



BOARD OF TRUSTEES
May 9, 2023
6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

Regular Meeting Agenda

Individuals wishing to make public comments must attend the meeting in person or may submit comments by sending an email to muhse@wellingtoncolorado.gov. The email must be received by 4:00 p.m. on the day of the meeting. 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 information below is for online viewing and listening only.

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/84871162393?pwd=UkVaaDE4RmhJaERnallEK1hvNHJ5Zz09>

Passcode: 726078

Or One tap mobile :

US: +17207072699,,84871162393# or +17193594580,,84871162393#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 720 707 2699 or +1 719 359 4580 or +1 669 444 9171 or +1 253 205 0468 or +1 253 215 8782 or
+1 346 248 7799 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931
3860 or +1 689 278 1000 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1
360 209 5623

Webinar ID: 848 7116 2393

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. Proclamation: Peace Officer Week (May 14 - 20)
 - Presentation: Mayor Chaussee

b. Proclamation: Mental Health Awareness Month (May)

- Presentation: Mayor Chaussee

c. Proclamation: Childcare Provider Day (May 12)

- Presentation: Mayor Chaussee

d. Proclamation: Kids to Parks Day (May 20)

- Presentation: Mayor Chaussee

C. CONSENT AGENDA

1. April 25, 2023 Board of Trustees Regular Meeting Minutes

- Presentation: Ethan Muhs, Town Clerk

2. 2023 Old Town Street Repair Asphalt and Concrete Contracts

- Presentation: Nathan Ewert

D. ACTION ITEMS

1. Ordinance No. 05-2023: An Ordinance Repealing Ordinance No. 6-2021 for Municipal Utility Fees

- Presentation: Meagan Smith, Deputy Director of Public Works

2. Resolution No. 17-2023: A Resolution Establishing Raw Water Dedication Requirements for Water Taps Serving Residential Units and Establishing Payments for Cash-in-lieu of Raw Water Dedication Requirements

- Presentation: Meagan Smith, Deputy Director of Public Works

3. Resolution No. 18-2023: A Resolution of the Town of Wellington, Colorado Amending the Adopted Fee Schedule for 2023

- Presentation: Meagan Smith, Deputy Director of Public Works

E. REPORTS

1. Town Attorney
2. Town Administrator
3. Staff Communications
 - a. Payment of Bills April 2023
 - Presentation: Charity Campfield, Finance Director
4. Board Reports

F. 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.

Board of Trustees Meeting

Date: May 9, 2023
Subject: Proclamation: Peace Officer Week (May 14 - 20)

- **Presentation: Mayor Chaussee**

BACKGROUND / DISCUSSION

A proclamation declaring May 14 - 20, 2023 as Peace Officer Week.

STAFF RECOMMENDATION

Proclaim May 14 - 20, 2023 as Peace Officer Week.

ATTACHMENTS

1. Peace Officer Week



PROCLAMATION

WHEREAS, *Deputies of the Larimer County Sheriff's Department stand watch over our citizens, selflessly risking their lives to protect individuals, families, neighborhoods, and property against crime, and;*

WHEREAS, *it is important that all citizens recognize the duties, responsibilities, hazards, and sacrifices of local law enforcement agencies, and;*

WHEREAS, *Monday, May 15th is observed Nationally as Peace Officers Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and;*

WHEREAS, *the Deputies of the Larimer County Sheriffs Office, by their faithful and loyal devotion to their responsibilities, have rendered dedicated service to the community.*

NOW, THEREFORE, *I Calar Chaussee, Mayor of the Town of Wellington, Colorado, do hereby proclaim the week of May 14 - 20, 2023 as:*

Peace Officer Week

in the Town of Wellington and hereby publicly salute the service of law enforcement officers in our community.

IN WITNESS WHEREOF, *I have hereunto set my hand and caused the seal of the Town of Wellington to be affixed this 9th day of May, 2023.*

Calar Chaussee, Mayor

Board of Trustees Meeting

Date: May 9, 2023
Subject: Proclamation: Mental Health Awareness Month (May)

- Presentation: Mayor Chaussee

BACKGROUND / DISCUSSION

May is the national month for Mental Health Awareness.

STAFF RECOMMENDATION

Proclaim the month of May as Mental Health Awareness Month.

ATTACHMENTS

1. Mental Health Awareness Month (MAY)



PROCLAMATION

WHEREAS, prioritization of mental health is essential to the well-being of our Town as life is filled with many difficulties and stressors, and;

WHEREAS, prevention and awareness of mental health issues are an effective means of reducing the burden of mental health conditions in our residents, and;

WHEREAS, each business, school, government agency, healthcare provider and resident in our Town shares the responsibility to acknowledge mental health issues and support prevention efforts while encouraging healthy living.

NOW, THEREFORE, I Calar Chaussee, Mayor of the Town of Wellington, Colorado, do hereby proclaim the month of May as:

Mental Health Awareness Month

As Mayor, I call upon the citizens, public and private institutions, businesses, and schools in our Town to recommit to advancing understanding of mental health issues in our community, and I encourage our residents to support the need for appropriate access to services for those affected with mental health issues.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Town of Wellington to be affixed this 9th day of May, 2023.

Calar Chaussee, Mayor

Board of Trustees Meeting

Date: May 9, 2023
Subject: Proclamation: Childcare Provider Day (May 12)

- Presentation: Mayor Chaussee

BACKGROUND / DISCUSSION

May 12 is Childcare Provider Day.

STAFF RECOMMENDATION

Proclaim May 12, 2023 as Childcare Provider Day.

ATTACHMENTS

1. Childcare Provider Day



PROCLAMATION

WHEREAS, the Saturday before Mother's Day is celebrated Nationally as Provider Appreciation Day, and;

WHEREAS, it is important that all citizens recognize the time, energy, dedication, and commitment necessary to raise healthy children, and;

WHEREAS, less than one-third of children in America have a full-time stay-at-home care provider and many parents choose to seek external care providers in the community and;

WHEREAS, the parents of our community place their trust in childcare providers that fill this vital role of sharing child-rearing responsibilities with parents.

NOW, THEREFORE, I Calar Chaussee, Mayor of the Town of Wellington, Colorado, do hereby proclaim the week of May 12, 2023 as:

Childcare Provider Day

in the Town of Wellington and encourage all citizens to thank childcare providers in our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Town of Wellington to be affixed this 9th day of May, 2023.

Calar Chaussee, Mayor

Board of Trustees Meeting

Date: May 9, 2023
Subject: Proclamation: Kids to Parks Day (May 20)

- **Presentation: Mayor Chaussee**

BACKGROUND / DISCUSSION

May 20, 2023 is Kids to Parks Day.

STAFF RECOMMENDATION

Proclaim May 20, 2023 as Kids to Parks Day.

ATTACHMENTS

1. Kids to Parks Day



PROCLAMATION

WHEREAS, May 20, 2023 is the thirteenth Kids to Parks Day organized and implemented by the National Park Trust held annually on the third Saturday of May, and;

WHEREAS, Kids to Parks Day empowers kids and encourages families to get outdoors and visit local parks, public lands, and waters, and;

WHEREAS, Kids to Parks Day will broaden children's appreciation for nature and the outdoors, and;

WHEREAS, Kids to Parks Day will recognize the importance of recreating responsibly while enjoying the benefits of the outdoors, and;

WHEREAS, Kids to Parks Day will foster future outdoor enthusiasts and help with developing the next generation of park stewards by engaging kids with memorable outdoor experiences.

NOW, THEREFORE, I Calar Chaussee, Mayor of the Town of Wellington, Colorado, do hereby proclaim May 20, 2023 as:

Kids to Parks Day

in the Town of Wellington and urge all fellow citizens celebrate our community's youth and nature by going outdoors.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Town of Wellington to be affixed this 9th day of May, 2023.

Calar Chaussee, Mayor

Board of Trustees Meeting

Date: May 9, 2023

Subject: April 25, 2023 Board of Trustees Regular Meeting Minutes

- **Presentation: Ethan Muhs, Town Clerk**

BACKGROUND / DISCUSSION

Minutes for the April 25, 2023 Board of Trustees Regular Meeting

STAFF RECOMMENDATION

Staff has identified the following options for Trustee consideration:

1. Approve April 25, 2023 Minutes
2. Approve April 25, 2023 Minutes with amendments as the Board of Trustees deems appropriate
3. Postpone consideration of April 25, 2023 Minutes to a specific date and time and provide staff direction regarding additional information or amendments
4. Vote to deny April 25, 2023 Minutes

ATTACHMENTS

1. 04.25.23 Board of Trustees Regular Meeting Minutes



BOARD OF TRUSTEES

April 25, 2023

6:30 PM

Leeper Center, 3800 Wilson Avenue, Wellington, CO

MINUTES

A. CALL TO ORDER

Mayor Chaussee called the meeting to order at 6:30 p.m.

1. Pledge of Allegiance

Mayor Chaussee asked all to rise for the pledge of allegiance.

2. Roll Call

Mayor Chaussee

Mayor Pro Tem Macdonald – virtual attendance noted.

Trustee Gaiter

Trustee Dailey

Trustee Mason

Trustee Tietz

Trustee Wiegand

3. Amendments to Agenda

Mayor Chaussee asked if there were any amendments to the agenda; there were none.

4. Conflict of Interest

Mayor Chaussee asked if there were any conflicts of interest to agenda items; there were none.

B. COMMUNITY PARTICIPATION

1. Public Comment

Mayor Chaussee called for public comment. Dawn Peacock, Troy Hamman, and Karen Eifert provided public comment.

2. Proclamation

a. Proclamation: Municipal Clerks Week (April 30 - May 6)

Mayor Chaussee proclaimed the week of April 30 – May 6, 2023 to be Municipal Clerks Week. Ethan Muhs, the Town Clerk, received this proclamation on behalf of the Town.

b. Proclamation: Administrative Professionals Day (April 26)

Mayor Chaussee proclaimed April 26, 2023 to be Administrative Professionals Day. Patti Garcia, the Town Administrator, received this proclamation on behalf of the Town.

c. Proclamation: Library Week (April 23 - 29)

Mayor Chaussee proclaimed the week of 23 – 29 April, 2023 to be Library Week. Mary Kerin, the longest standing librarian in the Town's library, received this proclamation on behalf of the Town.

C. PRESENTATION

1. Strategic Plan Update

Mayor Chaussee invited Hallie Sheldon, the Senior Management Analyst, to present an update on the Town's Strategic Plan. The presentation provided summary updates on numerous topics that align with the Town's adopted plan and a discussion on providing future transparency on staff efforts to the Town. Mayor Chaussee thanked Ms. Sheldon for the presentation.

D. CONSENT AGENDA

Mayor Chaussee directed Mr. Muhs, the Town Clerk, to establish a three-minute timer for Trustee comments in subsequent agenda items before calling for a motion to approve the Consent Agenda as follows:

1. Board of Trustee April 11, 2023 Regular Meeting Minutes

Trustee Gaiter moved to approve the Consent Agenda. Trustee Mason seconded the motion.

Yeas: Gaiter, Mason, Dailey, Tietz, Wiegand, Macdonald, Chaussee

Nays: None

E. ACTION ITEMS

1. Resolution No. 16-2023: A Resolution Establishing Hours of Outdoor Watering

Mayor Chaussee invited Ms. Hallie Sheldon to present this item to the Board and discussed the history of watering restriction discussions with the Board. The Trustees discussed related topics, including enforcement and scheduling. Mayor Chaussee invited public comment on this item, and Christine Gaiter provided public comment. Mayor Chaussee called for a motion to approve this item, then asked for final comments and direction from the Board. The Board had no further comments or direction.

Trustee Mason motioned to approve Resolution No. 16-2023: A Resolution Establishing Hours of Outdoor Watering. Mayor Pro Tem Macdonald seconded this motion.

Yeas: Mason, Macdonald, Dailey, Tietz, Wiegand, Chaussee

Nays: Gaiter

2. Ordinance No. 04-2023: An Ordinance Amending and Recodifying Chapter 13 of the Municipal Code Concerning Municipal Utilities

Mayor Chaussee invited Mrs. Meagan Smith, the Deputy Director of Public Works, and Ms. Charity Campfield, the Finance Director, to present this item. The presentation included a discussion of historical discussion pertinent to this ordinance as well as updates to utility billing. The Trustees discussed related topics, including specific changes to utility billing notification, associated processes for meter reading, and other topics. Mayor Chaussee invited public comment on this item, and Karen Eifert provided public comment. Mayor Chaussee called for a motion to approve this item, then asked for final comments and direction from the Board. The Board had no further comments or direction.

Trustee Mason motioned to approve Ordinance No. 04-2023: An Ordinance Amending and Recodifying Chapter 13 of the Municipal Code Concerning Municipal Utilities. Trustee Gaiter seconded the motion.

Yeas: Mason, Gaiter, Dailey, Tietz, Wiegand, Macdonald, Chaussee

Nays: None

F. REPORTS

1. Town Attorney
Mayor Chaussee invited a report from the Town Attorney. Mr. Dan Sapienza presented on an imminent plan to incorporate updates to the Municipal Code, highlighting a plan to review Chapter 10 in Quarter 3 of 2023.
2. Town Administrator
Mayor Chaussee invited a report from the Town Administrator. Mrs. Patti Garcia discussed the many recent efforts of Town staff and highlighted on an imminent conference that she and the administration team will attend.
3. Staff Communications
Mayor Chaussee invited other staff communications; there were none.
4. Board Reports
Mayor Chaussee invited Board reports. Trustee Tietz presented on the imminent Volunteer Appreciation Dinner and thanked the Town Clerk staff for supporting preparation for the event. Trustee Gaiter requested clarification on procedures implemented on the Board by Mayor Chaussee for timing Trustee questions and comments. Trustee Dailey reported on the upcoming Arbor Day celebrations in Town and thanked the Town's Chamber of Commerce for publishing an annual program. Mayor Pro Tem Macdonald thanked Mike Flores for his work on projects in Public Works. Mayor Chaussee thanked the Town Staff for their efforts.

G. **EXECUTIVE SESSION**

Mayor Chaussee called for consideration of entry into an Executive Session as follows:

1. Executive Session: For the purpose of considering the purchase, acquisition, lease, or transfer of real property pursuant to Section 24-6-402(4)(a), regarding potential property acquisitions within the Town of Wellington for municipal purposes. As required by C.R.S. 24-6-402(2)(d.5)(II)(A) and (II) (E) the executive session proceedings will be electronically recorded and the record will be preserved for 90 days through July 24, 2023.

He then called for a motion to enter an Executive Session.

Trustee Gaiter moved to enter the Executive Session. Trustee Mason seconded the motion.

Yeas: Gaiter, Mason, Dailey, Tietz, Wiegand, Macdonald, Chaussee

Nays: None

The Board of Trustees therefore entered the Executive Session at 7:39 p.m.

At the conclusion of Executive Session deliberations, Mayor Chaussee called for a motion to conclude the Executive Session.

Trustee Gaiter moved to exit the Executive Session. Trustee Tietz seconded the motion.

Yeas: Gaiter, Dailey, Mason, Tietz, Wiegand, Macdonald, Chaussee

Nays: None

The Board of Trustees therefore exited the Executive Session at 8:15 p.m.

H. ADJOURN

Mayor Chaussee called for a motion to adjourn the meeting.

Trustee Tietz motioned to adjourn the meeting. Trustee Wiegand seconded the motion.

Yeas: Gaiter, Dailey, Mason, Tietz, Wiegand, Macdonald, Chaussee

Nays: None

The meeting therefore adjourned at 8:15 p.m.

Ethan Muhs

Town Clerk

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.

Board of Trustees Meeting

Date: May 9, 2023
Subject: 2023 Old Town Street Repair Asphalt and Concrete Contracts

- **Presentation: Nathan Ewert**

BACKGROUND / DISCUSSION

Old Town Street Repair is a Capital Improvement Project in the Town's 2023 budget. The 2023 project is the last annual project in a multi-year program to repair street systems throughout the Old Town area. The focus of the work is to rehabilitate selected streets through asphalt mill and overlay, curb and gutter repair/replacement, and sidewalk replacement. The most recent completed project in this program occurred in the summer of 2021.

Funding for the project is from a combination of 2023 G/Ls:

- Old Town Street Repairs (211-80-4006) – \$505,000 (Street Fund)
- Old Town Streets Rehabilitation (211-80-4038) – \$66,300 (Drainage Fund)
- Storm Drain Pan Replacement (211-80-4021) - \$37,079 (Drainage Fund)

Five locations within the Old Town area were selected for repair under the base bid, with one alternate location included should bids come in lower than expected. Work is planned for the following locations:

Base Bid:

- Kennedy Ave (1st to 3rd Street): work includes mill and overlay, sidewalk replacement, ADA ramp upgrades.
- Harrison Ave (4th to 2nd Street): work includes mill and overlay, tree removal, sidewalk replacement, ADA ramp upgrades, cross pan replacement.
- Man O' War: work includes replacement of a precast stormdrain inlet lid located along the multi-use path, and asphalt patching.
- 3rd Street and Wine Cup: work includes replacement of a cross pan, and asphalt patching.
- Jefferson Ave: mill and overlay.

Alternate Bid:

- 5th Street (Harrison to Garfield Ave): work includes mill and overlay, sidewalk replacement, ADA Ramp upgrades, Fire Hydrant installation.

Bids were opened in April and came in under budget, allowing for the inclusion of the Add Alternate work. The bid tabs were compiled for both the Concrete and Asphalt contracts and are included as an

attachment.

Town staff thoroughly reviewed the bids and contacted the references provided for each low bidder as well as asked for additional references and a double check of the unit pricing included with the bids. Town staff is recommending the approval of the following contracts:

- Connell Resources Inc. for the 2023 Old Town Streets Asphalt repair project in the amount of \$220,686.60.
- L4 Construction LLC for the 2023 Old Town Streets Concrete repair project in the amount of \$143,775.68.

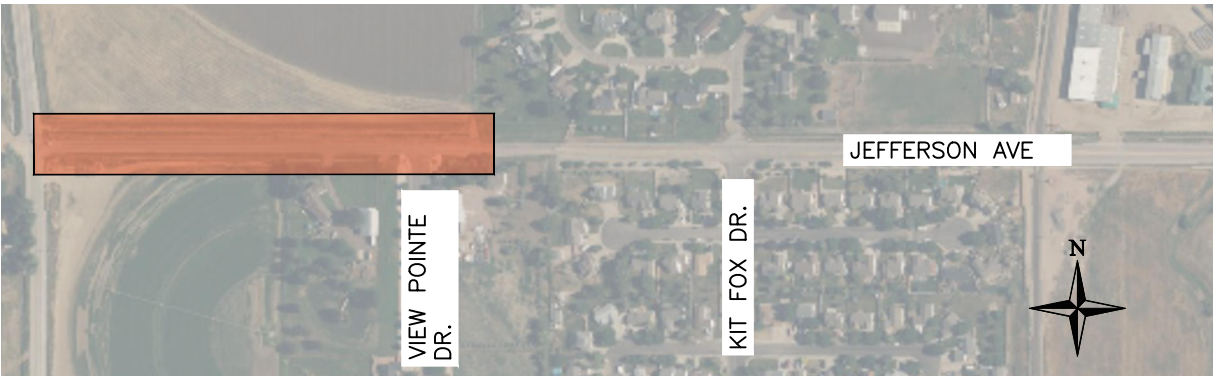
STAFF RECOMMENDATION

Motion to approve the consent agenda as presented. If the item is removed from the consent agenda, the following motions are provided for Board of Trustee review:

- Move to approve the execution of the contract for Connell Resources, Inc., for the amount of \$220,686.60, and the contract for L4 Construction LLC for \$143,775.68.
- Move to postpone consideration of the execution of the contract for Connell Resources, Inc., for the amount of \$220,686.60, and the contract for L4 Construction LLC for \$143,775.68.
- Move to deny the execution of the contract for Connell Resources, Inc., for the amount of \$220,686.60, and the contract for L4 Construction LLC for \$143,775.68.

ATTACHMENTS

1. OTS Overview 2023
2. 2023 OTS Bid Tabs-Asphalt
3. 2023 OTS Bid Tabs Concrete
4. 2023 Asphalt Contract Documents
5. 2023 Concrete Contract Documents



SHEET 1 1 OF 1	FIGURE 1 2023 OLD TOWN STREETS WORK LOCATIONS		 TOWN OF WELLINGTON	DRAWN BY: NRE									
	2023 OLD TOWN STREETS TOWN OF WELLINGTON			CHECKED BY: NRE									
				DATE: 02/9/2023									
				SCALE: 1" : 500'									
	REV: A			FILE: OTS-OVERVIEW-2023		REV.	DATE	DESCRIPTION			BY	CHK'D	
											REVISIONS		

Old Town Streets Bid Tabulation	Contract - Asphalt - Base Bid			CONNELL		MARTIN MARIETTA		SIMONS		ALL PRO PAVEMENT		ASPHALT SPECIALTIES	
ITEM NO.	DESCRIPTION	UNITS	BASE BID QUANTITIES	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	MOBILIZATION (6%)	LS	1	\$7,700.00	\$7,700.00	\$3,900.00	\$3,900.00	\$12,492.26	\$12,492.26	\$10,000.00	\$10,000.00	\$12,000.00	\$12,000.00
2	PLANING AND SURFACE PREPARATION: DEPTH < 2" - MIN DRUM WIDTH 70"	SY	8370	\$3.60	\$30,132.00	\$2.75	\$23,017.50	\$2.11	\$17,660.70	\$3.50	\$29,295.00	\$3.50	\$29,295.00
3	TAPER PLANING ADJACENT TO GUTTER	LF	2829	\$2.20	\$6,223.80	\$4.00	\$11,316.00	\$2.19	\$6,195.51	\$5.00	\$14,145.00	\$2.50	\$7,072.50
4	TAPER PLANING ADJACENT EDGE OF ASPHALT	LF	2610	\$2.50	\$6,525.00	\$4.00	\$10,440.00	\$2.16	\$5,637.60	\$4.00	\$10,440.00	\$2.50	\$6,525.00
5	SET VALVE BOX - W/ CONCRETE COLLAR TOW DETAIL 2-11	EA	9	\$425.00	\$3,825.00	\$600.00	\$5,400.00	\$944.77	\$8,502.93	\$500.00	\$4,500.00	\$499.80	\$4,498.20
6	SET MANHOLE RING W/ CONCRETE COLLAR, TOW DETAIL 3-4	EA	5	\$550.00	\$2,750.00	\$725.00	\$3,625.00	\$1,060.30	\$5,301.50	\$650.00	\$3,250.00	\$921.70	\$4,608.50
7	HMA - GRADING S, (75) 64-22 BINDER	TON	930	\$98.00	\$91,140.00	\$99.00	\$92,070.00	\$104.45	\$97,138.50	\$118.00	\$109,740.00	\$117.40	\$109,182.00
8	HMA - GRADING S 75 HAND PATCHING - REMOVE & REPLACE	TON	76	\$143.00	\$10,868.00	\$150.00	\$11,400.00	\$229.49	\$17,441.24	\$189.00	\$14,364.00	\$250.00	\$19,000.00
9	HMA PAVER PATCHING - REMOVE & REPLACE	TON	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10	HMA GRADING SX, (75) 64-22 LEVELING	TON	229	\$103.00	\$23,587.00	\$110.00	\$25,190.00	\$130.47	\$29,877.63	\$120.00	\$27,480.00	\$155.75	\$35,666.75
11	TRAFFIC CONTROL	LS	1	\$6,500.00	\$6,500.00	\$9,500.00	\$9,500.00	\$26,560.00	\$26,560.00	\$15,000.00	\$15,000.00	\$29,500.00	\$29,500.00
12	INSTALL FIRE HYDRANT ASSEMBLY	EA	0	\$5,600.00	\$0.00	\$2,800.00	\$0.00	\$5,021.76	\$0.00	\$6,500.00	\$0.00	\$15,000.00	\$0.00
	SUB TOTAL				\$189,250.80		\$195,858.50		\$226,807.87		\$238,214.00		\$257,347.95
ITEM NO.	DESCRIPTION	UNITS	ADD ALT QUANTITIES										
1	MOBILIZATION (6%)	LS	1	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,000.00	\$3,000.00
2	PLANING AND SURFACE PREPARATION: DEPTH < 2" - MIN DRUM WIDTH 70"	SY	1060	\$3.60	\$3,816.00	\$2.75	\$2,915.00	\$2.74	\$2,904.40	\$3.50	\$3,710.00	\$3.50	\$3,710.00
3	TAPER PLANING ADJACENT TO GUTTER	LF	654	\$2.20	\$1,438.80	\$4.00	\$2,616.00	\$1.90	\$1,242.60	\$5.00	\$3,270.00	\$2.50	\$1,635.00
4	TAPER PLANING ADJACENT EDGE OF ASPHALT	LF	68	\$2.50	\$170.00	\$4.00	\$272.00	\$4.93	\$335.24	\$4.00	\$272.00	\$2.50	\$170.00
5	SET VALVE BOX - W/ CONCRETE COLLAR TOW DETAIL 2-11	EA	3	\$425.00	\$1,275.00	\$600.00	\$1,800.00	\$944.77	\$2,834.31	\$500.00	\$1,500.00	\$499.80	\$1,499.40
6	SET MANHOLE RING W/ CONCRETE COLLAR, TOW DETAIL 3-4	EA	2	\$550.00	\$1,100.00	\$725.00	\$1,450.00	\$990.00	\$1,980.00	\$650.00	\$1,300.00	\$921.70	\$1,843.40
7	HMA - GRADING S, (75) 64-22 BINDER	TON	120	\$98.00	\$11,760.00	\$99.00	\$11,880.00	\$114.17	\$13,700.40	\$118.00	\$14,160.00	\$117.40	\$14,088.00
8	HMA - GRADING S 75 HAND PATCHING - REMOVE & REPLACE	TON	23	\$143.00	\$3,289.00	\$150.00	\$3,450.00	\$275.73	\$6,341.79	\$189.00	\$4,347.00	\$250.00	\$5,750.00
9	HMA PAVER PATCHING - REMOVE & REPLACE	TON	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10	HMA GRADING SX, (75) 64-22 LEVELING	TON	29	\$103.00	\$2,987.00	\$110.00	\$3,190.00	\$141.48	\$4,102.92	\$120.00	\$3,480.00	\$155.75	\$4,516.75
11	TRAFFIC CONTROL	LS	1	\$0.00	\$0.00	\$9,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,800.00	\$4,800.00
12	INSTALL FIRE HYDRANT ASSEMBLY	EA	1	\$5,600.00	\$5,600.00	\$2,800.00	\$2,800.00	\$5,021.76	\$5,021.76	\$6,500.00	\$6,500.00	\$15,000.00	\$15,000.00
	SUB TOTAL				\$31,435.80		\$30,373.00		\$38,463.42		\$38,539.00		\$56,012.55
	TOTAL				\$220,686.60		\$226,231.50		\$265,271.29		\$276,753.00		\$313,360.50

Notes: Red text indicates math adjustment.
1. Red Text indicates math adjustment
2. Install Fire Hydrant Assembly bid item was intended to only be part of the add alternate bid. The math was adjusted accordingly for all bids as needed.

				L4 CONSTRUCTION LLC		NORTH STARR		LIGHTFIELD		BURNT MOUNTAIN		GREATLAND CONCRETE		CASTLE ROCK	
BID ITEM NO.	DESCRIPTION	UNITS	Base Bid Quantities	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	MOBILIZATION (6%)	LS	1	\$7,000.00	\$7,000.00	\$10,000.00	\$10,000.00	\$4,500.00	\$4,500.00	\$8,170.00	\$8,170.00	\$7,000.00	\$7,000.00	\$9,369.60	\$9,369.60
2	AGGREGATE BASE COURSE	TON	130	\$57.56	\$7,482.80	\$60.00	\$7,800.00	\$32.00	\$4,160.00	\$44.00	\$5,720.00	\$60.00	\$7,800.00	\$28.80	\$3,744.00
3	CROSSPAN - REMOVE & REPLACE WITH 6-FT - 8-FT WIDE PAN (8.5" THICK)	SF	800	\$11.20	\$8,960.00	\$14.00	\$11,200.00	\$14.00	\$11,200.00	\$13.50	\$10,800.00	\$15.00	\$12,000.00	\$17.00	\$13,600.00
4	DRIVEOVER CURB & GUTTER & 6" SIDEWALK - REMOVE & REPLACE (UP TO 5' WIDE)	LF	1360	\$38.49	\$52,346.40	\$55.00	\$74,800.00	\$68.00	\$92,480.00	\$71.00	\$96,560.00	\$70.00	\$95,200.00	\$80.37	\$109,303.20
5	DRIVEOVER CURB AND GUTTER, NO SIDEWALK - REMOVE AND REPLACE	LF	130	\$51.63	\$6,711.90	\$45.00	\$5,850.00	\$47.00	\$6,110.00	\$34.00	\$4,420.00	\$30.00	\$3,900.00	\$51.12	\$6,645.60
6	PEDESTRIAN ACCESS RAMP, REMOVE AND REPLACE	SF	330	\$19.80	\$6,534.00	\$22.00	\$7,260.00	\$15.00	\$4,950.00	\$12.15	\$4,009.50	\$14.00	\$4,620.00	\$12.20	\$4,026.00
7	6" CONCRETE	SF	270	\$14.94	\$4,033.80	\$8.00	\$2,160.00	\$15.00	\$4,050.00	\$9.95	\$2,686.50	\$7.25	\$1,957.50	\$8.96	\$2,419.20
8	WET SET METAL TRUNCATED DOMES	SF	24	\$23.52	\$564.48	\$150.00	\$3,600.00	\$50.00	\$1,200.00	\$44.00	\$1,056.00	\$130.00	\$3,120.00	\$65.55	\$1,573.20
9	ALLEY APPROACH 8" - INSTALL	SF	0	\$19.04	\$0.00	\$14.00	\$0.00	\$14.00	\$0.00	\$15.00	\$0.00	\$12.50	\$0.00	\$0.00	\$0.00
10	TRAFFIC CONTROL	LS	1	\$8,133.00	\$8,133.00	\$10,000.00	\$10,000.00	\$8,765.00	\$8,765.00	\$4,750.00	\$4,750.00	\$20,000.00	\$20,000.00	\$8,755.00	\$8,755.00
11	STORM INLET LID - CAST IN PLACE	EA	1	\$4,765.00	\$4,765.00	\$5,000.00	\$5,000.00	\$4,150.00	\$4,150.00	\$4,650.00	\$4,650.00	\$1,000.00	\$1,000.00	\$10,041.00	\$10,041.00
12	IRRIGATION SYSTEM REPAIR	LS	1	\$5,500.00	\$5,500.00	\$1,000.00	\$1,000.00	\$2,500.00	\$2,500.00	\$1,500.00	\$1,500.00	\$800.00	\$800.00	\$3,590.75	\$3,590.75
	SUB TOTAL				\$112,031.38		\$138,670.00		\$144,065.00		\$144,322.00		\$157,397.50		\$173,067.55
Contract - Concrete - Add Alternate															
BID ITEM NO.	DESCRIPTION	UNITS													
1	MOBILIZATION (6%)	LS	1	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00	\$100.00	\$100.00	\$2,285.00	\$2,285.00	\$0.00	\$0.00	\$9,369.60	\$2,386.40
2	AGGREGATE BASE COURSE	TON	30	\$57.56	\$1,726.80	\$60.00	\$1,800.00	\$32.00	\$960.00	\$44.00	\$1,320.00	\$60.00	\$1,800.00	\$28.80	\$864.00
3	CROSSPAN - REMOVE & REPLACE WITH 6-FT - 8-FT WIDE PAN (8.5" THICK)	SF	0	\$11.20	\$0.00	\$14.00	\$0.00	\$14.00	\$0.00	\$13.50	\$0.00	\$15.00	\$0.00	\$17.00	\$0.00
4	DRIVEOVER CURB & GUTTER & 6" SIDEWALK - REMOVE & REPLACE (UP TO 5' WIDE)	LF	470	\$38.49	\$18,090.30	\$55.00	\$25,850.00	\$68.00	\$31,960.00	\$71.00	\$33,370.00	\$70.00	\$32,900.00	\$80.37	\$37,773.90
5	DRIVEOVER CURB AND GUTTER, NO SIDEWALK - REMOVE AND REPLACE	LF	0	\$51.63	\$0.00	\$45.00	\$0.00	\$47.00	\$0.00	\$34.00	\$0.00	\$30.00	\$0.00	\$51.12	\$0.00
6	PEDESTRIAN ACCESS RAMP, REMOVE AND REPLACE	SF	0	\$19.80	\$0.00	\$22.00	\$0.00	\$15.00	\$0.00	\$12.15	\$0.00	\$14.00	\$0.00	\$12.20	\$0.00
7	6" CONCRETE	SF	0	\$14.94	\$0.00	\$8.00	\$0.00	\$15.00	\$0.00	\$9.95	\$0.00	\$7.25	\$0.00	\$8.96	\$0.00
8	WET SET METAL TRUNCATED DOMES	SF	0	\$23.52	\$0.00	\$150.00	\$0.00	\$50.00	\$0.00	\$44.00	\$0.00	\$130.00	\$0.00	\$65.55	\$0.00
9	ALLEY APPROACH 8" - INSTALL	SF	180	\$19.04	\$3,427.20	\$14.00	\$2,520.00	\$14.00	\$2,520.00	\$15.00	\$2,700.00	\$12.50	\$2,250.00	\$0.00	\$0.00
10	TRAFFIC CONTROL	LS	1	\$1,500.00	\$1,500.00	\$2,500.00	\$2,500.00	\$235.00	\$235.00	\$750.00	\$750.00	\$0.00	\$0.00	\$8,755.00	\$8,755.00
11	STORM INLET LID - CAST IN PLACE	EA	0	\$4,765.00	\$0.00	\$0.00	\$0.00	\$4,150.00	\$0.00	\$4,650.00	\$0.00	\$1,000.00	\$0.00	\$10,041.00	\$0.00
12	IRRIGATION SYSTEM REPAIR	LS	1	\$5,500.00	\$5,500.00	\$500.00	\$500.00	\$100.00	\$100.00	\$200.00	\$200.00	\$0.00		\$3,590.75	\$1,795.38
	SUB TOTAL				\$31,744.30		\$35,670.00		\$35,875.00		\$40,625.00		\$36,950.00		\$51,574.68
	TOTAL				\$143,775.68		\$174,340.00		\$179,940.00		\$184,947.00		\$194,347.50		\$224,642.23

SECTION 00520
AGREEMENT

SECTION 00520

AGREEMENT

THIS AGREEMENT is dated as of the ____ day of May in the year of 2023. 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 **2023 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 September 22, 2023 and completed and ready for final payment in accordance with paragraph 14.07 of the General conditions on or before Friday September 29, 2023.

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 twenty thousand six hundred eighty six dollars and sixty cents (\$220,686.60)**, 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 3, 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 _____, 2023. (Which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

By _____

By _____

Signature _____

Signature _____

Title _____

Title _____

(CORPORATE SEAL)

Attest _____

Attest _____

Address for giving notices:

Telephone

Address for giving notices

Telephone

END OF AGREEMENT

SECTION 00580
NOTICE OF AWARD

SECTION 00580

NOTICE OF AWARD

May 10, 2023

TO: Connell Resources Inc.

Address: 7785 Highland Meadows Parkway, Suite 100, Fort Collins CO 80528-8988

Project: **2023 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 April 21, 2023 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 work on four (4) town blocks, and a quarter mile of paving along Jefferson Avenue. Other work includes asphalt patches and paving at two other sites adjacent to concrete work. Add alternate work includes paving along 5th street from Harrison to Garfield.

The Contract Price of your contract is **Two hundred twenty thousand six hundred eighty-six dollars and sixty cents. (\$220,686.60)**

Two (2) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

One (1) set of the Drawings will be delivered separately or otherwise made available to you immediately.

1. You must deliver to the OWNER 1 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

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SECTION 00590
NOTICE TO PROCEED

SECTION 00590

NOTICE TO PROCEED

Dated _____

TO: Connell Resources Inc.

Address: 7785 Highland Meadows Parkway, Suite 100, Fort Collins CO 80528-8988

Project: **2023 TOWN OF WELLINGTON ROAD ASPHALT REPAIR PROJECT**

You are notified that the Contract Times under the above contract will commence to run on _____, 2023. 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
8225 Third Street
PO Box 127
Wellington, CO 80549
ATTN: Nathan Ewert, Civil Engineer III
Telephone: 970-473-0014

CONSTRUCTION CONTRACT

Date:

Amount: _____

Description (Name and Location): **2023 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:

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

12.4 with the terms of the Construction Contract.
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): **2023 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:

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 done 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 Bond, 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:

2023 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 or 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.

ENGINEER By: _____
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.

CONTRACTOR By: _____
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:

You are hereby notified that on the ____ day of _____, 2023, the **Town of Wellington**, Colorado, has accepted the Work completed by _____ for the project, **2023 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: **The 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 **2023 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 **2023 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 00660
CONSENT OF SURETY

SECTION 00660

CONSENT OF SURETY

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

CONTRACTOR:

PROJECT: **2023 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 set its hand this _____ day of _____,
20_____.

(Surety Company)

By _____

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

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



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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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

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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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.

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.

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.

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 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:*

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.

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 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:*

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
 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 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
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.

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.

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 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.

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.
- 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, 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 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.
- 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.

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.

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.

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.

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.
- 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 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 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 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.

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 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.
- 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 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;
 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.

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 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.

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 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.

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 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, 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 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.
- 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.

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:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 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 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.
- 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.

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.

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.
- 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, 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.

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.
- 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 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:
 - 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.

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:
 - 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
 - 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.

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);
 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 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
 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.

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 | <u>\$ 600,000</u> 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) | <u>\$ 1,000,000</u> |
| (2) | Products - Completed
Operations Aggregate | <u>\$ 1,000,000</u> |
| (3) | Personal and Advertising
Injury (per person/
Organization) | <u>\$ 600,000</u> |
| (4) | Each Occurrence
(Bodily Injury and
Property Damage) | <u>\$ 600,000</u> |
| (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 of 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

SECTION 00520
AGREEMENT

SECTION 00520

AGREEMENT

THIS AGREEMENT is dated as of the ___ day of May in the year of 2023. The Town of Wellington (hereinafter called OWNER) and L4 Construction LLC (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 **2023 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 August 18, 2023 and completed and ready for final payment in accordance with paragraph 14.07 of the General conditions on or before Friday August 31, 2023.

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 forty thousand seven hundred seventy five thousand dollars and sixty eight cents (\$143,775.68)**, 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 3, 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 _____, 2023. (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:

Telephone

Address for giving notices

Telephone

END OF AGREEMENT

SECTION 00580
NOTICE OF AWARD

SECTION 00580

NOTICE OF AWARD

Date: May 10, 2023

TO: L4 Construction LLC

Address: 2350 17th Ave. Suite 204, Longmont, CO 80503

Project: **2023 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 April 21, 2023 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):

Concrete work **repairing sidewalk, ADA ramps, curb and gutter, and cross pans within four (4) town blocks, add alternate work includes additional concrete repair work along 5th Street.**

The Contract Price of your contract is **One hundred forty thousand seven hundred seventy-five thousand dollars and sixty-eight cents (\$143,775.68)**

Two (2) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

One (1) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

1. You must deliver to the OWNER 1 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 one (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: L4 Construction LLC

Address: 2350 17th Ave. Suite 204, Longmont, CO 80503

Project: **2023 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
8225 Third Street
PO Box 127
Wellington, CO 80549
ATTN: Nathan Ewert, Civil Engineer III
Telephone: 970-473-0014

CONSTRUCTION CONTRACT

Date:

Amount: _____

Description (Name and Location): **2023 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:

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

12.4 with the terms of the Construction Contract.
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

8225 Third Street

PO Box 127

Wellington, CO 80549

ATTN: Bob Gowing, Public Works Director

Telephone: 970-568-0447

CONSTRUCTION CONTRACT

Date:

Amount: _____

Description (Name and Location): **2023 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:

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 done 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 Bond, 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:

**OF WELLINGTON ROAD 2023 TOWN
REPAIR PROJECT CONCRETE**

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 or 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.

ENGINEER By: _____
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.

CONTRACTOR By: _____
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:

You are hereby notified that on the ____ day of _____, 20____, the **Town of Wellington**, Colorado, has accepted the Work completed by _____ for the project, **2023 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: **The 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 **2023 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 **2023 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 00660
CONSENT OF SURETY

SECTION 00660

CONSENT OF SURETY

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

CONTRACTOR: _____

PROJECT: **2023 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.

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



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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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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.

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.

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.

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

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:*

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.

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

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:*

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

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

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

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.

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.

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

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.

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.

- 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,

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

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.

- 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.

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.

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.

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.

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.

- 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

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

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

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.

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

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.

- 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

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;

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.

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

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.

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

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.

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

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,

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

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.

- 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.

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:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 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

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.

- 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.

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.

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.

- 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,

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.

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.

- 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

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:

- 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.

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:

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

- 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.

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);

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

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

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.

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 | <u>\$ 600,000</u> 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) | <u>\$ 1,000,000</u> |
| (2) | Products - Completed
Operations Aggregate | <u>\$ 1,000,000</u> |
| (3) | Personal and Advertising
Injury (per person/
Organization) | <u>\$ 600,000</u> |
| (4) | Each Occurrence
(Bodily Injury and
Property Damage) | <u>\$ 600,000</u> |
| (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 of 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

Board of Trustees Meeting

Date: May 9, 2023

Subject: Ordinance No. 05-2023: An Ordinance Repealing Ordinance No. 6-2021 for Municipal Utility Fees

- **Presentation:** Meagan Smith, Deputy Director of Public Works

BACKGROUND / DISCUSSION

The purpose of this ordinance is to repeal Ordinance No. 6-2021, adopted in 2021 to set all water and wastewater tap fees, water meter charges, raw water dedication requirements and cash-in-lieu rates. Since the adoption of that ordinance, the water and wastewater fees were superseded by Ordinance No. 16-2022. Of the remaining portions of the ordinance, the intent is to move the water meter charges into the comprehensive fee schedule with other similar charges and to adopt the raw water dedication requirements and cash in lieu rates by separate resolution.

The intent is to separate these items into discrete resolutions and ordinances. This will provide more clarity and focus when reviewing changes in the future. For example, the analysis and information needed to reassess tap fees is different from the analysis and information relevant to raw water requirements. Simultaneous changes are not always necessary or preferable.

Going forward, the items will be handled as follows:

1. Water and wastewater tap fees will be adopted by ordinance (currently Ord. 16-2022).
2. Raw Water dedication requirements and cash-in-lieu amounts will be adopted by resolution (proposed to be Res. 17-2023).
3. Water meter charges will be set along with the annual fee schedule review (to be modified with Res. 18-2023).

STAFF RECOMMENDATION

Below are possible motion options for the Board to consider:

- Move to approve Ordinance No. 05-2023 - An Ordinance Repealing Ordinance No. 06-2021 for Municipal Utility Fees.
- Move to approve Ordinance No. 05-2023 with amendments as the Board of Trustees deems appropriate.
- Move to postpone consideration of Ordinance No. 05-2023 and provide guidance to staff as requested modifications.
- Move to deny Ordinance No. 05-2023.

ATTACHMENTS

1. Ordinance 05-2023_Repeal Ord 06-2021
2. Ordinance 06-2021 - Re-Establishing Tap and Cash-in-lieu

TOWN OF WELLINGTON

ORDINANCE NO. 05-2023

AN ORDINANCE OF THE TOWN OF WELLINGTON, COLORADO, REPEALING ORDINANCE NO. 6-2021 IN ITS ENTIRETY

WHEREAS, the Wellington Town Code provides that the Board of Trustees of the Town of Wellington shall set fees for various services provided by the Town by ordinance or resolution; and

WHEREAS, the Town Engineer and the Town Treasurer regularly analyze water tap fees, sewer tap fees and raw water cash-in-lieu requirements and provide reports to the Board; and

WHEREAS, the Town Code provides that prior to allowing any new water tap, water right dedications shall be required or in lieu thereof, the Town, in the Town's sole discretion may, but is not required to, accept cash payments; and

WHEREAS, the Board of Trustees heretofore adopted Ordinance No. 6-2021 on May 25, 2021 establishing water tap fees, meter charges, raw water dedication requirements and cash-in-lieu payment amounts; and

WHEREAS, the Board of Trustees adopted Ordinance No. 16-2022 on November 8, 2022 establishing water tap fees; and

WHEREAS, the Board of Trustees adopted Ordinance No. 04-2023 amending and recodifying Chapter 13 of the Municipal Code relating to municipal utilities, which stated that meter charges would be established by resolution; and

WHEREAS, the Board of Trustees desires that meter charges be established by resolution along with other municipal fees on the Town of Wellington fee schedule; and

WHEREAS, the equity and sufficiency of fees and charges are reviewed from time to time by the Board of Trustees; and

WHEREAS, the Board of Trustees has reviewed and recommended changes to raw water dedication requirements and cash-in-lieu payment amounts; and

WHEREAS, the Board of Trustees desires to establish new fees and charges and repeal all other conflicting fees previously adopted; and

WHEREAS, the Board of Trustees desires to repeal Ordinance No. 06-2021 in its entirety, to maintain water tap fees established in Ordinance No. 16-2022, and to establish water meter charges, raw water raw water dedication requirements and cash-in-lieu payment amounts by resolution.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. Adoption. Ordinance No. 06-2021 is hereby repealed in its entirety and is of no further force or effect as of the effective date of this ordinance.
2. Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.
3. Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.
4. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted ordinance available for inspection by the public during regular business hours and shall record at least one certified copy of the ordinance with the Clerk and Recorder of Larimer County.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 9th day of May, 2023 and ordered to become effective 30 days from the date of publication.

TOWN OF WELLINGTON, COLORADO

By: _____
Calar Chaussee, Mayor

ATTEST:

Ethan Muhs, Town Clerk

TOWN OF WELLINGTON

ORDINANCE NO. 06-2021

AN ORDINANCE RE-ESTABLISHING FEES TO BE CHARGED BY THE TOWN OF WELLINGTON, COLORADO FOR WATER AND SEWER UTILITY CONNECTION SERVICES AND RE-ESTABLISHING CASH-IN-LIEU RATES FOR RAW WATER CONTRIBUTION REQUIREMENTS.

WHEREAS, the Wellington Town Code provides that the Board of Trustees of the Town of Wellington shall set fees for various services provided by the Town by ordinance or resolution; and

WHEREAS, the Board set water fees by Resolution 12-2008, Resolution 8-2016, Ordinance 6-2017 and Resolution 28-2020; and

WHEREAS, the Board, acting by and through the Town of Wellington, Colorado, Sewer Enterprise, set sewer fees by Resolution 1-2010 SE and Resolution 1-2011 SE; and

WHEREAS, the Town Engineer and the Town Treasurer were directed by the Board to provide an analysis of water tap fees, sewer tap fees and raw water cash-in-lieu requirements and reports have been provided to the Board; and

WHEREAS, the Town Code provides that prior to allowing any new water tap, water right dedications shall be required or in lieu thereof, the Town, in the Town's sole discretion may, but is not required to, accept cash payments; and

WHEREAS, Section 13-1-50 addresses capital investment fees for water taps, sewer taps and water rights dedication requirements and provides:

At Section 13-1-50 (a): Uniform water capital investment (tap or impact) fees. There are hereby imposed uniform water capital investment (tap or impact) fees, payable upon application for a water tap in the Town as established by ordinance or resolution of the Board of Trustees.

At Section 13-1-50 (b): Uniform sewer capital investment (tap or impact) fees. There are hereby imposed uniform sewer capital investment (tap or impact), payable upon application for a sewer tap in the Town as established by ordinance or resolution by the Board of Trustees.

At Section 13-1-50 (d): Basic water rights dedication requirements. Water rights shall be dedicated in the following quantities:

(1) Developers of residential uses shall dedicate to the Town water rights yielding one (1) acre-foot of water per year for each dwelling unit to be served by the Town water Utility.

(2) Developers of commercial or industrial uses shall dedicate to the Town water rights in the quantity sufficient to satisfy the ultimate water demand of the commercial or industrial uses as determined by the Town.

At Section 13-1-50 (e): Procedure for dedicating water rights. The Town shall have the sole right of determination to accept or reject any water rights proposed for dedication pursuant to the provision of this Section, or to allow a cash payment in lieu of water rights dedication to satisfy the basic dedication requirement. At the time of submission, the applicant shall indicate the water rights proposed to be dedicated to the Town, or the amount of cash in lieu thereof that is proposed to be paid to the Town.

At Section 13-1-50 (f): Cash in lieu of water rights dedication. Cash payments in lieu of water rights dedication shall be equal to the fair market value of the water rights necessary to satisfy the basic water rights requirement. The Town shall determine from time to time the cash in lieu payment amount to be paid after a public hearing before the Board of Trustees with the decision of the Board of Trustees being final and conclusive; and

WHEREAS, the Town has accepted shares of North Poudre Irrigation Company (NPIC) stock in satisfaction of raw water dedication requirements imposed by the Town Code and may accept Class D water allotment contracts representing acre foot units of water in the Colorado-Big Thompson Project in satisfaction of water right contribution requirements; and

WHEREAS, the costs of shares of NPIC stock are roughly twenty-five percent (25%) higher per year since 2019 and NPIC shares are currently selling for \$195,000 or higher, per share.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. **Sewer Utility Fees.** The Town shall require payment of the Capital Investment Fee to issue sewer taps connected to the Town's wastewater collection system. The Town adopts fees and charges due in relation to the issuance of any new sewer tap setting the sewer Capital Investment Fees as follows:

Sewer Tap Size	Capital Investment
4-inch sewer residential	\$9,700
4-inch sewer multi-family	\$9,700 x dwelling units
4-inch sewer commercial	\$9,700
6-inch sewer commercial	\$28,379
greater than 6-inch sewer tap	calculated based on use

- a) Sewer taps larger than 6 inches in size shall be calculated based on the proposed use and assumes maximum operating flow based on pipe capacity, flowing full at two percent (2%) slope.
- b) The above requirements and schedule are subject to existing and new development agreements and memoranda of public improvements to the contrary.

2. **Water Utility Fees.** The Town shall require payment of the Capital Investment Fee and Meter Charges and shall require Raw Water Dedication to issue water taps connected to Town Domestic water sources. The Town adopts fees and charges due in relation to the issuance of any new water tap setting the water Capital Investment Fee and Raw Water Dedication as follows:

Water Meter/ Tap Size	Capital Investment	Meter Charges	Acre Foot Raw Water Requirement	Cash-in-lieu Amount
3/4-inch residential (indoor)	\$7,750	N/A	0.32 acre feet	\$33,169
3/4-inch residential (irrigation)	\$7,750	N/A	0.26 acre feet	\$26,591
3/4-inch residential (indoor + irrigation)	\$7,750	N/A	0.58 acre feet	\$59,760
3/4-inch to 2-inch (multi-family)	\$7,750 x dwelling units	1-inch or larger refer to meter sizes below	0.32 AF x dwelling units + calculated for landscape	\$33,169 x dwelling units + calculated for landscape
3/4-inch commercial	\$7,750	N/A	calculated for use	calculated for use
1-inch	\$12,179	\$450	calculated for use	calculated for use
1 1/2-inch	\$35,429	\$750	calculated for use	calculated for use
2-inch	\$44,286	\$2,000	calculated for use	calculated for use
greater than 2-inch	Calculated for peak use	Contact Town for pricing	calculated for use	calculated for use
Irrigation only meter	Capital Investment for corresponding meter size	1-inch or larger refer to meter sizes above	calculated for use	calculated for use

- Water taps larger than 2 inches in size shall be calculated based on the proposed use and assumes maximum operating flow based on pipe/meter capacity.
- Multi-family development projects shall require the Capital Investment Fee and Indoor Raw Water Requirement for each residential dwelling unit in accordance with the above schedule. Irrigation water use for multiple-family development projects shall be required based upon calculated need for an approved landscape plan.
- Commercial development projects shall require the Raw Water Requirement based upon calculated need for the proposed use and includes calculated need for an approved landscape plan.
- The above requirements and schedule are subject to existing and new development agreements and memoranda of public improvements to the contrary.

3. Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.
4. Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.
5. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 25th day of May, 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: May 9, 2023

Subject: Resolution No. 17-2023: A Resolution Establishing Raw Water Dedication Requirements for Water Taps Serving Residential Units and Establishing Payments for Cash-in-lieu of Raw Water Dedication Requirements

- **Presentation: Meagan Smith, Deputy Director of Public Works**

BACKGROUND / DISCUSSION

Resolution No. 17-2023 reflects recommendations by the Board of Trustees from the Work Session on March 21, 2023 (Packet Materials included as an attachment). The Resolution includes changes to the Raw Water Dedication Requirement for residential development and changes to the Cash-in-lieu Equivalent to the Raw Water Dedication Requirement.

Raw Water Requirement

Town Code currently requires water dedication to satisfy the Raw Water Requirement (RWR) for new Utility customers.

The Town of Wellington has had a defined raw water requirement for new development since at least 1987. From 1987 to 2017, the raw water requirement was 1 acre-foot (AF) per residential dwelling unit, with a cash-in-lieu equivalent of \$10,000. This requirement was typically reduced by half for subdivisions with non-potable irrigation systems. To date, there has been no differentiation in requirements between different types of residential dwelling units (single-family attached or detached, multi-family apartments or condominiums). In 2017, the raw water requirement was reduced to 0.5 AF per residential dwelling unit.

In August 2020, the raw water requirement for residential development was updated (Resolution No. 28-2020) to create two types of residential requirements: 1) an indoor only requirement (0.32 AF per dwelling unit) for residential dwellings units with either no irrigable area, units that have a separate irrigation only tap, or units that have non-potable water for irrigation and 2) a standard requirement (0.58 AF per dwelling unit) for more traditional single-family dwelling units served by a single meter and with irrigable area attached to the dwelling unit served by potable irrigation.

Resolution No. 17-2023 includes the following changes to the raw water requirements for residential developments:

- Reducing the indoor only residential requirement from 0.32 AF per dwelling unit to 0.25 AF per dwelling unit. This proposed reduction is based on analysis of updated customer consumption datasets developed for the 2022 Rate Study.
- Reducing the standard residential requirement from 0.58 AF per dwelling unit to 0.5 AF per dwelling unit. Most of this proposed reduction is from the reduction in the indoor portion of the requirement, with only 0.01 AF change coming from updates to assumptions related to average irrigable area for single-family dwelling units.
- Creating a multi-family raw water requirement of 0.18 AF per dwelling unit that reflects the difference in typical indoor demand seen in traditional multi-family developments with more than one shared wall.



This difference in demand (approximately 30% less) is seen in the updated customer consumption datasets developed for the 2022 Rate Study.

Raw water requirements for commercial developments will be determined on a case-by-case basis. Raw water requirements for irrigation only taps will be based on conservative estimates of the proposed irrigation requirements.

Cash-in-lieu Equivalent

Town Code allows for cash payment in-lieu of water dedication at the Town's discretion.

The value of water shares has risen sharply in recent years and is anticipated to remain volatile in the coming years. The average cost for one share of NPIC stock has risen 120% in the last five years, from \$102,600 in 2018 to \$224,500 in 2022. Cost increases per unit of C-BT have followed a similar trajectory.

The cash-in-lieu equivalent for the Town was most recently updated in May 2021 (Ord. No. 6-2021, included as an attachment). Previous packet material provided to the Board for the March 2023 Work Session mis-stated that the last cash-in-lieu equivalent update was in August 2020.

The most recent updates to the cash-in-lieu equivalent are summarized below:

- 2017 (Ord. No. 6-2017) - \$38,571/acre-foot
- 2020 (Res. No. 28-2020) - \$116,500/acre-foot
- 2021 (Ord. No. 6-2021) - \$102,800/acre-foot

To support the update to the cash-in-lieu equivalent in 2020, Staff developed a methodology utilizing the most recent three years of market sales data for NPIC shares. The average annual percent change in market value is determined and then applied to the most recent average annual market value of an NPIC share. This exercise results in a prediction of the cost of an NPIC share a year into the future, which is then utilized to set the cash-in-lieu equivalent. This methodology was developed, in part, to account for the price increase in raw water between the time a developer meets the raw water requirement with a cash-in-lieu payment and when the Town can secure a purchase of raw water.

Changes to the cash-in-lieu equivalent included in Resolution No. 17-2023 are based on the same methodology. The calculations are updated with the most recent market data for NPIC shares and the change in yield for an NPIC share updated with Ordinance No. 4-2023, amending and recodifying Municipal Code Chapter 13 concerning Municipal Utilities.

These changes result in a Cash-in-lieu Equivalent of \$124,100/AF. This is an approximate 20% increase over the current cash-in-lieu equivalent of \$102,800/AF.

STAFF RECOMMENDATION

Below are possible motion options for the Board to consider:

- Move to approve Resolution No. 17-2023 - An Resolution Establishing Raw Water Dedication Requirements for Water Taps Serving Residential Units and Establishing Payments for Cash-in-lieu of Raw Water Dedication Requirements.
- Move to approve Resolution No. 17-2023 with amendments as the Board of Trustees deems appropriate.

- Move to postpone consideration of Resolution No. 17-2023 and provide guidance to staff as requested modifications.
- Move to deny Resolution No. 17-2023 .

ATTACHMENTS

1. RESOLUTION NO 17-2023 - Updating RWR and CIL
2. Work Session Packet Material_3/21/2023
3. Ordinance 06-2021 - Re-Establishing Tap and Cash-in-lieu

TOWN OF WELLINGTON, COLORADO

RESOLUTION NO. 17-2023

A RESOLUTION ESTABLISHING RAW WATER DEDICATION REQUIREMENTS FOR
WATER TAPS SERVING RESIDENTIAL UNITS AND ESTABLISHING PAYMENTS FOR
CASH-IN-LIEU OF RAW WATER DEDICATION REQUIREMENTS

WHEREAS, the Wellington Town Code provides that the Board of Trustees (Board) of the Town of Wellington shall set fees for various services provided by the Town by ordinance or resolution; and

WHEREAS, the Board established Water Contribution Requirements by Resolution 28-2020; and

WHEREAS, the Board established Payments for Cash-in-lieu of Water Contribution Requirements by Resolution 28-2020; and

WHEREAS, the Board established Water Contribution Requirements and Payments for Cash-in-lieu by Ordinance 06-2021, which was repealed by Ordinance 05-2023 on May 9, 2023; and

WHEREAS, the Wellington Town Code provides that prior to allowing any new water tap, raw water dedications shall be required, the Town, in the Town's sole discretion may, but is not required to, accept cash payments in lieu thereof; and

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of Trustees of the Town of Wellington, Colorado, as follows:

1. Cash Payment in lieu of Raw Water Dedication Requirement. Any cash payment made in lieu of a raw water dedication pursuant to Section 13-1-50(a)(3) of the Wellington Municipal Code shall be an amount equal to \$124,100 per acre-foot required.
2. Residential Development Raw Water Dedication Requirement. Issuance of water taps for construction of any residential dwelling unit, as defined herein, receiving water service from the Town shall require a raw water dedication meeting the following acre-foot per dwelling unit requirements:

RESIDENTIAL DEVELOPMENT TYPE	RAW WATER DEDICATION REQUIREMENT (AF/DU – acre-feet per dwelling unit)
Multi-family	0.18 AF/DU
Single-family Indoor Only	0.25 AF/DU
Single family	0.5 AF/DU

As used herein, the following definitions shall apply to each referenced Residential Development Type:

- Multi-family – Development with more than one dwelling unit served by a single water tap. Requires a separate irrigation-only tap and meter.
 - Single-family Indoor Only – Single-family attached or detached dwelling unit served by a single water tap with non-potable irrigation or no irrigation serviced by the unit.
 - Single-family – Single-family attached or detached dwelling unit served by a single water tap with potable irrigation serviced by the unit.
3. Commercial Development Projects and Irrigation-only Water Taps. Commercial development projects and irrigation-only taps shall require the Raw Water Dedication based upon calculated need for the proposed use, including calculated need for an approved landscape plan.
4. Existing Development Agreements. The above requirements and schedule are subject to existing and new development agreements and memoranda of public improvements to the contrary.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 9th day of May, 2023.

TOWN OF WELLINGTON, COLORADO

By: _____
Calar Chaussee, Mayor

ATTEST:

Ethan Muhs, Town Clerk



Board of Trustees Meeting

Date: March 21, 2023
Subject: Raw Water Requirement and Cash in-lieu Equivalent Discussion

- Meagan Smith, Deputy Director - Public Works

BACKGROUND / DISCUSSION

WELLINGTON RAW WATER SOURCES

The Town of Wellington currently has two raw water sources: 1) up to 400 acre-feet (AF) of decreed use via three groundwater wells (the Wilson Wells) and 2) up to 2,000 AF of surface water via a 1983 agreement with the North Poudre Irrigation Company (1983 Agreement).

The Wilson Wells supply non-potable irrigation for approximately 15 acres between the Town of Wellington and Poudre School District. This includes Library Park and adjacent ball fields, as well as Eyestone Elementary and the former Wellington Middle School. This irrigation accounts for approximately 30 AF of water annually, leaving up to 370 AF available for potable use.

The 1983 Agreement between the Town of Wellington and North Poudre Irrigation Company (NPIC) allows for Wellington to receive a raw water supply via Reservoir #3 and, correspondingly, use of NPIC-owned property to site Wellington's water treatment facilities. The Agreement further specifies the total volume of water available to Wellington under this Agreement (2,000 AF), as well as various costs and charges for delivery of the water and use of the land adjacent to Reservoir #3.

The Town and NPIC are interested in renegotiating several points in the 1983 Agreement, with the overarching goals of a renegotiated agreement for Wellington being:

1. Ensuring a reliable current and near-term water supply
2. Reducing annual payments to sustainable levels
3. Creating predictability of future payments

One recent successful point of renegotiation is the result of an ongoing land purchase with NPIC. Wellington is currently under contract with NPIC to purchase 10.51 acres to secure the land for the existing Water Treatment and Intake Facility sites, as well as secure the land necessary for the current expansion project. The minor land division goes for approval before the Board of County Commissioners on March 27. This is the last step before closing on the property with NPIC. The purchase of this property will reduce the existing administrative fee in the 1983 Agreement, with an anticipated annual savings of more than \$125,000.

CURRENT

Raw Water Requirement

Town Code currently requires water dedication to satisfy the Raw Water Requirement (RWR) for new Utility customers.



The Town of Wellington has had a defined raw water requirement for new development since at least 1987. From 1987 to 2017, the raw water requirement was 1 acre-foot (AF) per residential dwelling unit, with a cash-in-lieu equivalent of \$10,000. This requirement was typically reduced by half for subdivisions with non-potable irrigation systems. To date, there has been no differentiation in requirement across different types of residential dwelling units (single-family attached or detached, multi-family apartments or condominiums). In 2017, the raw water requirement was reduced to 0.5 AF per residential dwelling unit.

In August 2020, the raw water requirement for residential development was updated (Resolution No. 28-2020) to create two types of residential requirements: 1) an indoor only requirement (0.32 AF per dwelling unit) for residential dwellings units with either no irrigable area, have a separate irrigation only tap, or have non-potable water for irrigation and 2) a standard requirement (0.58 AF per dwelling unit) for more traditional single-family dwelling units served by a single meter and with irrigable area attached to the dwelling unit served by potable irrigation.

Water Yield

Current Town Code specifies the Town will accept NPIC stock or Class D water allotment contract units of the Colorado-Big Thompson Project (C-BT) to satisfy the Town's raw water requirements with the following yield per unit:

- One share of NPIC stock – 2.4 AF (per share historical average allocation of multiple use water)
- One C-BT unit – 0.7 AF (per unit historical average yield of the project)

Cash-in-lieu Equivalent

Town Code currently allows for cash payment in-lieu of water dedication at the Town's discretion.

The value of water shares has risen sharply in recent years and is anticipated to remain volatile in the coming years. The average cost for one share of NPIC stock has risen 120% in the last five years, from \$102,600 in 2018 to \$224,500 in 2022. Cost increases per unit of C-BT have followed a similar trajectory.

The cash-in-lieu equivalent for the Town was most recently updated in August 2020 along with the raw water requirement (Resolution No. 28-2020). It was increased from \$38,571/AF (Ordinance No. 06-2017) to \$102,800/AF.

To establish the cash-in-lieu equivalent for the 2020 update, Staff developed a methodology based on the most recent three years of market sales data for NPIC shares. The average annual percent change in market value was determined and then applied to the most recent average annual market value of an NPIC share. This exercise resulted in a prediction of the cost of a NPIC share a year into the future which was utilized to set the cash-in-lieu equivalent.

This methodology was developed, in part, to account for the price increase in raw water between the time a developer meets the raw water requirement with a cash-in-lieu payment and when the Town can secure a purchase of raw water.

PROPOSED

Raw Water Requirement

Staff is proposing the following changes to the raw water requirements for residential developments:

- Reducing the indoor only residential requirement from 0.32 AF per dwelling unit to 0.25 AF per dwelling unit. This proposed reduction is based on analysis of updated customer consumption datasets developed for the 2022 Rate Study.
- Reducing the standard residential requirement from 0.58 AF per dwelling unit to 0.5 AF per dwelling unit. Most of this proposed reduction is from the reduction in the indoor portion of the requirement, with only 0.01 AF change coming from updates to assumptions related to average irrigable area for single-family dwelling units.
- Creating a multi-family raw water requirement of 0.18 AF per dwelling unit that reflects the difference in typical indoor demand seen in traditional multi-family developments with more than one shared wall. This difference in demand (approximately 30% less) is seen in the updated customer consumption datasets developed for the 2022 Rate Study.

Raw water requirements for commercial developments will be determined on a case-by-case basis. Raw water requirements for irrigation only taps will be based on conservative estimates of the proposed irrigation requirements.

Water Yield

Staff is proposing the following reductions to the yield the Town allocates for the listed water sources:

- One share of NPIC stock – reduce to 2.0 AF/share (current allocated yield is 2.4 AF/share)
- One C-BT project unit – reduce to 0.5 AF/unit (current allocated yield is 0.7 AF/unit)

These proposed reductions are based on recent and on-going drought events in Colorado and the broader West, including continuing uncertainty with Colorado River Compact negotiations and the impacts to water availability in the Northern Front Range. Many water providers in the Northern Front Range reduce the yield they allocate for C-BT units from the historical average yield of the C-BT Project of 0.7 AF/unit. For example, Johnstown allocates a yield of 0.35 AF per C-BT unit and Berthoud allocates 0.6 AF/unit.

The proposed reduction in yield allocation for NPIC shares is a function of the proposed reduction in C-BT yield allocation. NPIC has 10,000 shares of stock and the company owns 40,000 units of C-BT. This means each share of NPIC is tied to four units of C-BT. It is this C-BT portion (e.g., multiple use water) that can be used for municipal drinking water production. If a single unit of C-BT yields 0.5 AF, then four units of C-BT would yield 2.0 AF.

Cash-in-lieu Equivalent

Staff is proposing to utilize the same methodology developed for the 2020 update to set the cash-in-lieu equivalent. Updating the calculations with the most recent market data for NPIC shares and the proposed reduction in yield for an NPIC share results in a proposed cash-in-lieu equivalent of \$124,100/AF. This is approximately a 20% increase over the current cash-in-lieu equivalent of \$102,800/AF.

STAFF RECOMMENDATION

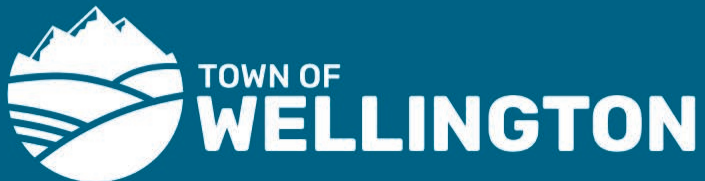
Does the Board have any questions or need more information in order to provide Staff with guidance on the proposed changes to residential Raw Water Requirement, Water Yield for NPIC and C-BT, and Cash-in-lieu Equivalent?

ATTACHMENTS

1. Powerpoint Presentation
2. Resolution 28-2020 - Water Contribution and Cash-in-Lieu
3. Ordinance 06-2017 - Re-Establishing Water Contributions and Water Tap Fee

Raw Water Requirement & Cash-in-lieu Equivalent

March 21, 2023





Wellington Raw Water Sources

- Potable water production
 - Wilson Wells
 - Up to 400 AF annually of decreed use
 - Approximately 30 AF annually for non-potable irrigation
 - NPIC 1983 Agreement
 - Up to 2,000 AF annually from Reservoir #3
 - Use of land to site Water Treatment Facility
 - Recent negotiations to purchase the land and reduce administrative fee; anticipated annual savings of more than \$125,000



What is a Raw Water Requirement

- Dedication of water required by new development so the Utility has adequate supplies to provide a safe and reliable water supply for all water users under a wide range of hydrologic conditions
- Not only planning for tomorrow but for the long-term future of the Community



Current Raw Water Requirement

- Town Code requires water dedication to satisfy Raw Water Requirement
- Last updated in 2020
- Indoor only requirement – 0.32 AF per dwelling unit
 - Multi-family developments
 - Single-family development with non-potable irrigation
- Standard requirement – 0.58 AF per dwelling unit
 - Traditional single-family dwelling units (served by single meter with potable irrigation attached to unit)



Proposed Raw Water Requirement

- Reduce indoor only requirement
 - 0.32 AF per dwelling unit → 0.25 AF per dwelling unit
 - Single-family attached or detached served by single meter with non-potable irrigation or no irrigation requirement
- Reduce standard requirement
 - 0.58 AF per dwelling unit → 0.5 AF per dwelling unit
 - Single-family attached or detached dwelling units served by single meter with potable irrigation attached to unit
- Create multi-family raw water requirement
 - 0.18 AF per dwelling unit
 - Developments with more than one shared wall between units and multiple units served by a single meter



Current Water Yield Allocations

- Defined in Municipal Code Section 13-1-50
- Town accepts NPIC shares and C-BT units for water dedication
- One share NPIC – 2.4 AF
 - Historical average allocation of multiple use water
- One C-BT unit – 0.7 AF
 - Historical average yield of the project



Proposed Water Yield Allocations

- Continue to accept NPIC shares and C-BT units for water dedication
- Reduce yield allocations for both water sources
 - One share NPIC - 2.4 AF → 2.0 AF
 - One C-BT unit - 0.7 AF → 0.5 AF
- Proposed reductions based on recent and on-going drought events in Colorado and the West, including continuing uncertainty with Colorado River Compact negotiations.



Current Cash-in-lieu Equivalent

- Town Code allows for cash payment in-lieu of water dedication at the Town's discretion
- Last updated in 2020
- \$102,800 per AF of requirement
 - Indoor only requirement per dwelling unit - \$33,169
 - Standard requirement per dwelling unit - \$59,760



Proposed Cash-in-lieu Equivalent

- Retain provision to allow for cash payment in-lieu of water dedication at the Town's discretion
- Increase Cash-in-lieu equivalent
 - \$102,800/AF of requirement → **\$124,100/AF of requirement**
 - Indoor only requirement per dwelling unit - \$31,112
 - Standard requirement per dwelling unit - \$61,960
 - Multi-family requirement per dwelling unit - \$21,778

Summary of Proposed Changes

Current and Proposed RWR* , Water Dedication, and CIL** Equivalent

Class	Current RWR (AF)	Current Water Dedication (NPIC shares)	Current CIL Equivalent	Proposed RWR (AF)	Proposed Water Dedication (NPIC shares)	Proposed CIL Equivalent
Single-family, Indoor Only	0.32	0.13	\$33,169	0.25	0.13	\$31,112
Single-family, Standard	0.58	0.24	\$59,760	0.50	0.25	\$61,960
Multi-family, per unit	0.32	0.13	\$33,169	0.18	0.1	\$21,778
Commercial and Irrigation, all	Calculated	Calculated	Calculated	Calculated	Calculated	Calculated

*RWR - Raw Water Requirement

**CIL - Cash-in-lieu

Community Comparisons

Requirements	TOW Proposed	Mead	Frederick	Windsor	Berthoud
RWR (AF)	0.5	0.7	0.7	0.5	0.4
CIL Equivalent	\$61,960	\$70,000	\$65,000	\$40,000	\$25,000

Requirements	Severance	Timnath	Johnstown	Firestone
RWR (AF)	0.7	0.67	0.5	0.47
CIL Equivalent	Does not accept	Does not accept	Does not accept	Does not accept

*RWR - Raw Water Requirement

**CIL - Cash-in-lieu



Direction

- Does the Board have any questions or need more information in order to provide Staff with guidance on the proposed changes to residential Raw Water Requirement, Water Yield for NPIC and C-BT, and Cash-in-lieu Equivalent?

RESOLUTION NO. 28-2020

**A RESOLUTION ESTABLISHING WATER CONTRIBUTION REQUIREMENTS FOR
WATER TAPS SERVING RESIDENTIAL UNITS AND ESTABLISHING CASH IN-
LIEU OF PAYMENTS FOR WATER CONTRIBUTION REQUIREMENTS FOR
RESIDENTIAL UNITS.**

WHEREAS, the Town Code (the "Town Code") of the Town of Wellington, Colorado (the "Town") provides that the Board of Trustees (the "Board") of the Town shall set fees for various services provided by the Town by ordinance or resolution; and

WHEREAS, the Board set water fees, including by Resolution 12-2008, Resolution 8-2016 and Ordinance 6-2017; and

WHEREAS, the Town Engineer and Town Treasurer were directed by the Board to provide an analysis of raw water requirements and costs and both have reported to the Board; and

WHEREAS, the Town Code provides that prior to allowing any new water tap, water right dedications shall be required or in lieu thereof, the Town, in the Town's sole discretion may, but is not required to, accept cash payments; and

WHEREAS, Section 13-1-50 addresses capital investment fees and water rights dedication requirements and provides:

At **section 13-1-50 (d)(1)**: Developers of residential uses shall dedicate to the Town water rights yielding one (1) acre-foot, (or such lesser amount of water as may be established by ordinance or resolution of the Town Board) of water per year for each dwelling unit to be served by the Town water Utility; and

At **section 13-1-50 (e)**: The Town shall have the sole right of determination to accept or reject any water rights proposed for dedication pursuant to the provision of this Section, or to allow a cash payment in-lieu of water rights dedication to satisfy the basic dedication requirement. At the time of submission, the applicant shall indicate the water rights proposed to be dedicated to the Town, or the amount of cash in-lieu thereof that is proposed to be paid to the Town; and

At **section 13-1-50 (f)**: Cash payments in-lieu of water rights dedication shall be equal to the fair market value of the water rights necessary to satisfy the basic water rights requirement. The Town, including the Town Board by Ordinance or Resolution shall determine from time to time the cash in-lieu payment amount to be paid after a public hearing before the Board of Trustees with the decision of the Board of Trustees being final and conclusive; and

WHEREAS, the Town has accepted shares of North Poudre Irrigation Company (NPIC) stock in satisfaction of raw water dedication requirements imposed by the Town Code and may accept Class D water allotment contracts representing acre foot units of water in the Colorado-Big Thompson Project in satisfaction of water right contribution requirements; and

WHEREAS, the costs of shares of NPIC stock have increased roughly forty percent (40%) per year since 2018 and NPIC shares are currently selling for \$200,000 or higher, per share.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of Trustees of the Town of Wellington, Colorado, that issuance of water taps for construction of any residential dwelling unit receiving water service from the Town shall require a raw water rights dedication meeting the following acre foot yield requirements, and if the Town elects to accept cash in-lieu of payments for water rights, such payments shall be as follows:

	Raw Water Dedication Requirement	Cash In-Lieu Amount
Each Residential Dwelling Unit ¾" tap		
Indoor Use	0.32 acre feet	\$37,376
Outdoor Use	0.26 acre feet	\$30,210
Combined (indoor and outdoor use)	0.58 acre feet	\$67,586

1. Multiple-family development projects shall require the indoor use dedication requirement for each residential dwelling unit in accordance with the above schedule. Outdoor use for multiple-family development projects shall be required, based upon calculated need for an approved landscape plan.
2. The above requirements and schedule are subject to existing and new development agreements and memoranda of public improvements to the contrary.
3. To address single family units under contract, for which commitments to buyers have been made by the seller, the Town Planning Director, may issue taps and accept cash in lieu of payments based on the pre-existing rates established by Ordinance 6-2017, if:

The party constructing the residential unit shall establish to the satisfaction of the Town Planning Director that the seller of the residential unit had entered into a contract with a buyer prior to the effective date of this resolution and that contract was entered into by the parties in expectation of the prior cash in lieu of payment amount.

No reduced payments allowed by this paragraph 4 shall be accepted by the Town after October 15, 2020.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON
THIS 12th DAY OF AUGUST, 2020.

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk



ORDINANCE NO. 10--2017

AN ORDINANCE RE-ESTABLISHING FEES TO BE CHARGED BY THE TOWN OF WELLINGTON, COLORADO, FOR UTILITY SERVICES, RE-ESTABLISHING RAW WATER CONTRIBUTION REQUIREMENTS AND DECLARING AN EMERGENCY.

WHEREAS, the Wellington Town Code provides that the Board of Trustees of the Town of Wellington shall set fees for various services provided by the Town by ordinance or resolution; and

WHEREAS, the Board set fees, including by Resolution 12-2008; and

WHEREAS, the Board revised fees, by Resolution 8-2016; and

WHEREAS, the Town Engineer was commissioned to provide analysis of raw water costs and reported to the Wellington Town Board by letter dated March 24, 2017 advising that based on market changes raw water contribution charges should be modified to reflect that the market price for Class D water allotment contracts representing acre foot units of water in the Colorado-Big Thompson Project ("CBT") administered by the Northern Colorado Water Conservancy District units ("NCWCD") were \$26,000 and that one unit represented .7 acre feet of water. Based in these assumptions the Town Engineer reported that cost per acre-foot of water to be \$37,143; and

WHEREAS, the Town Board, through the Town Attorney has advised that CBT units are transferring through NCWCD at the rate of \$27,000 per unit equating to \$38,571.43 per acre foot of water; and

WHEREAS, the Town code at Sec. 13-1-60 provides for water tap requirements and permits and provides for water right dedications as follows at the referenced section:

(e) Procedure for dedicating water rights. The town shall have the sole right of determination to accept or reject any water rights proposed for dedication pursuant to the provision of this Section, or to allow a cash payment in lieu of water rights dedication to satisfy the basic dedication requirement. At the time of submission, the applicant shall indicate the water rights proposed to be dedicated to the town, or the amount of cash in lieu thereof that is proposed to be paid to the Town.

(f) Cash in lieu of water rights dedication. Cash payments in lieu of water rights dedication shall be equal to the fair market value of the water rights necessary to satisfy the basic water rights requirement. The Town shall determine from time to time of the cash in lieu of payment amount to be paid after a public hearing before the Board of Trustees with the decision of the Board of Trustees being final and conclusive.

WHEREAS, Resolution 8—2016 provided for water fees charged at building permit/sewer tap issuance of \$15,350, representing Town's Uniform Water Capital Investment fee which was based on two components, a \$5,500 Plant Investment Fee and a \$9,850 cash in lieu of Raw Water Fee.

WHEREAS, the Town Board of Trustees adopts the following modified fees by ordinance and establishes a raw water contribution requirement and reestablishes a payment in lieu amount for the raw water requirement.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of Trustees of the Town of Wellington, Colorado, that fees charged by the Town shall be established as follows:

Section 1: Utility Fees. The Town shall require payment of the Uniform Capital Investment Fee and shall requires Raw Water Reserve dedications (RWR) to issue water taps connected to Town Domestic water sources and modifies Ordinance 8-2016 setting the Town's Uniform Water Capital Investment fee and further modifies prior ordinance(s) eliminating differentiations for multi-family utility rates under the Town's Uniform Water Capital Investment fee.

The Town adopts fees due in relation to the issuance of any new water tap setting the water Capital Investment Fee and Raw Water Reserve dedication (RWR) as follows:

Meter/Tap Size	Capital Investment
<u>Residential Capital Investment Fees</u>	
3/4"	\$5,500
<u>Commercial and Industrial Capital Investment Fees</u>	
3/4"	\$5,500
1"	\$9,680
1.5"	\$18,095
2"	\$30,195
>2"	Negotiated

Meter/Tap Size	Acre Foot Raw Water Requirement Contribution
<u>Residential Capital Investment Fees</u>	
3/4"	.5 AF
3/4" – 2" Multi-Family	Negotiated
<u>Commercial and Industrial Capital Investment Fees</u>	
3/4"	.5 AF
1"	.88 AF
1.5"	1.65
2"	2.75
>2"	Negotiated

Section 11: Raw Water. The Town shall require the contribution of the equivalent of raw water for any new water tap issued by the Town The Cash in- lieu of Raw Water Requirement Dedication in lieu of dedication of water rights for 1 acre-foot of water for water to meet the RWR Dedication requirement shall be \$38,571.

Section 2. Sec. 13-1-60 (a) and (f) of the Wellington Town Code provide for water tap issuance requirements and permits and provide for water rights dedications and are amended to read as follows:

(e) Procedure for dedicating water rights. The Town shall have the sole right of determination to accept or reject any water rights proposed for dedication pursuant to the provision of this Section, or to allow a cash payment in lieu of water rights dedication to satisfy the basic dedication requirement. At the time of submission, the applicant shall indicate the water rights proposed to be dedicated to the Town, or the amount of cash in lieu thereof that is proposed to be paid to the Town.

The Town will accept the following water rights to satisfy the Town's Raw Water requirements:

Water source	Allotment per unit
One share of North Poudre Irrigation company stock	2.4 AF
Class D water allotment contracts representing acre foot units of water in the Colorado-Big Thompson Project	.7 AF

(f) Cash in lieu of water rights dedication. Cash payments in lieu of water rights dedication shall be equal to the fair market value of the water rights necessary to satisfy the basic water rights requirement. The Town, including the Town Board by Ordinance or Resolution shall determine from time to time the cash in lieu payment amount to be paid after a public hearing before the Board of Trustees with the decision of the Board of Trustees being final and conclusive.

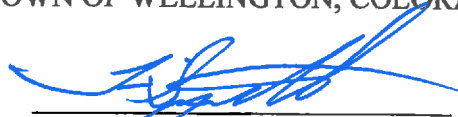
Notwithstanding any ordinance to the contrary, any utility fee to be imposed by the Town or imposed by any enterprise of the Town shall as required by the Town Code be set by ordinance or resolution of the Town Board of Trustees.

Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this Ordinance is necessary for the immediate preservation and protection of the public peace, health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.

Emergency Clause. The Board of Trustees finds and determines that, because this ordinance concerns the immediate and ongoing administration and operation of the Town and the need to meet costs which the Town must offset to meet requirement of agreements made by the Town its adoption as an emergency measure is necessary for the immediate preservation of the public's health, safety and welfare, and this ordinance shall therefore take effect immediately upon adoption as provided by law.

PASSED AND ADOPTED BY AFFIRMATIVE VOTE OF THREE-FOURTHS OF ALL THE MEMBERS OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON AND ORDERED PUBLISHED THIS 25th DAY OF APRIL, 2017 AND ORDERED TO BECOME EFFECTIVE IMMEDIATELY AS AN EMERGENCY ORDINANCE OF THE TOWN OF WELLINGTON, COLORADO INCLUDING PURSUANT TO C.R.S. §31-11-105.

TOWN OF WELLINGTON, COLORADO



Tim Singewald, Mayor

ATTEST: 

, Town Administrator/Clerk

TOWN OF WELLINGTON

ORDINANCE NO. 06-2021

AN ORDINANCE RE-ESTABLISHING FEES TO BE CHARGED BY THE TOWN OF WELLINGTON, COLORADO FOR WATER AND SEWER UTILITY CONNECTION SERVICES AND RE-ESTABLISHING CASH-IN-LIEU RATES FOR RAW WATER CONTRIBUTION REQUIREMENTS.

WHEREAS, the Wellington Town Code provides that the Board of Trustees of the Town of Wellington shall set fees for various services provided by the Town by ordinance or resolution; and

WHEREAS, the Board set water fees by Resolution 12-2008, Resolution 8-2016, Ordinance 6-2017 and Resolution 28-2020; and

WHEREAS, the Board, acting by and through the Town of Wellington, Colorado, Sewer Enterprise, set sewer fees by Resolution 1-2010 SE and Resolution 1-2011 SE; and

WHEREAS, the Town Engineer and the Town Treasurer were directed by the Board to provide an analysis of water tap fees, sewer tap fees and raw water cash-in-lieu requirements and reports have been provided to the Board; and

WHEREAS, the Town Code provides that prior to allowing any new water tap, water right dedications shall be required or in lieu thereof, the Town, in the Town's sole discretion may, but is not required to, accept cash payments; and

WHEREAS, Section 13-1-50 addresses capital investment fees for water taps, sewer taps and water rights dedication requirements and provides:

At Section 13-1-50 (a): Uniform water capital investment (tap or impact) fees. There are hereby imposed uniform water capital investment (tap or impact) fees, payable upon application for a water tap in the Town as established by ordinance or resolution of the Board of Trustees.

At Section 13-1-50 (b): Uniform sewer capital investment (tap or impact) fees. There are hereby imposed uniform sewer capital investment (tap or impact), payable upon application for a sewer tap in the Town as established by ordinance or resolution by the Board of Trustees.

At Section 13-1-50 (d): Basic water rights dedication requirements. Water rights shall be dedicated in the following quantities:

- (1) Developers of residential uses shall dedicate to the Town water rights yielding one (1) acre-foot of water per year for each dwelling unit to be served by the Town water Utility.
- (2) Developers of commercial or industrial uses shall dedicate to the Town water rights in the quantity sufficient to satisfy the ultimate water demand of the commercial or industrial uses as determined by the Town.

At Section 13-1-50 (e): Procedure for dedicating water rights. The Town shall have the sole right of determination to accept or reject any water rights proposed for dedication pursuant to the provision of this Section, or to allow a cash payment in lieu of water rights dedication to satisfy the basic dedication requirement. At the time of submission, the applicant shall indicate the water rights proposed to be dedicated to the Town, or the amount of cash in lieu thereof that is proposed to be paid to the Town.

At Section 13-1-50 (f): Cash in lieu of water rights dedication. Cash payments in lieu of water rights dedication shall be equal to the fair market value of the water rights necessary to satisfy the basic water rights requirement. The Town shall determine from time to time the cash in lieu payment amount to be paid after a public hearing before the Board of Trustees with the decision of the Board of Trustees being final and conclusive; and

WHEREAS, the Town has accepted shares of North Poudre Irrigation Company (NPIC) stock in satisfaction of raw water dedication requirements imposed by the Town Code and may accept Class D water allotment contracts representing acre foot units of water in the Colorado-Big Thompson Project in satisfaction of water right contribution requirements; and

WHEREAS, the costs of shares of NPIC stock are roughly twenty-five percent (25%) higher per year since 2019 and NPIC shares are currently selling for \$195,000 or higher, per share.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. **Sewer Utility Fees.** The Town shall require payment of the Capital Investment Fee to issue sewer taps connected to the Town's wastewater collection system. The Town adopts fees and charges due in relation to the issuance of any new sewer tap setting the sewer Capital Investment Fees as follows:

Sewer Tap Size	Capital Investment
4-inch sewer residential	\$9,700
4-inch sewer multi-family	\$9,700 x dwelling units
4-inch sewer commercial	\$9,700
6-inch sewer commercial	\$28,379
greater than 6-inch sewer tap	calculated based on use

- a) Sewer taps larger than 6 inches in size shall be calculated based on the proposed use and assumes maximum operating flow based on pipe capacity, flowing full at two percent (2%) slope.
- b) The above requirements and schedule are subject to existing and new development agreements and memoranda of public improvements to the contrary.

2. **Water Utility Fees.** The Town shall require payment of the Capital Investment Fee and Meter Charges and shall require Raw Water Dedication to issue water taps connected to Town Domestic water sources. The Town adopts fees and charges due in relation to the issuance of any new water tap setting the water Capital Investment Fee and Raw Water Dedication as follows:

Water Meter/ Tap Size	Capital Investment	Meter Charges	Acre Foot Raw Water Requirement	Cash-in-lieu Amount
3/4-inch residential (indoor)	\$7,750	N/A	0.32 acre feet	\$33,169
3/4-inch residential (irrigation)	\$7,750	N/A	0.26 acre feet	\$26,591
3/4-inch residential (indoor + irrigation)	\$7,750	N/A	0.58 acre feet	\$59,760
3/4-inch to 2-inch (multi-family)	\$7,750 x dwelling units	1-inch or larger refer to meter sizes below	0.32 AF x dwelling units + calculated for landscape	\$33,169 x dwelling units + calculated for landscape
3/4-inch commercial	\$7,750	N/A	calculated for use	calculated for use
1-inch	\$12,179	\$450	calculated for use	calculated for use
1 1/2-inch	\$35,429	\$750	calculated for use	calculated for use
2-inch	\$44,286	\$2,000	calculated for use	calculated for use
greater than 2-inch	Calculated for peak use	Contact Town for pricing	calculated for use	calculated for use
Irrigation only meter	Capital Investment for corresponding meter size	1-inch or larger refer to meter sizes above	calculated for use	calculated for use

- Water taps larger than 2 inches in size shall be calculated based on the proposed use and assumes maximum operating flow based on pipe/meter capacity.
- Multi-family development projects shall require the Capital Investment Fee and Indoor Raw Water Requirement for each residential dwelling unit in accordance with the above schedule. Irrigation water use for multiple-family development projects shall be required based upon calculated need for an approved landscape plan.
- Commercial development projects shall require the Raw Water Requirement based upon calculated need for the proposed use and includes calculated need for an approved landscape plan.
- The above requirements and schedule are subject to existing and new development agreements and memoranda of public improvements to the contrary.

3. Validity. The Board of Trustees hereby declares that should any section, paragraph, sentence, word or other portion of this ordinance or the rules and regulations adopted herein be declared invalid for any reason, such invalidity shall not affect any other portion of this ordinance or said rules and regulations, and the Board of Trustees hereby declares that it would have passed all other portions of this ordinance and adopted all other portions of said rules and regulations, independent of the elimination here from of any such portion which may be declared invalid.
4. Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.
5. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this 25th day of May, 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: May 9, 2023
Subject: Resolution No. 18-2023: A Resolution of the Town of Wellington, Colorado
Amending the Adopted Fee Schedule for 2023

- **Presentation: Meagan Smith, Deputy Director of Public Works**

BACKGROUND / DISCUSSION

The Town recently adopted Resolution No. 37-2022 updating fees and charges for the Town (November 8, 2022). The Fee Schedule is intended to reflect the most current fees adopted by the Board of Trustees and is intended to be updated periodically with the addition of new fees or updates to existing fees. Staff brought forward, and the Board approved, an amendment to the Fee Schedule on February 28, 2023 with Resolution No. 8-2023.

The attached Resolution No. 18-2023 is proposed to amend the Towns adopted fee schedule with changes to the following:

- Update the Raw Water Dedication Requirements for Residential development as adopted in Ordinance No. 05-2023
- Update the payment for Cash-in-lieu of Raw Water Dedication Requirements as adopted in Ordinance No. 05-2023
- Updates to fees removed from Code via Ordinance No. 04-2023 - An Ordinance Amending and Recodifying Chapter 13 of the Municipal Code Concerning Municipal Utilities and adopting via Resolution moving forward.
 - Update to the late fee for utility billing
 - Update to the notice of water disconnect fee
 - Update to the discontinuance and reconnection of service fee

STAFF RECOMMENDATION

Below are possible motion options for the Board to consider:

- Move to approve Resolution No. 18-2023 - A Resolution of the Town of Wellington, Colorado Amending the Adopted Fee Schedule for 2023.
- Move to approve Resolution No. 18-2023 with amendments as the Board of Trustees deems appropriate.
- Move to postpone consideration of Resolution No. 18-2023 and provide guidance to staff as requested modifications.
- Move to deny Resolution No. 18-2023 .

ATTACHMENTS

1. Resolution 18-2023 - Fee Schedule
2. 05.05.23_Fee_Schedule_Draft

TOWN OF WELLINGTON

RESOLUTION NO. 18-2023

A RESOLUTION OF THE TOWN OF WELLINGTON, COLORADO AMENDING THE ADOPTED FEE SCHEDULE FOR 2023.

WHEREAS, Colorado Revised Statutes 31-15-101 authorizes a municipality to enact regulations that promote the health, safety and welfare and improve order, comfort and convenience of the municipality and inhabitants thereof; and

WHEREAS, the Board of Trustees of the Town of Wellington is authorized to establish fees and charges to be paid in connection with requirements imposed or services provided to support those regulations; and

WHEREAS, the Board of Trustees of the Town of Wellington adopted Resolution No. 08-2023 amending the fee schedule for the 2023 fiscal year; and

WHEREAS, the Board of Trustees of the Town of Wellington adopted Ordinance No. 04-2023 amending and recodifying Chapter 13 of the Municipal Code relating to municipal utilities; and

WHEREAS, the Board of Trustees of the Town of Wellington desires to update fees and charges related to municipal utilities.

NOW, THEREFORE, be it resolved by the Board of Trustees for the Town of Wellington, Colorado, as follows:

1. The fees set forth on the Town of Wellington Fee Schedule, attached hereto as EXHIBIT A, are fixed and imposed for the various purposes set forth.
2. This resolution and the attached EXHIBIT A shall supersede and replace any previously adopted fee schedule of the Town.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 9th day of May, 2023.

TOWN OF WELLINGTON, COLORADO

By: _____
Calar Chaussee, Mayor

ATTEST:

Ethan Muhs, Town Clerk

LICENSE FEES

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	LICENSES			
	Business License (New/Renewal)	\$25.00	Res. No. 08-2023	Res. No. 37-2022
	Auctioneer License	\$100.00	Res. No. 08-2023	Res. No. 37-2022
	Peddler's and Handbill License		Res. No. 08-2023	Res. No. 37-2022
	• Monthly	\$8.00	Res. No. 08-2023	Res. No. 37-2022
	• Quarterly	\$50.00	Res. No. 08-2023	Res. No. 37-2022
	• Yearly	\$150.00	Res. No. 08-2023	Res. No. 37-2022
	Contractor License (new and renewal annually)	\$50.00	Res. No. 08-2023	Res. No. 37-2022
16-12-10	Home Occupation License	\$30.00	Ord. No. 5-2008	
6-7-20	Trash Haulers License	\$500.00	Ord. No. 14-1994	

CEMETERY FEES

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	Grave Space			
	Resident/Non-Resident (\$75.00 goes to perpetual care)	\$300.00	Res. No. 08-2023	Res. No. 37-2022
	Non-Resident (\$75.00 goes to perpetual care)	\$450.00	Res. No. 08-2023	Res. No. 37-2022
	Infant 2 years and under (\$75.00 goes to perpetual care)	\$200.00	Res. No. 08-2023	Res. No. 37-2022
	Opening and Closing			
	Casket – regular hours	\$200.00	Res. No. 08-2023	Res. No. 37-2022
	Casket – weekends	\$400.00	Res. No. 08-2023	Res. No. 37-2022
	Cremains – regular hours	\$100.00	Res. No. 08-2023	Res. No. 37-2022
	Cremains – weekends	\$200.00	Res. No. 08-2023	Res. No. 37-2022
	Disinterment			
	Casket	\$600.00	Res. No. 08-2023	Res. No. 37-2022
	Cremains	\$300.00	Res. No. 08-2023	Res. No. 37-2022

EXCAVATION FEES				
CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	RIGHT OF WAY PERMIT			
	Right-of-Way Permit	\$100.00	Res. No. 08-2023	Res. No. 37-2022
	Right-of-Way Deposit	\$1,000.00	Res. No. 08-2023	Res. No. 37-2022
	Encroachment Permit Fee	\$50.00	Res. No. 08-2023	Res. No. 37-2022

LIQUOR LICENSE FEES				
CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
Fees Payable to Town of Wellington (Local licensing authority)				
CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	
	NEW LICENSE FEES			
	New liquor license application fee (one-time fee)	\$750.00	Res. No. 08-2023	Res. No. 37-2022
	Concurrent review - New liquor license application fee(one time fee)	\$850.00	Res. No. 08-2023	Res. No. 37-2022
	Transfer application fee (one-time fee)	\$750.00	Res. No. 08-2023	Res. No. 37-2022
	Temporary Transfer	\$75.00	Res. No. 08-2023	Res. No. 37-2022
	RENEWAL LICENSE FEES			
	Annual Application-ALL Licenses	\$100/yr.	Res. No. 08-2023	Res. No. 37-2022
	Annual Art Gallery fee	\$100/yr.	Res. No. 08-2023	Res. No. 37-2022
	Hotel/Tavern	\$75/yr.	Res. No. 08-2023	Res. No. 37-2022
	Retail Liquor	\$22.50/yr.	Res. No. 08-2023	Res. No. 37-2022
	Beer & Wine	\$48.75/yr.	Res. No. 08-2023	Res. No. 37-2022
	Club	\$41.25/yr.	Res. No. 08-2023	Res. No. 37-2022
	Fermented Malt Beverage (On and Off Premise)	\$3.75/yr.	Res. No. 08-2023	Res. No. 37-2022
	Arts	\$41.25/yr.	Res. No. 08-2023	Res. No. 37-2022
	Liquor License Drugstore	\$22.50/yr.	Res. No. 08-2023	Res. No. 37-2022
	Lodging & Entertainment	\$75.00/yr.	Res. No. 08-2023	Res. No. 37-2022
	Brew Pub	\$75.00/yr.	Res. No. 08-2023	Res. No. 37-2022
	Mini Bar with Hotel/Restaurant	\$48.75/yr.	Res. No. 08-2023	Res. No. 37-2022
	Bed & Breakfast	\$3.75/yr.	Res. No. 08-2023	Res. No. 37-2022
	Special Event Permit (Liquor or Fermented Malt Beverage)	\$100/App	Res. No. 08-2023	Res. No. 37-2022
	Manager Registration/Hotel/Tavern/L&E/Campus Liquor only	\$75.00	Res. No. 08-2023	Res. No. 37-2022
	Change of Location	\$750.00	Res. No. 08-2023	Res. No. 37-2022
	Late Renewal	\$500.00	Res. No. 08-2023	Res. No. 37-2022
	Corporation/LLC Changes	\$100.00	Res. No. 08-2023	Res. No. 37-2022
Fees Payable to State of Colorado (State licensing authority) may be found at Liquor Enforcement Division Fee Schedule				

Payment of ALL applicable fees must be submitted with application

MARIJUANA LICENSE FEES

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
Fees Payable to Town of Wellington (Local licensing authority)				
	Retail Marijuana Store New Application	\$2,500.00	Res. No. 08-2023	Res. No. 37-2022
	Retail Marijuana Operating Fee (Annual)	\$5,000.00	Res. No. 08-2023	Res. No. 37-2022
	Retail Marijuana Store Renewal	\$1,500.00	Res. No. 08-2023	Res. No. 37-2022
	Medical Marijuana Store New Application	\$2,500.00	Res. No. 08-2023	Res. No. 37-2022
	Medical Marijuana Operating Fee (Annual)	\$5,000.00	Res. No. 08-2023	Res. No. 37-2022
	Medical Marijuana Store Renewal	\$1,500.00	Res. No. 08-2023	Res. No. 37-2022
	Zoning and Setback Verification	\$500.00	Res. No. 08-2023	Res. No. 37-2022
	Transfer of Ownership or Change in Business Structure	\$1,000.00	Res. No. 08-2023	Res. No. 37-2022
	Change of Location	\$2,500.00	Res. No. 08-2023	Res. No. 37-2022
	Modification of Premise	\$2,500.00	Res. No. 08-2023	Res. No. 37-2022
	Late Renewal	\$500.00	Res. No. 08-2023	Res. No. 37-2022

WATER RATES AND FEES

CODE SECTION	DESCRIPTION	FEE									RES/ORD NUMBER	PREVIOUS RES/ORD
	MONTHLY WATER RATES											
	Meter Size/Customer Class	Monthly Base Fee	1st Tier Usage Charge	1st Tier Threshold	2nd Tier Usage Charge	2nd Tier Threshold	3rd Tier Usage Charge	3rd Tier Threshold	4th Tier Usage Charge	4th Tier Threshold		
		per tap	per 1,000 gal	gal / month	per 1,000 gal	gal / month	per 1,000 gal	gal / month	per 1,000 gal	gal / month		
	Single-family Residential Single 3/4" Tap	\$49.71	\$0.00	3,000	\$11.70	7,000	\$15.20	20,000	\$21.64	>20,000	Ord. No. 17-2022	Res. No. 44-2020
	Single-family Residential Single 1" Tap	\$60.91	\$0.00	3,000	\$11.70	7,000	\$15.20	20,000	\$21.64	>20,000	Ord. No. 17-2022	Res. No. 44-2020
	Single-family Residential Single 1.5" Tap	\$87.22	\$0.00	3,000	\$11.70	7,000	\$15.20	20,000	\$21.64	>20,000	Ord. No. 17-2022	Res. No. 44-2020
	Single-family Residential Single 2" Tap	\$120.61	\$0.00	3,000	\$11.70	7,000	\$15.20	20,000	\$21.64	>20,000	Ord. No. 17-2022	Res. No. 44-2020
		Monthly Base Fee	1st Tier Usage Charge	1st Tier Threshold	2nd Tier Usage Charge	2nd Tier Threshold	3rd Tier Usage Charge	3rd Tier Threshold	4th Tier Usage Charge	4th Tier Threshold		
		per unit	per 1,000 gal	gal / month	per 1,000 gal	gal / month	per 1,000 gal	gal / month	per 1,000 gal	gal / month		
	Multi-family Residential	\$30.95	\$0.00	3,000	\$7.08	5,000	\$9.21	14,000	\$13.11	>14,000	Ord. No. 17-2022	Res. No. 44-2020
		Monthly Base Fee	1st Tier Usage Charge	1st Tier Threshold	2nd Tier Usage Charge	2nd Tier Threshold	3rd Tier Usage Charge	3rd Tier Threshold				
		per tap	per 1,000 gal	gal / month	per 1,000 gal	gal / month	per 1,000 gal	gal / month				
	Non-Residential ¼ Tap	\$24.07	\$11.72	25,000	\$14.64	120,000	\$17.57	>120,000			Ord. No. 17-2022	Res. No. 31-2021
	Non-Residential 1" Tap	\$35.27	\$11.72	25,000	\$14.64	120,000	\$17.57	>120,000			Ord. No. 17-2022	Res. No. 31-2021
	Non-Residential 1.5" Tap	\$61.58	\$11.72	25,000	\$14.64	120,000	\$17.57	>120,000			Ord. No. 17-2022	Res. No. 31-2021
	Non-Residential 2" Tap	\$94.97	\$11.72	25,000	\$14.64	120,000	\$17.57	>120,000			Ord. No. 17-2022	Res. No. 31-2021
		Monthly Base Fee	Winter Months Usage Charge (Nov-Apr)	Summer Months Usage Charge (May-Oct)								
		per tap	per 1,000 gal	per 1,000 gal								
	Irrigation 0.75" Tap	\$24.07	\$8.99	\$17.98							Ord. No. 17-2022	Res. No. 44-2020
	Irrigation 1" Tap	\$35.27	\$8.99	\$17.98							Ord. No. 17-2022	Res. No. 44-2020
	Irrigation 1.5" Tap	\$61.58	\$8.99	\$17.98							Ord. No. 17-2022	Res. No. 44-2020
	Irrigation 2" Tap	\$94.97	\$8.99	\$17.98							Ord. No. 17-2022	Res. No. 44-2020
		Monthly Base Fee	Usage Charge									
		per tap	per 1,000 gal									
	Non-Potable Irrigation	\$0.00	\$1.10									
	Inactive Water Tap (Residential or Non-residential)	\$5.00	\$0.00								Ord No. 8-2016	
	MISCELLANEOUS WATER FEES											
CODE SECTION	DESCRIPTION	FEE									RES/ORD NUMBER	PREVIOUS RES/ORD
	Shut off notice fee	\$10.00								Res. No. 18-2023	Res. No. 08-2023	
13-1-120	Reconnection Fee - following termination due to non-payment	\$100.00								Res. No. 18-2023	Res. No. 08-2023	
13-1-90	Delinquent Fee	\$5.00								Res. No. 18-2023	Res. No. 08-2023	
13-1-90	Non-sufficient Funds Fee	\$20.00								Res. No. 08-2023	Ord. No. 15-2020	
	Account Transfer Fee	\$10.00								Res. No. 08-2023	Res. No. 37-2022	
	Bulk Water Rates	\$21.64	per 1,000 gallons							Ord. No. 17-2022	Res. No. 44-2020	
	Contractor Supplied Hydrant Meter Fees	\$50.00		\$ 21.64	per 1,000 gallons					Res. No. 08-2023	Res. No. 37-2022	
	Town Hydrant Supplied Meter Use Fees	\$3,500.00	Rental Deposit	\$ 10.00	per day	\$ 21.64	per 1,000 gallons			Res. No. 08-2023	Res. No. 37-2022	

SEWER RATES AND FEES

CODE SECTION	DESCRIPTION	FEE		RES/ORD NUMBER	PREVIOUS RES/ORD
	MONTHLY SEWER RATES	Monthly Base Fee	Usage Charge		
		per tap	per 1,000 gallons		
	Residential Usage Charge based on average monthly water usage for user between January 1 and March 31.	\$13.95	\$8.02	Ord. No. 17-2022	Ord. No. 3-2022
	Non-residential Usage Charge based on actual monthly water usage reduced by 15% to account for irrigation uses and other water uses not returned as wastewater.	\$13.95	\$8.02	Ord. No. 17-2022	Ord. No. 3-2022
	Inactive taps (Residential or Non-residential)	\$6.00		Ord. No. 3-2022	

STORMWATER RATES AND FEES			
CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER
	MONTHLY STORMWATER RATES		
13-1-40	Residential Monthly Stormwater Fees	\$5.00	Res. No. 08-2023
13-1-40	Commercial Monthly Stormwater Fees	\$9.25	Res. No. 08-2023
	BOXELDER STORMWATER AUTHORITY FEES		
13-7-50	Residential Monthly Stormwater Fees	\$6.33	Res. No. 08-2023
13-7-50	Commercial Monthly Stormwater Fees (Based on square feet of impervious area):		
	1-5,000 sq ft	\$6.33	Res. No. 08-2023
	5,001-10,000 sq ft	\$13.75	Res. No. 08-2023
	10,001-20,000 sq ft	\$27.50	Res. No. 08-2023
	20,001-30,000 sq ft	\$55.00	Res. No. 08-2023
	30,001-40,000 sq ft	\$87.50	Res. No. 08-2023
	40,001-50,000 sq ft	\$110.00	Res. No. 08-2023

PRE-CONSTRUCTION INSPECTION FEES FOR PUBLIC IMPROVEMENTS

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	Streets - New	\$1.50 / linear foot	Res. No. 08-2023	Res. No. 37-2022
	Streets - Existing (widening or other improvements)	\$1.00 / linear foot	Res. No. 08-2023	Res. No. 37-2022
	Water Mains, with appurtenances	\$1.75 / linear foot	Res. No. 08-2023	Res. No. 37-2022
	Wastewater Mains, with appurtenances	\$1.50 / linear foot	Res. No. 08-2023	Res. No. 37-2022
	Storm Drain Pipes, with appurtenances	\$1.50 / linear foot	Res. No. 08-2023	Res. No. 37-2022
	Stormwater Facilities	\$1,000.00 / each	Res. No. 08-2023	Res. No. 37-2022
	Erosion and Sediment Control	\$200.00 / acre	Res. No. 08-2023	Res. No. 37-2022

PLANNING AND ZONING FEES					
CODE SECTION	DESCRIPTION	FEE		RES/ORD NUMBER	PREVIOUS RES/ORD
	Annexation	\$4,000.00	+ \$10 / Acre	Res. No. 08-2023	Ord. No. 8-2019
	Preliminary Major Subdivision - Single Family and Two Family Zoning Districts	\$3,000.00	+ \$10 / Lot	Res. No. 08-2023	Ord. No. 8-2019
	Preliminary Major Subdivision - All other Zoning Districts	\$3,000.00	+ \$10 / Acre	Res. No. 08-2023	Ord. No. 8-2019
	Major Subdivision, Final	\$500.00		Res. No. 08-2023	Ord. No. 8-2019
	Minor Subdivision Plat - Single-family and Two-family Zoning Districts	\$1,500.00	+ \$10 / Lot	Res. No. 08-2023	Ord. No. 8-2019
	Minor Subdivision Plat - All other Zoning Districts	\$1,500.00	+ \$10 / Acre	Res. No. 08-2023	Ord. No. 8-2019
	Manufactured Home Park	\$3,000.00	+ \$10 / Lot	Res. No. 08-2023	Ord. No. 8-2019
	Recreational Vehicle Park	\$3,000.00	+ \$10 / vehicle space	Res. No. 08-2023	Ord. No. 8-2019
	Revised Final Plat	\$500.00		Res. No. 08-2023	
	Lot Line Adjustment	\$500.00		Res. No. 08-2023	
	Easement Adjustment	\$500.00		Res. No. 08-2023	
	Condominium/Townhome Plat	\$750.00		Res. No. 08-2023	
	Vacation of Right-of-Way or Easement	\$1,200.00		Res. No. 08-2023	Ord. No. 8-2019
	Zone Change Request (Rezone)	\$1,200.00		Res. No. 08-2023	Ord. No. 8-2019
	Planned Unit Development	\$4,000.00	+ \$10 / lot for residential + \$10 / acre for non-residential	Res. No. 08-2023	Ord. No. 8-2019
	Conditional Use	\$1,200.00		Res. No. 08-2023	Ord. No. 8-2019
	Variance, Residential Zones	\$500.00		Res. No. 08-2023	Ord. No. 8-2019
	Variance, C-1, C-2 and LI Zones	\$1,000.00		Res. No. 08-2023	
	Variance, C-3 and I Zones	\$2,000.00		Res. No. 08-2023	
	Each Additional Variance (concurrent review on same site)	\$500.00	each additional variance on same site	Res. No. 08-2023	
	Special Review	\$750.00		Res. No. 08-2023	
	Non-conforming Use Review	\$500.00		Res. No. 08-2023	Ord. No. 8-2019
	Site Plan Review	\$1,200.00	+ \$100 per acre if more than one acre	Res. No. 08-2023	Ord. No. 8-2019
	Amend Approved Site Plans (Planning Commission)	\$500.00		Res. No. 08-2023	Ord. No. 8-2019
	Administrative Adjustment	\$500.00		Res. No. 08-2023	Ord. No. 8-2019
	Minor Deviation	\$250.00		Res. No. 08-2023	
	Extension of Final Approval	\$250.00		Res. No. 08-2023	Ord. No. 8-2019
	Board of Adjustment / Appeals	\$500.00	+ legal expenses incurred, if any	Res. No. 08-2023	Ord. No. 8-2019
	Third and subsequent rounds of review	50% of base fee		Res. No. 08-2023	
	Zoning Permit (for accessory structures less than 120 sq. ft. or fences, structures and signs otherwise not requiring a building permit)	\$30.00		Res. No. 08-2023	Ord. No. 8-2019
5.06.5 Land Use Code	Park Land Fee in-lieu of Dedication	Appraisal		Res. No. 08-2023	Ord. No. 7-2022
5.04.16 Land Use Code	Tree Preservation Standards Fee in-lieu	\$500.00	per tree	Res. No. 08-2023	

ENGINEERING REVIEW FEES					
CODE SECTION	DESCRIPTION	FEE		RES/ORD NUMBER	PREVIOUS RES/ORD
Includes engineering review of construction documents and engineering design documents					
	Annexation	\$1,500.00	+\$10.00/Acre	Res. No. 08-2023	Res. No. 37-2022
	Zone Change Request (Rezone)	\$0.00		Res. No. 08-2023	Res. No. 37-2022
	Planned Unit Development	\$2,000.00	+\$10.00/lot for residential or \$10.00/acre for non-residential	Res. No. 08-2023	Res. No. 37-2022
	Conditional Use	\$0.00		Res. No. 08-2023	Res. No. 37-2022
	Preliminary Major Subdivision - Single Family and Two Family Zoning Districts	\$4,000.00	+\$30.00/Lot	Res. No. 08-2023	Res. No. 37-2022
	Preliminary Major Subdivision - All other Zoning Districts	\$4,000.00	+\$30.00/Acre	Res. No. 08-2023	Res. No. 37-2022
	Final Major Subdivision - Single Family and Two Family Zoning Districts	\$5,000.00	+\$40.00/Lot	Res. No. 08-2023	Res. No. 37-2022
	Final Major Subdivision - All other Zoning Districts	\$5,000.00	+\$40.00/Acre	Res. No. 08-2023	Res. No. 37-2022
	Minor Subdivision - Plat only	\$1,000.00	+\$10.00/Lot for residential or \$10.00/acre for non-residential	Res. No. 08-2023	Res. No. 37-2022
	Minor Subdivision - With public improvements	\$5,000.00	+\$50.00/Lot for residential or \$60.00/acre for non-residential	Res. No. 08-2023	Res. No. 37-2022
	Manufactured Home Park - With private drive aisles and public utilities	\$2,000.00	+\$40.00/mobile home site	Res. No. 08-2023	Res. No. 37-2022
	Recreational Vehicle Park - With private drive aisles and public utilities	\$2,000.00	+\$30.00/vehicle site	Res. No. 08-2023	Res. No. 37-2022
	Vacation of Right-of-Way or Easement	\$400.00		Res. No. 08-2023	Res. No. 37-2022
	Site Plan Review - No public improvements	\$1,000.00	+\$10.00 per acre if over an acre	Res. No. 08-2023	Res. No. 37-2022
	Site Plan Review - With public improvements	\$4,000.00	+\$80.00 per acre if over an acre	Res. No. 08-2023	Res. No. 37-2022
	Revised Final Plat	\$500.00		Res. No. 08-2023	Res. No. 37-2022
	Lot Line Adjustment	\$400.00		Res. No. 08-2023	Res. No. 37-2022
	Easement Adjustment	\$400.00		Res. No. 08-2023	Res. No. 37-2022
	Review of resubmittals in response to first round of comments	20% of initial fee		Res. No. 08-2023	Res. No. 37-2022
	Review of all resubmittals after the first resubmittal	10% of intitial fee		Res. No. 08-2023	Res. No. 37-2022
	Modifications to Town Engineering Standards	\$500/instance		Res. No. 08-2023	Res. No. 37-2022
	Specialized reports requiring outside review services - Traffic Impact Studies, Environmental Studies and others as determined by the Town	Costs as invoiced by consultant			

WATER & SEWER CAPITAL INVESTMENT FEES & RAW WATER REQUIREMENT

CODE SECTION	DESCRIPTION					
13-1-40	Water Meter/ Tap Size	Meter Charges	Water Capital Investment Fee	Wastewater Capital Investment Fee	Raw Water Requirement	Raw Water Requirement Cash-in-lieu
	Previous RES/ORD Number	Ord. No. 16-2021	Ord. No. 16-2021	Ord. No. 16-2021	Ord. No. 6-2021	Ord. No. 6-2021
	RES/ORD Number	Res. No. 18-2023	Ord. No. 16-2022	Ord. No. 16-2022	Res. No. 17-2023	Res. No. 17-2023
	RESIDENTIAL					\$124,100/AF
	Single-family 3/4 inch (indoor only)	N/A	\$10,437.00	\$9,742.00	.25 AF	
	Single-family 3/4 inch	N/A	\$10,437.00	\$9,742.00	.50 AF	
	Multi-family 3/4 inch - 2 inch	N/A	\$7,306.00 x dwelling units	\$6,819.00 x dwelling units	.18 AF x dwelling units	
	COMMERCIAL					\$124,100/AF
	3/4 inch	N/A	\$10,437.00	\$9,742.00	Calculated based on expected use	
	1 inch	\$450.00	\$16,699.00	\$15,587.00	Calculated based on expected use	
	1 1/2 inch	\$750.00	\$48,010.00	\$44,813.00	Calculated based on expected use	
	2 inch	\$2,000.00	\$59,491.00	\$55,529.00	Calculated based on expected use	
	Greater than 2 inch	Contact Town for pricing	Contact Town for pricing	Contact Town for pricing	Calculated based on expected use	
	Irrigation only meter	1 inch or larger refer to meter size above	Capital investment for corresponding meter size above	N/A	Calculated based on expected use	

IMPACT FEES & DEVELOPMENT COSTS						
CODE SECTION	DESCRIPTION		FEE		RES/ORD NUMBER	PREVIOUS RES/ORD
		General Commercial	Single Family Residence	Multi - Family		
	Park		\$1,000.00	\$1,000 X Dwelling Units	Res. No. 08-2023	Ord. No. 17-1999
	Road	Average Daily Traffic X \$126	\$1,700.00	\$1,700 X Dwelling Units	Res. No. 08-2023	Res. No. 22-2016
	Library		\$250.00	\$250 X Dwelling Units	Res. No. 08-2023	Ord. No. 17-1999
	Trail		\$450.00	\$450 X Dwelling Units	Res. No. 08-2023	Ord. No. 16-2014
	Storm Drainage	\$0.33 X sq. ft. of impervious space	\$840.00	\$840 X Dwelling Units	Res. No. 08-2023	Ord. No. 1-2017
	Fire	\$1.31 X gross sq. ft.	\$1,480.00	\$1,480 X Dwelling Units	Res. No. 08-2023	IGA adopted August 2019
	School District Cash in-lieu of Land Dedication		\$1,710 (1-4 attached units)	\$855 (5 or more attached units)	Res. No. 08-2023	Res. No. 6-2013

BUILDING PERMIT FEES

CODE SECTION	DESCRIPTION	FEE		RES/ORD NUMBER	PREVIOUS RES/ORD
	Permit Issuance	\$25.00		Res. No. 08-2023	Ord. No. 8-2019
	Building Permit – Based on Valuation of Work as set by the Building Official (IBC 109.3)				
	\$1.00 - \$1,000	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	\$1,001 - \$25,000	\$75.00	plus \$14.00 for each additional \$1,000 or fraction thereof over \$1,000	Res. No. 08-2023	Ord. No. 8-2019
	\$25,001 - \$50,000	\$391.25	plus 10.10 for each additional \$1,000 or fraction thereof over \$1,000	Res. No. 08-2023	Ord. No. 8-2019
	\$50,001 - \$100,000	\$643.75	plus 7.00 for each additional \$1,000 or fraction thereof over \$1,000	Res. No. 08-2023	Ord. No. 8-2019
	\$100,001 - \$500,000	\$993.75	plus \$5.60 for each additional \$1,000 or fraction thereof over \$1,000	Res. No. 08-2023	Ord. No. 8-2019
	\$500,000 - \$1,000,000	\$3,233.75	plus \$4.75 for each additional \$1,000 or fraction thereof over \$1,000	Res. No. 08-2023	Ord. No. 8-2019
	\$1,000,000 or greater	\$5,608.75	plus \$3.15 for each additional \$1,000 or fraction thereof over \$1,000	Res. No. 08-2023	Ord. No. 8-2019
	Building Plan Review (Townhomes, Single- and Two Family Residential)	30% of Building Fee		Res. No. 08-2023	Ord. No. 8-2019
	Building Plan Review (Commercial and Multi-Family)	65% of Building Fee		Res. No. 08-2023	Ord. No. 8-2019
	Town Administrative Fee	10% of Building Fee		Res. No. 08-2023	Ord. No. 8-2019
	Electrical Fee	From State Electrical Fee Schedule		Res. No. 08-2023	Ord. No. 8-2019
	Furnace or AC Replacement	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Water Heater Replacement	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Lawn Sprinkler	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Roof/Re-roof	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Siding Replacement	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Window Replacement	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Water Service Line Inspection Fee	\$50.00		Res. No. 08-2023	
	Sewer Service Line Inspection Fee	\$50.00		Res. No. 08-2023	
	Demolition	\$50.00		Res. No. 08-2023	Ord. No. 8-2019
	Re-inspection/Consultation	\$75.00		Res. No. 08-2023	Ord. No. 8-2019
	Temporary Certificate of Occupancy (TCO)	\$150.00		Res. No. 08-2023	Ord. No. 8-2019
	Reactivation of Expired Permit	50% of Building Permit Fee		Res. No. 08-2023	Ord. No. 8-2019
	Investigation Fee	50% of Building Permit Fee		Res. No. 08-2023	Ord. No. 8-2019
	Inspection Outside Normal Business Hours	\$100.00 per hour (one hour minimum)		Res. No. 08-2023	Ord. No. 8-2019
	Rereview of Previously Approved Plans	\$75.00 per hour (one hour minimum)		Res. No. 08-2023	Ord. No. 8-2019
	Structural Engineering Plan Review	\$150 per hour (one hour minimum)		Res. No. 08-2023	
	Business License Inspection	\$75.00		Res. No. 08-2023	
	Mobile/Manufactured/Factory Built	\$155 – Approved Mobile Home Park	\$75 – Temporary or accessory	Res. No. 08-2023	Res. No. 3-2011
	Stock Model / “Same As” Plan Review	\$45 – No Changes	\$100 – Minor Changes	Res. No. 08-2023	Res. No. 3-2011

RECREATION FEES				
CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	Updated Fee Schedule Resolution	Fees imposed for recreational programs, advertisement and sale of goods provided by the Town of Wellington shall be set at the discretion of the Parks & Recreation Manager, not to exceed the cost of the individual programs. Imposed fees will align with the Cost Recovery Model for the Parks & Recreation Department.		
	Adult Kickball	\$300 per team	Res. No. 08-2023	Res. No. 37-2022
	Adult Softball	\$400 per team	Res. No. 08-2023	Res. No. 37-2022
	Adult Softball: With playoffs	\$550 per team	Res. No. 08-2023	Res. No. 37-2022
	Adult Softball: Tournament	\$200 per team	Res. No. 08-2023	Res. No. 37-2022
	Adult Volleyball	\$310 per team	Res. No. 08-2023	Res. No. 37-2022
	Contractor Activities	70% revenue to instructor/30% to department (price set by contractor)	Res. No. 08-2023	Res. No. 37-2022
	Youth Baseball: FCBC Rec	\$100 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Baseball: FCBC Intermediate	\$395 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Baseball: T-Ball	\$50 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Baseball: Modified T-Ball	\$55 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Baseball: Coach/Player Pitch	\$70 per participant	Res. No. 08-2023	Res. No. 37-2022
	Start Smart – All Sports	\$55 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Basketball	\$60 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Soccer: 5U	\$50 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Soccer: 7U	\$55 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Soccer: 9U, 12U, 15U	\$60 per participant	Res. No. 08-2023	Res. No. 37-2022
	Youth Volleyball	\$55 per participant	Res. No. 08-2023	Res. No. 37-2022
	Bubble Soccer	\$90 per team	Res. No. 08-2023	Res. No. 37-2022
	Archery Attack	\$100 per team	Res. No. 08-2023	Res. No. 37-2022
	Advertisement Opportunities	Variable	Res. No. 08-2023	
	Concessions Sales	Variable	Res. No. 08-2023	

PARKS FEES

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	Ball Field Rental	\$20/hour	Res. No. 08-2023	Res. No. 37-2022
	Field Lighting	\$30/hour	Res. No. 08-2023	Res. No. 37-2022
	Field Lighting: Unplanned Turn on Fee	\$30	Res. No. 08-2023	Res. No. 37-2022
	Deposit	\$250/rental	Res. No. 08-2023	Res. No. 37-2022
	NSF Fee	\$35	Res. No. 08-2023	Res. No. 37-2022
	Ballfield Prep – Full Service (Scarify, Drag, Chalk)	\$60 per field	Res. No. 08-2023	Res. No. 37-2022
	Ball Field Prep – Scarify and Drag	\$25 per field	Res. No. 08-2023	Res. No. 37-2022
	Ball Field Prep – Chalk	\$35 per field	Res. No. 08-2023	Res. No. 37-2022
	Ball Field Prep – Cocoa Mat	\$10 per field	Res. No. 08-2023	Res. No. 37-2022
	Ball Field Prep – Bases Only	\$20 per set	Res. No. 08-2023	Res. No. 37-2022
	Additional Field Prep: Full (Drag, Re-Chalk)	\$50 per prep	Res. No. 08-2023	Res. No. 37-2022
	Additional Field Prep: Cocoa Mat	\$10 per prep	Res. No. 08-2023	Res. No. 37-2022
	Additional Field Prep: Drag	\$15 per prep	Res. No. 08-2023	Res. No. 37-2022
	Additional Field Prep: Re-chalk	\$15 per prep	Res. No. 08-2023	Res. No. 37-2022
	Portable Pitching Mound	\$200 per mound	Res. No. 08-2023	Res. No. 37-2022
	Score Booth Rental	\$150 per day per booth	Res. No. 08-2023	Res. No. 37-2022
	Turfce	\$20 per bag	Res. No. 08-2023	Res. No. 37-2022
	Green Space Rental – Half Day (4 hours)	\$100	Res. No. 08-2023	Res. No. 37-2022
	Green Space Rental – Full Day (8 hours)	\$200	Res. No. 08-2023	Res. No. 37-2022
	Tennis Court Rental – Single Court	\$15/hour	Res. No. 08-2023	Res. No. 37-2022
	Field Supervisor – May be required	\$20/hour	Res. No. 08-2023	Res. No. 37-2022
	Tournament Rental Cancellation – 1 week in advance	\$250 (deposit kept)	Res. No. 08-2023	Res. No. 37-2022
	Tournament Rental Cancellation – 2 weeks in advance	\$50	Res. No. 08-2023	Res. No. 37-2022
	Portable Goals	\$20 per goal	Res. No. 08-2023	Res. No. 37-2022
	Pickle Ball Nets	\$20 per day per net	Res. No. 08-2023	Res. No. 37-2022
	Pickle Ball Set	\$50 per day per set	Res. No. 08-2023	Res. No. 37-2022
	Memorial Bench	\$750	Res. No. 08-2023	Res. No. 37-2022

SPECIAL EVENT FEES

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
	Application Fee	\$25.00	Res. No. 08-2023	Res. No. 37-2022
	Annual Vendor Fee	\$25.00	Res. No. 08-2023	Res. No. 37-2022
	Daily Park Rental (Excluding Sports Fields)	\$200.00	Res. No. 08-2023	Res. No. 37-2022
	Fencing (maximum 1,300 feet of fencing)	\$480.00	Res. No. 08-2023	Res. No. 37-2022
	Electric Distribution Panel for Temporary Power (per day)	\$50.00	Res. No. 08-2023	Res. No. 37-2022
	Refundable Deposit	\$250.00	Res. No. 08-2023	Res. No. 37-2022

MISCELLANEOUS FEES

CODE SECTION	DESCRIPTION	FEE	RES/ORD NUMBER	PREVIOUS RES/ORD
13-1-90(c)	NSF Fee - Utility bills	\$20.00	Res. No. 08-2023	Res. No. 37-2022
	Fee for Code Books	Actual Cost	Res. No. 08-2023	Res. No. 37-2022
	Fees for Special Meetings	\$200.00	Res. No. 08-2023	Res. No. 37-2022
	Public Tow Hearing Cost	\$25.00	Res. No. 08-2023	Res. No. 37-2022
	Snow Removal	Abatement Procedure	Res. No. 08-2023	Res. No. 37-2022
	Leeper Center Rental – Individual	\$25.00 Per Hour + \$100.00 Deposit	Res. No. 08-2023	Res. No. 37-2022
	Leeper Center Rental – Non-Profit	\$15.00 Per Hour (Deposit Waived)	Res. No. 08-2023	Res. No. 37-2022
	Centennial Conference Room Rental - Individual	\$25.00 Per Hour + \$100.00 Deposit	Res. No. 08-2023	Res. No. 37-2022
	Centennial Conference Room Rental - Non-Profit	\$15.00 Per Hour (Deposit Waived)	Res. No. 08-2023	Res. No. 37-2022
	VIN Verification	\$20.00	Res. No. 08-2023	Res. No. 37-2022
	Nuisance Abatement	Actual cost of abatement + 10%	Res. No. 08-2023	Res. No. 37-2022
	CORA requests	First hour free every subsequent hour is \$30 per hour	Res. No. 08-2023	Res. No. 37-2022
	Copies	\$0.25 per page	Res. No. 08-2023	Res. No. 37-2022

Board of Trustees Meeting

Date: May 9, 2023
Subject: Payment of Bills April 2023

- **Presentation: Charity Campfield, Finance Director**

BACKGROUND / DISCUSSION

Payment of Bills April 2023

STAFF RECOMMENDATION

Review and retain report.

ATTACHMENTS

1. April 2023_Expenses

Check Issue Date	Payee	Description	Amount
4/7/2023	4RIVERS EQUIPMENT	Washer, hy-gard and drain plug	781.61
4/7/2023	ADVANCED AUTO PARTS	Transmission Filter	285.98
4/7/2023	ALL AMERICAN BACKFLOW	Annual Backflow Testing for Irriga	1,220.32
4/7/2023	ALLWATER SUPPLY LLC	Injection Quill	1,714.21
4/7/2023	AMAZON	Mini-Fridge Stand, Binders, USB c	639.01
4/7/2023	Analytical Environmental Laboratory LLC	Odor and Taste Contaminants	810.00
4/7/2023	BRYAN EHRUCH	2023 4th of July Pyro-Musical 80%	41,125.60
4/7/2023	BUSINESS CARD FACTORY OF COLORADO	Business Cards	238.70
4/7/2023	C & W TRUCK AND TRAILER PARTS	PowerEdge HD Truck Starter	2,113.77
4/7/2023	CASELLE, INC.	W-2 YEAR-END SERVICES	1,425.00
4/7/2023	Debbie Hanson	Cemetery Payment Reimburseme	100.00
4/7/2023	CENTURYLINK	PUMP STATION 970-568-0449 065	79.06
4/7/2023	CINTAS	First Aid Restock	531.00
4/7/2023	CIRSA	Property/Casualty Coverage 1/1/2	43,997.97
4/7/2023	CITY OF FORT COLLINS	Ice Buster	3,050.40
4/7/2023	COLORADO ANALYTICAL LAB	E Coli	987.00
4/7/2023	CTL THOMPSON, INC.	Testing services for water treatme	9,880.50
4/7/2023	DANA KEPNER	New home water meters	13,650.00
4/7/2023	DPC INDUSTRIES, INC	SODIUM HYPO	2,577.40
4/7/2023	Employers Council	Court Fees	600.00
4/7/2023	GLOBAL EQUIPMENT COMPANY INC	Doormat, storage cabinets and uti	1,490.27
4/7/2023	GRAINGER	Sleeve coupling insert	678.59
4/7/2023	INTERMOUNTAIN SALES, INC	Hydrant Buddy	5,783.11
4/7/2023	KELLY SUPPLY	Plant R&M Parts	466.87
4/7/2023	KORBY SOD LLC	Existing Sod Removal & Haul Away	4,025.00
4/7/2023	LARIMER COUNTY SHERIFF	1ST QUARTER 2023 LAW ENFORCI	446,284.41
4/7/2023	Lewan Technology	MICROSOFT LICENSE 12/21/22-1/	1,633.00
4/7/2023	LOVELAND REPORTER-HERALD	Subscription	0.99
4/7/2023	LOVELAND STEAM LAUNDRY	Shirt and Pant	201.69
4/7/2023	LUMEN	IP AND DATA SERVICES	1,950.59
4/7/2023	NAPA AUTO PARTS	Knock Sensor Kit	175.53
4/7/2023	NORTH POUDRE IRRIGATION	Rental Payments for 8/22-12/22	1,250.00
4/7/2023	NORTHERN COLORADO SPORTS OFFICIALS	Game Fee's Football and Soccer	410.00
4/7/2023	PINNACOL ASSURANCE	Audit Premium	1,693.00
4/7/2023	POUDRE SCHOOL DISTRICT	RENTAL RICE ELEMENTARY	573.75
4/7/2023	POUDRE VALLEY AIR	SERVICE CALL	872.50
4/7/2023	PROTECT YOUTH SPORTS, DEPT 2110	COACHES BACKGROUND CHECKS	688.80
4/7/2023	RESOURCE CENTRAL	2023 Garden in a Box Program	2,750.00
4/7/2023	ROCKY MOUNTAIN BOTTLED WATER, LLC	Purified Water	35.00
4/7/2023	ROSS LAGENESE	MILEAGE REIMBURSEMENT - Spons	34.06
4/7/2023	SMART DOCUMENT MANAGEMENT, LLC	Shredding	25.00
4/7/2023	SUMMIT CONTROL	Ascent X1	825.96
4/7/2023	THE F.A. BARTLETT TREE EXPERT CO.	W 1st ST.	320.00
4/7/2023	UNCC	TRANSMISSIONS	140.61
4/7/2023	USA BLUE BOOK	Mag battery power w/ cable	5,880.57
4/7/2023	VALERIE JO FAGAN	Book Bugs	473.00
4/7/2023	VAUGH CONCRET PRODUCTS, INC	Precast Concrete Water Meter Va	6,691.00
4/7/2023	WELD CNTY DEPT PUBLIC HEALTH ENVIRO	Total Coliform and E. Coli Feb22	430.00
4/7/2023	WELLINGTON FIRE PROTECTION DIS	Less 5% Vendor Fee	32,145.43
4/7/2023	WELLINGTON TOY STORAGE	Storage 3/23-4/24	1,800.00
4/7/2023	WHITE CAP CONST. SUPPLY	12 Ribbed Wire"	1,287.15
4/7/2023	Williams Scotsman, INC	MS Furniture Package	765.00
4/7/2023	XYLEM WATER SOLUTIONS USA, INC.	Anthraxite	7,250.00
4/7/2023	The BBQ Love Shack	Employee Appreciation Lunch	814.20
4/10/2023	CASH	Reconcile Cash Drawers	101.68
4/17/2023	CARMEN DEGNAN	RECREATION REFUNDS	230.00
4/24/2023	4Rivers Equipment	Fuel filter, gasket, fuel pump	180.40
4/24/2023	ALLWATER SUPPLY LLC	0-160 PSI 316ss BT Gauge CPV/PTI	580.13
4/24/2023	AMAZON	Keen Utility Men's Arch Support &	1,259.08
4/24/2023	AWP, Inc. dba AWP Safety	STREET NAME SIGNAGE	2,948.54
4/24/2023	BOBCAT OF THE ROCKIES	Bit Planner & Wheel Saw	146.40
4/24/2023	C & W TRUCK AND TRAILER PARTS	Kit, Gunite Sty 5/8-18"	110.98
4/24/2023	COLORADO ANALYTICAL LAB	E-coli	710.00
4/24/2023	COLORADO LIBRARY CONSORTIUM	AspenCat Maintenance Fee 2023	3,680.00
4/24/2023	A QUIVER FULL LLC	BUSINESS LICENSE FEE REFUND	55.00
4/24/2023	CPS DISTRIBUTORS	Community Park	5,732.36
4/24/2023	CRAFTED SIMPLY INC	20 oz Black Travel Mugs with Hanc	775.00
4/24/2023	DEDICATED OVERHEAD DOOR	6x4 Steel Counter Shutter - Manu:	2,205.00
4/24/2023	DPC INDUSTRIES, INC	Caustic Soda 25%	7,278.37
4/24/2023	HALLIE SHELTON	PER DIEM FOR CCCMA	454.72
4/24/2023	EWING IRRIGATION PRODUCTS INC	Branch Recycling	54.00
4/24/2023	GRAINGER	Cotton Jacket, Flame Resistant	144.85
4/24/2023	HARCROS CHEMICALS INC	Muriatic Acid 15%	1,229.00
4/24/2023	INGRAM LIBRARY SERVICES	BOOKS	3,547.00
4/24/2023	INTELLIGENT MARKING USA, INC	GPS Paint Robot + GPS Package	11,000.00
4/24/2023	JEANETTE GONZALEZ	Leeper Refund Request	100.00
4/24/2023	KELLAR ENGINEERING GROUP	Connel Asphalt Plant Review	320.00
4/24/2023	KELLY SUPPLY	PVC Fittings	367.02
4/24/2023	Lewan Technology	Microsoft License 12/21/2023-01/	10,488.00
4/24/2023	LOGAN SIMPSON DESIGN INC	PROFESSIONAL SERVICES 12/05/2	2,082.50
4/24/2023	MARCH & OLIVE, LLC	FEB/MAR Attorney Fees	13,687.24
4/24/2023	MARILU CASTRO	Leeper Refund	100.00
4/24/2023	McDonald Farms Enterprises	ROLLOFF DEMO	2,496.00
4/24/2023	NORTHERN COLORADO SPORTS OFFICIALS	Game Fees - Soccer and Softball	265.00
4/24/2023	Poudre Fire Authority	Personnel, apparatus and equipm	1,950.66
4/24/2023	POUDRE SCHOOL DISTRICT	February Gym Rental Fees	2,244.00
4/24/2023	SAFEBUILT COLORADO, LLC	March 2023 Permit Activity	7,300.12
4/24/2023	WAGNER RENTS	Tip, Pin, Retainer	221.58
4/24/2023	WELD CNTY DEPT PUBLIC HEALTH ENVIRO	Coliform & E-Coli Water Testing	361.40
4/24/2023	KELLY HOUGHTELING	PER DIEM FOR CCCMA	454.72
4/24/2023	PATTI GARCIA	PER DIEM FOR CCCMA	454.72
4/24/2023	BOXELDER BASIN REGIONAL STORMWATE	2022 SYSTEM DEVELOPMENT FEE:	414,591.26
4/28/2023	Ericka Scott	CLEANING SERVICE MAR 2023 LIB	4,077.50