



Progressive Design-Build Agreement for Water and Wastewater Projects

This **AGREEMENT** is made as of the Seventh day of January in the year of 2025, by and between the following parties, for services in connection with the Project identified below:

OWNER: TOWN OF CASTLE ROCK, a Colorado municipal corporation (alternatively referred to in the Agreement as the “Town” or “Owner”), 100 N. Wilcox Street, Castle Rock, Colorado 80104

DESIGN-BUILDER: S.J. LOUIS CONSTRUCTION, INC., a Minnesota corporation, 1351 Broadway Street, P.O. Box 459, Rockville, Minnesota 56369-0459

PROJECT: Sedalia Lift Station and Force Main to Plum Creek Water Reclamation Authority Project

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Design-Builder’s Services and Responsibilities

1.1 General Services.

1.1.1 Owner shall provide Design-Builder with Owner’s Project Criteria describing Owner’s program requirements and objectives for the Project as set forth in Exhibit A. Owner’s Project Criteria will include Owner’s use, space, price, time, site, performance and expandability requirements. Owner’s Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

1.1.2 If Owner’s Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner’s Project Criteria. If Owner has developed Owner’s Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder’s written evaluation of Owner’s Project Criteria and agree upon what revisions, if any, should be made to such criteria.

1.2 Phased Services.

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (60% percent of design completion).

1.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 1.3.

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price. The Proposal shall include for the Owner's review, consideration and selection an option based on Lump Sum, and an alternative option based on Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP). If a GMP form of Agreement is selected, the Parties may discuss the potential for Design-Builder to have control over a portion of the Contingency to be clearly identified in the Phase 2 Proposal and the corresponding conditions related to such control at that time.

1.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

1.3.1.1 The Contract Price that may be based on a Lump Sum or Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

- i Design-Builder's Fee as defined in Section 6.4.1 hereof;
- ii The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Contingency as defined in Section 6.6.2 hereof; and
- iii If applicable, any prices established under Section 6.1.3 hereof;

1.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal;

1.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

1.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

1.3.1.12 A permit list, a list detailing the permits and governmental approvals that either Owner or Design-Builder will bear responsibility to obtain.

1.3.2 Review and Adjustment to Proposal.

1.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in a written amendment to this Agreement executed by both parties, when mutually agreed upon between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.2 above;
- ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.2.3 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.3 within ten (10) days of receipt of Design-

Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.2.3 iii, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement other than those obligations or requirements designed or intended by their nature to survive the expiration or termination of the Agreement, including but not necessarily limited to indemnification and warranties.

Article 2

Contract Documents

- 2.1 The Contract Documents are comprised of the following:
- 2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement;
 - 2.1.2 The Contract Price Amendment or the Proposal accepted by Owner in accordance with Section 1.3 above;
 - 2.1.3 This Agreement, including all exhibits (including but not limited to Exhibit A "Owner's Project Criteria," Exhibit B "Scope of Services," and Exhibit C "Sedalia Lift Station and Forcemain Schedule") but excluding, if applicable, the Contract Price Amendment;
 - 2.1.4 The General Conditions of Contract;
 - 2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- 2.2 The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, written or oral representations and agreements. The Agreement incorporates the above-listed Contract Documents. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated.

Article 3

Interpretation and Intent

- 3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.
- 3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.
- 3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract, unless expressly indicated otherwise in this Agreement.

3.4 If Owner's Project Criteria contain design specifications, Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications. The parties may negotiate regarding a potential adjustment in Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have allegedly been adversely impacted by alleged inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth below.

4.2 Owner's Limited License. Design-Builder shall grant Owner an irrevocable, perpetual, unrestricted-use limited license to use the Work Product, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder. Owner may utilize the Work Product under this license without restriction of use and without permission or consent of Design-Builder, including but not necessarily limited to for completion of this project with a different contractor(s) in the event the parties do not come to an agreement regarding Phase 2 and this Agreement is terminated. Owner shall be granted the aforementioned license for no additional payment and regardless of the circumstances under which this Agreement terminates, including but not limited to if Owner terminates this Agreement for convenience, Design-Builder elects to terminate, or the Agreement is terminated due to Design-Builder's default.

Article 5

Contract Time

5.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than seven hundred and fourteen (714) calendar days after the Phase 1 Notice to Proceed has been issued ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved pursuant to Exhibit C "Sedalia Lift Station and Forcemain Schedule."

5.2.3 Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (“Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages.

5.4.1 Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by seven (7) days after the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner One Thousand Dollars (\$1,000.00) per day as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

5.4.2 Design-Builder understands that if Final Completion is not achieved within seven (7) days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within seven (7) days of Substantial Completion, Design-Builder shall pay to Owner One Thousand Dollars (\$1,000.00), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.4.3 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

5.5 Owner’s Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.5.1 Owner shall have a minimum of ten (10) days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.5.2 Owner shall review and (if applicable) provide a response to Design Builder on all Design Submissions, the Project Schedule, and any updates thereto within ten (10) days of receipt by Owner.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of **SIX HUNDRED THIRTY THREE THOUSAND TWO HUNDRED AND THREE DOLLARS AND NO CENTS (\$633,203.00)** for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price (“Contract Price”) equal to the Lump Sum amount set forth in Section 6.2 hereof or in the Contract Price Amendment, or equal to Design-Builder’s Fee (as defined in Section 6.4 hereof) plus the Cost of the Work (as defined in Section 6.5 hereof),

subject to any GMP established in Section 6.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

6.2 Lump Sum. If the parties agree to a lump sum payment for Phase 2 services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the mutually agreed upon sum of dollars ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.3.1 For additive Change Orders for Phase 1, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of zero percent (0%) of the additional costs incurred for that Change Order.

6.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

No additional reduction to account for Design-Builder's Fee or any other markup.

6.4 Design-Builder's Fee.

6.4.1 Design-Builder's Fee shall be:

7.5% of the Cost of the Work for Phase 2 only, as adjusted in accordance with Section 6.4.2 below.

6.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.4.2.1 For Phase 2 additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of 7.5% of the additional Costs of the Work incurred for that Change Order, provided however that indirect costs, including but not necessarily limited to bonds, insurance, etc., and taxes, shall not be subject to a fee of 7.5% of the additional Costs of the Work incurred for that Change Order.

6.4.2.2 For Phase 2 deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include an amount equal to the sum of: 7.5% applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee).

6.5 Cost of the Work.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work may potentially include the following, subject to mutual agreement by the parties during Phase 2 negotiations of the Contract Price:

6.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site.

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-

Site to assist in the production or transportation of material and equipment necessary for the Work.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in an Exhibit mutually agreed upon by the parties and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices may include a mutually agreed upon percent markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

6.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.7 Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.5.1.8 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.5.1.9 Costs of removal of debris and waste from the Site.

6.5.1.10 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, and photocopying expenses.

6.5.1.11 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.5.1.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.5.1.13 All fuel and utility costs incurred in the performance of the Work.

6.5.1.14 If applicable, sales, use or similar taxes, tariffs or duties incurred in the performance of the Work. Only taxes not covered by Owner's tax-exempt status may be considered for potential inclusion. Design-Builder shall specifically identify any taxes not covered by Owner's tax-exempt documentation prior to potential inclusion of any such taxes.

6.5.1.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.16 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.5.1.17 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.5.1.18 Accounting and data processing costs related to the Work.

6.5.1.19 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as otherwise provided for herein.

6.5.2.2 Overhead and general expenses, except as provided for above, or which may be recoverable for changes to the Work.

6.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

6.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 The Guaranteed Maximum Price. The parties shall comply with this Section 6.6 if the parties develop and agree upon a GMP after execution of this Agreement.

6.6.1 Design-Builder guarantees that it shall not exceed the GMP if a GMP is agreed upon by the parties. Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

6.6.2 The GMP may include a Contingency, in an amount agreed upon by the parties, which is available for use for unanticipated costs incurred. Design-Builder shall provide Owner prior written notice of all anticipated charges against the Contingency, shall obtain Owner's prior written agreement to use of any portion of the Contingency prior to use occurring, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Owner shall review and respond to all requests to use a portion of the Contingency within three (3) business days.

6.6.3 Savings.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.3 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

100% percent to Owner.

6.6.3.2 Savings shall be calculated as part of Final Payment under Section 7.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred.

6.7 Allowance Items and Allowance Values.

6.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

6.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advance authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, applicable taxes if any (only taxes specifically identified by Design-Builder and not covered by Owner's tax-exempt status may be considered), and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

6.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Article 7

Procedure for Payment

7.1 Payment for Preliminary Services shall be pursuant to the process set forth below.

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the 30th day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by

Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain five percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment.

7.3.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 8

Representatives of the Parties

8.1 Owner's Representatives.

8.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract, subject to any restrictions or limitations on said authority under the Town of Castle Rock Charter and Municipal Code, rules, regulations, policies, procedures, Executive Orders, and fiscal rules of the Town:

Mark Marlowe, Director of Castle Rock Water

8.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Scott Tait, Water Resources Project Manager

8.2 Design-Builder's Representatives.

8.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Robert Schuller, Vice President, 1351 Broadway St., P.O. Box 459, Rockville, Minnesota 56369-0459

8.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address and telephone numbers.)

Kevin Strott, Director of Strategic Projects, 1351 Broadway St., P.O. Box 459, Rockville, Minnesota 56369-0459

Article 9

Bonds and Insurance

9.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

9.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

Required

Payment Bond.

Required

Article 10

Other Provisions

10.1 Other provisions, if any, are as follows:

10.1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

10.1.2 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified,

licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

10.1.3 Design-Builder affirms it is licensed to do business in the State of Colorado and is in good standing. Design-Builder shall be solely responsible for paying all applicable taxes associated with or arising out of this Agreement.

10.1.4 None of the terms or conditions in the Agreement shall give or allow any claim, benefit, or right of action by any third person not a party to the Agreement. Any person, except Owner or the Design-Builder, receiving services or benefits under the Agreement is an incidental beneficiary only.

10.1.5 Design-Builder is performing all work under the Agreement as an independent contractor and not as an agent or employee of Owner. No employee or official of Owner will supervise Design-Builder. Design-Builder will not supervise any employee or official of Owner. Design-Builder shall not represent that it is an employee or agent of Owner in any capacity. Design-Builder and its employees are not entitled to Owner Workers' Compensation benefits and are solely responsible for federal and state income tax on money earned. This is not an exclusive contract.

10.1.6 Financial Obligations of Owner: All financial obligations of Owner under the Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in the Agreement shall be deemed a pledge of Owner's credit, or a payment guarantee by Owner to Design-Builder.

10.2 Listing of Exhibits and documents incorporated herein:

- Exhibit A – Owner's Project Criteria
- Exhibit B – Scope of Services
- Exhibit C – Sedalia Lift Station and Forcemain Schedule
- The General Conditions of Contract
- Contract Price Amendment, if any.

Venue for all legal actions, including but not necessarily limited to any claims, disputes, or controversies between the parties arising out of or related to the Agreement or the breach thereof, shall lie in the District Court in and for the County of Douglas, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Municipal Code, rules, regulations, policies, procedures, Executive Orders, and fiscal rules of the Town.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary legal approvals to execute this Agreement and perform the services described herein.

[SIGNATURE BLOCK TO FOLLOW]

Executed this _____ day of _____, 20__.

OWNER:

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:


Approved as to content:

Kaitlin Parker, Assistant Town Attorney

Mark Marlowe, Director of Castle Rock Water

DESIGN-BUILDER:

S.J. Louis Construction, Inc.
(Name of Design-Builder)


(Signature)

Bob Schueller
(Printed Name)

Vice President
(Title)

Date: _____ 01/07/2025

General Conditions of Contract

Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder.

1.2.2 *Basis of Design Documents* are as follows: Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

1.2.8 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.9 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.10 *General Conditions of Contract* refer to this document.

1.2.11 *GMP Exhibit* means, if applicable, that exhibit agreed upon by Owner and Design-Builder after the execution of the Agreement.

1.2.12 *GMP Proposal or Proposal* means that proposal developed by Design-Builder in accordance with the Agreement.

1.2.13 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.14 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.15 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.16 *Site* is the land or premises on which the Project is located.

1.2.17 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.18 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.19 *Substantial Completion or Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.20 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for; and (v) other items that require resolution so as not to jeopardize Design-

Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) may be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule, which shall provide Owner with a minimum of ten (10) days after receipt for review and response by Owner.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) may be adjusted, if mutually agreed by the parties in writing, to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) may be adjusted to

the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship for one year from the Notice of Construction Completion. The Notice of Construction Completion is the written acknowledgement that construction is complete which starts the warranty period. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents; this includes but is not limited to meaning that nothing set forth in this Section 2.9 or the Contract Documents shall limit the length of any manufacturer's warranty to only one (1) year in the event the manufacturer's warranty is for a greater length of time. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct, at its sole expense, any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 There are three (3) route alternatives. One (1) route will be selected in the Phase 1 decision process. It is anticipated that only that one (1) route will be surveyed and easements sought therefor. Subject to the foregoing, Design-Builder shall provide, at its own cost and expense, the following to the Owner, for use in performing the Work:

3.2.1.1 All necessary surveys, including but not necessarily limited to describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines, and for all land and easements needed;

3.2.1.2 All necessary Geotechnical studies, including but not necessarily limited to describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site, and for all land and easements needed;

3.2.1.3 All necessary legal descriptions, including but not necessarily limited to of the Site and for all land and easements needed.

3.2.2 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.2.1 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.2.2 To the extent available, record drawings of any existing structures at the Site; and

3.2.2.3 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.3 Unless otherwise agreed by the parties, Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 The Town reserves the right to award other Contracts in connection with the Project. Design-Builder is not responsible for work performed on the Project or at the Site by separate contractors under Owner's control. However, Design-Builder shall cooperate with and afford other contractors' reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall coordinate its Work with theirs.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work or subsequently agreed upon, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, if the Agreement is not terminated, the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless shall be taken. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that must be taken either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after it is provided with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder may be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Design-Builder was selected in part because of its experience with and knowledge of the corridor and the corridor site conditions. Design-Builder shall reasonably identify any areas in the corridor at the beginning of the Project that Design-Builder is aware of where performance, services or Work may be adversely impacted. Such site conditions shall not constitute "Differing Site Conditions," as defined below and shall not entitle Design-Builder to request adjustment(s) in the Contract Price and/or Contract Time(s).

4.2.2 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition, if mutually agreed upon in writing by the parties.

4.2.3 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 General Conditions: Design-Builder agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Design-Builder shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as A-VII or better. Each policy shall require notification to the Owner in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Owner. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Design-Builder shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Owner by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). Design-Builder shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Design-Builder. The Design-Builder shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this

Agreement. Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. All commercial and automobile liability policies shall have the following additional provisions:

- Severability of interests or separation of insureds provision;
- Provision that coverage is primary and non-contributory with other coverage maintained by the Owner;
- The underlying Agreement is an "insured contract" under the policy;
- Defense costs shall be outside the policy limits for liability coverage.

5.1.2 Proof of Insurance: Design-Builder may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Design-Builder certifies that the certificate of insurance attached as Exhibit 3, preferably an ACORD form, complies with all insurance requirements of this Agreement. The Owner's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Design-Builder's breach of this Agreement or of any of the Owner's rights or remedies under this Agreement. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Owner. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Owner may require additional proof of insurance, including but not limited to policies and endorsements.

5.1.3 Additional Insureds: For Commercial General Liability, Automobile Liability, Contractors Pollution Liability (if required) and Excess Liability/Umbrella (if required), Design-Builder and subcontractor's insurer(s) shall include the Owner, its elected and appointed officials, officers, employees, agents and volunteers acting within the course and scope of their duties for the Owner as additional insured, and Douglas County, its officers and employees as an additional insured.

5.1.4 Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability - if required, Design-Builder's insurer shall waive subrogation rights against the Owner its elected and appointed officials, officers, employees, agents and volunteers acting within the course and scope of their duties for the Owner.

5.3.5 Subcontractors and Subconsultants: All subconsultants, subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein. Design-Builder shall require all of its subcontractors and subconsultants of any tier to provide insurance coverage in types and amounts required by the Design-Builder, but in amounts of at least \$1,000,000 Commercial General Liability, Business Automobile Liability insurance of \$1,000,000 combined single limit, statutory Workers' Compensation coverage, and \$1,000,000 professional liability for any subcontractor performing design or engineering work. Design-Builder agrees to provide proof of insurance for all such subcontractors, subconsultants, independent contractors, suppliers or other entities upon request by the Owner.

5.3.6 Workers' Compensation and Employer's Liability Insurance: Design-Builder shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with minimum limits of \$500,000 per occurrence for each bodily injury claim, \$500,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

5.3.7 Commercial General Liability: Design-Builder shall maintain a Commercial General

Liability insurance policy with minimum limits of \$2,000,000 for each occurrence and \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate (per project). The policy shall provide coverage for all claims for bodily injury, broad form property damage (including loss of use, contractual and employee acts), blanket contractual, independent contractors, and products and completed operations.

5.3.8 Comprehensive Automobile Liability: Design-Builder shall maintain Comprehensive Automobile Liability, including coverage for each of Design-Builder's owned, hired and non-owned vehicles assigned to or used in the performance of the services or work under this Agreement, with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 for each occurrence and \$1,000,000 aggregate. If transporting wastes, hazardous material, or regulated substances, Design-Builder shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

5.3.9 Builder's Risk or Installation Floater: Design-Builder shall maintain limits equal to the completed value of the Project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. The Owner, Design-Builder, and subcontractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by the Owner. Builder's Risk or Installation Floater shall not be included in the GMP.

5.3.10 Contractor's Pollution Liability: Design-Builder shall maintain minimum limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean-up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the Owner.

5.3.11 Professional Liability Insurance, including coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate (for the design contract only).

5.3.12 Additional Provisions:

5.3.12.1 For claims-made coverage: The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the Owner, whichever is earlier

5.3.12.2 Design-Builder shall advise the Owner in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Design-Builder will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

5.2 Nothing in Article 5 "Insurance and Bonds" or elsewhere in the Agreement or Contract Documents regarding Design-Builder's insurance requirements shall limit Design-Builder's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from its performance or nonperformance under the Agreement. The insurance requirements contained in the Agreement and Contract Documents shall not limit or redefine the obligations of Design-Builder as provided

elsewhere in the Agreement.

Design-Builder agrees to procure and maintain, at its own cost, the above policy or policies of insurance. Design-Builder shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Design-Builder shall procure and maintain, and shall cause each subcontractor of Design-Builder to procure and maintain a policy the minimum insurance coverage listed above. Such coverage shall be procured and maintained with forms and insurers acceptable to Owner. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

5.3 Intentionally Omitted.

5.4 **Bonds.**

5.4.1 Design-Builder shall, before the commencement of any operations, services, or Work hereunder, execute the Agreement and furnish Owner with separate Performance, and Labor and Material Payment Bonds each in a penal sum equal to the amount of the Contract Price, conditioned upon Design-Builder's performance of all undertakings, covenants, terms and conditions of the Agreement, and upon Design Builder's prompt payment to all persons supplying labor and materials in the prosecution of the Work provided by the Agreement. Design-Builder and a corporate Bonding company, licensed to transact such business in the State of Colorado and acceptable to Owner, shall execute the Bonds. Design-Builder bears the expense of these Bonds. If at any time the Surety on such Bonds becomes irresponsible or loses its right to do business in the State of Colorado, Owner may require another Surety, which Design-Builder shall furnish within ten (10) days after receipt of written notice to do so. Evidence of authority of an attorney-in-fact acting for the corporate Surety shall be provided in the form of a certificate as to its power of attorney and to the effect that it is not terminated and remains in full force and effect on the date of the Bonds. The form of the Bonds is subject to Owner's approval.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 **Schedule of Values.**

6.1.1 Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 Owner shall be informed of all discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment and provided a reasonable opportunity to advance payment for purposes of obtaining the discounts. If Owner decides to advance payment for purpose of obtaining a discount for early payment, Owner shall accrue one hundred percent of the discount and Design-Builder shall not include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder within ten (10) calendar days in writing after receipt and review of the Application for Payment. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Intentionally omitted.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within seven (7) calendar days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations; (ii) Design-Builder's failure

to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

7.2 Taxes.

7.2.1 Only taxes not covered by Owner's tax-exempt status may be considered for potential inclusion in the Cost of Work. Design-Builder shall specifically identify any taxes not covered by Owner's tax-exempt documentation prior to potential inclusion of any such taxes. Owner shall furnish Design-Builder with any applicable tax exemption certificates upon request.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with

the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death and property damage or destruction but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.4.3 Responsibility for Damage Claims: In addition to, and not as a limitation of, any other indemnification obligations of Design-Builder under this Agreement and Contract Documents, Design-Builder agrees to the following, to the fullest extent permitted by law: The Design-Builder shall indemnify, save harmless, and defend the Owner, its officers and employees, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Owner under the Agreement and Contract Documents; the Design-Builder's failure to comply with the provisions of the Agreement and Contract Documents; from any claims, losses, damages, liabilities, bodily injury, sickness, death, property damage or destruction arising from professional errors or omissions resulting from the acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable; the Design-Builder's neglect of materials while constructing the Work; because of any act or omission, neglect or misconduct of the Design-Builder; because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, materials or process involved are specifically required by the Agreement and Contract Documents; from any claims or amount arising or recovered under the "Workers' Compensation Act," by reason of the Design-Builder's failure to comply with the act; pollution or environmental liability; or any failure of the Design-Builder to comply with any other law, ordinance, order or decree. The Owner may retain so much of the money due the Design-Builder under the Agreement and Contract Documents, as the Owner considers necessary for such purpose, for the Owner's use. If no money is due, the Design-Builder's Surety may be held until such suits, actions, claims for injuries or damages have been settled. Money due the Design-Builder will not be withheld when the Design-Builder produces satisfactory evidence that it and the Owner are adequately protected by public liability and property damage insurance. The Design-Builder also agrees to pay the Owner all expenses incurred to enforce this "Responsibility for Damage Claim" agreement and if the insurer of the Design-Builder fails to provide or pay for the defense of the Owner, its officers and employees, as additional insured, the Design-Builder agrees to pay for the cost of that defense.

7.5 Colorado Governmental Immunity Act.

7.5.1 The parties understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, Contract Documents, or any other document, the monetary limitations or any other rights, immunities, and protections provided by the Colorado

Governmental Immunity Act, §24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to Owner, its officers, or its employees.

- 7.6** The indemnification obligations of Design-Builder under this Agreement and Contract Documents shall survive the expiration or termination of this Agreement.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance may be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's potential right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise mutually agreed by the parties.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the

services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and is entitled to reimbursement; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to reasonably prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. Notwithstanding the foregoing, if a Colorado statute of limitations or repose provides for a greater period of time to provide notice of a claim, the greater period of time for providing notice shall apply.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties may initiate litigation.

10.3 Venue and Choice of Law.

10.3.1 Venue for all legal actions, including but not necessarily limited to any claims, disputes, or controversies between the parties arising out of or related to the Agreement or the breach thereof, shall lie in the District Court in and for the County of Douglas, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Municipal Code, rules, regulations, Executive Orders, and fiscal rules of the Town.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents or by written notice from Owner to Design-Builder, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner has the authority to suspend Work on the Project either in whole or in part, for as long as Owner deems necessary due to: Unsuitable weather; Faulty workmanship; Improper superintendence; Design-Builder's failure to carry out orders or to perform any provision of the Agreement; Conditions which may be considered unfavorable for the prosecution of Work on the Project; or Work being carried on in an unsafe manner.

11.1.2 Design-Builder may request an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.1.3 If it is necessary to stop work for an indefinite period, Design-Builder shall, if directed by Owner, store all materials in such a manner that they will not become an obstruction or become damaged in any way. Design-Builder shall take every precaution to prevent damage to or deterioration of the Work, providing suitable drainage and erecting temporary structures where necessary.

11.1.4 Owner will put the Stop Work order in writing and Design-Builder may not proceed with Work on the suspended portion of the Project until notified in writing by the Project Manager.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 Owner may serve notice upon Design-Builder and its Surety of the intention to terminate the Agreement if the performance of the Work set forth under the Agreement and Contract Documents is unnecessarily or unreasonably delayed by Design-Builder, or if any of the provisions of the Agreement are being violated by Design-Builder or its Subcontractors. The Agreement is terminated unless, in the opinion of Owner, the Design-Builder corrects or commences reasonable, concrete steps towards correction of the violation within five (5) days after the notice is served. In the event of such termination, Owner shall immediately serve notice of the termination and the Surety's right to complete the Agreement upon the Surety and Design-Builder. The Surety shall have the right to take over and perform the Work called for in the Agreement. The Surety is then bound by all the provisions of the Agreement. If the Surety does not commence performance of the Work within ten (10) days from the date of the notice, Owner may take over the Project and, without prejudice to any other remedies, complete the Project and Design Builder and its Surety are liable to Owner for any excess costs incurred by Owner.

11.3 Intentionally omitted.

11.4 Design-Builder's Right to Terminate.

11.4.1 Design-Builder may terminate the Agreement if the Work is stopped for a period of three (3) months under any order of any court or other public authority through no act or fault of Design-Builder or of anyone employed by it.

11.4.2 Design-Builder may suspend Work if Owner fails to make payments at the times provided in the Agreement and the Design-Builder has given Owner written notice seven (7) days before suspending Work. Design-Builder may terminate the Agreement, at its option, if Owner continues to be in default thirty (30) days after the date of the written notice. Failure by Owner to make payments at the times provided is a bar to any claim by Owner against Design-Builder for delay in completion of the Project if Design-Builder suspended Work for that reason.

11.4.3 If Design-Builder terminates the Agreement, it may recover the price of all Work done and materials provided and all damages reasonably sustained.

11.5 Termination for Convenience.

11.5.1 Owner shall, at any time, have the right to terminate the Agreement, for convenience, upon giving written notice to Design-Builder. Design-Builder shall be entitled to the full amount of the approved estimate for the Work satisfactorily completed under the Agreement up to the time of such termination, including the retained percentage. Owner shall reimburse Design-Builder for such expenditures as, in the judgment of Owner, are not otherwise compensated for, together with the cost of moving to and from the Project and a reasonable profit on the Work deleted by reason of the annulment of the Agreement, in order that an equitable settlement is made with the Design-Builder.

11.5.2 If Owner terminates this Agreement pursuant to Section 11.5.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 4 of the Agreement. Such rights may not be transferred or assigned to others without Owner's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”).

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data

via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Design-Builder agrees that it shall treat as confidential all information provided by Owner regarding Owner's business and operations. All confidential information provided by Owner hereto shall be used by Design-Builder solely for the purposes of rendering services or work pursuant to this Agreement and, except as may be required in carrying out the terms of this Agreement, shall not be disclosed to any third party without the prior consent of Owner. The foregoing shall not be applicable to any information that is publicly available when provided or which thereafter becomes publicly available or which is required to be disclosed by any regulatory authority in the lawful and appropriate exercise of its jurisdiction over a party, any auditor of the parties hereto, by judicial or administrative process or otherwise by applicable law or regulation.

13.2 Assignment.

13.2.1 Design-Builder shall not, without the prior written consent of Owner, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents or any interest in the Agreement, including any money due or to become due.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Severability.

13.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.5 No Waiver.

13.5.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.6 Headings.

13.6.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.7 Notice.

13.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

Notices to Owner shall be sent to the following address to be effective. All notices to Owner shall include a copy to Legal@crgov.com.

TOWN OF CASTLE ROCK
Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104

13.8 Colorado Labor Preference.

13.8.1 In accordance with the requirements of the Colorado Labor on Public Works Act, Section 8-17-101, et seq., C.R.S., Design-Builder shall ensure that Colorado labor shall be employed to perform at least 80% of the work. It shall be the sole responsibility of Design-Builder to ensure that all Subcontractors comply with this requirement.

13.9 Provisions Construed as to Fair Meaning & No Implied Representations.

13.9.1 The provisions of the Agreement, Contract Documents, and any other document related hereto, shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party of the source of the language in question. No representations, agreements, covenants, warranties, or certifications, express or implied, exist as between the parties, except as specifically set forth in the Agreement.

13.10 Amendments.

13.10.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative(s) of each party.

13.11 AMERICANS WITH DISABILITIES ACT.

13.11.1 Design-Builder agrees to ensure that any deliverables, work, services, or equipment developed, designed, constructed or produced pursuant to this Agreement, to include website design services, will comply with all requirements of Title II of the Americans with Disabilities Act and, where applicable, Section 504 of the Rehabilitation Act, the Architectural Barriers Act, and the Colorado Anti-Discrimination Act. To the extent any deliverables, work, services, or equipment developed, designed, constructed or produced pursuant to this Agreement fail to comply with the requirements of this Section, Design-Builder shall indemnify the Owner in accordance with the terms of this Agreement and, at the Owner's option, shall re-visit, re-construct, or similar, the non-compliant deliverable, work, service, or equipment, or reimburse the Owner for the cost associated with bringing the non-compliance deliverable, work, service or equipment into compliance.

13.12 NO DISCRIMINATION IN EMPLOYMENT.

13.12.1 The Owner is a governmental agency and, therefore, in connection with the performance of Work or Services under this Agreement, Design-Builder shall not refuse to hire, discharge,

promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability, or any other protected class under Federal or State law; and Design-Builder shall insert the foregoing provision in any subcontracts hereunder.

13.13 TITLE VI COMPLIANCE.

13.13.1 To the extent applicable, Design-Builder shall ensure its current and future compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., as amended, which prohibits the exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin.

13.14 ADVERTISING AND PUBLIC DISCLOSURE.

13.14.1 Design-Builder shall not include any reference to this Agreement or goods or services provided pursuant to this Agreement in any of Design-Builder's advertising or public relations materials without first obtaining the written approval of the Owner. Nothing herein, however, shall preclude the transmittal of any information to officials of the Owner, including without limitation, the Town Attorney, Town Manager, and the Town Council.

13.15 Department of Revenue Forms

13.15.1 It is the responsibility of Design-Builder to apply for a Colorado State Sales and Use Tax Exemption Certificate from the State Dept. of Revenue and to use it when purchasing materials or supplies in connection with the Project.

13.15.2 Owner's Tax Exemption Numbers are to be used only when obtaining Design-Builder's own Tax Exemption Certificate for each specific Owner project:

- a. Federal Tax Exemption Number: 84-6000640
- b. State of Colorado Tax Exemption Number: 98-05820-0000

13.16 Reporting Requirements. If determined to be applicable, due to the involvement of ARPA funds, Owner shall provide to Douglas County information responsive to mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program outcomes. Further, in providing ARPA-required information to Douglas County, to the extent possible if applicable, Owner shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by Douglas County. If applicable, Design-Builder shall be obligated to this same reporting requirement as Owner.

13.17 TOWN OF CASTLE ROCK CONSTRUCTION CONTRACT GENERAL CONDITIONS:

Article 1 – SCOPE

Since the General Conditions are general, some conditions may not apply to a particular Project. Town as used herein refers to Owner; Contractor as used herein refers to Design-Builder; and Contract as used herein refers to the Agreement and Contract Documents. In the event of a conflict between any of the conditions contained in Section 13.17 and the general conditions contained above Section 13.17, the **TOWN OF CASTLE ROCK CONSTRUCTION CONTRACT GENERAL CONDITIONS** shall control.

Article 1--PRELIMINARY MATTERS

2.1 Design-Builder's License and Permits: Design-Builder, or if applicable Subcontractor, shall be responsible for applying for, and obtaining all Town, County, State and/or Federal licenses and permits required to do the Work. Design-Builder will not be required to pay for Town permits, with the exception of the Temporary Erosion and Sediment Control (TESC) permit. All TESC permit fees must be paid by Design-Builder or Subcontractor as a condition to issuance of such TESC Permit.

2.2 Notification of Utility Owners

The Design-Builder shall cooperate with Utility Owners to mitigate damage whenever the Design-Builder's work affects their utilities.

The Design-Builder shall not excavate without first notifying the owners, operators or association of owners and operators having underground facilities in the area of such excavation. Notice may be given in person, by telephone or in writing. Notice to an association is notice to each member of the association.

Design-Builder shall give notice of the commencement, extent, and duration of the excavation work at least two business days before beginning Work.

If the Project affects fences, landscaping, mailboxes, driveways and other improvements, the Design-Builder shall notify the affected property owners or occupants **IN WRITING** at least two business days before beginning Work. The Design-Builder shall cooperate with the owners or occupants to reduce inconvenience where reasonably possible.

Article 3 – Intentionally Omitted

Article 2--AVAILABILITY OF RIGHT-OF-WAY

4.1 Acquisition of Right-of-Way

4.1.1 The Town will endeavor to timely obtain all land and right-of-way necessary for carrying out and completion of the Work to be performed pursuant to the Contract, unless otherwise mutually agreed.

4.1.2 To the extent the Town possesses such information at the time, Town shall provide to the Design-Builder information which delineates and describes the lands owned and rights-of-way acquired, when necessary. The Design-Builder shall confine its operations within the areas designated by the Project Manager.

4.2 Access to Right-of-Way: The Town will provide right of access to all places necessary for the performance of the Work. Nothing contained in the Contract shall give the Design-Builder exclusive occupancy of the area provided by the Town. The Town, other contractors of the Town and utility companies may enter upon or occupy portions of the land furnished by the Town for any purpose, but without unreasonably interfering with the completion of the Project. Joint occupancy or use of the territory shall not be the basis of any claim for delay or damages.

4.3 State Highway Right-of-Way: If any part of the Project is within the right-of-way of a roadway under the jurisdiction of the Colorado Division of Transportation (CDOT) the Town shall obtain the necessary permits from CDOT to perform such Work. Town, at its option may assign the responsibility to Design-Builder to obtain the necessary permits from CDOT to perform such Work. The Design-Builder shall conform to all the requirements and restrictions indicated on the permit. The Design-Builder shall restore the area to its original condition, including reseeding, if necessary, at the completion of the Project.

- 4.4 **Temporary Storage Facilities:** The Design-Builder may secure at its own expense, and without liability to the Town, use of any additional land that the Design-Builder may desire for temporary construction activities, and facilities, or storage of materials.

Articles 5-6 Intentionally Omitted

Article 3--DESIGN-BUILDER'S RESPONSIBILITIES

7.1 Existing Utilities

The Town has collected and shown on the Drawings available information on the location of existing underground, surface and overhead structures and utilities. However, the Town does not guarantee the results of the investigations are accurate or complete. It is the Design-Builder's responsibility to verify all locations of existing structures and utilities shown on the Drawings and to ascertain whether any other structures and utilities exist.

The Design-Builder shall support, and protect from injury, existing power lines, telephone lines, water mains, gas mains, sewers, cables, conduits, ditches, curbs, walks, pavements, driveways, and other structures in the vicinity of the Project which are not authorized to be removed until completion of the Project.

7.2 Coordination with Utilities Departments

The Design-Builder shall always coordinate its Work with the Town of Castle Rock Utilities Department. If it becomes necessary to close portions of any water or sewer system due to construction operations, a minimum of 48 hours notification shall be given the Utilities Department and whenever possible one week's notice should be given. It is the Design-Builder's responsibility to ensure continuity of the utilities.

All water from Town owned utilities required for the Project will be provided at the Design-Builder's expense.

7.3 Laws and Ordinances

The Design-Builder shall perform all obligations under the Contract in strict compliance with all federal, state, and municipal laws, rules, statues, charter provisions, ordinances, and regulations, applicable to the performance of the Design-Builder under the Contract.

The Design-Builder shall obtain all other permits and licenses required in the prosecution of the Work.

IT IS UNLAWFUL AND UNETHICAL FOR ANY PERSON TO OFFER, GIVE OR AGREE TO GIVE ANY TOWN EMPLOYEE, TOWN OFFICIAL OR FORMER TOWN EMPLOYEE, OR FOR ANY TOWN EMPLOYEE, TOWN OFFICIAL OR FORMER TOWN EMPLOYEE TO SOLICIT, DEMAND, ACCEPT OR AGREE TO ACCEPT FROM ANOTHER PERSON, A GRATUITY OR AN OFFER OF EMPLOYMENT IN CONNECTION WITH ANY DECISION, APPROVAL, DISAPPROVAL, RECOMMENDATION OR PREPARATION OF ANY PART OF A PROGRAM REQUIREMENT OR A PURCHASE REQUEST, INFLUENCING THE CONTENT OF ANY SPECIFICATION OR PROCUREMENT STANDARD, RENDERING OF ADVICE, INVESTIGATION, AUDITING OR IN ANY OTHER ADVISORY CAPACITY IN ANY PROCEEDING OR APPLICATION, REQUEST FOR RULING, DETERMINATION, CLAIM OR CONTROVERSY, OR OTHER PARTICULAR MATTER, PERTAINING TO ANY PROGRAM REQUIREMENT OR A CONTRACT OR SUBCONTRACT, OR TO ANY SOLICITATION OR PROPOSAL THEREFOR.

IT IS UNLAWFUL AND UNETHICAL FOR ANY PAYMENT, GRATUITY OR OFFER OF EMPLOYMENT TO BE MADE BY OR ON BEHALF OF A SUBCONTRACTOR UNDER A CONTRACT TO THE PRIME CONTRACTOR OR HIGHER TIER SUBCONTRACTOR OF ANY PERSON ASSOCIATED THEREWITH, AS AN INDUCEMENT FOR THE AWARD OF A SUBCONTRACT OR ORDER.

7.4 Protection of Persons

The Design-Builder is responsible for the health and safety of each and every person on or at the Work site. The Design-Builder shall take all necessary and reasonable precautions and actions to protect all such persons from injury, death or loss. The Design-Builder shall furnish, erect, and maintain at its own expense all necessary precautions for the protection of the Work and safety of the public through and around its construction operations.

Design-Builder shall prepare and implement a safety program complying with all of the requirements in this Section. Prior to the start of construction, Design-Builder shall provide the safety program to the Project Manager.

Prior to the start of construction, the Design-Builder shall provide the Project Manager with a statement signed by the Design-Builder's Superintendent that all Design-Builder Personnel have been or will be briefed on the Design-Builder's safety program prior to being allowed on the Work site.

It is a condition of the Contract, and the Design-Builder shall make a condition of each Subcontract entered into pursuant to the Contract, that the Design-Builder and any Subcontractor shall not require any laborer, mechanic or other person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety. The Design-Builder shall comply with all applicable safety rules and regulations adopted by the United States Department of Labor Occupational Safety and Health Administration (OSHA), the Industrial Commission of the State of Colorado or the Town of Castle Rock, whichever is most restrictive. The Town assumes no duty to ensure that the Design-Builder follows the safety regulations issued by OSHA or the State of Colorado.

The Town shall have the right at any time to request a safety compliance review of the Design-Builder's and its Subcontractor's safety policies, practices, and procedures. The Design-Builder shall provide to the Project Manager a complete copy of any OSHA correspondence, report, warning, citation, directive or notice within twenty-four (24) hours after it is received. The Design-Builder shall also provide the Project Manager a copy of any Design-Builder replies to any OSHA correspondence, report, warning, citation, directive or notice. This submittal is for informational purposes only and shall not alter the Design-Builder's responsibilities for safety of the Work site.

The Design-Builder shall provide written notice of any report of injury on the Work site to the Project Manager within forty-eight (48) hours after Design-Builder becomes aware of same. In addition, the Design-Builder shall provide verbal notice of the injury to the Project Manager immediately following the report of the injury. Design-Builder shall thereafter provide a copy of any investigation into the injury and a written statement of resolution of the injury, which should include but is not limited to, the cause of the injury and remediation steps the Design-Builder will take to prevent another similar injury.

The Design-Builder shall employ at the Work site a responsible qualified person whose duties shall include the protection of persons and property and the administration of the Design-Builder's safety program. This person must have safety training, a working knowledge of safety requirements, and experience administering safety programs. The Design-Builder shall provide the Project Manager with this person's name prior to the start of construction.

For operations involving trenching, excavation or any other underground construction, the Design-Builder's attention is specially directed to and its Work shall conform to the Construction Safety and Health Regulations, Part P Subparagraph 1926.650-653 by OSHA, latest revision.

The Design-Builder shall provide all necessary protective devices and safety precautions. Such devices and precautions may include but are not limited to: posting of danger signs warning against hazards such as, but not limited to, hoists, well holes, elevator hatchways, scaffolding, openings, stairways, trip and fall hazards and falling materials; placement of warning flares; equipment back-up alarms; installation of barricades; promulgation and application of safety regulations and employment of safety personnel and guards. Signs will not be considered to be an adequate substitute for physical protective barriers. The costs of all protective devices and the planning and implementing of safety precautions are considered to be included in the Contract Amount.

This Section shall be interpreted in its broadest sense for the protection of persons and property, and no act or omission to act by the Town, its officers, employees or agents, or by any consultant shall relieve the Design-Builder of its obligations and duties hereunder.

7.5 Protection of Property

The Design-Builder shall continuously and adequately protect the Work from damage, injury or loss arising in connection with the Contract. It shall repair or replace at its expense any such damage, injury or loss, except such as may be directly due to error in the Contract or caused by agents or employees of the Town. It shall provide and maintain at its expense all passageways, barricades, guard fences, lights, and other protection facilities required by public authority or local conditions.

The Design-Builder is responsible for protection of all public and private property on and adjacent to the site of the Work. It shall use every precaution necessary to prevent damage to curbs, sidewalks, driveways, trees, shrubs, sod, mailboxes, fences, and other private and public improvements. It shall protect carefully from disturbance or damage all land monuments and property markers until an authorized agent has witnessed or otherwise referenced their locations, and shall not remove them until directed.

- 7.6 **Protection of Historical Sites:** When the Design-Builder's excavating operations encounter remains of prehistoric people's dwelling sites or artifacts of historical or archeological significance, the Design-Builder shall temporarily discontinue the operations, and immediately advise the Project Manager. The Project Manager will contact archeological authorities to determine the disposition of the items in question. When directed, the Design-Builder shall excavate the site in such a manner as to preserve the artifacts encountered and remove them for delivery to the custody of the proper authorities. Such excavation is considered, and paid for, as extra Work.

7.7 Responsibility to Repair

Should any existing property be damaged, the Design-Builder shall immediately notify the owner of such property. Unless authorized in writing by the owner of the property or directed by the Project Manager, the Design-Builder shall not attempt to make repairs. Written authorization from the owner to make repairs must be so worded as to save the Town harmless from any responsibility whatsoever relative to the sufficiency of the repairs. The Design-Builder shall give the Project Manager a copy of the written authorization to make repairs.

When any direct or indirect damage or injury is done to any public or private property or utility by or on account of any act, omission, neglect or misconduct in the execution of the Work, the Design-Builder shall restore the damaged property at its own expense to a condition equal to or better than that existing before such damage or injury.

The Design-Builder shall replace any materials and equipment lost, stolen, damaged or otherwise rendered useless during the performance of Work on the Project.

7.8 Traffic Control

The Design-Builder shall arrange Work to disrupt traffic as little as possible. All traffic Control Devices used shall conform to the latest edition of the Manual of Uniform Traffic Control Devices, (MUTCD). Except as otherwise permitted, two-way traffic shall be maintained at all times in public roadways. At least 7 days before starting any Work in Town right-of-way, the Design-Builder shall submit a detailed traffic control plan for review from the Public Works Department, with a copy to the Police Department. The approval shall establish the requirements for closures related to the number of lanes and time of day lanes or streets may be closed. The Traffic Control Plan (TC Plan) shall include the name of the contractor, the name and phone number of the person responsible for the traffic control, the date for beginning and ending construction activity and hours of operation expected. The TC Plan should show the widths of streets involved, traffic lanes, the size and location of the Work area with distances from the curb, distance to the nearest intersection and the type and location of traffic control devices. No changes to the TC Plan shall be permitted without prior approval by the Public Works Director.

The Design-Builder shall furnish and maintain all necessary signs, barricades, lights, and flaggers necessary to control traffic and provide for safety of the public, all in compliance with the MUTCD with subsequent revisions and additions, and to the satisfaction of the Public Works Director.

Whenever a police officer is necessary for traffic control, the Design-Builder shall hire and pay a uniformed off-duty police officer with authority in the Town to direct traffic. The police department will determine the rate of pay for the officers.

The Design-Builder shall make its Traffic Control plans in concurrence with the Town requirements.

7.9 Sanitary Regulations

The Design-Builder is responsible for providing proper health and sanitation facilities for its employees, in compliance with any rules and regulations of the State Board of Health or any other bodies having jurisdiction.

The Design-Builder shall always provide an abundant supply of safe drinking water for its employees and shall give orders against the drinking of any water known to be unsafe in the vicinity of the Project.

At convenient places, the Design-Builder shall provide fly-proof outside toilets which are to be maintained in a sanitary condition. Toilets shall not be permitted in any reservoir area and shall not be permitted where they may pollute a water supply.

7.10 Pollution Control

The Design-Builder shall comply with all applicable Federal and State laws, orders, and regulations concerning the control, prevention, and abatement of water pollution and air pollution in all operations pertaining to the Contract whether on right-of-way provided by the Town or elsewhere.

The Design-Builder shall use construction methods that prevent release, entrance or accidental spillage of solid matter, contaminants, debris, and other objectionable pollutants and wastes including, but not restricted to refuse, garbage, cement, concrete, sewage effluent, industrial waste, radioactive substances, oil and other petroleum products, aggregate processing tailings,

mineral salts, and thermal pollution. Non-regulated solid wastes shall be disposed of by methods approved under applicable laws and regulations, including, the Resource Conservation and Recovery Act (RCRA), Subtitle D, as administered by Colorado and local Health Departments and the EPA. Contaminated and hazardous materials are regulated by RCRA, Subtitles C and D. The Design-Builder shall notify the Colorado Department of Health, local Health Departments, and Town Fire Departments if suspect materials are encountered.

The Design-Builder shall utilize methods and devices that are reasonably available to control, prevent, and otherwise minimize atmospheric emissions or discharges of air contaminants including dust in its construction activities and operation of equipment.

The Design-Builder shall engage in dust control as required by Douglas County and CDOT regulations; compliance with said regulations is required by Design-Builder. Further, the Design-Builder shall utilize reasonable efforts to avoid emitting and mitigate the emission of dust into the atmosphere during any operations, including but not limited to during: grading; excavating; manufacturing, handling or storing of aggregates; trenching; or cement or pozzolans. The Design-Builder shall use reasonably necessary methods and equipment to reasonably collect, deposit, and prevent dust from its operations from damaging crops, orchards, fields or dwellings or causing a nuisance to persons. Good engineering and construction SOP shall be followed by Design-Builder to reasonably avoid dust migration to easement and adjacent lands.

The Design-Builder may not operate equipment and vehicles with excessive emission of exhaust gases due to improper mechanical adjustments, or other inefficient operating conditions, until repairs or adjustments are made.

Burning trash, rubbish, trees, brush or other combustible construction materials is not permitted.

De-watering for structure foundations or earthwork operations adjacent to or encroaching on lakes, streams or water courses shall be done in a manner which prevents muddy water and eroded materials from entering the lakes, streams or water courses, by construction of intercepting ditches, bypass channels, barriers, settling ponds or by other approved means. Excavated materials may not be deposited or stored in or alongside lakes or water courses where they can be washed away by high water or storm runoff.

The Design-Builder may not allow wastewater from aggregate processing, concrete batching or other construction operations to enter lakes, streams, water courses or other surface waters without turbidity control methods such as settling ponds, gravel-filter entrapment dikes, approved flocculation processes that are not harmful to fish, recirculation systems for washing of aggregates or other approved methods. Any waste waters discharged into surface waters shall conform to applicable discharge standards of the Colorado Department of Health and the Federal Government.

7.11 Cleaning Up and Restoration

The Design-Builder shall clean up all refuse or scrap materials so the site presents a neat, orderly, and workmanlike appearance at all times.

Upon completion of the Project, and before Final Inspection, the Design-Builder shall remove from the construction site and any occupied adjoining property all plants, buildings, refuse, unused materials, forming lumber, sanitary facilities, and any other materials and equipment that belong to the Design-Builder or its Subcontractors.

The Town may clean up and restore the construction site satisfactorily when the Design-Builder fails to do so. Any costs the Town incurs will be deducted from the Final Payment due the Design-Builder.

Articles 8-10 Intentionally Omitted

Article 4--CHANGES

- 11.1 **Compliance with §24-91-103.6:** Notwithstanding any other language in this contract, the issuance of any Change Order or other form of order or directive by the Town requiring additional compensable work to be performed which will cause the Contract Price to **exceed** the amount appropriated for the Work is prohibited unless the Design-Builder is given written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made or unless the Contract contains a remedy granting provision.

The Town shall pay the Design-Builder for performing the Work and the completion of the Project according to the Contract, subject to Change Orders as approved in writing by the Town, under the Contract Documents and guidelines in the General Conditions. The Town will pay the Contract Price to the Design-Builder, subject to full and satisfactory performance of the terms and conditions of the Contract. The Town has appropriated money equal to or in excess of the Contract Price for this work.

All financial obligations of the Town under the Contract are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in the Contract shall be deemed a pledge of the Town's credit, or a payment guarantee by the Town to the Design-Builder.

Article 12 – Intentionally Omitted

Article 5-- SAMPLES AND TESTING; DEFECTIVE WORK AND MATERIALS

13.1 **Samples and Testing**

All materials and equipment used in the Project will be subject to sampling and testing according to generally accepted standards and as required in the Contract Documents. In the absence of direct references, the sampling and testing of materials will be done according to current Specifications of the American Society for Testing and Materials or the American Water Works Association. The Design-Builder shall cooperate with the Project Manager in collecting and forwarding required samples.

The Design-Builder shall not incorporate any materials into the Project or cover any part of the Work until it has been inspected and approved according to the Contract Documents.

The Design-Builder shall furnish all samples without charge. The Design-Builder will cooperate with the Project Manager in collecting, handling, storing, and forwarding required samples including the furnishing of manpower and equipment when necessary.

The Design-Builder will pay the cost of the initial test except when the Contract states otherwise. The Design-Builder will pay the costs for repeated tests due to failure of the initial test.

13.2 **Access to Work**

The Project Manager and the Manager's representatives shall have access to the Project at any time for purposes of inspection, sampling, testing, and or observation of construction activities. Access shall also extend to authorized representatives of participating federal or state agencies and to other public authorities having jurisdiction established by law. The Design-Builder shall provide proper facilities for access to the

Project.

Access to the Project shall mean wherever and whenever it is in manufacture, preparation or progress. It shall include access to payrolls, records of personnel, invoices of materials, terms and conditions of sale of materials and equipment to be incorporated in the Project, files, records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and any other relevant data and records relating to the Contract.

The Town may, at reasonable times, inspect the part of the plant, place of business or worksite of the Design-Builder or Subcontractor at any tier which is pertinent to the performance of the Contract.

Articles 14-15 Intentionally Omitted

Article 6--EQUAL OPPORTUNITY

16.1 **General:** During the performance of the Contract, the Design-Builder agrees as follows:

16.1.1 The Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, age, disability, religion, sex, national origin, or as otherwise prohibited by law.

16.1.2 The Design-Builder shall ensure that all Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, age, disability, religion, sex, national origin, or as otherwise prohibited by law.

Article 17 – Intentionally Omitted

Article 7--MISCELLANEOUS

18.1 **Reservation of Right to Bar Persons from the Work and Site:** The Town reserves the right to bar any person, including employees of the Design-Builder and Subcontractors, from the Town's Work site. This shall not be treated as a request for the employee's termination but a request that the employee not be assigned to work on the Town Work site. No increase in contract time or price is authorized.

Article 19—Intentionally Omitted

Article 20—CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

20.1 **Applicability.** The clauses in this Article apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

20.2 **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

20.3 **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation

of the clause set forth in 20.2 of this Article the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 20.2 of this Article, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 20.2 of this Article.

20.4 **Withholding for unpaid wages and liquidated damages.** The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

20.5 **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 20.1-20.5 of this Article and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 20.1-20.5 of this Article.

Other. In addition to the clauses contained in Article 20, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1 of 29 C.R.F, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the contracting agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

