towns. A courtesy copy shall also be delivered to the attorneys for Larimer County, cities, and towns. Failure to deliver courtesy copies to the attorneys shall not invalidate a notice otherwise properly delivered as provided in this Agreement. Notice to a director is given by delivering a writing addressed to the director to the Governing Body's current address. Notice shall be effective upon receipt if hand-delivered or three (3) days after mailing if sent by first-class or certified U.S. mail.

XIV. SEVERABILITY

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined by a Court of competent jurisdiction. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of this Agreement.

XV. SUCCESSORS AND THIRD PARTIES

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. This Agreement is not intended to, and does not, inure to the benefit of non-Parties to this Agreement.

XVI. ASSIGNMENT AND DELEGATION

No Party shall assign any of the rights nor delegate any of the duties created by this Agreement without the written approval of three-quarters (3/4) of the other then-Parties to this Agreement.

XVII. COUNTERPARTS

This Agreement may be executed by original, scanned, or digital counterpart signatures and shall have the same force and effect as if all signatures appeared on the same original.

IN WITNESS WHEREOF, the Parties have caused their representatives to affix their respective signatures hereto.

COUNTY OF LARIMER STATE OF COLORADO By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**ALLENSPARK FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
CITY OF FORT COLLINS, COLORADO By:_____ Jeni Arndt, Mayor ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Cyril Vidergar Date: _____	**BERTHOUD FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
CITY OF LOVELAND, COLORADO By:_____ Stephen C. Adams, City Manager ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Laurie Stirman Date: _____	**CRYSTAL LAKES FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____

TOWN OF BERTHOUD, COLORADO By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**ESTES VALLEY FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
TOWN OF ESTES PARK, COLORADO By:_____ Wendy Koenig, Mayor ATTEST: _____ Jackie Williamson, Town Clerk APPROVED AS TO FORM (if applicable): _____ Dan Kramer Date: _____	**FRONT RANGE FIRE RESCUE FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
TOWN OF JOHNSTOWN, COLORADO By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**GLACIER VIEW FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____

TOWN OF TIMNATH, COLORADO By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**LIVERMORE FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
TOWN OF WELLINGTON, COLORADO By:_____ Troy Hamman, Mayor ATTEST: _____ Krystal Eucker, Town Clerk APPROVED AS TO FORM (if applicable): _____ Dan Sapienza Date: _____	**LOVELAND RURAL FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
TOWN OF WINDSOR, COLORADO By:_____ Paul Rennemeyer, Mayor ATTEST: _____ Karen Frawley, Town Clerk APPROVED AS TO FORM (if applicable): _____ Ian McCargar Date: _____	**LYONS FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY By:_____ Michael D. Liggett, Board President ATTEST:_____ Anita Benavidez, Asst. to E.D. APPROVED AS TO FORM (if applicable): _____ Date: _____	**PINEWOOD SPRINGS FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
PARK HOSPITAL DISTRICT By:_____ Gary Hall, CIO/COO, Estes Park Health ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**POUDRE CANYON FIRE PROTECTION DISTRICT** By:_____ Gene Mericle, President ATTEST: _____ Paula Collins, Secretary APPROVED AS TO FORM (if applicable): _____ Date: _____
THOMPSON VALLEY HEALTH SERVICES DISTRICT By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**POUDRE VALLEY FIRE PROTECTION DISTRICT** By:_____ Derek Bergsten, Chief ATTEST: _____ Sean Jones, Battalion Chief APPROVED AS TO FORM (if applicable): _____ Date: _____

COLORADO STATE UNIVERSITY By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____	**RED FEATHER LAKES FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____
LOVELAND FIRE RESCUE AUTHORITY By:_____ Jeff Swanty, Board Chair ATTEST:_____ Kristen Cummings APPROVED AS TO FORM (if applicable): _____ Emily Powell Date: _____	**WELLINGTON FIRE PROTECTION DISTRICT** By:_____ Gary Green, Chief ATTEST:_____ Ashley Macdonald, Deputy District Manager APPROVED AS TO FORM (if applicable): _____ Date: _____
POUDRE FIRE AUTHORITY By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Emily Powell Date: _____	**WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT** By:_____ ATTEST:_____ APPROVED AS TO FORM (if applicable): _____ Date: _____

THIRD AMENDED INTERGOVERNMENTAL AGREEMENT OF THE ESTABLISHMENT OF THE LARIMER EMERGENCY TELEPHONE AUTHORITY

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this 21st day of July, 2009, by and between the following public entities which shall collectively be referred to as the "Parties", or individually as a " Contracting Party": County of Larimer, the Town of Berthoud, the Town of Estes Park, the City of Fort Collins, the Town of Johnstown, the City of Loveland, the Town of Timnath, the Town of Wellington, the Town of Windsor, Allenspark Fire Protection District, Berthoud Fire Protection District, Loveland Rural Fire Protection District, Pinewood Springs Fire Protection District, Poudre Canyon Fire Protection District, Poudre Valley Fire Protection District, Red Feather Lakes Fire Protection District, Glacier View Fire Protection District, Lyons Fire Protection District, Wellington Fire Protection District, the Windsor/Severance Fire Protection District, Park Hospital District, Health District of Northern Colorado, Thompson Valley Health Services District, and Colorado State University.

WITNESSETH:

WHEREAS, pursuant to Article XI of Title 29 of the Colorado Revised Statutes (C.R.S.), as amended, the Parties are authorized to enter into agreements for the purpose of providing emergency telephone services; and

WHEREAS, the Colorado Constitution, Article XIV, Section 18 and §29-1-201, C.R.S., *et seq.* provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, §29-1-203, C.R.S., as amended, authorizes any political subdivisions or agency of the State of Colorado to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities, including the sharing of costs, imposition of taxes, or incurring of debt; and

WHEREAS, on or about November 14, 1990, the Parties entered into an Intergovernmental Agreement concerning the implementation of an E-911 Emergency Telephone Service which established the Larimer Emergency Telephone Authority. This Intergovernmental Agreement was entered into pursuant to the authority granted by Article XI of Title 29 of the Colorado Revised Statutes; and

WHEREAS, on July 7, 1999, the Intergovernmental Agreement between the Parties was amended with regards to the powers of the Authority and the operational procedures of the Authority with regard to budget and funding. Additionally, this Amendment added the Windsor/Severance Fire Protection District and Colorado State University as Contracting Parties to the Agreement; and

WHEREAS, on April 5, 2002, the Intergovernmental Agreement was further amended to add the Town of Windsor, Colorado and the Town of Johnstown, Colorado as Contracting Parties and to afford those entities representation on the Authority's governing board; and

WHEREAS, due to the changes in fact, circumstances, technology and law since the Parties entered into the original Intergovernmental Agreement, and subsequent amendments thereto, the Parties to this Agreement desire to amend the Agreement for the purposes of complying with Colorado law and to carry out the intents and purposes of the Parties; and

WHEREAS, the Parties intend by entering into this Agreement that the Authority hereby created shall fall within the definition of a "public entity" under the Colorado Governmental Immunity Act, §24-10-101, C.R.S., and a "nonprofit organization" under the Volunteer Service Act §§ 12-21-115.5, 13-21-115.7 and 13-21-116, C.R.S.; and

WHEREAS, it is the position of the Parties that emergency telephone authorities created pursuant to Title XI of Article 29, C.R.S., are not subject to the revenue and spending limitations imposed by Article X, Section 20 (2)(d) of the Colorado Constitution ("Amendment 1"), and to the extent that Amendment 1 may be deemed to apply to emergency telephone authorities, the authority created hereby shall operate as an enterprise within the meaning of Amendment 1 and shall thereby be exempt from all revenue and spending limitations imposed by said Amendment; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement for the purposes of establishing a separate legal entity to be known as the Larimer Emergency Telephone Authority and to define the manner in which each of the Parties hereto will participate in the Authority.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

I. PREAMBLE

The Parties agree that the recitals set forth above are true and correct and those recitals are hereby incorporated in the body of this Agreement.

II. SUPERSEDING ALL PRIOR AGREEMENTS

The Parties agree that upon the approval of this Agreement by all Parties, this Agreement shall supersede all prior agreements, representations and understandings between the Parties, whether written or oral, including but not limited to the Intergovernmental Agreement dated November 14, 1990 and amendments thereto dated July 7, 1999 and April 5, 2002.

III. DEFINITIONS

A. The definitions for the terms "emergency telephone charge," "emergency telephone service," "exchange access facilities," "governing body," "public agency," "service supplier," "service user," "wireless communications access," and "wireless carrier" as used in this Agreement shall be the same as the definitions for those terms set forth in §29-11-100.5, C.R.S., as amended.

B. The term "emergency telephone services" shall mean any form of emergency communication which the Authority facilitates or provides to the Parties, and includes but is not limited to, emergency telephone services, wireless communications access, and other developing technologies used for communications purposes.

C. "Proportional basis", as referred to in Section XV of this Agreement, shall be determined by the direct ratio of the number of service lines within the jurisdictions hereinafter identified to the total number of service lines in all of those identified jurisdictions. For the purposes of this definition "jurisdictions" shall refer to Larimer County and the cities and towns that are Contracting Parties to this Agreement. Larimer County's proportion shall be determined using those service lines within the unincorporated areas of the County.

IV. ESTABLISHMENT OF THE LARIMER COUNTY EMERGENCY TELEPHONE AUTHORITY

The Parties hereby establish a separate legal entity to be known as the Larimer County Emergency Telephone Authority (the "Authority") which shall be responsible for administering the installation, operation, maintenance, upgrade and enhancement of emergency telephone services to the citizens of Larimer County, Colorado. The Parties will provide reasonable assistance to the Authority for the purposes of organizing, administering and operating emergency telephone services in Larimer County.

The Authority is hereby created as a nonprofit, public entity established pursuant to §29-1-203, C.R.S. and §29-11-100.5, C.R.S., *et seq.* and in conformance with the Colorado Governmental Immunity Act, §24-10-101, C.R.S., *et seq.* and the Volunteer Service Act §§13-21-115.5, 13-21-115.7 and 13-21-116, C.R.S.

The Parties agree that the Authority is an independent legal entity, separate and distinct from the Parties, but subject to their ownership and control. The lawful boundaries of the Parties, as they may from time to time be changed, shall comprise the jurisdiction of the Authority.

V. ESTABLISHMENT OF THE AUTHORITY BOARD

1. **Governing Board.** The Authority shall be governed by a Board of Directors (the "Board"), which shall have the power to perform all acts necessary, whether express or implied, to fulfill the purpose, and to provide the functions, services and facilities, for which the Authority was created.

2. **Composition of the Board.** The Board shall consist of seven (7) members, all of whom shall be residents of Larimer County. The members of the Board shall be appointed as follows:

a. One member shall be appointed by the Larimer County Board of County Commissioners to serve as a representative from Larimer County.

b. One member shall be appointed by the City Council of the City of Fort Collins to represent the City of Fort Collins. The City of Fort Collins representative shall be an employee, elected official or resident of the City of Fort Collins.

c. One member shall be appointed by the City Council of the City of Loveland to represent the City of Loveland. The City of Loveland representative shall be an employee, elected official or resident of the City of Loveland.

d. One member shall be appointed by the Larimer County Board of County Commissioners to represent the fire districts in Larimer County. This member shall be appointed by the Commissioners upon nomination by the Authority, and shall be an employee, or elected official of a fire district named as a Contracting Party under this Agreement.

e. One member shall be appointed by the Larimer County Board of County Commissioners to represent the hospital districts in Larimer County. This member shall be appointed by the Commissioners upon nomination by the Authority, and shall be an employee, or elected official of a hospital district named as a Contracting Party under this Agreement.

f. Two members shall be appointed by the Larimer County Board of County Commissioners to represent the Towns of Berthoud, Estes Park, Johnstown, Timnath, Wellington and Windsor and Colorado State University. These members shall be appointed by the Commissioners upon nomination by the Authority, and shall be employees, elected officials or residents of the named municipalities or in the case of Colorado State University an employee or appointed official of Colorado State University.

g. Members shall serve a term of two (2) years and there shall be no prohibition on consecutive terms or number of terms. Nothing contained herein shall alter the current composition of the Board, or the current terms of Board members.

h. Each member of the Board shall serve without compensation.

3. **Voting and Quorum.** Each member of the Board shall have one (1) vote. A quorum of the Board shall consist of four (4) members, except that, should there be four (4) or more vacancies at any time, then during that time a quorum shall consist of three (3) members. No official action may be taken by the Board on any matter unless a quorum is present. The affirmative vote of a majority of the Board members present at the time of the vote shall be required for the Board to take action.

4. **Bylaws**. The Board shall promulgate bylaws establishing offices and detailing all matters in connection therewith, including the election, duties and terms of officers and the filling of any officer vacancies, the establishment and responsibilities of committees, scheduling of meetings, and standing operating and fiscal procedures, as it deems necessary, provided the bylaws are in compliance with Articles I and II of Title 29, C.R.S., as amended, and this Intergovernmental Agreement.

VI. POWERS OF THE AUTHORITY

1. **Plenary Powers**. Except as otherwise limited by this Agreement, the Authority, in its own name and as provided herein, shall exercise all powers lawfully authorized by the Parties pursuant to §29-1-203, C.R.S. and §29-11-100.5, C.R.S., *et seq.*, as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Authority shall act through its Board, officers and agents as authorized by this Agreement and the Bylaws and Rules and Regulations of the Authority. The Authority shall not have the power to levy taxes on its own behalf or on behalf of any Contracting Party.

2. **Enumerated Powers**. The Authority is authorized to undertake all actions reasonably necessary for the installation, operation and maintenance of emergency telephone services within the Authority's jurisdiction, and which the Authority believes are necessary to carry out the intent and purpose of this Agreement, including but not limited to:

a. Imposing and assuring the collection of an emergency telephone charge in the amount and manner provided by §29-1-203, C.R.S. and §§29-11-102 and 29-11-103, C.R.S., as amended, or as may in the future be amended. This charge may be imposed and collected from land based and wireless carriers, as well as from any other telephone service provided as authorized by §29-11-102, C.R.S., *et seq.* and any future amendment thereto.

b. Acquire, hold, lease (as Lessor or Lessee), sell, or otherwise dispose of any legal or equitable interest in real or personal property in connection with the installation, operation and maintenance of the emergency telephone services.

c. To enter into, make and perform contracts and agreements with other federal, state or local governmental, non-profit and private entities which are reasonably necessary for the acquisition, repair or maintenance of equipment, or the installation, operation or maintenance of the emergency telephone services.

d. To employ agents, accountants, attorneys, engineers, consultants and other individuals and entities as the Authority deems necessary for the performance of its obligations under this Agreement.

e. to conduct the business and affairs of the Authority.

f. To incur debts, liabilities or obligations to the extent and in the manner permitted by law. To borrow money and from time to time, to make, accept, endorse, execute, issue and deliver notes and other obligations of the Authority for monies borrowed, or in payment for property acquired, or for any of the other purposes, services or functions authorized by this Agreement and as provided by law. To the extent permitted by law, to secure the payment of any Authority obligation by mortgage, pledge, deed, indenture, agreement, or other collateral instrument, or by lien upon or assignment of all or any part of the properties, rights, assets, contracts, easements, revenues and privileges of the authority except that no debt, liability, or obligation shall extend to or be an obligation of any Contracting Party unless properly authorized by such Contracting Party and agreed to in writing.

g. To issue bonds, notes or other obligations payable from the revenues derived or to be derived from the emergency telephone service charge imposed by the authority, in accordance with applicable law, and subject to voter approval, as may be required.

h. To own, operate and maintain real and personal property and facilities individually or in common with others, and to conduct joint, partnership, cooperative or other operations with other individuals and entities, and to exercise all powers and authority incident thereto and authorized by this Agreement.

i. To sue and to be sued in its own name.

j. To adopt and amend from time to time, by resolution, bylaws, rules and regulations as the Board deems necessary and appropriate for the exercise of the powers granted, and performing the obligations imposed by this Agreement.

k. To receive contributions, gifts, bequests, grants, cash, equipment or services from the Parties or any other public or private individual or entity for the furtherance of the intent and purpose of this Agreement, and the Authority's performance of its obligations under this Agreement.

l. Negotiate and enter into agreements with equipment vendors, suppliers and service suppliers for the acquisition or maintenance of equipment, and for the purpose of obtaining the benefit of technological developments which the Authority deems necessary to improve or enhance the quality and efficiency of emergency telephone services to the Parties.

m. Any other act of services which the Authority believes is reasonably necessary for the exercise of its powers and the performance of its obligations under this Agreement.

VII. RULES AND REGULATIONS

The Authority Board may promulgate and adopt rules, regulations, policies and procedures which the Board deems necessary to carry out the intent and purposes of this Agreement, and to exercise the Authority's powers and perform the Authority's obligations under this Agreement. After their initial adoption, the rules, regulations, policies and procedures may be modified or amended, provided any such modification or amendment: (a) is approved by a majority vote of the Board; (b) is consistent with the purpose and intent of this Agreement; (c) is not in conflict with any of the provisions of this Agreement; and (d) is in compliance with any and all applicable state and federal laws.

VIII. CHARGES TO BE IMPOSED BY THE AUTHORITY

The Parties agree that the Authority, by and through the Board, may establish a charge for emergency telephone services up to the amount authorized by §29-11-100.5, C.R.S., *et seq.*, as amended from time to time. Said charge shall be assessed on a uniform basis for all Parties within the Authority's jurisdiction.

The Authority shall not establish a charge in excess of the amount authorized by §29-11-102, C.R.S., as amended from time to time, unless the Authority: (1) first obtains approval by two-thirds (2/3) of the Parties; and (2) obtains approval from the Public Utilities Commission pursuant to §29-11-102(2)(b), C.R.S., as may be amended from time to time.

The Authority may invest funds received from any source in accordance with the laws of the State of Colorado for investments by a public entity, and properly adopted investment policies consistent therewith.

IX. USE OF FUNDS – CONTRIBUTIONS

The Authority shall use the funds generated by the charges imposed in Section VIII, above, and all funds received by the Authority from any other source, to pay for the costs of acquiring, maintaining, upgrading and enhancing equipment related to providing emergency telephone services, and/or the installation, operation, maintenance, upgrade and enhancement of emergency telephone services, including, but not limited to, administrative costs of the Authority, in accordance with, and as authorized by, §29-11-104, C.R.S., as amended from time to time. Notwithstanding the foregoing, neither the Authority nor its directors, officers, agents or employees shall use Authority funds or property to conduct political lobbying activities. In addition, Authority funds shall not be used to lease or purchase vehicles for the personal convenience of the Authority's directors, officers, employee, agents or representatives.

No disbursement shall be made from the funds of the Authority without appropriate supporting documents in accordance with the properly adopted bylaws, rules, regulations and policies of the Authority.

The Authority may carry over funds which have not been used in a given fiscal year to the following fiscal year.

X. BOOKS AND RECORDS

The Authority shall provide for the keeping of accurate and correct books of account on a modified accrual basis, showing in detail the capital costs, costs of services, installation, maintenance and operating costs, and the financial transactions of the Authority. The Authority's books of account shall correctly show any and all revenues, costs, or charges paid to or to be paid by each of the Parties, and all funds received by, and all funds expended by the Authority. The Authority's books and records shall be open to inspection during normal business hours upon reasonable notice by the Parties, their attorneys, accountants or agents. The books and records of the Authority shall also be made available to the public in accordance with the provisions of §24-72-201, C.R.S., *et seq.* (the "Open Records Act").

The Authority shall cause an annual audit to be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado. The Authority shall comply with the provision of §29-1-601, C.R.S. *et seq.*, as may be amended from time to time. The Authority shall comply with all federal and state financial reporting requirements.

XI. REPORTS TO PARTIES

On an annual basis the Authority shall submit a comprehensive annual report to the Parties summarizing the activities of the Authority and containing information concerning the finances of the Authority.

XII. ASSETS OF THE AUTHORITY

1. **Assets.** Any assets purchased or received by the Authority subsequent to the formation of the Authority shall be owned by the Authority for the mutual benefit of the Parties. Assets purchased with funds of the Authority and one or more Parties shall be owned jointly in proportion to the amounts contributed.

2. **Asset Inventory Schedules.** The Authority shall maintain an asset inventory list for any and all real and personal property acquired by the Authority in whole or in part.

XIII. DEFAULT OF PERFORMANCE

1. In the event any Contracting Party fails to perform any of its covenants and undertakings under this Agreement, this Agreement may be terminated as to such Contracting Party. The Authority shall cause written notice of the Authority's intention to terminate said Agreement as to such Contracting Party to be given to that party's governing body identifying the matter in default. Upon failure to cure any such default within thirty (30) days after such notice is given, the membership in the Authority of the defaulting party shall thereupon terminate and said Contracting Party shall thereafter have no voting rights as a member of the Authority, nor be entitled to representation on the Board, and said Contracting Party may thereafter be denied service by the Authority. Furthermore, any Contracting Party whose participation is terminated under the provisions of this article of the Agreement shall forfeit all right, title and interest in and to any property of or within the Authority to which it may otherwise be entitled upon the dissolution of the Authority. This article is not intended to limit the right of the Authority or any Contracting Party under this Agreement to pursue any and all other remedies it may have for breach of this Agreement.

2. In the event of litigation between any Parties hereto concerning this Agreement (or between the Authority and any Contracting Party), the prevailing party may recover its costs and reasonable attorney fees incurred therein.

XIV. DURATION OF AGREEMENT

This Agreement shall be in effect from the time it is fully executed and shall continue on a year-to-year basis, unless sooner terminated in accordance with Section XV of this Agreement.

XV. WITHDRAWAL, TERMINATION AND DISSOLUTION

1. **Individual Party's Withdrawal.** Any Contracting Party may withdraw from this Authority and terminate its membership under this Agreement by providing written notice to each Contracting Party and the Board at least ninety (90) days prior to August 1 of any given year. Withdrawal from the Authority shall become effective on January 1 of the year in which a timely notice of termination is given. A Contracting Party which withdraws from the Authority shall retain all right, title and interest to any real and personal property, if any, which it has contributed to the Authority and which is located within the withdrawing party's jurisdiction; however, the withdrawing Contracting Party shall make the property available for use by the Authority to the extent necessary for public safety.

2. **Termination by Mutual Agreement of the Parties.** Upon a three quarters (3/4) majority vote of all Parties, this Agreement shall be terminated and the Authority dissolved. The effective date of termination shall be December 31st of the calendar year in which the three quarters (3/4) majority vote for termination occurs.

3. **Dissolution of Authority.** Upon the termination of this Agreement pursuant to Section XV(2) above, the Authority Board and the Parties shall take such actions necessary to finalize and conclude the Authority's operations and effect the orderly dissolution of the authority.

All contributions of real and personal property, all revenues received by the Authority, and all assets of the Authority shall be distributed on a proportional basis. The Board shall be responsible for inventorying the revenues, property and assets of the Authority, making distributions to the Parties and concluding the affairs of the Authority. A Contracting Party which has made a contribution toward a jointly owned asset (as defined in Section XII) would be entitled to retain ownership of the asset upon termination; however, the Contracting Party must account to the Authority for the amount of the Authority's contribution toward purchase of the asset upon distribution of the other assets of the Authority. Upon termination, any revenues derived from emergency telephone service charges imposed pursuant to §29-11-102, C.R.S. will be distributed on a proportional basis in accordance with §29-11-104(3), C.R.S. Such funds can be distributed to the Parties only if the emergency telephone service is discontinued. All other real and personal property, and all contributions and revenues, shall likewise be distributed on a proportional basis.

If a Contracting Party does not agree to the Authority's division of assets within six (6) months from the effective date of termination, the Parties shall engage in mediation on all unresolved issues prior to engaging in legal proceedings. In any legal proceeding, the Court may award attorney fees, expenses and costs of the proceeding if the Court determines that the proceeding was necessitated by an unreasonable position, or unreasonable demands of a Contracting Party.

The rights and duties of the Parties related to apportionment, division, transfer and ownership of assets upon termination shall survive termination of this Agreement.

The Parties agree that during the period following the vote to terminate the Authority, the Authority will continue to provide emergency telephone services in accordance with this Agreement until the effective date of termination.

XVI. LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS AND EMPLOYEES OF THE AUTHORITY

As a non-profit public entity, the Authority and its directors, officers and employees shall be immune from civil liability in accordance with, and the extent provided by §24-10-101,C.R.S., *et seq.* (the Governmental Immunity Act), §§13-21-115.5, 13-21-115.7 and 13-21-116, C.R.S. (the Volunteer Service Act), as these statutes may be amended from time to time and any other applicable law.

In addition, the Authority shall purchase insurance for the Authority and its Board, officers and employees which insurance will provide reasonable coverage against any claims, suit or proceeding arising out of or relating to any act or omission under this Agreement.

XVII. AMENDMENTS

This Agreement may be amended upon the affirmative vote of three-quarters (3/4) of the Parties eligible to vote.

XVIII. SEVERABILITY

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of this Agreement.

XIX. SUCCESSORS AND THIRD PARTIES

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. This Agreement is not intended to, and does not, inure to the benefit any individual or entity who is not a Party to this Agreement.

XX. ASSIGNMENT AND DELEGATION

No Contracting Party shall assign any of the rights nor delegate any of the duties created by this Agreement without the written approval of three quarters (3/4) of the other Parties to this Agreement

IN WITNESS WHEREOF, the Parties hereto have caused their representatives to affix their respective signatures hereto, as of the day and year hereinafter set forth.

COUNTY OF LARIMER
STATE OF COLORADO

By _____

ATTEST:

_____

Date: _____

TOWN OF ESTES PARK, COLORADO

By _____

ATTEST:

_____

Date: _____

TOWN OF WELLINGTON, COLORADO

By _____

ATTEST:

_____

Date: _____

CITY OF FORT COLLINS, COLORADO

By _____

ATTEST:

_____

Date: _____

TOWN OF BERTHOUD, COLORADO

By _____

ATTEST:

_____

Date: _____

CITY OF LOVELAND, COLORADO

By _____

ATTEST:

_____

Date: _____

COUNTY OF LARIMER
STATE OF COLORADO

By_____

ATTEST:

_____

Date: _____

TOWN OF ESTES PARK, COLORADO

By_____

ATTEST:

_____

Date: December 9, 2008

TOWN OF WELLINGTON, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF FORT COLLINS, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF BERTHOUD, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF LOVELAND, COLORADO

By_____

ATTEST:

_____

Date:_____

COUNTY OF LARIMER
STATE OF COLORADO

By_____

ATTEST:

_____

Date: _____

TOWN OF ESTES PARK, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF WELLINGTON, COLORADO
COLORADO

By_____

ATTEST:

_____

Date: 2/26/09

CITY OF FORT COLLINS,

By_____

ATTEST:

_____

Date:_____

TOWN OF BERTHOUD, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF LOVELAND, COLORADO

By_____

ATTEST:

_____

Date:_____

COUNTY OF LARIMER
STATE OF COLORADO

By_____

ATTEST:

_____

Date: _____

TOWN OF ESTES PARK, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF WELLINGTON, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF FORT COLLINS, COLORADO

By_____
Doug Hutchinson, Mayor

ATTEST:

_____

Date: 2-20-09

CITY OF FORT COLLINS SEAL
APPROVED AS TO FORM:
Sr. Assistant City Attorney

TOWN OF BERTHOUD, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF LOVELAND, COLORADO

By_____

ATTEST:

_____

Date:_____

COUNTY OF LARIMER
STATE OF COLORADO

By_____

ATTEST:

_____

Date: _____

TOWN OF ESTES PARK, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF WELLINGTON, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF FORT COLLINS, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF BERTHOUD, COLORADO

By_____

ATTEST:

Mary K Cowdin

Date: 12/9/08

CITY OF LOVELAND, COLORADO

By_____

ATTEST:

_____

Date:_____

COUNTY OF LARIMER
STATE OF COLORADO

By_____

ATTEST:

_____

Date: _____

TOWN OF ESTES PARK, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF WELLINGTON, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF FORT COLLINS, COLORADO

By_____

ATTEST:

_____

Date:_____

TOWN OF BERTHOUD, COLORADO

By_____

ATTEST:

_____

Date:_____

CITY OF LOVELAND, COLORADO

By_____

ATTEST:

Deputy City Clerk

Date: 7-24-09

APPROVED AS TO FORM
BY:_____
ASSISTANT CITY ATTORNEY

TOWN OF JOHNSTOWN, COLORADO

By_____

ATTEST:

_____

Date: 3/2/09

TOWN OF WINDSOR, COLORADO

By_____

ATTEST:

_____

Date:_____

ALLENSPARK FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF TIMNATH, COLORADO

By_____

ATTEST:

_____

Date:_____

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF JOHNSTOWN, COLORADO

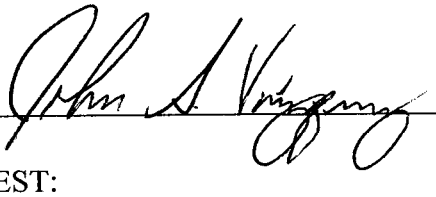
By _____

ATTEST:

_____

Date:_____

TOWN OF WINDSOR, COLORADO

By 

ATTEST:



Date: 11/17/08

ALLENSPARK FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF TIMNATH, COLORADO

By_____

ATTEST:

_____

Date:_____

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF JOHNSTOWN, COLORADO

By _____

ATTEST:

_____

Date:_____

TOWN OF WINDSOR, COLORADO

By_____

ATTEST:

_____

Date:_____

ALLENSPARK FIRE PROTECTION DISTRICT

By Esther L Walter

ATTEST:

Lorraine Stark

Date: 11-25-8

TOWN OF TIMNATH, COLORADO

By_____

ATTEST:

_____

Date:_____

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF JOHNSTOWN, COLORADO

By _____

ATTEST:

_____

Date:_____

TOWN OF WINDSOR, COLORADO

By_____

ATTEST:

_____

Date:_____

ALLENSPARK FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF TIMNATH, COLORADO

By Donna Bewsen

ATTEST:

Melissa McGuire

Date: 12-3-08

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF JOHNSTOWN, COLORADO

By _____

ATTEST:

_____

Date:_____

TOWN OF WINDSOR, COLORADO

By_____

ATTEST:

_____

Date:_____

ALLENSPARK FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF TIMNATH, COLORADO

By_____

ATTEST:

_____

Date:_____

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By Dan Heilman

ATTEST:

J. H. Erickson

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF JOHNSTOWN, COLORADO

By _____

ATTEST:

_____

Date:_____

TOWN OF WINDSOR, COLORADO

By_____

ATTEST:

_____

Date:_____

ALLENSPARK FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

TOWN OF TIMNATH, COLORADO

By_____

ATTEST:

_____

Date:_____

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By Richard E Payne

ATTEST:

Beverly R McBride

Date: 12-8-08

LOVELAND RURAL FIRE PROTECTION DISTRICT

By_____ President

ATTEST:

_____ Secretary

Date: 1/7/09

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

WELLINGTON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

GLACIER VIEW FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By_____

ATTEST:

_____

Date:_____

LOVELAND RURAL FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By Don S. Sailors

ATTEST: John V. Miller

Date: 2/10/09

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

WELLINGTON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

GLACIER VIEW FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By_____

ATTEST:

_____

Date:_____

LOVELAND RURAL FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By Kristen Owen

ATTEST:

Ardeen D Johnson

Date: 12-9-08

WELLINGTON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

GLACIER VIEW FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By_____

ATTEST:

_____

Date:_____

LOVELAND RURAL FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

WELLINGTON FIRE PROTECTION DISTRICT

By Sue Reed

ATTEST:

Date: 11/25/08

GLACIER VIEW FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By_____

ATTEST:

_____

Date:_____

LOVELAND RURAL FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

WELLINGTON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

GLACIER VIEW FIRE PROTECTION DISTRICT

By William C Smith
11/21/08

ATTEST:

Terri Suba

Date: 11/21/08

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By_____

ATTEST:

_____

Date:_____

LOVELAND RURAL FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

WELLINGTON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

GLACIER VIEW FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By Joe D. Hendrickson

ATTEST:

Nancy Stirling

Date: 12/12/08

LYONS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: 4/17/2009

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By_____

ATTEST:

_____

Date:_____

POUDRE CANYON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PARK HOSPITAL DISTRICT

By_____

ATTEST:

_____

Date:_____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

JOHNSTOWN FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

LYONS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By Eldon Hughes

ATTEST:

Date: 11-20-08

POUDRE CANYON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PARK HOSPITAL DISTRICT

By_____

ATTEST:

_____

Date:_____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

JOHNSTOWN FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

LYONS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By_____

ATTEST:

_____

Date:_____

POUDRE CANYON FIRE PROTECTION DISTRICT

By Bette Blendi

ATTEST:

Terry A. Gander

Date: 12-16-08

My Commission Expires Sept. 1, 2010

PARK HOSPITAL DISTRICT

By_____

ATTEST:

_____

Date:_____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

JOHNSTOWN FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

LYONS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By_____

ATTEST:

_____

Date:_____

POUDRE CANYON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PARK HOSPITAL DISTRICT

By_____

ATTEST:

_____

Date:_____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

JOHNSTOWN FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

LYONS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By_____

ATTEST:

_____

Date:_____

POUDRE CANYON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PARK HOSPITAL DISTRICT

By_____

ATTEST:

_____

Date:_____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By John T. Bufmann

ATTEST:

_____

Date: 11-20-08

JOHNSTOWN FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

LYONS FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By_____

ATTEST:

_____

Date:_____

POUDRE CANYON FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date:_____

PARK HOSPITAL DISTRICT

By_____

ATTEST:

_____

Date:_____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: _____

JOHNSTOWN FIRE PROTECTION DISTRICT

By_____

ATTEST:

_____

Date: 12/9/08

COLORADO STATE UNIVERSITY

By: _____ Legal Sufficiency Review

ATTEST: By: _____

_____

Date: 3-27-09

Board of Trustees Meeting

Date: July 13, 2021
Submitted By: Krystal Eucker, Town Clerk
Subject: Ordinance No. 07-2021 - An Ordinance Establishing a Hearing Process to Address Alleged Campaign Finance Complaints and Violations

- **Presentation: Krystal Eucker, Town Clerk**

EXECUTIVE SUMMARY

On May 29, 2019, the Governor signed SB 19-232 which amends the Colorado Fair Campaign Finance Practices Act and provides that any complaints related to a municipal campaign finance would be handled by the municipal clerk. Prior to this change, municipal clerks would rely on the Colorado Secretary of State's Office to handle campaign finance complaints. Due to the change, staff is presenting an amendment to the municipal code to provide a process for handling municipal campaign finance complaints.

BACKGROUND / DISCUSSION

Summary of Ordinance 07-20201:

Campaign Finance Complaints

- Made by residents of the Town
- Made within 180 calendar days of the alleged violation
- Written complaints filed with Town Clerk (including necessary information)

Initial Review

- Town clerk will review the complaint to determine:
    - If the complaint was filed in a timely manner
    - If the complaint violates campaign finance law
    - If the complaint provides sufficient evidence of a violation
    - If the complaint is able to identify the subject of the complaint
- Within 10 days of receiving the complaint, the Town Clerk must make a determination to
    - Dismiss the complaint
    - Allow respondent to cure the violation
    - Refer the complaint to a hearing officer

Curing Violations (Correcting errors or insufficiencies)

- Town Clerk will notify respondent of complaint
- Respondent will have 10 days to cure any alleged violations
- Town Clerk will then have five days to determine if the violation has been cured
    - If respondent substantially complied or acted in good faith to cure violation, the complaint can be dismissed

- If respondent did not substantially comply nor acted in good faith to cure the violation, the complaint can be referred to a hearing officer

Complaint Hearing

- Town Clerk, Town Administrator and Town Attorney will consult to refer complaint to a hearing officer
- Hearing shall be held within 30 calendar days (may be continued with good cause)
- Notice of Hearing and applicable documentation sent to complainant and respondent within three days
- Hearing officer shall issue a written decision within seven days

Penalties

- Candidates are personally liable for any penalties
- The Town may pursue legal action for collection of penalties

STAFF RECOMMENDATION

Staff recommends approval of Ordinance 07-2021.

ATTACHMENTS

1. Ordinance No 07-2021 - Campaign Finance Complaints and Violations

TOWN OF WELLINGTON

ORDINANCE NO. 07-2021

AN ORDINANCE AMENDING CHAPTER 2 OF THE WELLINGTON MUNICIPAL CODE AND ESTABLISHING A HEARING PROCESS TO ADDRESS ALLEGED MUNICIPAL CAMPAIGN FINANCE COMPLAINTS AND VIOLATIONS

WHEREAS, until state legislation was adopted in 2019, the Town was able to rely on election campaign regulations and enforcement by the Colorado Secretary of State through Title 1, Article 45 of the Colorado Revised Statutes the Fair Campaign Practices Act (the "FCPA"); and

WHEREAS, while the Colorado Constitution, Article XXVIII, provides that the Colorado Secretary of State handle third party complaints alleging violations of campaign finance laws, the Secretary of State may no longer accept filings of complaints concerning municipal campaign finance matters; and

WHEREAS, on May 29, 2019, the Governor signed SB 19-232, which amends C.R.S. § 1-45-111.7(9)(b) of the Colorado Fair Campaign Practices Act and provides that any complaint arising out of a municipal campaign finance matter be exclusively filed with the clerk of the applicable municipality; and

WHEREAS, the Town desires to establish a process for review of municipal campaign finance complaints in order to ensure that such matters are addressed.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

Section 1. Article 14 of Chapter 2 of the Wellington Municipal Code is hereby created and reads as follows:

Article 14 - Campaign Finance Complaints

Sec. 2-14-10 Campaign Finance Complaints.

a. Any person who resides in the town limits who believes a violation of Article XXVIII of the Colorado Constitution or the Fair Campaign Practices Act (C.R.S. § 1-45-101 et seq.), as amended, subject to the modifications made by this Code, has occurred related to a municipal election may file a written complaint with the Town Clerk.
b. Complaints must be filed no later than one hundred and eighty (180) calendar days after the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.
c. A written complaint filed with the Town Clerk shall include the following information and any other information that the Town Clerk deems necessary to process the complaint:

1) The name, address, e-mail address, telephone number and signature of the complainant. If the complainant is represented by counsel, include the counsel's name, address, e-mail address, telephone number and signature;
2) The name and, if known, the telephone number, email address, and mailing address of the respondent(s) (or each person alleged to have committed a violation);
3) The particulars of the violation, including the specific factual and legal basis for the allegation; and
4) Optionally, documentation or other evidence supporting the allegation.

d. If an incomplete complaint is received, the date on which the originally filed complaint was received is considered the filed date if a complete copy is received within three (3) business days of notification from the Town Clerk that the complaint was incomplete.

Sec. 2-14-20 Initial Review.

a. The Town Clerk will review the complaint to determine:
   1) Whether the complaint was timely filed in accordance with this section;
   2) Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or any rules adopted and promulgated by the Town Clerk concerning campaign and political finance;
   3) Whether the complainant has alleged sufficient facts and/or provided sufficient information to support a legal and factual basis for the complaint; and
   4) Whether it is possible through reasonable efforts, to identify the subject of the complaint.
b. Within ten (10) business days of receiving the complaint, the Town Clerk must take one (1) or more of the following actions following their initial review:
   1) If the Town Clerk determines that the complaint fails to satisfy each criteria in section 2-14-10, the Town Clerk will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The Town Clerk's determination and dismissal is a final decision.
   2) If the Town Clerk determines that the complaint satisfies each criteria in section 2-14-10, and alleges one (1) or more curable violations as described in section 2-14-30, the Town Clerk will notify the respondent(s) and provide an opportunity to cure the violation, holding in abeyance any alleged violations that may not be curable.
   3) If the Town Clerk determines that the complaint satisfies each criteria in section 2-14-10, and that none of the alleged violations may be curable, the Town Clerk will take the actions set forth in section 2-14-40.

Sec. 2-14-30 Curing Violations.

a. Upon the Town Clerk's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the Town Clerk will notify the respondent(s) by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.

b. Respondent(s) must provide the Town Clerk with notice of intent to cure on the form provided by the Town Clerk and include a copy of any amendments prior to curing the violation in accordance with this section.
c. Respondents shall have ten (10) business days from the date the notice is issued to cure the alleged violation and to notify the Town Clerk, in writing, of actions taken to cure the alleged violation.
d. After the period for cure, the Town Clerk will determine, within five (5) business days, whether the respondent(s) cured the violation(s), and if so, whether the respondent(s) substantially complied or acted in good faith. The Town Clerk may ask the respondent to provide additional information and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.
    1) If the Town Clerk determines that the respondent(s) substantially complied or acted in good faith in curing any alleged violation, the Town Clerk will dismiss the complaint as to such violation. The clerk's determination and dismissal is a final decision.
    2) If the Town Clerk determines that the respondent neither substantially complied nor acted in good faith in curing any alleged violation, the Town Clerk will take the action as set forth in section 2-14-40 as to such violation.
e. In determining whether an entity "substantially complied" the Town Clerk must consider:
    1) The extent of the noncompliance;
    2) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
    3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.

Sec. 2-14-40 Complaint Hearing.

a. When the Town Clerk is required to take further action as set forth in this section, the Town Clerk shall notify the Town Administrator of the complaint, and the Town Administrator, in consultation with the Town Clerk and the Town Attorney, shall forthwith refer the complaint to a hearing officer appointed by the Board of Trustees to hear and determine such complaint.
b. A hearing shall be scheduled and held within thirty (30) calendar days of referral of the complaint to the hearing officer, or the closest business day thereafter if the 30th day falls on a weekend or holiday. Upon written motion, the hearing officer may grant a continuance of up to thirty (30) calendar days upon a showing of good cause. The Town will not be a necessary party to the hearing and will not represent either the complainant or respondent.
c. Notice of the hearing, any applicable rules governing the hearing process and the entire complaint received by the Town Clerk shall be sent to the complainant and to the respondent by electronic mail within three (3) business days.
d. Upon the request of either party, the hearing officer may issue an administrative subpoena requiring the attendance of a witness or party in relation to an alleged campaign finance violation. It shall be unlawful for a witness or party to fail to

comply with such subpoena, and any person convicted of a violation hereof shall be punished in accordance with the procedures of the municipal court.

e. The hearing shall be electronically audibly recorded and held for six (6) months past final resolution of the complaint.
f. Following the hearing, the hearing officer shall issue a decision in writing within seven (7) business days.
g. The hearing officer's decisions as set forth in this section are a final decision subject to review under Rule 106, C.R.C.P.

Sec. 2-14-50 Penalties.

a. If the hearing officer determines after a hearing that a violation has occurred, the hearing officer shall impose penalties and sanctions as set forth in C.R.S § 1-45-111.5 and 8 C.C.R. 1505-6, both as amended. Recovery of a party's reasonable attorney fees and costs shall be as set forth therein.
b. The town may pursue any legal means for the collection of civil penalties imposed under this section. The Town Administrator may also refer the matter for collection by whatever means are available to the town, including by a private collection agency and the party responsible to pay the penalty may be assessed in the cost of collection.

Section 2. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions. sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 3. All the provisions of the Wellington Municipal Code as heretofore adopted that conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 13th day of July, 2021 and ordered to become effective 30 days from the date of publication.

TOWN OF WELLINGTON, COLORADO

By:_____
Troy Hamman, Mayor

ATTEST:

_____
Krystal Eucker, Town Clerk

Board of Trustees Meeting

Date: **July 13, 2021**
Submitted By: **Patti Garcia, Town Administrator**
Subject: **Consideration of Invoice not Included in 2021 Budget**

- **Presentation: Patti Garcia, Town Administrator**

EXECUTIVE SUMMARY

The Town of Wellington Purchasing Policy was revised and adopted by the Board of Trustees on April 13, 2021. The Policy provides that Trustee approval is required for non-appropriated items above $10,000. It additionally states that Trustee approval is required for appropriated items above $30,000. Staff has identified two projects that were budgeted for 2020 and had been expected to be completed that year but were not. Due to COVID and other issues, they were not completed and invoices related to those projects have been received in 2021

BACKGROUND / DISCUSSION

When creating the budget, assumptions are made on when projects will be completed. Staff does their best to estimate completion timelines but there are instances where what is planned in October for a project changes after budget adoption in November. We have identified two projects that were budgeted and expected to be completed in 2020 but due to COVID and supply issues, they were completed in 2021. The two projects are "Emergency Power for Main Plant" (generators) and "Crosswalk Safety Project". Both projects had funds left over in 2020 which ended up rolled over into their respective funds as noted below:

Emergency Power for Main Plant
2020 Budget - $302,000
2020 invoices paid - $280,180.02
Balance rolled into 2021 Water Fund - $21,819.98
2021 invoices to be paid - $13,784.70

Crosswalk Safety Project
2020 budget - $75,000
2020 invoices paid - $44,071.25
Balance rolled into 2021 Street Fund - $30,928.75
2021 invoices to be paid - $3,830

Four invoices were received for the above projects. Three of invoices were under the $10,000 threshold and were approved by the Town Administrator:
Emergency Power for Main Plant - Interstate Construction Services - $1,000
Crosswalk Safety Project - Traffic Control Signals - $3,600; CTL Thompson - $230

The fourth invoice was over $10,000 and requires Trustee approval for payment:
Emergency Power for Main Plant - Interstate Construction Services - $12,784.70

There are no remaining invoices to be received for either project; both projects have been completed.

STAFF RECOMMENDATION

Staff recommends approval of payment of $12,784.70 to Interstate Construction Services for the 2020 Backup Generators Manual Transfer - Switch Installation

ATTACHMENTS

1. Invoice update

TOWN OF WELLINGTON

Consideration of Invoice not Included in 2021 Budget

Invoices to be paid

2020 projects that were completed in 2021

Emergency Power for Main Plant

2020 budget - $302,000
2020 invoices paid - $280,180.02
Balance rolled into 2021 Water Fund - $21,819.98
2021 invoices to be paid - $13,784.70

Crosswalk Safety Project

2020 budget - $75,000
2020 invoices paid - $44,071.25
Balance rolled into 2021 Street Fund - $30,928.75
2021 invoices to be paid - $3,830

Invoices to be paid – Administrator Approval

Procurement policy states that Board approval is required for non-appropriated (non-budgeted) items over $10,000

Invoices under $10,000 related to 2020 projects authorized by Town Administrator to pay:

Crosswalk Safety Project – Street Fund (211-80-4051)

- Traffic Control Signals - $3,600
- CTL Thompson - $230

Emergency Power for Main Plant – Water Fund (211-80-4011)

- Interstate Construction Services - $1,000

Invoices to be paid – Trustee approval

Invoice related to 2020 projects requiring Board of Trustee approval:

Emergency Power for Main Plant - Water Fund (211-80-4011)

- Interstate Construction Services - $12,784.70

  Project title: 2020 Backup Generators Manual Transfer – Switch Installation

Emergency Power for Main Plant
2020 budget - $302,000
2020 invoices paid - $280,180.02
Balance rolled into 2021 Water Fund - $21,819.98
Total 2021 invoices to be paid - $13,784.70

Questions or Comments?

Board of Trustees Meeting

Date: July 13, 2021
Submitted By: Bob Gowing, Public Works Director
Subject: Resolution No. 20-2021 - A Resolution Adopting the 2021 Larimer County Multi-Jurisdictional Hazard Mitigation Plan Update

- **Presentation: Bob Gowing, Public Works Director**

EXECUTIVE SUMMARY

The Town Wellington is a participant in the current Larimer County Hazard Mitigation Plan (HMP), which was adopted in 2016. The plan is being updated for 2021, as per FEMA requirements, and the Town is seeking to be included in the update to continue to be eligible for FEMA grant funding.

BACKGROUND / DISCUSSION

The Larimer County Multi-Jurisdictional Hazard Mitigation Plan (HMP) is an overall plan for Larimer County and participating communities to reduce long-term risk to life and property from hazards such as floods, landslides, wildfires, winter storms, and others. It generally consists of evaluation and documentation of risks from a wide range of potential hazards and the development of strategies to mitigate that risk. Although the HMP is county-wide in scope, individual communities are invited to participate. This allows communities to meet the FEMA requirement that a community be included and adopt an HMP to be eligible for FEMA grants.

In January 2020, Larimer County began an update to the HMP, which is required by FEMA on a 5-year cycle. The plan was primarily created by the County, but included many communities and organizations throughout the county. Those participating communities assisted with creation of specific plans which are referred to as "Annexes" in the plan. Annex T to the HMP is the specific plan for the Town of Wellington. This portion of the HMP is provided as an attachment here. The entire HMP is expansive and too large to include as an attachment, but can found at the County's shared drive here: https://drive.google.com/drive/folders/1bXSp0k7yvMc1lMe4PfX-f5n5U99e3m0R

As an example of the importance of an adopted HMP, the Town applied for and obtained a FEMA Flood Mitigation Assistance grant in 2020 to partially fund the Stormwater Master Plan. This particular grant provides for 75% FEMA funding to complete the project. If the Town had not adopted the 2016 Larimer County Hazard Mitigation Plan, we would not have been eligible for that grant.

STAFF RECOMMENDATION

Approve Resolution No. 20-2021 A Resolution Adopting the 2021 Larimer County Multi-Jurisdictional Hazard Mitigation Plan Update

ATTACHMENTS

1. Resolution - Multi Jurisdictional HMP PDF
2. 2021 Larimer County HMP - Annex T for Wellington
3. 2021-07-13 HMP Presentation PDF

TOWN OF WELLINGTON

RESOLUTION NO. 20-2021

A RESOLUTION ADOPTING THE LARIMER COUNTY MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN

WHEREAS, the Town of Wellington, with the assistance from Larimer County, has gathered information and prepared the Larimer County Multi-Jurisdictional Hazard Mitigation Plan Update for 2021; and,

WHEREAS, the Larimer County Multi-Jurisdictional Hazard Mitigation Plan has been prepared in accordance with FEMA requirements at 44 C.F.R. 201.6; and,

WHEREAS, Annex T to the Larimer County Multi-Jurisdictional Hazard Mitigation Plan identifies characteristics and potential hazards particular to the Town of Wellington; and,

WHEREAS, the Town of Wellington is a municipal corporation in the state of Colorado and through its Board of Trustees meetings has afforded the residents an opportunity to comment and provide input in the Plan and the actions in the Plan; and

WHEREAS, the Board of Trustees of the Town of Wellington has reviewed the Plan, including the 2021 update, and affirms that the Plan will be updated no less than every five years;

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees that the Town of Wellington adopts the Larimer County Multi-Jurisdictional Hazard Mitigation Plan, as approved by FEMA, as its Multi-Hazard Mitigation Plan, and resolves to execute the actions in the Plan.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 13th day of July, 2021.

TOWN OF WELLINGTON, COLORADO

By:_____
Troy Hamman, Mayor

ATTEST:

_____
Krystal Eucker, Town Clerk

T. Town of Wellington

"The citizens of Wellington choose to deal with the issue of growth proactively in order to maintain the quality of life in the community. Over the past fifteen years, the Town has witnessed a significant amount of residential growth. Wellington residents want to continue to investigate the development of innovative land uses that provide a sound tax base, preserve the quality of life, and balance residential and commercial development.

Citizens want to ensure that new development does not overburden existing infrastructure and services and does not detract from the community's existing character. The valued aspects of the Town's character include: friendly and accessible downtown, seeing familiar faces around town, a safe and relaxed environment, and diverse community programs and activities."

– Community Vision Statement, Town of Wellington Comprehensive Plan, 2014

T.1 Background and Planning Process

This Annex was updated during the development of the 2021 Larimer County Hazard Mitigation Plan. The Town of Wellington participated in the 2016 Larimer County Hazard Mitigation Plan and has been active in implementing that plan as described in Section T.7.1. A review of jurisdictional priorities found no significant changes in priorities since the last update. Individuals who participated in the update process and represented the Town on the Planning Team are listed in Appendix B.

More details on the planning process and how the jurisdictions, special districts, and stakeholders participated, as well as how the public was involved, can be found in Chapter 3 of the Base Plan.

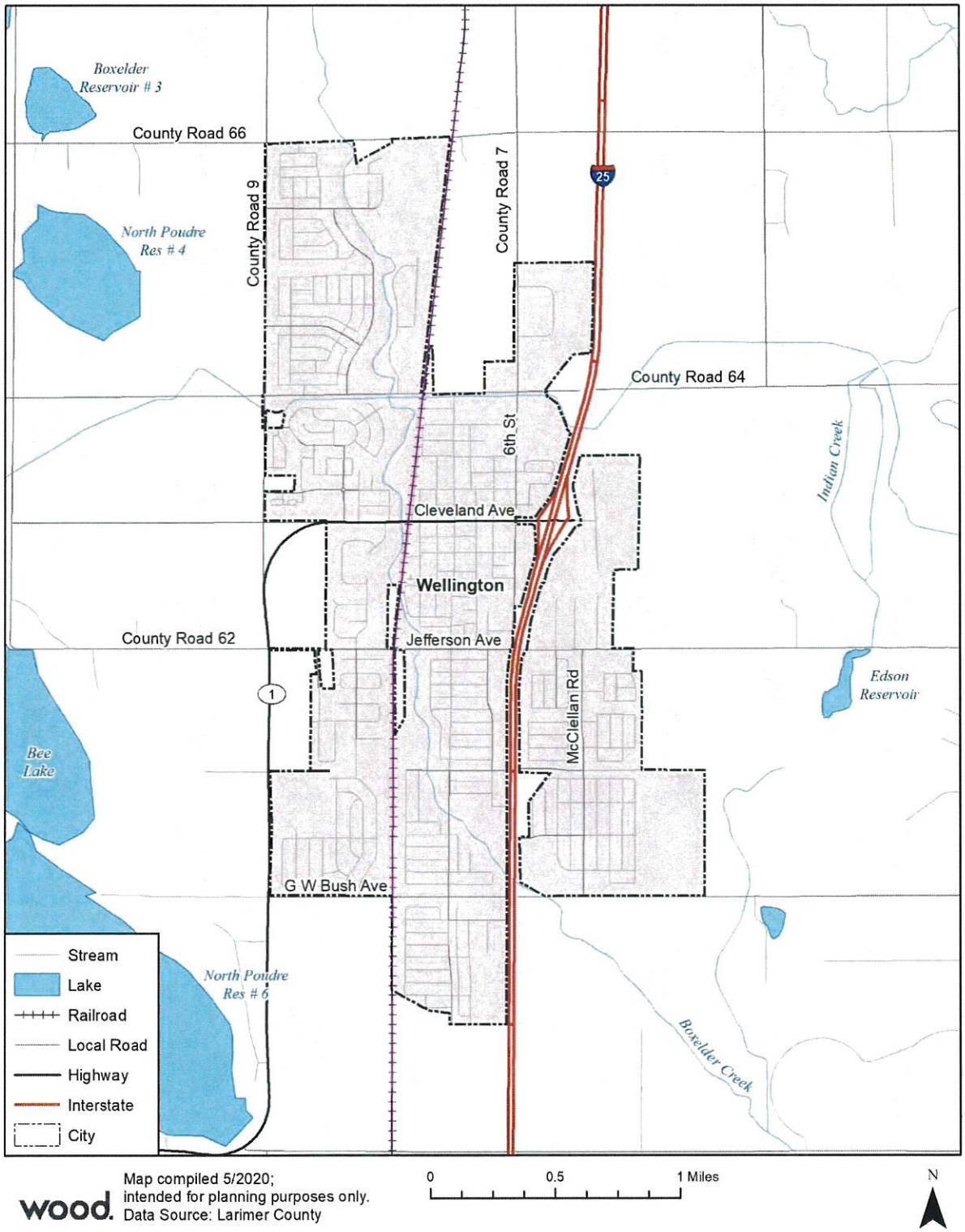
T.2 Community Profile

Wellington, also referred to as "Colorado's Northern Gateway," is located along the northern Front Range, 11 miles north of Fort Collins and 34 miles south of Cheyenne on I-25. The town's location has long made it a crossroads of those travelling both north/south from Colorado to Wyoming and east/west from the farming and ranching communities east to Fort Collins and the Rocky Mountains.

Wellington was founded in 1905, spurred by agricultural development, the Union Pacific Railroad and the presence of the North Poudre Land & Reservoir Co. The town boomed in the early 20th century but its population did not reach 1,000 until 1980. From 2000 until 2010 the town grew rapidly from 2,672 residents to 6,289 residents. As of 2018 the population was 8,571, indicating continued steady growth. With new developments and a booming population in the early 21st century, downtown anchor businesses are beginning to thrive once again, and a community vision for a vibrant downtown commercial district along Cleveland Avenue has become a community priority.

Figure T-1 shows a map of the Town of Wellington.

Figure T-1 Map of the Town of Wellington



T.2.1 Demographics

The following tables and graphs summarize key demographic and social characteristics of the Town of Wellington.

Table T-1 Town of Wellington Statistics

Town of Wellington	2014	2018	% Change
Population	6,634	8,571	29.20%
Median Age	33	31.5	-4.5%
Total Housing Units	2,478	2,820	13.8%
Housing Occupancy Rate	95.6%	100.0%	4.6%
% of Housing Units with no Vehicles Available	2.50%	2.80%	12.0%
Median Home Value	$204,100	$280,700	37.5%
Unemployment Rate	2.1%	3.0%	42.9%
Mean Travel Time to Work (minutes)	33.2	25.9	-22.0%
Median Household Income	$73,658	$88,978	20.8%
Per Capita Income	$31,970	$30,703	-4.0%
% of Individuals Below Poverty Level	5.0%	5.7%	14.0%
% Without Health Insurance	8.1%	3.8%	-53.1%
# of Households	2,370	2,820	19.0%
Average Household Size	2.8	3.0	8.6%
% of Population Over 25 with High School Diploma	95.0%	94.9%	-0.1%
% of Population Over 25 with bachelor's degree or Higher	27.7%	35.7%	28.9%
% with Disability	8.5%	8.7%	2.4%
% Speak English less than "Very Well"	1.1%	1.0%	-9.1%

Source: U.S. Census Bureau American Community Survey, www.census.gov/

Table T-2 Demographic and Social Characteristics Compared to the County and State

Demographic & Social Characteristics (as of 2018)	Wellington	County	Colorado
Median Age	31.5	35.9	36.6
Housing Occupancy Rate	100.0%	91.7%	89.8%
% of Housing Units with no Vehicles Available	2.8%	4.1%	5.2%
Median Home Value	$280,700	$336,200	$313,600
Unemployment	3.0%	5.0%	4.7%
Mean Travel Time to Work (minutes)	25.9	23.2	25.5
Median Household Income	$88,978	$67,664	$68,811
Per Capita Income	$30,703	$35,390	$36,415
% of Individuals Below Poverty Level	5.7%	12.0%	10.9%

Demographic & Social Characteristics (as of 2018)	Wellington	County	Colorado
% Without Health Insurance	3.8%	6.3%	8.1%
Average Household Size	3.0	2.5	2.6
% of Population Over 25 with High School Diploma	94.9%	95.8%	91.4%
% of Population Over 25 with bachelor's degree or Higher	35.7%	46.3%	40.1%
% with Disability	8.7%	9.8%	10.6%
% Speak English less than "Very Well"	1.0%	2.6%	5.9%

Source: U.S. Census Bureau American Community Survey, www.census.gov/

Table T-3 Demographics by Race and Sex

Wellington	Population	%
Total Population	8,571	100%
Male	4,319	50.4%
Female	4,252	49.6%
White, not Hispanic	6,872	80.2%
Hispanic or Latino	1,347	15.7%
Black	60	0.7%
Asian	13	0.2%
American Indian and Alaska Native	26	0.3%
Native Hawaiian and Other Pacific Islander	0	0.0%
Some other race	497	5.8%
Two or more races	323	3.8%

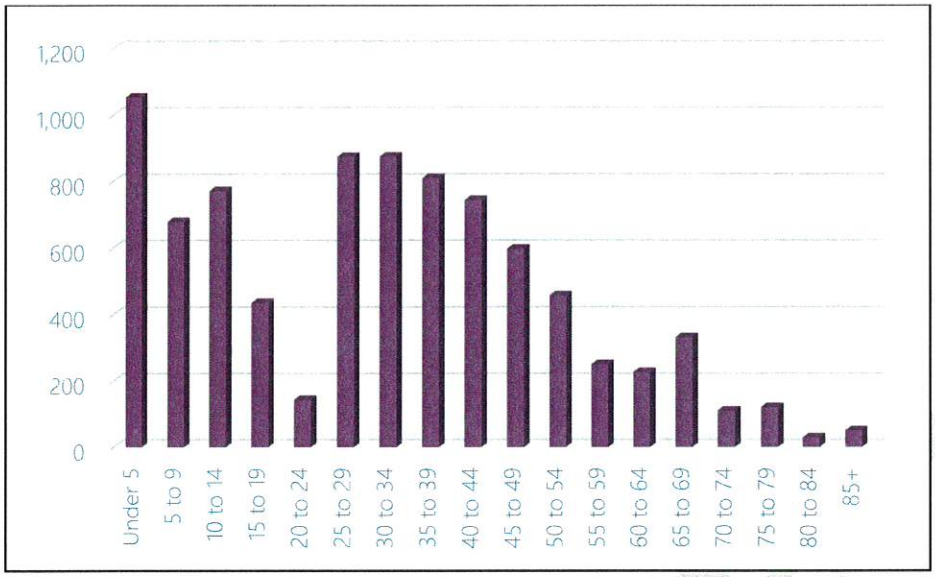
Source: U.S. Census Bureau American Community Survey, www.census.gov/

Table T-4 Types and Total Amounts of Housing Units in Wellington

Type of Housing Units	Total	%
Total housing units	2,820	100%
1-unit detached	2,581	91.5%
1-unit attached	38	1.3%
2 units	45	1.6%
3 or 4 units	41	1.5%
5 to 9 units	33	1.2%
10 to 19 units	82	2.9%
20 or more units	0	0.0%
Mobile home	0	0.0%
Boat, RV, van, etc.	0	0.0%

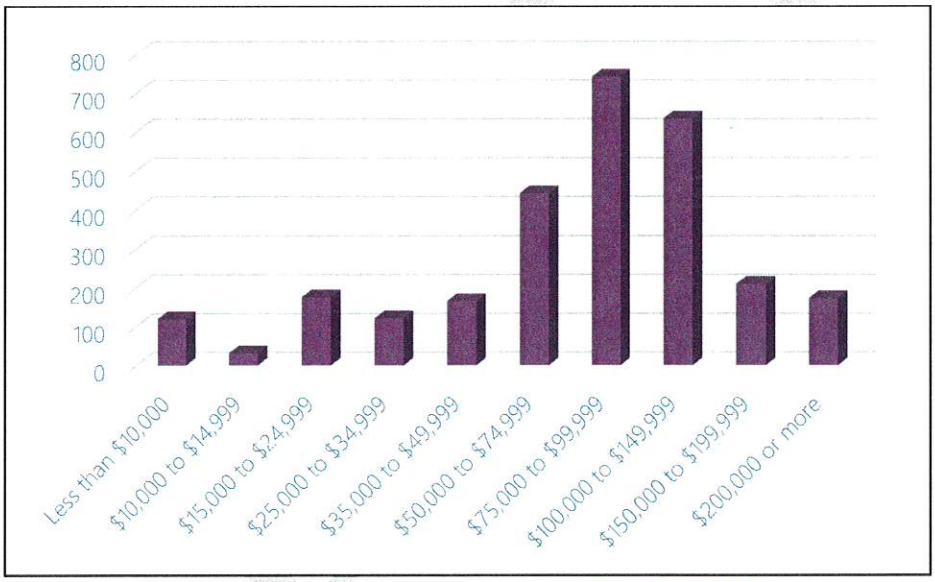
Source: U.S. Census Bureau American Community Survey, www.census.gov/

Figure T-2 Town of Wellington Population Distribution by Age



Source: U.S. Census Bureau American Community Survey, www.census.gov/

Figure T-3 Town of Wellington Income Distribution



Source: U.S. Census Bureau American Community Survey, www.census.gov/

T.2.2 Social Vulnerability

Social vulnerability scores for the Town of Wellington can be seen in Figures 2-4 through 2-8 in Section 2 of the Base Plan. Wellington's overall social vulnerability is below average compared to the rest of Larimer County and Colorado as a whole. In particular, Wellington's vulnerability ranks below average in the minority status and language vulnerability, as well as housing and transportation vulnerability. However, the Town's vulnerability ranks above average in the household composition and disability vulnerability category. Close analysis of the individual social vulnerability indicators within the community will give local emergency managers, planners, and stakeholders a clearer picture of which social vulnerability factors threaten the community the most and where social and economic resources should be allocated in

order to reduce vulnerability. Over time, the town should continue to monitor their local social vulnerability as demographic, economic, and housing related conditions change.

For more discussion of Social Vulnerability, see Section 2.7 of the Base Plan.

T.3 Hazard Identification and Risk Assessment

The following Hazard Identification and Risk Assessment Summary table is based on jurisdiction-specific responses to the risk factor exercise and differs from the County-wide risk factors reported in Section 4.1.1 of the Base Plan.

Table T-5 Hazard Identification and Risk Assessment Summary for the Town of Wellington

Hazard	Frequency	Spatial Extent	Severity	Overall Significance
Biological Hazards	Highly Likely	Extensive	Catastrophic	High
Civil Disturbance	Likely	Limited	Significant	Medium
Dam Inundation	Occasional	Extensive	Catastrophic	High
Drought	Likely	Significant	Significant	Medium
Earthquake	Unlikely	Significant	Catastrophic	Medium
Flood	Likely	Limited	Critical	High
Hazardous Materials	Likely	Significant	Significant	Medium
Landslide/Rockslide	Likely	Limited	Negligible	Low
Soil Hazards	Likely	Limited	Limited	Low
Spring/Summer Storm	Highly Likely	Extensive	Critical	High
Tornado	Likely	Limited	Critical	High
Utility Disruption	Likely	Significant	Critical	Medium
Wildfire	Likely	Limited	Significant	Medium
Winter Storm	Highly Likely	Extensive	Critical	High

Frequency of Occurrence:
Highly Likely: Near 100% probability in next year.
Likely: Between 10 and 100% probability in next year or at least one chance in ten years.
Occasional: Between 1 and 10% probability in next year or at least one chance in next 100 years.
Unlikely: Less than 1% probability in next 100 years.

Spatial Extent:
Limited: Less than 10% of planning area
Significant: 10-50% of planning area
Extensive: 50-100% of planning area

Potential Severity:
Catastrophic: Multiple deaths, complete shutdown of facilities for 30 days or more, more than 50% of property is severely damaged
Critical: Multiple severe injuries, complete shutdown of facilities for at least 2 weeks, more than 25% of property is severely damaged
Significant: Some injuries, complete shutdown of critical facilities for more than one week, more than 10 percent of property is severely damaged
Negligible: Minor injuries, minimal quality-of-life impact, shutdown of critical facilities and services for 24 hours or less, less than 10 percent of property is severely damaged.

Significance
Low: minimal potential impact
Medium: moderate potential impact
High: widespread potential impact

T.4 Vulnerability Assessment

This section provides a refined vulnerability assessment, specific for the Town of Wellington, for those hazards where the risk is significantly different from that of Larimer County overall, or where sufficient data exists to conduct mapping and analysis at the local level. For the following hazards, the Town's risk does not differ significantly from the rest of the County, and they are not profiled further:

- Biological Hazards
- Civil Disturbance
- Drought
- Earthquake
- Tornado
- Utility Disruption

For more information about how hazards affect Larimer County, see Section 4 (Risk Assessment) of the Base Plan.

T.4.1 Community Asset Inventory

Table T-6 shows the total number of improved parcels, properties, and their improvement and content values for the Town of Wellington. See Section 4.2.2 of the Base Plan for details and methodology.

Table T-6 Total Exposure of Improved Properties within the Town of Wellington

Property Type	Improved Parcels	Building Count	Improved Value	Content Value	Total Value
Agricultural	2	2	$741,938	$741,938	$1,483,876
Commercial	92	97	$55,485,546	$55,485,546	$110,971,092
Exempt	28	216	$38,870,816	$38,870,816	$77,741,632
Industrial	3	3	$4,017,637	$6,026,455	$10,044,092
Mobile Home	7	9	$118,866	$59,433	$178,299
Multiple Unit	5	66	$7,131,790	$7,131,790	$14,263,580
Residential	3,637	3,652	$1,005,900,758	$502,950,309	$1,508,851,067
Total	**3,774**	**4,045**	**$1,112,267,351**	**$611,266,287**	**$1,723,533,638**

Source: Larimer County GIS/Assessor's Office, Wood analysis.

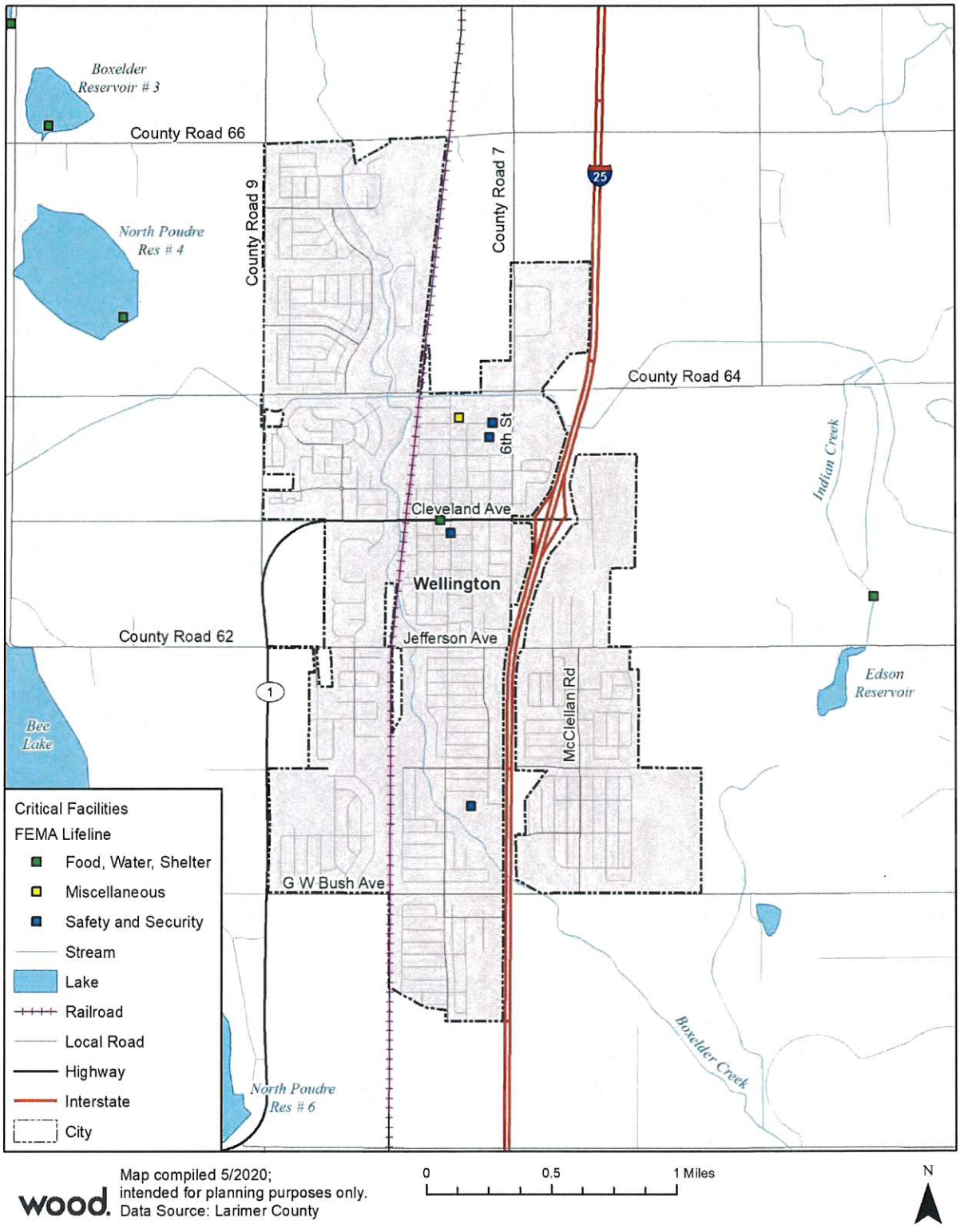
Table T-7 lists summary information about the 16 critical facilities and other community assets identified by the Town as important to protect or that provide critical services in the event of a disaster. These facilities are mapped in Figure T-4. For additional information on the definitions behind each critical facility category, source, and other details refer to Section 4.2 of the Base Plan.

Table T-7 Town of Wellington Critical Facilities and Infrastructure Summary

FEMA Lifeline	Count
Food, Water, Shelter	1
Miscellaneous	1
Safety and Security	4
Total	**6**

Source: Cascarta, Larimer County Assessor's Office, Wood analysis.

Figure T-4 Town of Wellington Critical Facilities and Infrastructure



T.4.2 Dam Inundation

Potential dam inundation areas in and around the Town of Wellington are shown in Figure T-5.

Figure T-5 Dam Inundation Areas for the Town of Wellington

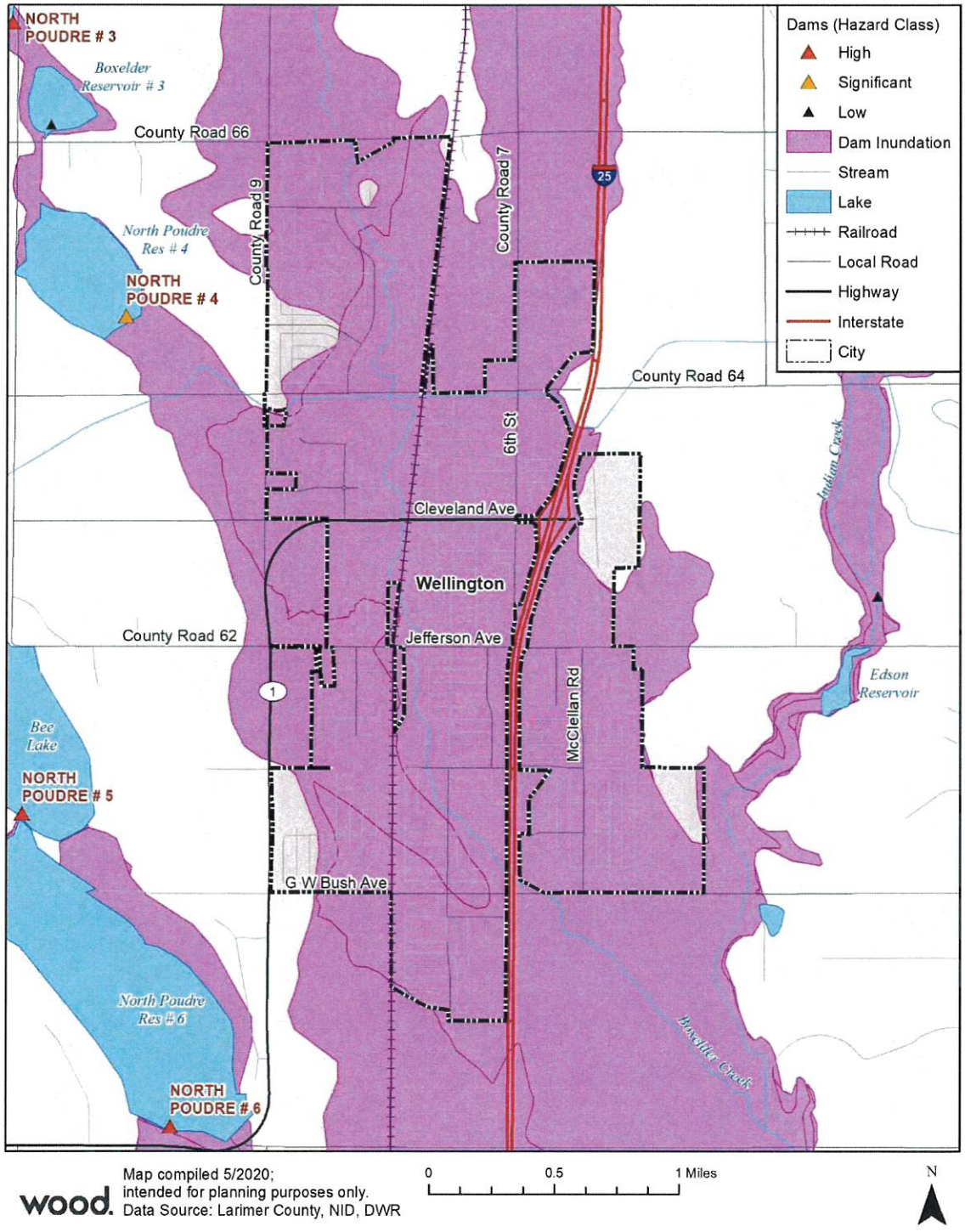


Table 4-17 in Section 4.3.3 of the Base Plan lists dams of concern for Larimer County. High Hazard classified dams upstream of the Town of Wellington are:

- Floodwater Ret. B-2
- Floodwater Ret. B-3
- Floodwater Ret. B-4
- North Poudre # 3
- Rawhide

Table T-8 shows that Wellington has 3,621 parcels potentially at risk of dam inundation, valued at $1.6B; This constitutes 95% of the total improved parcels in the Town. An estimated 9,855 residents live in those parcels.

Table T-8 Town of Wellington Parcels Potentially at Risk of Dam Inundation

Property Type	Improved Parcels	Building Count	Improved Value	Content Value	Total Value	Population
Agricultural	1	1	$224,784	$224,784	$449,568	
Commercial	92	97	$55,485,546	$55,485,546	$110,971,092	
Exempt	28	216	$38,870,816	$38,870,816	$77,741,632	
Industrial	3	3	$4,017,637	$6,026,455	$10,044,092	
Mobile Home	7	9	$118,866	$59,433	$178,299	25
Multiple Unit	5	66	$7,131,790	$7,131,790	$14,263,580	
Residential	3,485	3,498	$958,955,772	$479,477,817	$1,438,433,589	9,829
Total	**3,621**	**3,890**	**$1,064,805,211**	**$587,276,641**	**$1,652,081,852**	**9,855**

Source: USACE National Inventory of Dams 2018, Colorado Dam Safety Program, Larimer County GIS, U.S. Census Bureau, Wood analysis

All six of the critical facilities identified in the Town of Wellington are located in areas at risk of dam inundation, as shown in Table T-9.

Table T-9 Town of Wellington Critical Facilities at Risk of Dam Inundation

FEMA Lifeline	Count
Food, Water, Shelter	1
Miscellaneous	1
Safety and Security	4
Total	**6**

Source: Cascarta, Larimer County Assessor's Office, Wood analysis.

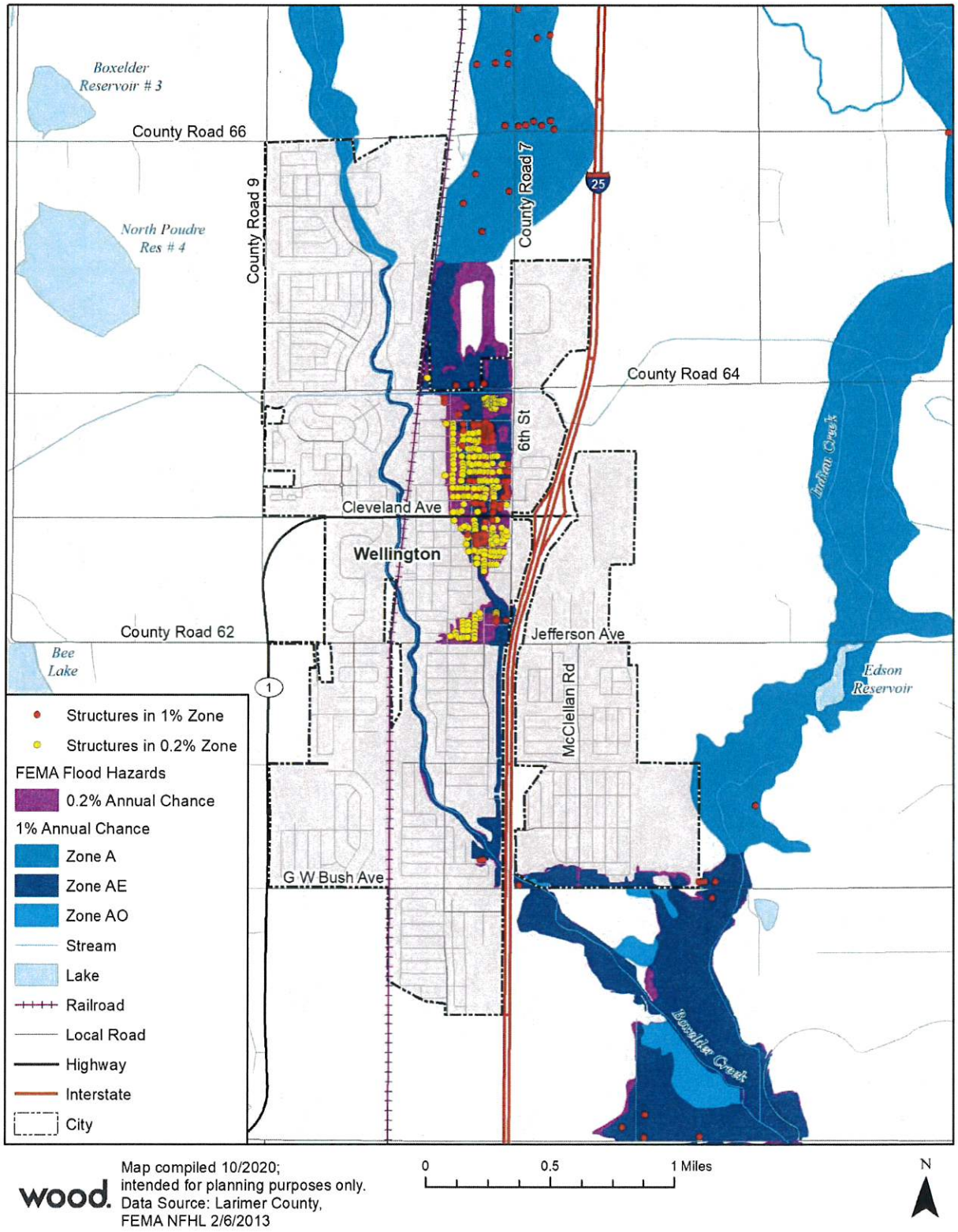
Based on the above analysis, the spatial extent and severity of the dam inundation hazard in the Town of Wellington is significantly higher than that of Larimer County as a whole. The overall significance of this hazard for the Town is High.

T.4.3 Flood

FEMA mapped floodplains in and around the Town of Wellington are shown in Figure T-6.

As shown in Table 4-34 of Section 4.3.6 of the Base Plan, the Town of Wellington has 43 parcels, 52 buildings, and 112 residents in areas at 1% annual chance of flooding, with total estimated losses of $10,014,666. There are an additional 191 parcels, 328 buildings, and 541 residents located in the 0.2% annual chance flood hazard area, with total estimated losses of $28,257,120.

Figure T-6 FEMA Special Flood Hazard Areas for the Town of Wellington



wood.

Map compiled 10/2020; intended for planning purposes only. Data Source: Larimer County, FEMA NFHL 2/6/2013

The Town has three critical facility identified in FEMA mapped floodplains, as shown in Table T-10.

Table T-10 Wellington Critical Facilities Exposed to Risk of Flooding

FEMA Lifeline	1% Annual Flood Risk	0.2% Annual Flood Risk	Protected by Levee	Total
Miscellaneous	0	1	0	1
Safety and Security	1	1	0	2
Total	**1**	**2**	**0**	**3**

Source: Cascarta

Based on the above analysis, the spatial extent and severity of the flood hazard in the Town of Wellington is higher than that of Larimer County as a whole. The overall significance of this hazard for the Town is High.

National Flood Insurance Program Policy Analysis
Wellington has participated in the National Flood Insurance Program (NFIP) since 1979. NFIP insurance data shows that as of January 2021 there were 30 flood insurance policies in force in the Town with $10,578,400 of coverage. There have been 10 historical claims for flood losses, totaling $52,161. There are no repetitive or severe repetitive loss structures as defined by the NFIP. The Town of Wellington does not participate in the Community Rating System (CRS) program.

T.4.4 Hazardous Materials Incident

Designated hazardous materials routes passing through or near the Town of Wellington include I-25 and one rail line. None of the County's Risk Management Plan (RMP) facilities are located within the Town limits.

The National Response Center (NRC) data cited in Section 4.3.7 of the Base Plan includes just three hazardous materials incidents in or near the Town of Wellington from 1987 through 2019. This averages out to one hazardous materials incident every ten years. None of those incidents reported any deaths, injuries, or significant property damage. It should also be noted that a portion of the Town's drinking water supply is supplied with raw water from 3 shallow alluvial aquifers.

Based on the above analysis, the frequency and spatial extent of hazardous materials incidents in the Town of Wellington is lower than that of Larimer County as a whole. The overall significance of this hazard for the Town is Medium.

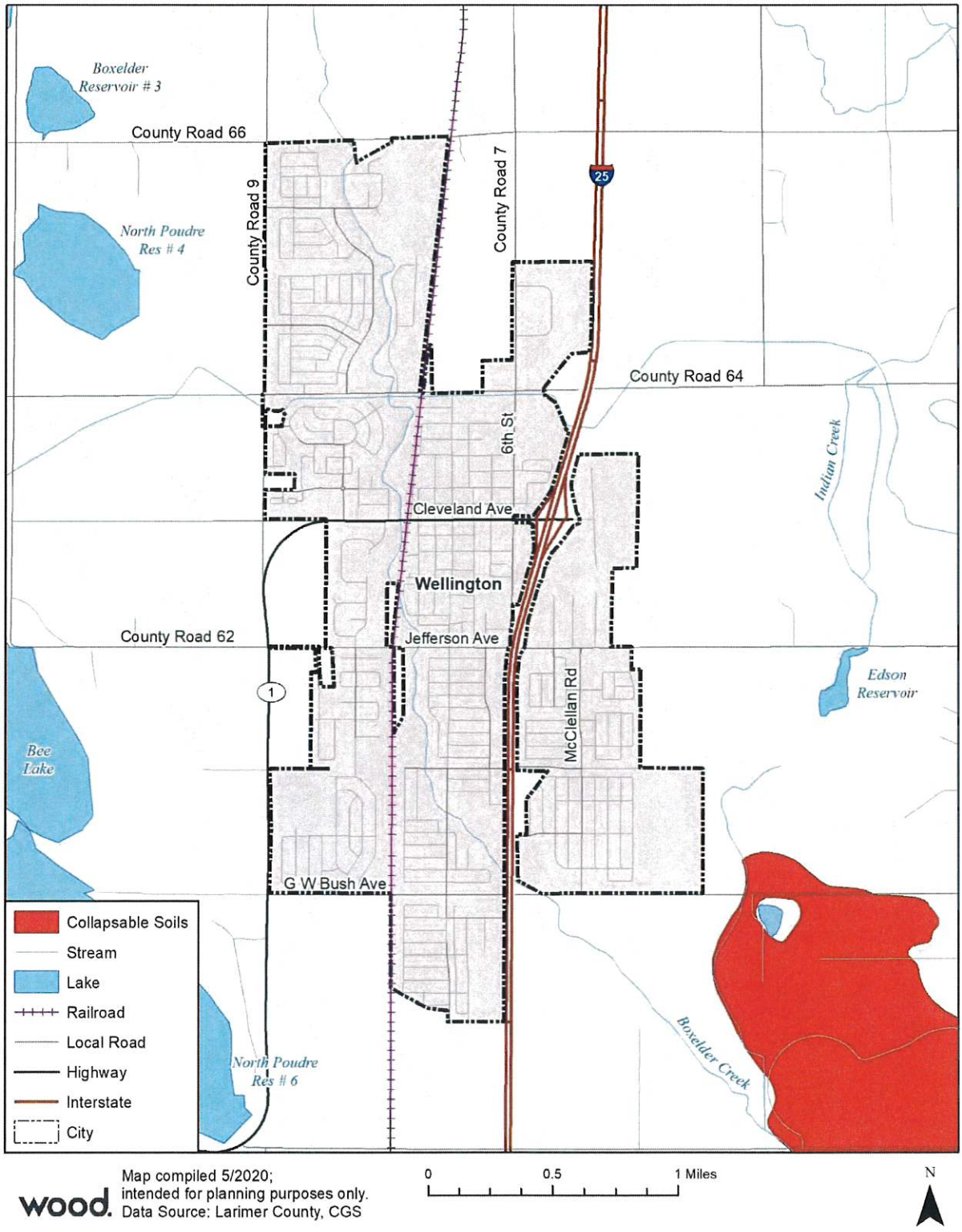
T.4.5 Landslide/Rockslide

There are no identified areas of landslide or rockslide risk in the Town of Wellington. The overall significance of this hazard for the Town is Low.

T.4.6 Soil Hazards

There are no historically undermined areas or areas at risk of land subsidence or collapsible or expansive soils that have been identified in the Town of Wellington. However, a significant area of potential collapsible soils has been identified southeast of the Town, as shown in Figure T-7. The overall significance of this hazard for the Town is Low.

Figure T-7 Potential Collapsible Soils Areas – Town of Wellington



T.4.7 Wildfire

Areas in and around the Town of Wellington at risk of wildfire, based on CO-WRAP assessment, are shown in Figure T-8. Tables 4-72, 4-73, and 4-74 in the Wildfire profile of the Base Plan shows that the Town does not have any parcels at moderate, high, or highest risk of wildfire.

The Town has one critical facility identified at being at risk of wildfires, as shown in Table T-11.

Table T-11 Wellington Critical Facilities Exposed to Wildfire Risk

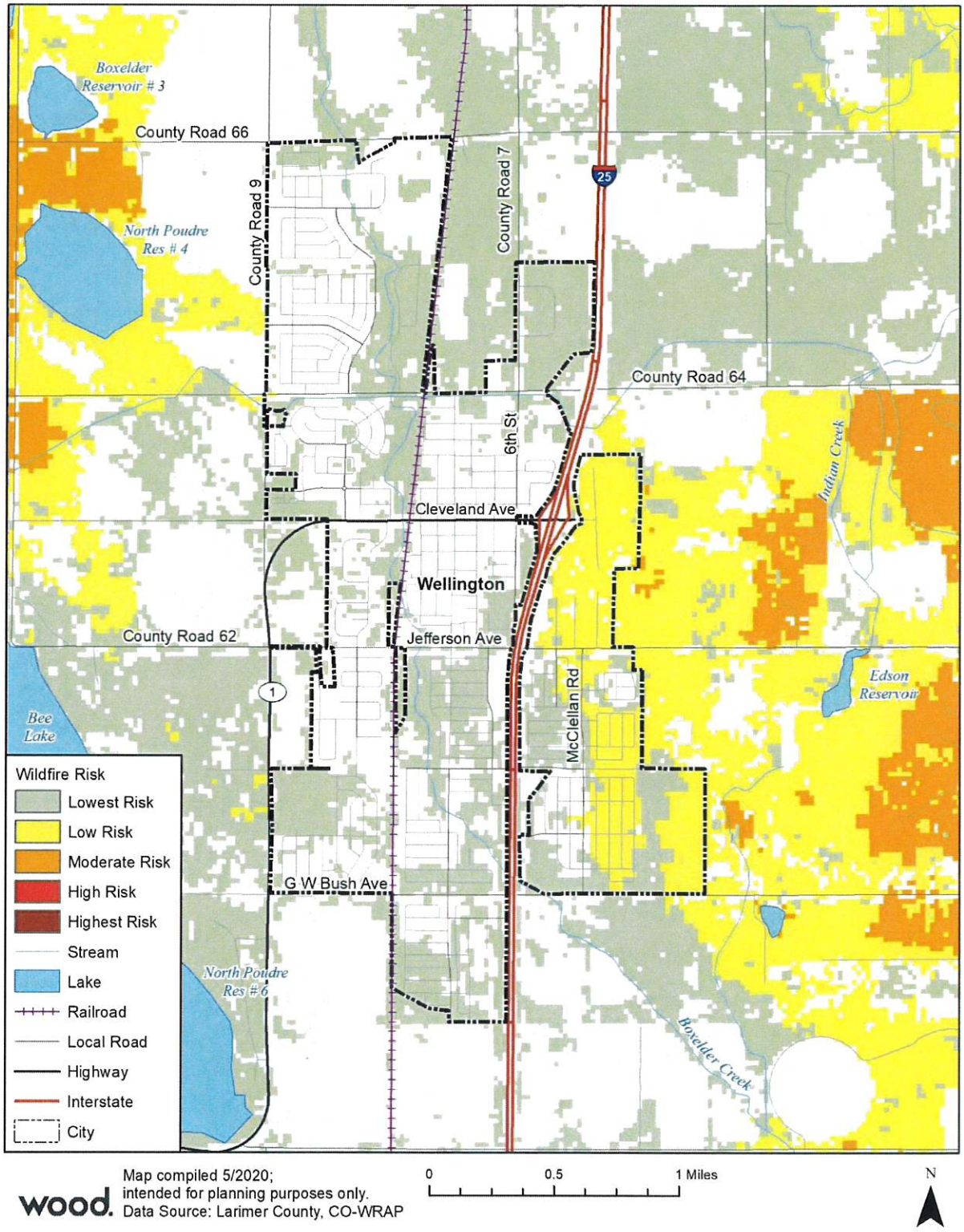
FEMA Lifeline	Lowest Risk	Low Risk	Moderate Risk	High Risk	Highest Risk	Total
Safety and Security	1					1
Total	**1**	**0**	**0**	**0**	**0**	**1**

Source: Cascarta, CO-WRAP

The overall significance of wildfire for the Town is Medium.

DRAFT

Figure T-8 Wellington Wildfire Risk



T.5 Capabilities Assessment

This section profiles the programs and policies currently in use by the Town of Wellington to reduce hazard impacts or that could be used to implement hazard mitigation activities.

T.5.1 Existing Capabilities

The following tables summarize the Town's current ability to conduct mitigation activities, focused on planning and regulatory capabilities, administrative and technical capabilities, and fiscal capabilities.

Table T-12 Town of Wellington Planning and Regulatory Mitigation Capabilities

Regulatory Tool (ordinances, codes, plans)	Yes/No	Comments
Comprehensive Plan	Yes	
Zoning ordinance	Yes	
Subdivision ordinance	Yes	
Growth management ordinance	No	
Floodplain ordinance	Yes	
Other special purpose ordinance (stormwater, steep slope, wildfire)	Yes	Adopted infrastructure design standards
Building codes	Yes	2018 IBC
BCEGS Rating	No	
Fire department ISO rating	Yes	ISO rating 3, as provided by Wellington Fire Protection District
Erosion or sediment control program	Yes	
Stormwater management program	Yes	
Site plan review requirements	Yes	
Capital improvements plan	Yes	
Economic development plan	Yes	
Local emergency operations plan	No	
Community Wildfire Protection Plan	No	
Other special plans	No	
National Flood Insurance Program	Yes	Joined 1979
Community Rating System	No	
Flood insurance study or other engineering study for streams	Yes	
Elevation certificates (for floodplain development)	Yes	

Source: Town of Wellington planning team

Table T-13 Town of Wellington Administrative and Technical Mitigation Capabilities

Personnel Resources	Yes/No	Department/Position/Comments
Planner/engineer with knowledge of land development/land management practices	Yes	Planning and Building Department
Engineer/professional trained in construction practices related to buildings and/or infrastructure	Yes	Public Works Department
Planner/engineer/scientist with an understanding of natural hazards	Yes	Public Works Department
Transportation Planner	Yes	Town Planner, Town Engineer
Resiliency Planner	No	

Personnel Resources	Yes/No	Department/Position/Comments
Personnel skilled in GIS	No	GIS services provided by consultant
Full time building official	No	New building official position in approved 2021 budget
Floodplain manager	Yes	Public Works Department
Emergency manager	No	
Grant writer	Yes	Finance Department
GIS Data Resources (Hazard areas, critical facilities, land use, building footprints, etc.)	Yes	Public Works Department
Warning Systems/Services (Reverse 9-11, cable override, outdoor warning signals)	No	

Source: Town of Wellington planning team

Table T-14 Town of Wellington Fiscal Mitigation Capabilities

Financial Resources	Accessible/ Eligible to Use	Has Been Used in the Past	Comments
Community Development Block Grants	Yes	No	
Capital improvements project funding	Yes	Yes	
Authority to levy taxes for specific purposes	Yes	Yes	
Fees for water, sewer, gas, or electric services	Yes	Yes	
Stormwater Service Fees	Yes	Yes	
Impact fees for new development	Yes	Yes	
Incur debt through general obligation bonds	Yes	Yes	
Incur debt through special tax bonds	Yes	No	
Incur debt through private activities	Yes	No	
Withhold spending in hazard prone areas	Yes	No	

Source: Town of Wellington planning team

Table T-15 Town of Wellington Education and Outreach Mitigation Capabilities

Education & Outreach	Yes/No	Comments
Local Citizen Groups That Communicate Hazard Risks	No	
Firewise	No	
StormReady	No	
Other: Communications Specialist on staff	Yes	

Source: Town of Wellington planning team

Local land use plans and building codes are tremendous tools for evaluating local policies related to hazard mitigation and risk reduction. Additionally, comprehensive master plans, capital improvement plans, stormwater plans and zoning ordinances all present opportunities for enhanced local capabilities.

Building codes are another tool that communities use to enhance public safety. For example, they can increase structural integrity, mitigate structure fires, and provide benefits in relation to natural hazard avoidance. In Colorado, land use regulations and building codes are typically implemented at the local level. Even without a statewide mandate, most counties and many municipalities have enacted regulations and codes. The Town of Wellington has adopted a local building code requirement, demonstrating their understanding of the benefits codes provide, including reduced exposure to hazards.

T.5.2 Opportunities for Enhancement

Based on the capability assessment, Wellington has several existing mechanisms in place that already help to mitigate hazards. There are also opportunities for the Town to expand or improve on these policies and programs to further protect the community. Future improvements may include providing training for staff members related to hazards or hazard mitigation grant funding in partnership with the County and DHSEM. Additional training opportunities will help to inform Town staff and Town Council on how best to integrate hazard information and mitigation projects into the Town policies and ongoing duties of the Town. Continuing to train Town staff on mitigation and the hazards that pose a risk to the Town will lead to more informed staff members who can better communicate this information to the public.

Another capability enhancement would be to consider joining the CRS, which would require enhancements to the Town's floodplain management program; however the low number and value of flood insurance policies in the Town of Wellington means this would not significantly affect flood insurance affordability in the Town.

Although there are specific emergency response plans for critical facilities such as treatment plants, an overall adopted Emergency Action Plan is a probable future improvement.

T.6 Mitigation Strategy

The Town of Wellington has adopted the hazard mitigation goals and objectives developed by the Planning Team and described in Section 6.2 of the Base Plan.

The Town had two mitigation actions in the 2016 Plan, and has completed one of them:

- North Old Town Drainage Improvements – completed in 2017

The remaining action has been carried over into the 2021 Plan, along with three new actions.

Wellington has used FEMA Pre Disaster Mitigation funding for the Coal Creek Flood Mitigation Project, which removed flood hazard designation from most of the designated properties in the Town of Wellington and north of Wellington along Coal Creek. It reduced the acreage designated by FEMA as a floodplain by approximately 700 to 850 acres. It also reduced the flood hazard and damages for approximately 200 homes, dozens of businesses, and two schools, a community center, and commercial structures. A Letter of Map Revision (LOMR) was filed with FEMA and approved in February 2013.

The local planning team identified and prioritized the following mitigation actions for the Town of Wellington based on the risk assessment. Information on how each action will be implemented and administered, such as ideas for implementation, responsible agency, potential funding, estimated cost, and timeline also are included. These actions are also captured in Table 6-2 in the Base Plan.

National Flood Insurance Program

Recognizing the importance of the National Flood Insurance Program (NFIP) in mitigating flood losses, the Town of Wellington will place an emphasis on continued compliance with the NFIP. As an NFIP participant, the Town has and will continue to make every effort to remain in good standing with NFIP. This includes continuing to comply with the NFIP's standards for updating and adopting floodplain maps and maintaining and updating the floodplain zoning ordinance as well as review of any potential development in special flood hazard areas.

Table T-16 Town of Wellington 2021 Mitigation Action Plan

ID	Related Goal(s)	Hazard(s) Mitigated	Description / Background / Benefits	Lead Agency and Partners	Cost Estimate	Potential Funding	Priority	Timeline	Status / Implementation Notes
T-1	Goals 1,2,5 Objectives 3,5	Tornado	**Tornado Warning System.** Town of Wellington has no Tornado Warning System. Provide Tornado Warning System. Tornado Sirens or Reverse 911 type phone notification	**Town of Wellington,** Wellington Fire District, Larimer County Sheriff	TBD	Grants, Annual Budget	Medium	2024	Not completed/deferred.
T-2	Goals 1,2,3,5 Objectives 3,5	Drought, Fire, Hazardous Material	**Source Water Protection Plan.** Plan and implement various strategies for protecting source water for the drinking water system, such as natural and man-made pollutants, hazardous material and other contaminants. Benefits: Damage or loss of human life.	**Town of Wellington**, Larimer County, NPIC	TBD	Grant funding, Town utility funding	High	TBD	New in 2021
T-3	Goals 1,2,5 Objectives 3,5	Flood	**Stormwater Masterplan.** Plan and implement various drainage and stormwater management programs and improvements throughout the Town.	**Town of Wellington**	TBD	Grant funding, Town drainage funds	High	2021-2026	New in 2021
T-4	Goals 1,2,5 Objectives 3,5	Dam Inundation, Flood	**B-Dam Emergency Response Plan and Flood Warning System.** The B-Dams flood control structures located just upstream of the Town and have been reclassified as high hazard dams. These improvements are intended to provide early warning and a coordinated plan in the event of an overtopping event.	Town of Wellington, Larimer County, Town of Timnath, City of Fort Collins, North Poudre Irrigation Company	TBD	Grant funding, various funding from participating jurisdictions	High	2021 - 2026	New in 2021

T.7 Plan Maintenance and Implementation

The Town of Wellington has developed a Plan Maintenance and Implementation Strategy outlining their method and schedule for keeping the plan current. The Implementation Strategy below also includes a discussion of how the town will continue public participation in the plan maintenance process.

T.7.1 Implementation and Maintenance of the 2016 Plan

The 2016 Plan discussed a number of strategies that Larimer County and its jurisdictions would use to integrate the plan into other planning mechanisms and processes. The Town of Wellington's implementation strategy included:

- The Town Board will review the plan annually in a work session.
  - This was not accomplished, because of extensive staff turnover.
- We will post mitigation plan on town website and update when mitigation actions are completed.
  - This was accomplished.
- We will integrate mitigation actions into our capital improvements plan.
  - This was partially accomplished. The North Old Town Drainage Improvements project was included in the CIP plan, and has been completed. The Tornado Warning System project was deferred.

Additional ways in which the Town incorporated information from the 2016 HMP into other plans and processes include:

- The lessons learned from the Old Town Drainage Improvements project led directly into a new town-wide Stormwater Masterplan project, which was included in the Town budget for 2021. That budget has been approved and adopted by the Board of Trustees.

T.7.2 Monitoring, Evaluation and Updating the Plan

The information contained within this plan, including results from the Vulnerability Assessment, and the Mitigation Strategy will be used by the Town to help inform updates and the development of local plans, programs and policies, as described in Section 7 of the Base Plan.

The Town Administrator or their designee will be responsible for monitoring, evaluating, and updating this plan using the process outlined in Section 7 of the Base Plan. The Town Administrator, or their designee, will also be responsible for representing the Town on future Larimer County Planning Team meetings, and for coordination with town staff and departments during plan updates. The Town, Fire District and Sheriff's Department will meet at a minimum annually to discuss items that need to be updated and look at progress of action items. All items with budgetary requirements would need to be approved by the Town Board of Trustees.

Integration Into Other Planning Mechanisms

The Town of Wellington will work to incorporate the updated HMP into other plans, procedures, and programs as described in Section 7.3 of the Base plan. Specifically, the Town will:

- Incorporate information from the HMP into the Comprehensive Plan and Land Use update projects, which are currently underway and scheduled for completion in mid-2021, as appropriate.
- Incorporate information from the HMP into various infrastructure masterplans which are either currently underway or included in the adopted 5-year CIP plan, as appropriate.
- Incorporate information from the HMP into existing public education & outreach programs.

- Post information on the Town's website and utilize internal communications staff to get information to citizens and businesses.
- Mitigation actions will be incorporated into the 5-year capital improvement plan, beginning in 2021.
- Appropriate town departments and staff will meet annually to discuss items that need to be updated and look at progress of action items.

Continued Public Involvement

The Town will also continue to involve the public in mitigation, as described in Section 7.4 of the Base Plan. This will include posting information on the website and utilize the marketing and communications firm to get information to citizens and businesses.

DRAFT

Larimer County Multi-Jurisdictional Hazard Mitigation Plan Update Adoption

July 13, 2021

TOWN OF WELLINGTON

Background

- Wellington is currently included in Larimer County's 2016 Hazard Mitigation Plan (HMP), which included the following mitigation actions for Wellington
  - Implement a Tornado Warning System – Status is Deferred
  - Construct new stormwater facilities (North Old Town Drainage Improvements) – Completed 2017
- FEMA requires regular updates to the HMP every 5 years. The timeline for the current update is as follows:
  - December 1, 2018 - "Statement of Intent to Participate" sent from Mayor Hamman to Larimer County Office of Emergency Management
  - January 2000 – Larimer County staff initiates planning with participating communities
  - Throughout 2020 - Wellington staff participates in specific portions of HMP creation process
  - February 2021 – Larimer County publishes draft HMP for public comment
  - May 2021 – Larimer County sends draft to FEMA for review
  - July 2021 – All participating communities adopt HMP
- Communities must adopt the HMP in its entirety prior to August 1, 2021, to be eligible for FEMA funding and grants!

TOWN OF WELLINGTON

What is a Hazard Mitigation Plan

“Hazard Mitigation” is defined as sustained actions taken to reduce or eliminate long-term risk to human life and property from hazards, and includes:

- Risk Assessment for
  - Biologic Hazards
  - Civil Disturbance
  - Dam Inundation
  - Drought
  - Earthquake
  - Floods
  - Hazardous Material
  - Landslide/Rockslide
  - Soil Hazards
  - Rainstorms
  - Tornados
  - Utility Disruption
  - Wildfire
  - Winter Storms
- Capability Assessment
- Mitigation Strategy
- Plan Implementation and Maintenance

TOWN OF WELLINGTON

What a Hazard Mitigation Plan is not

- A regulatory document
  - The plan does not create new regulations
  - The plan does not require the community to create new regulations
- A set-in-stone commitment of resources or activities
  - The plan is a guidance tool
  - FEMA encourages communities be ambitious and practical, however
  - FEMA understands that actions are dependent on the availability of resources, such as staffing and funding
  - There are no repercussions for not completing elements of the plan

TOWN OF WELLINGTON

Participating Communities and Organizations

- Municipalities
  - Town of Berthoud
  - Town of Estes Park
  - City of Fort Collins
  - Town of Johnstown
  - City of Loveland
  - Town of Timnath
  - Town of Windsor
  - Town of Wellington
- Others
  - Estes Park Health
  - Estes Valley Rec & Park
  - Northern Water
  - Thompson Valley EMS
  - Upper Thompson Sanitation
- Fire Authorities
  - Berthoud Fire Protection District (FPD)
  - Crystal Lakes FPD
  - Estes Valley FPD
  - Glacier View FPD
  - Livermore FPD
  - Loveland Fire Rescue Authority (FRA)
  - Pinewood Springs FPD
  - Poudre Canyon FPD
  - Poudre Fire Authority
  - Windsor Severance FPD
  - Wellington FPD

TOWN OF WELLINGTON

Wellington's proposed hazard mitigation activities

- The proposed HMP includes "annexes" that are specific to participating communities. The following are the mitigation actions included for Wellington:
  - Tornado Warning System (Medium Priority)
  - Source Water Protection Plan (High Priority)
  - Stormwater Master Plan (High Priority)
  - B-Dam Emergency Response Plan and Flood Warning System (High Priority)

Questions?

TOWN OF WELLINGTON

LARIMER COUNTY SHERIFF'S OFFICE

Justin E. Smith, Sheriff

One Agency *One Mission* *Public Safety*

June 17, 2021

Town of Wellington
Attn: Patti Garcia, Town Administrator
PO Box 127
Wellington, Colorado 80549

Dear Ms. Garcia:

The Law Enforcement Services Agreement for the Town of Wellington obligates the Larimer County Sheriff's Office to provide monthly reporting.

In meeting the contract, for the month of **May 2021**, the Larimer County Sheriff's Office maintained six deputies, one corporal, and one sergeant providing full-time law enforcement for the Town. In addition, one half-time investigator, one full-time desk deputy, and one full-time School Resource Officer assisted the town with law enforcement activities.

During the month of **May 2021**, non-assigned deputies spent a total of **101.59** hours in Wellington responding to calls, patrolling, and making contacts in the town.

During the month of **May 2021** there were **6.0** hours worked by Northern Colorado Drug Task Force.

Investigations – ongoing and active cases include:

- Arson - 1
- Sex Crimes Investigations – 6
- Death Investigations – 3
- Harassment/Stalking – 1
- Trespass - 2
- Fraud/Forgery Investigations - 2

Of Note:
The Larimer County Sheriff's Office added a mental health therapist from the co-responder program who is being assigned half-time to Wellington.

Pursuant to the Law Enforcement Agreement between the Town of Wellington and Larimer County, applicable documenting monthly forms are attached.

Thank you,



Captain Joe Shellhammer
(970) 498-5103
Attachments

LARIMER COUNTY SHERRIFF'S OFFICE

Wellington Calls for Service and Patrol Time
(For Non-Wellington Officers)

Dispatch Dates Between 5/1/2021 and 5/31/2021

Excluded from this report -
Squads: Civilian, Parks, and Investigations
Units: 9ME, 9S8;9Z89;9E75;9E72;9E7;9E5;9E34;9E23;9E21;9X106;9E41*

Call Times by Month

	Call/Contact Time (Minutes/Hours)	Patrol Time (Minutes/Hours)	Totals
2021-05	4,586.7 76.45	1,508.73 25.15	**6,095.43** **101.59**
Totals	**4,586.7** **76.45**	**1,508.73** **25.15**	**6,095.43** **101.59**

Wellington Monthly Report

May 2021

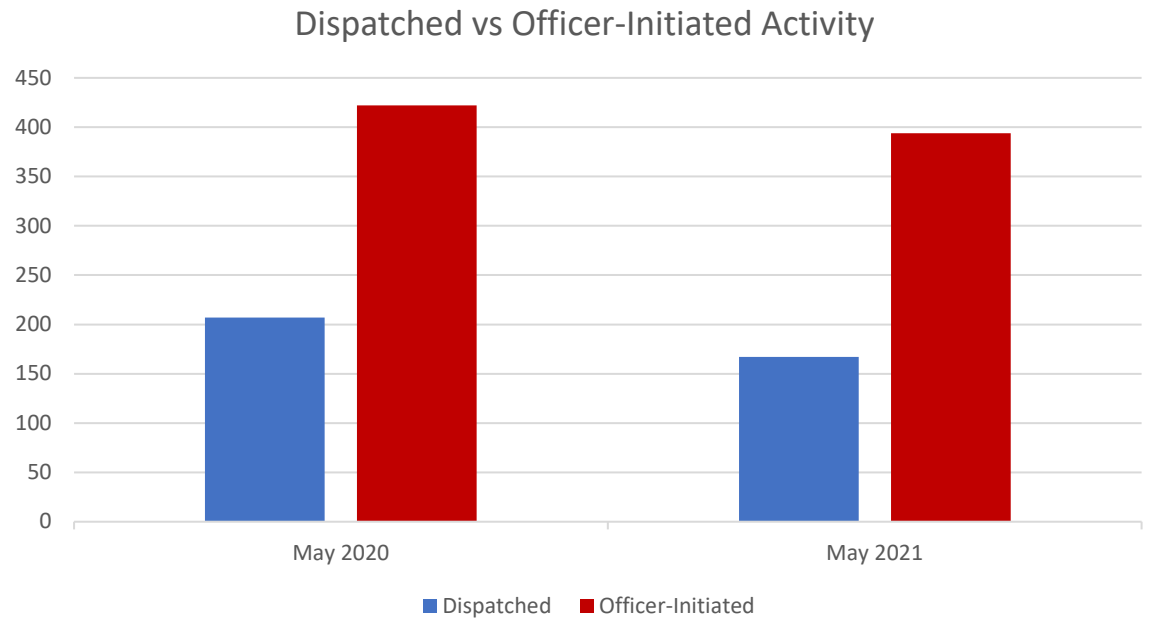
Larimer County Sheriff's Office

Christine Harpel
Executive Assistant
6/9/2021

May 2021 Totals

Dispatched / Officer-Initiated Activity

Dispatched Calls	167
Officer Initiated	394
May 2021 Total	561



- Dispatched calls were Down 40 or 19% from May 2020
- Officer-Initiated Activity was Down 28 or 7% from May 2020

	May 2020	May 2021
Dispatched Calls	207	167
	33%	30%
Officer Initiated	422	394
	67%	70%
Total	629	561

- 30% were Dispatched Calls
- 70% was Officer-Initiated Activity

May 2021 Calls for Service

Calls for Service Comparison

Call Types A-M

Call Type	2018	2019	2020	Avg 18-20	2021	% Change 3-Yr Avg to 2021
9-1-1 Hangup	3	4	2	3.00	2	-33%
Alarm Calls	6	4	5	5.00	12	140%
Alcohol Calls	1	0	0	0.33	0	-100%
Animal Calls	8	11	7	8.67	9	4%
Assault	3	1	1	1.67	2	20%
Assist Other Agency (Fire/Med)	17	20	10	15.67	10	-36%
Burglary	2	1	1	1.33	0	-100%
Child abuse	1	0	1	0.67	0	-100%
Citizen Assist	14	11	18	14.33	20	40%
Civil	13	14	8	11.67	13	11%
Criminal Mischief	5	1	4	3.33	3	-10%
Death Investigation	0	1	0	0.33	1	200%
Disturbance	6	10	6	7.33	7	-5%
Drug case	2	2	2	2.00	1	-50%
DUI Arrest	1	1	3	1.67	2	20%
Extra Checks & Business Check	103	222	240	188.33	277	47%
Family Problems	12	5	16	11.00	10	-9%
Fireworks complaint	1	0	1	0.67	3	350%
Follow up	50	20	49	39.67	28	-29%
Found property	1	2	1	1.33	1	-25%
Fraud	3	5	7	5.00	5	0%
Harassment	4	5	6	5.00	3	-40%
Juvenile Problem	11	7	5	7.67	11	43%
Littering	0	0	1	0.33	0	-100%
Lost Property	0	3	2	1.67	2	20%
Mental Health Call	0	2	1	1.00	0	-100%
Missing Person (Child/Adult)	1	1	4	2.00	2	0%
Motor Vehicle Accident	8	6	2	5.33	5	-6%
Municipal Code Violation	5	1	0	2.00	1	-50%

Call Types N-Z

Call Type	2018	2019	2020	Avg 18-20	2021	% Change 3-Yr Avg to 2021
Neighbor Problems	0	3	3	2.00	1	-50%
Noise\Party Complaint	4	5	6	5.00	5	0%
Pedestrian Contact/Subject St	3	6	10	6.33	1	-84%
Private Tow	3	4	0	2.33	2	-14%
REDDI Report	4	5	1	3.33	2	-40%
Safe 2 Tell	1	2	1	1.33	2	50%
School Check	14	29	0	14.33	10	-30%
Sex Offense	0	2	0	0.67	3	350%
Sex Offender Check	5	3	2	3.33	0	-100%
Solicitor	0	0	1	0.33	1	200%
Suicide Attempt	0	0	0	0.00	1	NC
Suicide Threat	7	0	2	3.00	4	33%
Suspicious Circumstances	20	25	27	24.00	27	13%
Theft	10	3	7	6.67	6	-10%
Traffic Problem	17	14	19	16.67	9	-46%
Traffic Stop	86	88	92	88.67	21	-76%
Trespass	2	0	1	1.00	1	0%
Vehicle Theft	2	0	1	1.00	0	-100%
Vehicle Trespass	1	1	8	3.33	0	-100%
VIN Check	3	24	8	11.67	15	29%
Warrant Attempt/Arrest	1	1	9	3.67	2	-45%
Weapon	1	0	1	0.67	1	50%
Welfare Check	0	0	6	2.00	0	-100%
Unspecified	4	4	5	4.33	11	154%
TOTALS	**464**	**578**	**613**	**551.67**	**554**	**0%**

NC = Not Calcuable. Cannot divide by 0.

Calls for Service DOWN 59 or 10% from May 2020

May 2021 calls DOWN 0% from May 2018-2020 Average

May 2021 Call Categories

Crime Type Averages / Trends

Property Crimes					
Call Type	2018	2019	2020	Avg 18-20	2021
Burglary	2	1	1	1.33	0
Theft	10	3	7	6.67	6
Vehicle Theft	2	0	1	1.00	0
Vehicle Trespass	1	1	8	3.33	0
Property Crimes Totals	**15**	**5**	**17**	**12.33**	**6**

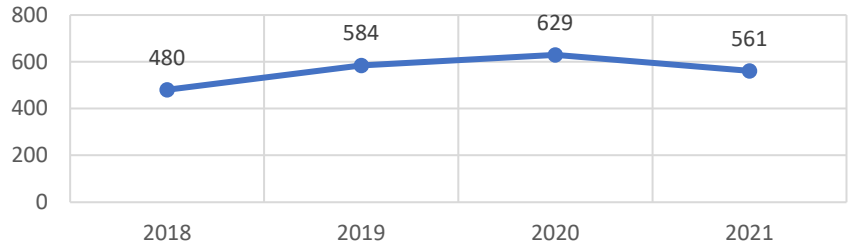
Persons Crimes					
Call Type	2018	2019	2020	Avg 18-20	2021
Assault	3	1	1	1.67	2
Missing Person (Child/Adult)	1	1	4	2.00	2
Robbery	0	2	0	0.67	3
Sex Offense	0	2	0	0.67	3
Weapon Related (menacing,	1	0	1	0.67	1
Persons Crimes Totals	**5**	**6**	**6**	**5.67**	**11**

Disorder/Other Crimes					
Call Type	2018	2019	2020	Avg 18-20	2021
Alcohol Calls	1	0	0	0.33	0
Animal Calls	8	11	7	8.67	9
Criminal Mischief	5	1	4	3.33	3
Disturbance	6	10	6	7.33	7
Drug case	2	2	2	2.00	1
Family Problems	12	5	16	11.00	10
Harassment	4	5	6	5.00	3
Juvenile Problem	11	7	5	7.67	11
Noise\Party Complaint	4	5	6	5.00	5
Suspicious Circumstances	20	25	27	24.00	27
Trespass	2	0	1	1.00	1
Disorder Crimes Totals	**75**	**71**	**80**	**75.33**	**77**

Red numbers indicate a DECREASE in crime from May2020

Yellow backgrounds indicate an INCREASE in crime from April 2018-2020 Average

May 2018-2021 Totals



May 2021 Traffic

Traffic Citations	5/20	5/21
Traffic Citations Issued	8	1
Traffic Warnings	72	16

- Citations Issued Down 7
- Warnings Down 56

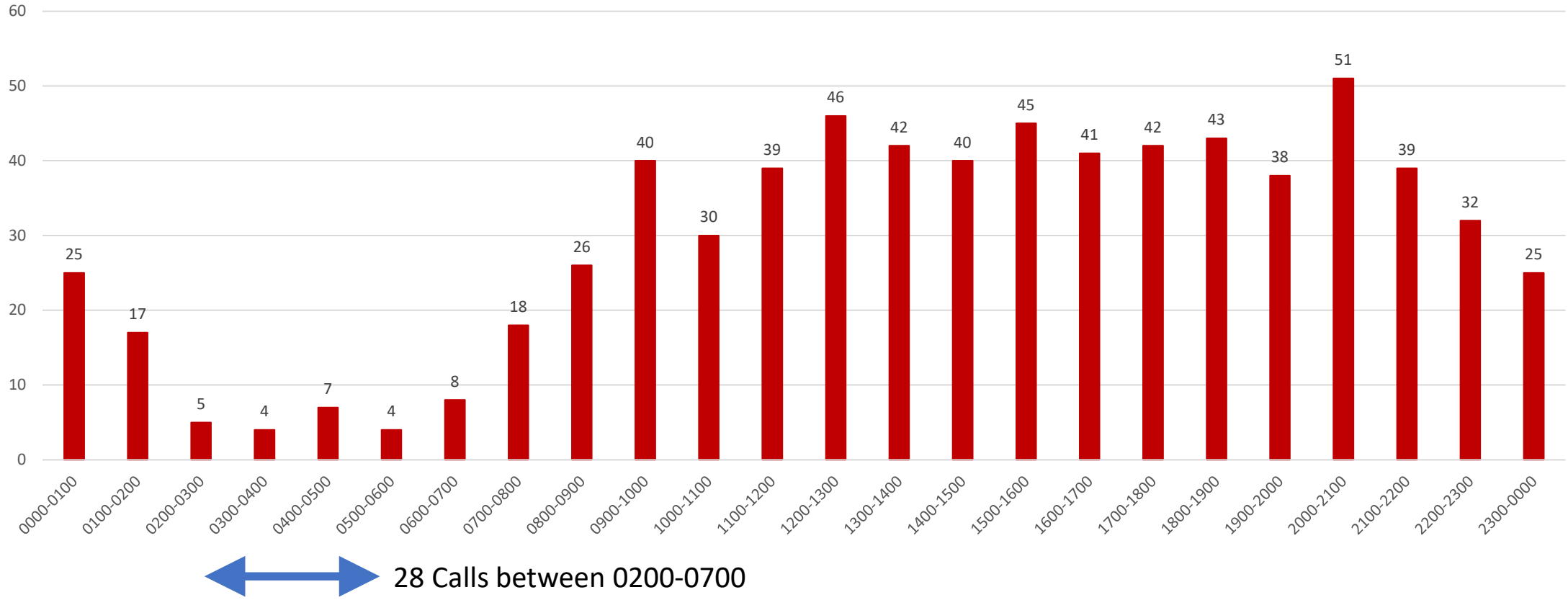
Call Type	5/20	5/21
Traffic Stop	92	21
Motor Vehicle Accident	2	5
DUI Arrest	3	2
Traffic Problem	19	9
REDDI Report	1	2

- Traffic Stops Down 71 or 77%
- MV Accidents Up 3
- DUI Arrests Down 1
- Traffic Problems Down 10
- REDDI Reports Up 1

May 2021

Call Totals by Hour

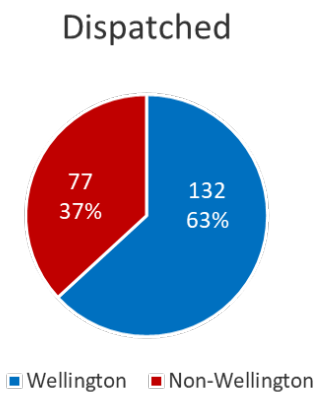
Busiest Hours
2000-2100 (51)
1200–1300 (46)

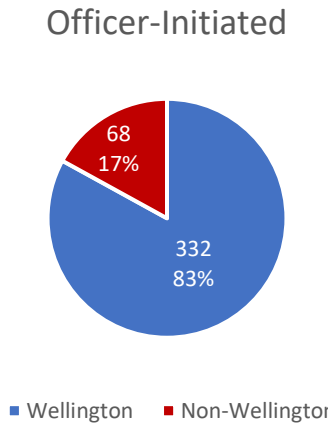


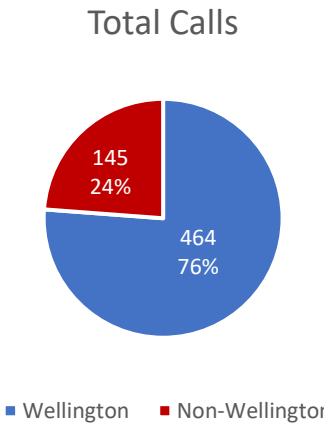
28 Calls between 0200-0700

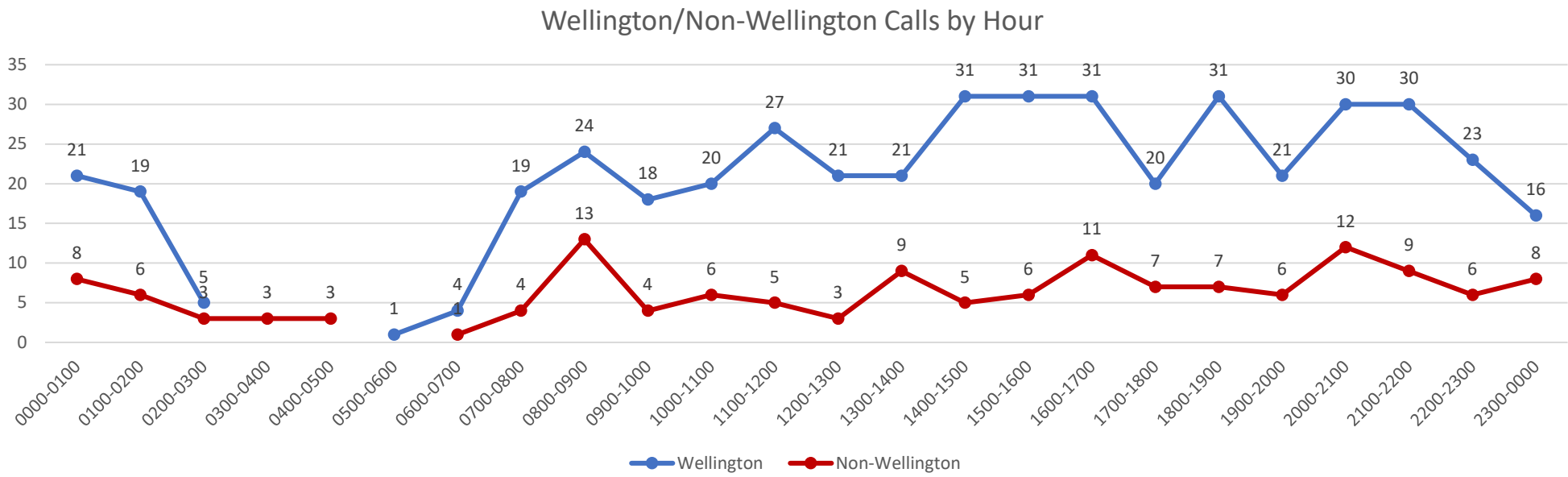
May 2021

Wellington/Non-Wellington Units









May 2021

Response Times / Time on Calls
Dispatched Calls Only
All Times in Minutes

Average Response Time (All Units)		
High		
Medium		13.09
Low		26.17
Avg. Response Time		19.63

Average Time on Calls (All Wellington Calls)			
High			
Medium			51.71
Low			35.06
Avg. Time			43.39

Check Issue Date	Payee	Description	Amount
6/1/2021	BASIC BENEFITS LLC	MAY 2021 MONTHLY COBRA FEE	$26.00
6/1/2021	PITNEY BOWES INC.	POSTAGE METER REFILL	$628.80
6/1/2021	RISE BROADBAND	WTP INTERNET	$95.63
6/1/2021	VERIZON WIRELESS	TOWN CELL PHONES	$2,705.64
6/1/2021	XCEL ENERGY	STREET LIGHTS	$12,679.58
6/4/2021	FIRST NATIONAL BANK	PARK LOAN	$22,454.99
6/4/2021	ALL COPY PRODUCTS, INC.	NEW COPIER	$6,416.97
6/4/2021	ALLIANT INSURANCE SERVICES, INC-NPB MAIN	COMMERCIAL FLOOD CFS000237601	$2,998.44
6/4/2021	ALLWATER SUPPLY LLC	SPARE PARTS KITS	$789.05
6/4/2021	BLACK'S GLASS	SAFTY GLASS	$1,392.15
6/4/2021	CINTAS	WTP FIRST AID RESTOCK	$193.75
6/4/2021	CIVICPLUS	CIVICCLERK-STANDARD	$3,780.00
6/4/2021	COLORADO ANALYTICAL LAB	TESTING WWTP	$2,560.00
6/4/2021	DANA KEPNER	CABLE/WIRE	$1,450.00
6/4/2021	DPC INDUSTRIES, INC	WTP CHEMICALS	$100.00
6/4/2021	DS CONSTRUCTORS, LLC	3749 HARRISON AVE EXPANSION	$33,162.20
6/4/2021	EVOQUA WATER TECHNOLOGIES LLC	WTP CHEMICALS	$1,300.00
6/4/2021	F & C DOOR CHECK & LOCK	NEW DOOR	$1,558.00
6/4/2021	FERGUSON WATERWORKS #1116	STEM EXTENTION	$368.10
6/4/2021	FRONT RANGE STEEL	CONTRACT FB 1/4	$38.21
6/4/2021	GOVCONNECTION, INC.	COMPUTERS FOR NEW EMPLOEES	$812.36
6/4/2021	HARCROS CHECMICALS INC	WTP CHEMICALS	$914.54
6/4/2021	INFUSION ARCHITECTS	TOWN HALL STUDY	$720.00
6/4/2021	INGRAM LIBRARY SERVICES	LIBRARY BOOKS	$2,004.08
6/4/2021	JACOBS ENGINEERING C/O BANK OF AMERICA	WATER SYSTGEM UPDATE	$3,186.75
6/4/2021	LARIMER COUNTY SOLID WASTE	TREE REMOVAL	$99.00
6/4/2021	LEWAN & ASSOCIATES, INC.	MICROSOFT LICENSE 040721-050621	$1,120.65
6/4/2021	M&M TANK COATING COMPANY	SANDBLAST/PAINT 25% DOWN	$17,500.00
6/4/2021	MARCH & OLIVE, LLC	TOWN LEGAL SERVICES	$12,081.00
6/4/2021	MOBILE MINI INC	MOBILE OFFICE RENTAL	$1,354.30
6/4/2021	MOSES, WITTEMYER, HARRISON & WOODRUFF	PROFESSIONAL SERVICES	$8,695.00
6/4/2021	MUNICIPAL TREATMENT EQUIP. INC	120V MODULATIN SERV	$2,220.47
6/4/2021	NALCO COMPANY	WTP CHEMICALS	$4,450.50

6/4/2021	NORTHERN COLORADO SPORTS OFFICIALS	JUNE 21,2021	$625.00
6/4/2021	ONE CLEAR CHOICE LLC	DOOR AND OPENER	$1,385.78
6/4/2021	PHONE COMPUNET INC.	REC PHONE REPAIR	$240.00
6/4/2021	PLATINUM CHEMICALS INC	SANATIZING WIPES	$955.00
6/4/2021	POLAR GAS INC	WTP PROPANE	$1,566.04
6/4/2021	PROTECT YOUTH SPORTS, DEPT 2110	BACKGROUND CHECKS	$65.25
6/4/2021	RICHARD BACON	REIMBURSEMENT FOR EASTER EVENT	$105.12
6/4/2021	SMART DOCUMENT MANAGEMENT, LLC	CONFIDENTAL DOCUMENT SHREDDING	$22.00
6/4/2021	TEAM PETROLEUM	CASSIDA FLUID GL 220 PAIL	$540.06
6/4/2021	TIMBERLINE ELECTRIC & CONTROL CORP.	WTP Service/Repair	$392.50
6/4/2021	TROPHY CREATIVE LLC	NAME TAGS	$187.00
6/4/2021	WELD CNTY DEPT PUBLIC HEALTH ENVIRONMENT	WATER TESTING	$552.50
6/4/2021	WEX BANK	FUEL PUCHASES FOR TOWN MAY	$3,688.64
6/10/2021	ALLSTATE	MAY PREMIUM	$744.15
6/10/2021	CENTURYLINK	INTERNET	$1,592.76
6/10/2021	GALLEGOS SANITATION	TOILET SERVICE	$1,362.00
6/10/2021	GUARDIAN	JUNE INSURANCE PREMIUM	$5,564.33
6/10/2021	HEALTHIEST YOU C/O TELADOC INC	JUNE INSURANCE PREMIUM	$560.00
6/10/2021	PINNACOL ASSURANCE	2021 6TH INSTALLMENT	$6,133.00
6/10/2021	POUDRE VALLEY REA	UTILITIES	$3,824.27
6/10/2021	RISE BROADBAND	INTERNET	$125.63
6/10/2021	TDS	INTERNET	$172.95
6/10/2021	WEX BANK	FUEL PUCHASES FOR TOWN JUNE	$4,843.08
6/10/2021	XCEL ENERGY	UTILITIES	$11,918.20
6/10/2021	FIRST NATIONAL BANK OMAHA	PCARD PURCHASES 5/14/21 to 5/31/21	$9,191.93
6/10/2021	XCEL ENERGY	UTILITIES	$903.15
6/10/2021	XCEL ENERGY	UTILITIES	$444.97
6/15/2021	Jive Communications Inc	TOWN PHONE	$896.90
6/15/2021	TDS	INTERNET	$44.95
6/17/2021	ALL COPY PRODUCTS, INC.	COPIER USAGE	$509.73
6/17/2021	AMAZON	OFFICE SUPPLIES	$341.30
6/17/2021	AMBIENTE H2O INC	RECIRCULATION PUMP WWTP	$6,059.20
6/17/2021	BIG STATE INDUSTRIAL SUPPLY, INC	TOOLS	$655.00
6/17/2021	BOKF, NATIONAL ASSOCIATION	LOAN	$142,707.50

6/17/2021	BUFFALO CREEK SUBDIVISION AT WELLINGTON	JUNE HOA	$812.12
6/17/2021	COLORADO ANALYTICAL LAB	TESTING WWTP	$622.00
6/17/2021	COLORADOAN	PUBLIC HEARING 7/12	$27.09
6/17/2021	DAVE VIEIRA	FIELD RENTAL	$250.00
6/17/2021	DPC INDUSTRIES, INC	WWTP CHEMICALS	$200.00
6/17/2021	DS CONSTRUCTORS, LLC	3749 HARRISON AVE EXPANSION	$55,843.75
6/17/2021	EMPLOYERS COUNCIL SERVICES, INC.	BACKGROUND CHECKS	$192.00
6/17/2021	EVOQUA WATER TECHNOLOGIES LLC	WTP CHEMICALS	$10,113.57
6/17/2021	FEDEX FREIGHT	FREIGHT	$122.33
6/17/2021	FERGUSON WATERWORKS #1116	HOSE	$507.88
6/17/2021	FIRST ADVANTAGE LNS OCC. HEALTH SOLUTION	DRUG TEST	$63.83
6/17/2021	GALLEGOS SANITATION	4TH PORTA POTTIES/TRASH	$1,980.00
6/17/2021	GEN MASTER INC	INSPECTION	$470.00
6/17/2021	GOLF N FUN CARS	2 GOLF CAR RENTALS FOR 7/4/21	$300.00
6/17/2021	INTERMOUNTAIN CONTROLS NICHOLS-GIVEN	SUPPLIES	$4,508.00
6/17/2021	JACOBS ENGINEERING C/O BANK OF AMERICA	WATER SYSTEM UPDATE	$277,668.63
6/17/2021	KELLAR ENGINEERING LLC	TRAFFIC IMPACT STUDY	$135.00
6/17/2021	LEWAN & ASSOCIATES, INC.	MONTHLY CHARGE FOR MICROSOFT LICENSE	$5,010.65
6/17/2021	LOGAN SIMPSON DESIGN INC	COMP PLAN & LAND USE UPDATE 03/13/21-05/07/21	$17,023.50
6/17/2021	MI SPORTS	SHIRTS	$346.40
6/17/2021	O.J. WATSON COMPANY, INC.	TOOL	$1,087.06
6/17/2021	OCCUPATIONAL HEALTH CENTERS	RANDOM DRUG TESTING	$64.00
6/17/2021	POLAR GAS INC	PROPANE	$574.00
6/17/2021	ROCKY MOUNTAIN BOTTLED WATER, LLC	WATER	$226.68
6/17/2021	TREE TOP INC.	TREE MAINTENANCE	$1,238.00
6/17/2021	TROPHY CREATIVE LLC	2021 PW UNIFOR ITEMS EMBROIDERY	$100.89
6/17/2021	UNITED MAILING	UTILITY BILLING	$4,540.55
6/17/2021	WELD CNTY DEPT PUBLIC HEALTH ENVIRONMENT	WATER TESTING	$206.00
6/17/2021	Utility Management	ALBERT/DOROTHY HOOKER	$130.68
6/17/2021	Utility Management	ALLYSON/JACKSON LITTLE	$155.60
6/17/2021	Utility Management	ASPEN LEAF PROPERTIES LLC	$1.35
6/17/2021	Utility Management	BORER, WILLIAM-OWNER	$3.01
6/17/2021	Utility Management	BRYAN/JENNIFER QUICK	$177.11
6/17/2021	Utility Management	CHLOE MAXWELL	$57.43

6/17/2021	Utility Management	CHRIS MEINECKE	$33.58
6/17/2021	Utility Management	CHRIS PHILLIPS	$44.41
6/17/2021	Utility Management	DALE STEINBAUGH	$125.66
6/17/2021	Utility Management	DENISE SEALE	$178.00
6/17/2021	Utility Management	DIANA NALL	$124.79
6/17/2021	Utility Management	GEOFFREY/ KIMBERLY GUNDELFINGER	$144.39
6/17/2021	Utility Management	HARTFORD CONSTRUCTION LLC	$100.99
6/17/2021	Utility Management	HARTFORD CONSTRUCTION LLC	$97.96
6/17/2021	Utility Management	HARTFORD CONSTRUCTION LLC	$123.34
6/17/2021	Utility Management	HARTFORD CONSTRUCTION LLC	$124.09
6/17/2021	Utility Management	HARTFORD CONSTRUCTION LLC	$131.69
6/17/2021	Utility Management	HARTFORD CONSTRUCTION LLC	$127.91
6/17/2021	Utility Management	JANICE MCMAHON	$126.25
6/17/2021	Utility Management	JESSE WELCH/LISA WEDLOCK	$32.69
6/17/2021	Utility Management	JOHNNY LEACH JR	$153.46
6/17/2021	Utility Management	JUANELL COLE	$198.77
6/17/2021	Utility Management	JUSTIN STEINHART	$146.35
6/17/2021	Utility Management	KATIE WOLF	$132.73
6/17/2021	Utility Management	KEITH WHETSEL	$149.57
6/17/2021	Utility Management	KELLY BRENNER	$29.57
6/17/2021	Utility Management	KURTZ, EDWARD, CRAVER, SALLY	$130.29
6/17/2021	Utility Management	LARRY HOWARD/KRISTIE DAUBERT	$140.17
6/17/2021	Utility Management	LINAMARIA BARON	$26.12
6/17/2021	Utility Management	LINDSAY KILLOUGH	$377.58
6/17/2021	Utility Management	LINDSEY CASCARINA	$25.14
6/17/2021	Utility Management	LORI HAINKEL	$26.69
6/17/2021	Utility Management	NATHAN SAVIG	$129.53
6/17/2021	Utility Management	NICOLE BROWN	$250.15
6/17/2021	Utility Management	PATRICIA FOX	$138.51
6/17/2021	Utility Management	RICHARD MAXWELL	$108.38
6/17/2021	Utility Management	SAGE HOMES LLC	$97.96
6/17/2021	Utility Management	SAGE HOMES LLC	$228.76
6/17/2021	Utility Management	SAGE HOMES LLC	$127.10
6/17/2021	Utility Management	SAMANTHA BREAKFIELD	$139.93

6/17/2021	Utility Management	STEPHANIE GALLISON	$237.56
6/17/2021	Utility Management	STEVEN/JANINE GONZALEZ	$203.26
6/17/2021	Utility Management	WARREN/MARGARET SCHAEFFER	$26.39
6/23/2021	BLACK HILLS ENERGY	TOWN UTILITIES	$858.37
6/23/2021	TDS	GREENHOUSE INTERNET	$149.95
6/23/2021	XCEL ENERGY	TOWN UTILITIES	$2,008.49
6/30/2021	FIRST NATIONAL BANK OMAHA	PCARD PURCHASES 6/01/21 to 06/13/21	$19,210.02
6/30/2021	BASIC BENEFITS LLC	INSURANCE PREMIUM	$26.00
6/30/2021	GUARDIAN	TOWN LIFE INSURANCE	$6,464.95
6/30/2021	HealthEZ	HEALTH PREMUIMS	$42,632.99
6/30/2021	VERIZON WIRELESS	TOWN CELL PHONES	$3,039.21