



TOWN OF ESTES PARK

The Mission of the Town of Estes Park is to provide high-quality, reliable services for the benefit of our citizens, guests, and employees, while being good stewards of public resources and our natural setting.

The Town of Estes Park will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements for persons with disabilities. Please call (970) 577-4777. TDD available.

BOARD OF TRUSTEES - TOWN OF ESTES PARK

SPECIAL TOWN BOARD MEETING

Thursday, September 29, 2022

2:00 p.m.

Board Room – 170 MacGregor Avenue
Estes Park, CO 80517

In Person Meeting – Mayor, Trustees, Staff and Public

ADVANCED PUBLIC COMMENT

By Public Comment Form: Members of the public may provide written public comment on a specific agenda item by completing the Public Comment form found at <https://dms.estes.org/forms/TownBoardPublicComment>. The form must be submitted by 10:00 a.m., Thursday, September 29, 2022. All comments will be provided to the Board for consideration during the agenda item and added to the final packet.

REMOTE PUBLIC PARTICIPATION DURING BOARD MEETING

Remote participation in the meeting will be available by call-in (telephone) or online via Zoom Webinar which will be moderated by the Town Clerk's Office. Instructions are also available at www.estes.org/boardsandmeetings by clicking on "Virtual Town Board Meeting Participation". Individuals participating in the Zoom session should also watch the meeting through that site, and not via the website, due to the streaming delay and possible audio interference.

CALL-IN (TELEPHONE): **877-853-5257 (toll-free)** Webinar ID: **982 1690 2040**

ONLINE (ZOOM WEBINAR): <https://zoom.us/j/98216902040> Webinar ID: **982-1690-2040**.

AGENDA APPROVAL.

CONSENT AGENDA:

1. Resolution 67-22 USDA Loan Resolution to fund the Prospect Mountain Water System Reconstruction Project.
2. Resolution 68-22 Intergovernmental Agreement with the United States Department of Agriculture (USDA) for Grant Funding to Support the Reconstruction of the Prospect Mountain Water Distribution System.

ACTION ITEMS:

1. **ORDINANCE 15-22 THE TOWN ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION LOAN AGREEMENT AND A CONSTRUCTION LOAN NOTE, SERIES 2022A AND OTHER DOCUMENTS RELATED THERETO IN CONNECTION WITH REBUILDING AND IMPROVING THE WATER DISTRIBUTION SYSTEM OF THE FORMER PROSPECT MOUNTAIN WATER COMPANY (PMWC); AND DECLARING AN EMERGENCY.** Director Bergsten and Manager Wesley.

A construction loan to cash flow the rebuild of the PMWC water system. The USDA-RD is financially backing the project with a loan and grant.

2. **RESOLUTION 81-22 SUPPLEMENTAL BUDGET APPROPRIATIONS #4.** Director Hudson.
3. **RESOLUTION 82-22 AWARDED THE USDA-RD FINANCED CONSTRUCTION CONTRACT WITH WAGNER CONSTRUCTION, INC. TO REBUILD THE PROSPECT MOUNTAIN WATER SYSTEM.** Director Bergsten and Manager Wesley.

Contract to rebuild the former Prospect Mountain Water Company System.

ADJOURN.



Memo

To: Honorable Mayor Koenig
Board of Trustees

Through: Town Administrator Machalek

From: Utilities Director Bergsten, Project Manager Wesley,
Finance Director Hudson, Town Attorney Kramer

Date: September 29, 2022

RE: Resolution 67-22 USDA Loan Resolution to fund the Prospect Mountain
Water System Reconstruction Project

(Mark all that apply)

☐ PUBLIC HEARING ☐ ORDINANCE ☐ LAND USE
☐ CONTRACT/AGREEMENT ☒ RESOLUTION ☐ OTHER _____

QUASI-JUDICIAL ☐ YES ☒ NO

Objective:

Provide high-quality, reliable drinking water service and firefighting benefits to the limited number of customers previously serviced by the now bankrupt Prospect Mountain Water Company (PMWC). Approving this resolution will accept the USDA's revised project loan.

Present Situation:

The Town Board acting by and through its Water Activity Enterprise agreed to a [voluntary water system transfer agreement](#) of the bankrupt PMWC on February 26, 2019. The agreement requires the former PMWC water customers to fund the reconstruction of that water distribution system to current Town standards. Based on a 2018 estimate the Rural Development division of the United States Department of Agriculture (USDA-RD) provided \$11 million in project financing. The 2022 project construction cost has increased above \$15M.

Approving this resolution is one step to accepting the revised USDA-RD financing. A Town Board ordinance is required to secure a construction loan.

Time is of the essence to lock in this favorable loan before the end of the federal fiscal year on September 30th and award the construction contract before the bid expires in early October.

Proposal:

Staff requests approval of the resolution to accept the generous USDA loan for this project. If the Board approves the resolution staff will begin preparing the paperwork for a Town Board loan ordinance.

Advantages:

- The favorable loan will help reduce the project's loan costs
- Quick action allows award of construction in 2022 to provide reliable drinking water and fire protection to these residents
- There is a smaller incremental administrative effort because the Town has an existing USDA loan agreement in place

Disadvantages:

- USDA financing comes with many conditions and processes; however, we are familiar with the program and its reporting requirements.

Action Recommended:

Staff recommends approval of the resolution

Finance/Resource Impact:

\$4,493,000 through USDA-RD loan to be repaid by the former PMWC customers as established in the 2019 Voluntary Water System Transfer Agreement

Level of Public Interest

High; The property owners of the former PMWC need these improvements.

Sample Motion:

This item is on consent. If it is removed from consent the following sample motion can be made by any Trustee agreeing with the resolution:

I move to **approve** the Resolution

Attachments:

1. USDA Loan Resolution
2. USDA Letter of Conditions
3. USDA Letter of Conditions, Amended
4. USDA Amendment to the Amended Letter of Conditions

LOAN RESOLUTION

(Public Bodies)

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN, ACTING AS THE GOVERNING BODYOF THE TOWN'S WATER ACTIVITY ENTERPRISE

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

PROPECT MOUNTAIN WATER DISTRIBUTION PROJECT

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the Town of Estes Park, CO, acting by and through the Town's Water Activity Enterprise

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

\$4,493,000pursuant to the provisions of Article X, Sec 20 of the CO Constitution, Title 31, Article 35, Part 4, C.R.S. and Title 11, Article 57, Part 2. C.R.S.; and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ 10,535,000

under the terms offered by the Government; that the Mayor, Mayor Pro Tem, Town Administrator

Finance Director, Utilities Director and

all other officials of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the Board of Trustees, of the Town, acting as the governing body of the

Town's Water Activity Enterprise, has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____, _____ day of 2022

(SEAL)

By _____

Attest:

Title Mayor

Title _____



Rural Development

Colorado State Office

Denver Federal Center
P.O. Box 25426
Denver, CO 80225

Voice: 800-424-6214
Fax: 866-587-7607

September 28, 2018

Town of Estes Park
PO Box 1200
Estes Park, CO 80517

SUBJECT: Recipient Name: Town of Estes Park
Project Name: Prospect Mountain Water Company
Water Application
CFDA NUMBER – 10.760

Loan:	\$4,493,000
Grant:	\$6,547,000
Applicant:	\$45,000
Other Funding:	\$25,000

Dear Mr. Lancaster:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 9 months of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 7 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement"

The loan/grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in

itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed and loan/grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. Project Description – Funds will be used to upgrade the PMWC water distribution system to meet the Town of Estes Park standards. The system improvements will allow for disinfection and adequate fire flow throughout the Prospect Mountain service area. As a result, the Town of Estes Park will take ownership and operation of the system.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. Project Funding – The Agency is offering the following funding for your project:

Agency Loan -	\$4,493,000
Agency Grant -	\$6,547,000

This offer is based upon the following additional funding being obtained.

Applicant Contribution -	\$ 45,000
DOLA Funding -	\$ 25,000

TOTAL PROJECT COST - \$ 11,110,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other

funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. Project Budget – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>		<u>Total Budgeted:</u>
Administration	\$375,000	
Construction	\$6,378,000	
Contingency	\$1,150,000	
Engineering Fees	\$1,198,000	
Includes:		
Basic Services		\$823,000
Resident Project Representative		\$375,000
Interest - Interim	\$87,500	
Land and Rights-of-Way	\$1,602,000	
Easement Acquisition	\$200,000	
Testing	\$112,000	
Northern Water Inclusion	\$7,500	
TOTAL	\$11,110,000	

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

SECTION II – LOAN AND GRANT TERMS

4. Repayment – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after loan closing. For planning purposes, use a 2.375% interest rate and an amortization factor of 39.01, which provides for an annual payment of \$175,272. The precise payment amount will be based on the interest rate at which the loan is closed, and may be different than the one above.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5. Security – The loan will be secured by a Revenue bond with 1st lien position in the amount of \$4,493,000. The bond will be fully registered as to both principal and interest in the

name of the United States of America, Acting through the United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-12, “Water and Waste System Grant Agreement,” and RUS Bulletin 1780-27, “Loan Resolution (Public Bodies).” A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. Electronic Payments – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, “Authorization Agreement for Preauthorized Payments,” for all new and existing indebtedness to the Agency prior to loan closing. It will allow for your payment to be electronically debited from your account on the day your payment is due.

7. Construction Completion Timeframe - All projects must be completed and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. Disbursement of Agency Funds - Agency funds will be disbursed into the borrower’s depository account through an electronic transfer system. SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be closed and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of \$500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt and there should be

little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

- a. The recipient receives less than \$120,000 in Federal awards per year.
- b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
- c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
- d. A foreign government or banking system prohibits or precludes interest-bearing accounts.

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal \$1,461 per month; this amount should be deposited monthly until a total of \$175,272 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully-funded amount is reached.
- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least \$4,700 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – USDA Rural Development has applied the *Nationwide Programmatic Agreement among the U.S. Department of Agriculture Rural Development*

Programs, National Conference of State Historic Preservation Officers and The Advisory Council on historic Preservation for Sequencing Section 106 (NPA) for this project to avoid an impending pooling, interest rate change, or another financial deadline.

USDA Rural Development has attached the *RD Staff NPA Certification Checklist* and *NPA Applicant Awareness Certification* forms to this agreement. These documents certify that USDA Rural Development and the applicant are aware of their roles and responsibilities under the NPA.

USDA Rural Development is aware that using the NPA conditionally concludes the Section 106 process. The disbursement of funds or construction may not begin until the Section 106 process has been completed and verified by the State Environmental Coordinator.

Any National Environmental Policy Act document (environmental report or assessment) will be supplemented to document the completion of Section 106.

The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required.

11. Engineering Services – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids, and must approve any modifications to this agreement.

12. Contract Documents, Final Plans, and Specifications

- a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.
- c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

13. Legal Services – You have been required to execute a legal services agreement with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed”

amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
- e. **Preliminary Title Work (Title Report)** – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, “Preliminary Title Opinion,” may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. System Policies, Procedures, Contracts, and Agreements – The facility must be operated on a sound business plan. You must adopt policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or

ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant's governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

- b. **Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may

make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. Construction Account – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. System Users – This letter of conditions is based upon your indication at application that there will be at least 128 residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

20. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter from each source.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance

(O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested please contact our office for information.

22. Permits –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns**. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to

commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

- b. **Excess Funds.** If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

26. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. Final Rights-of-Way – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

- a. **Final Title Work** - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, “Final Title Opinion” may be used.

28. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
- d. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. Interim Financing - Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

31. Other Requirements – All requirements contained in the Agency's closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

- a. **System for Award Management**. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be

done on-line at: <http://sam.gov>. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the “Help” section at <http://sam.gov>).

- b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator.** Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

32. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.

33. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

34. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time, and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

35. **Change Orders** – Prior Agency concurrence is required for all Change Orders.

36. Payments – Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner’s written concurrence.

37. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 180 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency’s intent to cancel the remaining funds and given appropriate appeal rights.
- c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

38. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

39. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may

include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

- b. **Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

40. **Prepayment and Extra Payments** - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

41. **Graduation** - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

42. **Security/Operational Inspections** – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

43. **Annual Financial Reporting/Audit Requirements** – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP), and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

- a. **Audits** – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

- b. **Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.
- c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end. The Agency will notify you in writing when the quarterly reports are no longer required.

44. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. With the submission of the annual budget, you will be required to provide a current rate schedule, and a current listing of the Board or Council members and their terms. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

45. Insurance. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

46. Statutory and National Policy Requirements – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National

Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

47. Compliance Reviews and Data Collection – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

We look forward to working with you to complete this project. If you have any questions, please contact me at 720-544-2920 or by e-mail at Allison.trujillo@co.usda.gov.

Sincerely,

Allison Ruiz

ALLISON TRUJILLO
Area Loan Specialist

Attachments

cc: Reuben Bergsten, Utilities Director, Town of Estes Park
Mandy Rasmussen, Project Engineer, JVA, Inc.
Lillian Tolver, Project Engineer, JVA, Inc.
Robert Scarpa, Engineer, USDA Rural Development
April Dahlager, Community Programs Director, USDA Rural Development



Rural Development

April 16, 2021

Colorado State Office

Denver Federal Center
P.O. Box 25426
Denver, CO 80225

Travis Machalek
Town of Estes Park
PO Box 1200
Estes Park, CO 80517

Voice: 800-424-6214
Fax: 866-587-7607

RE: Recipient Name: Town of Estes Park
Project Name: Prospect Mountain Water Company
Water Application
CFDA NUMBER – 10.760

Dear Mr. Machalek:

USDA Rural Development is providing this amendment to the Letter of Conditions dated September 28, 2018 for the Town of Estes Park, Prospect Mountain Water Company project. The overall purpose of this amendment is to recognize the updates to the total project budget. The paragraph numbers below correspond/replace the paragraph number in the September 28, 2018 letter.

3) PROJECT BUDGET – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Administration	\$375,000
Construction	\$6,867,600
Contingency	\$1,150,000
Engineering Fees	\$1,198,000
Includes:	
Basic Services	\$823,000
Resident Project Representative	\$375,000
Interest – Interim	\$87,500
Remaining Town Development/Water Right Fees	\$1,062,400
Easement Acquisition	\$250,000
Testing	\$112,000
Northern Water Inclusion	\$7,500
 TOTAL	 \$11,110,000

Obligated long or grant funds not needed to complete the proposed project will be de-obligated prior to the start of construction. Any reduction will be applied to grant funds first.

If you have any questions, please contact me at 720-544-2920 or allison.ruiz@usda.gov.

Sincerely,

Allison Ruiz

ALLISON RUIZ
Loan Specialist

cc: Reuben Bergsten, Utilities Director, Town of Estes Park
Mandy Rasmussen, Project Engineer, JVA, Inc.
Chris Eshelman, Water Superintendent, Town of Estes Park
Steve Rusch, Utilities Coordinator, Town of Estes Park



Rural Development

September 27, 2022

Colorado State Office

Town of Estes Park

Denver Federal Center

PO Box 1200

P.O. Box 25426

Estes Park, CO 80517

Denver, CO 80225

Voice: 800-424-6214

SUBJECT: Amendment to the Amended Letter of Conditions dated April 16, 2021

Fax: 866-587-7607

Project Name: Prospect Mountain Water Company – Cost Overrun
Water Application
CFDA NUMBER – 10.760

RUS Loan #01: \$4,493,000

RUS Grant #02: \$6,547,000

RUS Grant #03 \$3,988,000

Applicant: \$245,000

DOLA: \$25,000

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 30 days:

Form RD 1942-46, “Letter of Intent to Meet Conditions”

Form RD 1940-1, “Request for Obligation of Funds”

RUS Bulletin 1780-12, “Water and Waste System Grant Agreement”

The loan/grant will be considered approved on the date Form RD 1940-1, “Request for Obligation of Funds,” is signed by the approving official. Thus, this letter in itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed and loan/grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. **Project Description** – Funds will be used to upgrade the PMWC water distribution system to meet the Town of Estes Park standards. The system improvements will allow for disinfection and adequate fire flow throughout the Prospect Mountain service area. As a result, the Town of Estes Park will take ownership and operation of the system.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. **Project Funding** – The Agency is offering the following funding for your project:

RUS Loan #01: \$4,493,000
RUS Grant #02: \$6,547,000
RUS Grant #03 \$3,988,000

This offer is based upon the following additional funding being obtained.

Applicant Contribution - \$ 245,000
DOLA - \$25,000

TOTAL PROJECT COST - \$15,298,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Admin	\$537,000
Construction	\$10,732,588

Contingency		\$999,292
Engineering Fees		\$1,421,500
Includes:		
Basic	\$1,141,500	
Estimated Reimbursables	\$55,000	
RPR (Inspection)	\$225,000	
Interest - Interim		\$125,000
Remaining Town Development/WR Fees		\$1,064,120
Easement Acquisition		\$250,000
Testing		\$161,000
Northern Water Inclusion		\$7,500
 TOTAL	 \$15,298,000	

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

Please let me know if there are further questions.

Allison Ruiz

Sincerely,
ALLISON RUIZ
Area Specialist

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Memo

To: Honorable Mayor Koenig
Board of Trustees

Through: Town Administrator Machalek

From: Utilities Director Bergsten, Project Manager Wesley,
Finance Director Hudson, Town Attorney Kramer

Date: September 29, 2022

RE: Resolution 68-22 Intergovernmental Agreement with the United States
Department of Agriculture for Grant Funding to Support the
Reconstruction of the Prospect Mountain Water Distribution System

(Mark all that apply)

☐ PUBLIC HEARING ☐ ORDINANCE ☐ LAND USE
☐ CONTRACT/AGREEMENT ☒ RESOLUTION ☐ OTHER _____

QUASI-JUDICIAL ☐ YES ☒ NO

Objective:

To provide high-quality, reliable drinking water service and fire hydrants to the former Prospect Mountain Water Company (PMWC) customers. Approving this resolution will accept the USDA's revised project financing to achieve this objective.

Present Situation:

The Town Board acting by and through its Water Activity Enterprise, agreed to a voluntary water system transfer agreement of the bankrupt PMWC on February 26, 2019. The agreement requires the former PMWC water customers to fund the reconstruction to meet current Town standards. Based on a 2018 estimate, the Town accepted the Rural Development division of the United States Department of Agriculture's (USDA-RD) \$11 million project financing. The 2022 project construction cost has increased to \$15M.

Approving this resolution is the first step toward locking in the USDA-RD revised project financing. A future Town Board ordinance is required to secure an interim project loan.

Time is of the essence to lock in this favorable project financing before the end of the federal fiscal year on September 30.

Proposal:

Staff requests the resolution's approval to accept this project's generous USDA financing. If the Board approves, staff will begin preparing the paperwork for a Town Board loan ordinance.

Advantages:

- The favorable financing will help reduce the cost to the previous PMWC customers
- Agreement includes a grant from USDA, which does not require repayment
- Quick action allows us to award the construction work in 2022
- This is an incremental administrative workload increase because the Town has existing USDA financing in place

Disadvantages:

- USDA financing comes with many conditions and processes; however, we are familiar with the program and its reporting requirements.

Action Recommended:

Staff recommends approval of the resolution

Finance/Resource Impact:

\$4,493,000 through USDA-RD financing to be repaid by the former customers of PMWC as established in the 2019 Voluntary Water System Transfer Agreement

Level of Public Interest

High; these improvements are required.

Sample Motion:

This item is on consent. If it is removed from consent, the following sample motion can be made by any Trustee agreeing with the resolution:

I move to **approve** Resolution 68-22.

Attachments:

1. Resolution 68-22
2. USDA Letter of Conditions, (dated September 28, 2018)
3. USDA Letter of Conditions, Revised (dated April 16, 2021)
4. USDA Letter of Conditions, Amended (dated September 27, 2022)
5. USDA Water and Waste System Grant Agreement (RUS Bulletin 1780-12)

RESOLUTION 68-22

APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE FOR GRANT FUNDING TO SUPPORT THE RECONSTRUCTION OF THE PROSPECT MOUNTAIN WATER DISTRIBUTION SYSTEM

WHEREAS, the Town acting by and through its Water Activity Enterprise desires to enter into the USDA-RD project financing agreement supporting the capital reconstruction of the former Prospect Mountain Water Company distribution system; and

WHEREAS, the USDA-RD project financing is composed of a \$10,535,000 grant plus a \$4,493,000 40-year loan at 2.375% interest; and

WHEREAS, the project is required to ensure high-quality, reliable drinking water service for the benefit of customers of the now bankrupt Prospect Mountain Water Company (PMWC).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO:

The Board approves, and authorizes the Mayor to sign, the intergovernmental agreement referenced in the title of this resolution, in substantially the form now before the Board.

DATED this _____ day of _____, 2022.

TOWN OF ESTES PARK

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:



Town Attorney



Rural Development

Colorado State Office

Denver Federal Center
P.O. Box 25426
Denver, CO 80225

Voice: 800-424-6214
Fax: 866-587-7607

September 28, 2018

Town of Estes Park
PO Box 1200
Estes Park, CO 80517

SUBJECT: Recipient Name: Town of Estes Park
Project Name: Prospect Mountain Water Company
Water Application
CFDA NUMBER – 10.760

Loan:	\$4,493,000
Grant:	\$6,547,000
Applicant:	\$45,000
Other Funding:	\$25,000

Dear Mr. Lancaster:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 9 months of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 7 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement"

The loan/grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in

itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed and loan/grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. Project Description – Funds will be used to upgrade the PMWC water distribution system to meet the Town of Estes Park standards. The system improvements will allow for disinfection and adequate fire flow throughout the Prospect Mountain service area. As a result, the Town of Estes Park will take ownership and operation of the system.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. Project Funding – The Agency is offering the following funding for your project:

Agency Loan -	\$4,493,000
Agency Grant -	\$6,547,000

This offer is based upon the following additional funding being obtained.

Applicant Contribution -	\$ 45,000
DOLA Funding -	\$ 25,000

TOTAL PROJECT COST - \$ 11,110,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other

funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. Project Budget – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>		<u>Total Budgeted:</u>
Administration	\$375,000	
Construction	\$6,378,000	
Contingency	\$1,150,000	
Engineering Fees	\$1,198,000	
Includes:		
Basic Services		\$823,000
Resident Project Representative		\$375,000
Interest - Interim	\$87,500	
Land and Rights-of-Way	\$1,602,000	
Easement Acquisition	\$200,000	
Testing	\$112,000	
Northern Water Inclusion	\$7,500	
TOTAL	\$11,110,000	

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

SECTION II – LOAN AND GRANT TERMS

4. Repayment – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after loan closing. For planning purposes, use a 2.375% interest rate and an amortization factor of 39.01, which provides for an annual payment of \$175,272. The precise payment amount will be based on the interest rate at which the loan is closed, and may be different than the one above.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5. Security – The loan will be secured by a Revenue bond with 1st lien position in the amount of \$4,493,000. The bond will be fully registered as to both principal and interest in the

name of the United States of America, Acting through the United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-12, “Water and Waste System Grant Agreement,” and RUS Bulletin 1780-27, “Loan Resolution (Public Bodies).” A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. Electronic Payments – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, “Authorization Agreement for Preauthorized Payments,” for all new and existing indebtedness to the Agency prior to loan closing. It will allow for your payment to be electronically debited from your account on the day your payment is due.

7. Construction Completion Timeframe - All projects must be completed and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. Disbursement of Agency Funds - Agency funds will be disbursed into the borrower’s depository account through an electronic transfer system. SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be closed and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of \$500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt and there should be

little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

- a. The recipient receives less than \$120,000 in Federal awards per year.
- b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
- c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
- d. A foreign government or banking system prohibits or precludes interest-bearing accounts.

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal \$1,461 per month; this amount should be deposited monthly until a total of \$175,272 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully-funded amount is reached.
- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least \$4,700 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – USDA Rural Development has applied the *Nationwide Programmatic Agreement among the U.S. Department of Agriculture Rural Development*

Programs, National Conference of State Historic Preservation Officers and The Advisory Council on historic Preservation for Sequencing Section 106 (NPA) for this project to avoid an impending pooling, interest rate change, or another financial deadline.

USDA Rural Development has attached the *RD Staff NPA Certification Checklist* and *NPA Applicant Awareness Certification* forms to this agreement. These documents certify that USDA Rural Development and the applicant are aware of their roles and responsibilities under the NPA.

USDA Rural Development is aware that using the NPA conditionally concludes the Section 106 process. The disbursement of funds or construction may not begin until the Section 106 process has been completed and verified by the State Environmental Coordinator.

Any National Environmental Policy Act document (environmental report or assessment) will be supplemented to document the completion of Section 106.

The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required.

11. Engineering Services – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids, and must approve any modifications to this agreement.

12. Contract Documents, Final Plans, and Specifications

- a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.
- c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

13. Legal Services – You have been required to execute a legal services agreement with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed”

amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
- e. **Preliminary Title Work (Title Report)** – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, “Preliminary Title Opinion,” may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. System Policies, Procedures, Contracts, and Agreements – The facility must be operated on a sound business plan. You must adopt policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or

ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant's governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

- b. **Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may

make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. Construction Account – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. System Users – This letter of conditions is based upon your indication at application that there will be at least 128 residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

20. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter from each source.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance

(O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested please contact our office for information.

22. Permits –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns**. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to

commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

- b. **Excess Funds.** If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

26. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. Final Rights-of-Way – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

- a. **Final Title Work** - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, “Final Title Opinion” may be used.

28. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
- d. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. Interim Financing - Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

31. Other Requirements – All requirements contained in the Agency's closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

- a. **System for Award Management**. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be

done on-line at: <http://sam.gov>. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the “Help” section at <http://sam.gov>).

- b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator.** Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

32. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.

33. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

34. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time, and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

35. **Change Orders** – Prior Agency concurrence is required for all Change Orders.

36. Payments – Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

37. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 180 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

38. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

39. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may

include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

- b. **Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

40. **Prepayment and Extra Payments** - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

41. **Graduation** - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

42. **Security/Operational Inspections** – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

43. **Annual Financial Reporting/Audit Requirements** – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP), and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

- a. **Audits** – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

- b. **Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.
- c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end. The Agency will notify you in writing when the quarterly reports are no longer required.

44. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. With the submission of the annual budget, you will be required to provide a current rate schedule, and a current listing of the Board or Council members and their terms. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

45. Insurance. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

46. Statutory and National Policy Requirements – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National

Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

47. Compliance Reviews and Data Collection – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

We look forward to working with you to complete this project. If you have any questions, please contact me at 720-544-2920 or by e-mail at Allison.trujillo@co.usda.gov.

Sincerely,

Allison Ruiz

ALLISON TRUJILLO
Area Loan Specialist

Attachments

cc: Reuben Bergsten, Utilities Director, Town of Estes Park
Mandy Rasmussen, Project Engineer, JVA, Inc.
Lillian Tolver, Project Engineer, JVA, Inc.
Robert Scarpa, Engineer, USDA Rural Development
April Dahlager, Community Programs Director, USDA Rural Development



Rural Development

April 16, 2021

Colorado State Office

Denver Federal Center
P.O. Box 25426
Denver, CO 80225

Travis Machalek
Town of Estes Park
PO Box 1200
Estes Park, CO 80517

Voice: 800-424-6214
Fax: 866-587-7607

RE: Recipient Name: Town of Estes Park
Project Name: Prospect Mountain Water Company
Water Application
CFDA NUMBER – 10.760

Dear Mr. Machalek:

USDA Rural Development is providing this amendment to the Letter of Conditions dated September 28, 2018 for the Town of Estes Park, Prospect Mountain Water Company project. The overall purpose of this amendment is to recognize the updates to the total project budget. The paragraph numbers below correspond/replace the paragraph number in the September 28, 2018 letter.

3) PROJECT BUDGET – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Administration	\$375,000
Construction	\$6,867,600
Contingency	\$1,150,000
Engineering Fees	\$1,198,000
Includes:	
Basic Services	\$823,000
Resident Project Representative	\$375,000
Interest – Interim	\$87,500
Remaining Town Development/Water Right Fees	\$1,062,400
Easement Acquisition	\$250,000
Testing	\$112,000
Northern Water Inclusion	\$7,500
 TOTAL	 \$11,110,000

Obligated long or grant funds not needed to complete the proposed project will be de-obligated prior to the start of construction. Any reduction will be applied to grant funds first.

If you have any questions, please contact me at 720-544-2920 or allison.ruiz@usda.gov.

Sincerely,

Allison Ruiz

ALLISON RUIZ
Loan Specialist

cc: Reuben Bergsten, Utilities Director, Town of Estes Park
Mandy Rasmussen, Project Engineer, JVA, Inc.
Chris Eshelman, Water Superintendent, Town of Estes Park
Steve Rusch, Utilities Coordinator, Town of Estes Park



Rural Development

September 27, 2022

Colorado State Office

Denver Federal Center
P.O. Box 25426
Denver, CO 80225

Town of Estes Park acting by and through the Water Activity Enterprise
Wendy Koenig
PO Box 1200
Estes Park, CO 80517

Voice: 800-424-6214
Fax: 866-587-7607

SUBJECT: Amendment to the Amended Letter of Conditions dated April 16, 2021

Project Name: Prospect Mountain Water Company – Cost Overrun
Water Application
CFDA NUMBER – 10.760

RUS Loan #01: \$4,493,000
RUS Grant #02: \$6,547,000
RUS Grant #03: \$3,988,000
Applicant: \$245,000
DOLA: \$25,000

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 30 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement"

The loan/grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed and loan/grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. **Project Description** – Funds will be used to upgrade the PMWC water distribution system to meet the Town of Estes Park standards. The system improvements will allow for disinfection and adequate fire flow throughout the Prospect Mountain service area. As a result, the Town of Estes Park will take ownership and operation of the system.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. **Project Funding** – The Agency is offering the following funding for your project:

RUS Loan #01:	\$4,493,000
RUS Grant #02:	\$6,547,000
RUS Grant #03	\$3,988,000

This offer is based upon the following additional funding being obtained.

Applicant Contribution -	\$ 245,000
DOLA -	\$25,000

TOTAL PROJECT COST - \$15,298,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to awarding construction bids, you must provide evidence of applicant contributions and approval of other funding sources (i.e. once bankruptcy is finalized). This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

Project Costs:

Total Budgeted:

Admin		\$537,000
Construction		\$10,732,588
Contingency		\$999,292
Engineering Fees		\$1,421,500
Includes:		
Basic	\$1,141,500	
Estimated Reimbursables	\$55,000	
RPR (Inspection)	\$225,000	
Interest - Interim		\$125,000
Remaining Town Development/WR Fees		\$1,064,120
Easement Acquisition		\$250,000
Testing		\$161,000
Northern Water Inclusion		\$7,500
TOTAL	\$15,298,000	

Obligated loan or grant funds not needed to complete the proposed project will be de-obligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

Please let me know if there are further questions.

Allison Ruiz

Sincerely,
ALLISON RUIZ
Area Specialist

Water and Waste System Grant Agreement**United States Department of Agriculture****Rural Utilities Service**

THIS AGREEMENT dated _____, between

a public corporation organized and operating under

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ _____ and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ _____ of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ _____ has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ _____ or _____ percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed _____ percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland ``Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term ``facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$_____ which it will advance to Grantee to meet not to exceed _____ percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

attested and its corporate seal affixed by its duly authorized

Attest:

By _____

(Title) _____

By _____

(Title) _____

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By _____

(Title)

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PROCEDURE FOR PUBLIC HEARING

Applicable items include: Rate Hearings, Code Adoption, Budget Adoption

1. **MAYOR.**

The next order of business will be the public hearing on **ACTION ITEM 1. Ordinance 15-22 the Town Acting by and Through Its Water Activity Enterprise, Authorizing the Execution and Delivery of a Construction Loan Agreement and a Construction Loan Note, Series 2022A and Other Documents Related Thereto in Connection with Rebuilding and Improving the Water Distribution System of The Former Prospect Mountain Water Company (PMWC); And Declaring an Emergency.**

- ☐ At this hearing, the Board of Trustees shall consider the information presented during the public hearing, from the Town staff, public comment, and written comments received on the item.
- ☐ Any member of the Board may ask questions at any stage of the public hearing which may be responded to at that time.
- ☐ Mayor declares the Public Hearing open.

2. **STAFF REPORT.**

- ☐ Review the staff report.

3. **PUBLIC COMMENT.**

- ☐ Any person will be given an opportunity to address the Board concerning the item. All individuals must state their name and address for the record. Comments from the public are requested to be limited to three minutes per person.

4. **MAYOR.**

- ☐ Ask the Town Clerk whether any communications have been received in regard to the item which are not in the Board packet.
- ☐ Ask the Board of Trustees if there are any further questions concerning the item.
- ☐ Indicate that all reports, statements, exhibits, and written communications presented will be accepted as part of the record.
- ☐ Declare the public hearing closed.
- ☐ Request Board consider a motion.

7. SUGGESTED MOTION.

- ☐ Suggested motion(s) are set forth in the staff report.

8. DISCUSSION ON THE MOTION.

Discussion by the Board on the motion.

9. VOTE ON THE MOTION.

Vote on the motion or consideration of another action.

***NOTE:** Ordinances are read into record at the discretion of the Mayor as it is not required to do so by State Statute.



Memo

To: Honorable Mayor Koenig
Board of Trustees

Through: Town Administrator Machalek

From: Utilities Director Bergsten
Project Manager Wesley

Date: September 29, 2022

RE: Ordinance 15-22 An Ordinance of the Town of Estes Park, Colorado, Acting by and Through Its Water Activity Enterprise, Authorizing the Execution and Delivery of a Construction Loan Agreement and a Construction Loan Note, Series 2022a and Other Documents Related thereto in Connection with Rebuilding and Improving the Water Distribution System of the Former Prospect Mountain Water Company; and Declaring an Emergency

(Mark all that apply)

☒ PUBLIC HEARING ☒ ORDINANCE ☐ LAND USE
☐ CONTRACT/AGREEMENT ☐ RESOLUTION ☐ OTHER _____

QUASI-JUDICIAL ☐ YES ☒ NO

Objective:

Our objective is to enable the financing of the Prospect Mountain Water reconstruction project. Financing the project supports affordability by spreading the cost over future years. The functional replacement of old water infrastructure with new infrastructure helps the staff provide high-quality, reliable drinking water and fire protection to the limited number of customers within the bankrupt Prospect Mountain Water Company's (PMWC's) service area.

Present Situation:

A brief account of the Town's public process to transfer the PMWC to the Town is attached.

The Water Enterprise needs money to cashflow the reconstruction of the PMWC water distribution system. The United States Department of Agriculture's Rural Development Division (USDA-RD) has offered, and the Town Board has accepted, a loan guarantee and grant to complete the reconstruction project. We can get an interim construction loan using the USDA-RD's guaranteed loan and grant as collateral.

The Town Board, Acting by and Through the Town's Water Activity Enterprise, has the legal authority to enter into a loan agreement by passing the attached Ordinance.

Proposal:

Staff proposes the Board approval of the Ordinance.

As agreed to in the Voluntary Water System Transfer agreement, the Water Enterprise will collect loan repayment funds from the water customers inside the bankrupt PMWC's service area. After completion of the project, those customers will have a separate PMWC Rebuild charge on their utility bill. The PMWC Rebuild charge will also recoup all project expenses which the USDA deems ineligible for USDA loan and grant funds. Some costs incurred before the USDA issued their letter of conditions dated September 28, 2018, are not eligible loan or grant costs. For example, ineligible costs include documented staff time and legal fees for; developing and executing agreements, developing and presenting reports and coordinating public meetings. We will add those documented costs to the loan repayment to calculate the "PMWC Rebuild" charge.

Advantages:

- Upgrades the former PMWC infrastructure with up-to-date, Town compatible technology
- Improves water infrastructure reliability and quality
- Adds fire protection to the former PMWC neighborhoods

Disadvantages:

- There is an increase in administrative workload associated with the project; however, JVA has proven to make this easier with excellent engineering and project management on the Park Entrance Mutual Pipeline and Water Company redesign and system construction project.

Action Recommended:

Staff recommends approval of the Ordinance

Finance/Resource Impact:

\$15,298,000 estimated project total, to be appropriated in a separate, future budget revision

Level of Public Interest

Low

Sample Motion:

I move to approve Emergency Ordinance 15-22.

Attachments:

1. Ordinance 15-22
2. Construction Loan Agreement
3. A brief account of PMWC notable events

**TOWN OF ESTES PARK, COLORADO
ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE**

ORDINANCE NO. 15-22

AN ORDINANCE OF THE TOWN OF ESTES PARK, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSTRUCTION LOAN AGREEMENT AND A CONSTRUCTION LOAN NOTE, SERIES 2022A AND OTHER DOCUMENTS RELATED THERETO IN CONNECTION WITH REBUILDING AND IMPROVING THE WATER DISTRIBUTION SYSTEM OF THE FORMER PROSPECT MOUNTAIN WATER COMPANY; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Estes Park, Colorado (the “Town”) is a statutory town and political subdivision duly organized and existing pursuant to the constitution and laws of the State of Colorado; and

WHEREAS, the Board of Trustees (the “Board”) of the Town has formally established a Water Activity Enterprise (the “Enterprise”) pursuant to Ordinance No. 08-99; and

WHEREAS, the Town, acting by and through the Enterprise operates and maintains a municipal water system within the Town and surrounding areas for the distribution of treated water; and

WHEREAS, such municipal water system has been and continues to be operated by the Enterprise as a government-owned business, which is authorized to issue its own revenue bonds and receives under 10% of annual revenue in grants from all Colorado state and local governments combined, and the Enterprise is determined to be an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Town, acting by and through the Enterprise, provided treated water to the Prospect Mountain Water Company, Inc. (the “Company”) for years as a bulk water customer, and the Company distributed such water through its own distribution system (the “Prospect Mountain System”) to property owners in the Company’s service area; and

WHEREAS, on April 22, 2015, the Company filed a Chapter 7 Bankruptcy petition under the United States Bankruptcy Code with the United States Bankruptcy Court for the District of Colorado, and a trustee (the “Bankruptcy Trustee”) was appointed to manage the Company; and

WHEREAS, on March 8, 2016, the Town and the Bankruptcy Trustee, acting for the Company, entered into an agreement for the Town to maintain and operate the Prospect Mountain System; and

WHEREAS, the Prospect Mountain System has exceeded its useful life and needs to be replaced in order to provide improved water quality, water pressure and fire flow volume, and to meet Town standards and requirements for water distribution systems; and

WHEREAS, on February 26, 2019, the Town, acting by and through the Enterprise, and the Bankruptcy Trustee, acting for the Company, entered into a Voluntary Water System Transfer Agreement for the transfer of the Prospect Mountain System to the Town in order for the Town, acting by and through the Enterprise, to undertake the rebuilding and improvement of the Prospect Mountain System to Town standards (the “Project”); and

WHEREAS, in order to provide funds to pay a portion of the costs of the Project, the Board, acting as the governing body of the Enterprise, has determined to enter into a Construction Loan Agreement (the “Loan Agreement”) with CoBank, ACB, as lender (the “Lender”), pursuant to which the Lender is to make an interim construction loan evidenced by the Construction Loan Note, Series 2022A (the “Series 2022A Note”), to be executed and delivered by the Town, acting by and through the Enterprise, in a principal amount equal to the amount drawn on the Series 2022A Note, but not to exceed \$4,493,000.00, to be issued to the Lender in anticipation of the receipt of, and payable from, the proceeds of the USDA Direct Loan, as hereinafter defined (the “USDA Direct Loan Proceeds”) and, if necessary, from the Net Revenues (defined below); and

WHEREAS, the USDA Direct Loan Proceeds are expected to be received by the Town, acting by and through the Enterprise, upon completion of the Project pursuant to and in accordance with a Letter of Conditions provided by USDA-RD (as more particularly described in the Loan Agreement, the “Letter of Conditions”); and

WHEREAS, the Series 2022A Note shall have a lien on the Net Revenues, and an exclusive first lien on the USDA Direct Loan Proceeds, all as described in the Loan Agreement; and

WHEREAS, voter approval is not required under Article X, Section 20 of the Colorado Constitution for the execution of the Loan Agreement or the issuance of the Series 2022A Note; and

WHEREAS, none of the members of the Board have any potential conflicting interests in connection with the execution and delivery of the Loan Agreement, the authorization, issuance or delivery of the Series 2022A Note, or the use of the proceeds thereof; and

WHEREAS, the Board, acting as the governing body of the Enterprise, desires to authorize the issuance and sale of the Series 2022A Note and the execution of the Loan Agreement and other documents in connection therewith.

BE IT HEREBY ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO, ACTING AS THE GOVERNING BODY OF ITS WATER ACTIVITY ENTERPRISE:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the same meanings, respectively, as provided in the Loan Agreement. In addition, as used

herein, the following capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise:

“*Authorized Officer*” means the Mayor, the Mayor Pro Tem, the Town Administrator, the Finance Director of the Town, or the Director of Utilities of the Town or any other person designated as an Authorized Officer by ordinance or resolution of the Board and submitted to the Lender.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Enabling Law*” means Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended; Part 4 of Article 35 of Title 31, Colorado Revised Statutes, as amended; Part 1 of Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and all other laws of the State establishing the power of the Town to complete the financing contemplated by this Ordinance.

“*Final Terms Certificate*” means a certificate of the Mayor, the Town Administrator, or the Finance Director of the Town, dated on or before the Closing Date, confirming the final details of the Series 2022A Note.

“*Ordinance*” or “*Note Ordinance*” means this Ordinance, which authorizes the issuance of the Series 2022A Note and the execution and delivery of the Loan Agreement, including any amendments hereto.

“*Paying Agent*” means the Treasurer of the Town, acting as the paying agent and registrar of the Series 2022A Note.

“*Payment Date*” means the date or dates provided in the Final Terms Certificate.

“*USDA Direct Loan*” means the future loan of funds by USDA-RD to the Town, acting by and through the Enterprise, to be made in a principal amount not to exceed the amount of such loan as provided in the Letter of Conditions.

“*USDA-RD*” means the United States Department of Agriculture, acting through the United States Department of Agriculture-Rural Development, and its successors and assigns.

Section 2. Authorization. Pursuant to and in accordance with the Enabling Law, the Town, acting by and through the Enterprise, shall enter into and deliver the Loan Agreement and execute and deliver the Series 2022A Note, and perform its obligations thereunder, in substantially the forms presented at this meeting with only such changes as are not inconsistent herewith and as are approved by the Town Attorney and bond counsel to the Town to effectuate the intentions of the parties or to comply with applicable law. The Series 2022A Note shall be sold to the Lender at a private sale, pursuant to the terms and subject to the conditions provided in the Loan Agreement.

The Mayor or Mayor Pro Tem of the Town, acting as a member of the governing body of the Enterprise, is hereby authorized and directed to execute, and the Town Clerk or any deputy is authorized to authenticate and affix the seal of the Town to, the Loan Agreement and the

Series 2022A Note, and further to execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable in connection therewith. Such documents are to be executed in substantially the form hereinabove approved, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of any instrument by said officials shall be conclusive evidence of the approval by the Town, acting by and through the Enterprise, of such instrument in accordance with the terms of such instrument and this Ordinance.

Section 3. Note Details. The Board hereby approves the Project and, for the purpose of providing interim financing for the Project, the Board, acting by and through the Enterprise, shall issue the Series 2022A Note to the Lender. The Series 2022A Note shall be substantially in the form and subject to the terms specified in the Loan Agreement and the Final Terms Certificate. All of the covenants, statements, representations and agreements contained in the Series 2022A Note and the Loan Agreement are hereby approved and adopted as the covenants, statements, representations and agreements of the Town, acting by and through the Enterprise. The Series 2022A Note shall be issued in an aggregate principal amount not to exceed \$4,493,000.00 and dated as provided in the Loan Agreement and the Final Terms Certificate. The Series 2022A Note shall bear interest at a variable rate as provided in the Loan Agreement, payable on each Payment Date, and shall mature not later than the Maturity Date provided in the Loan Agreement, or earlier if the Series 2022A Note is prepaid in full pursuant to the Loan Agreement and may be made subject to prepayment with or without prepayment penalty, as provided by the Loan Agreement and the Final Terms Certificate.

A maximum net effective interest rate need not be specified herein because the Lender has represented to the Town that it is an institution of the Farm Credit System within the meaning of Chapter 23 of Title 12 of the U.S. Code. Accordingly, if CoBank, ACB, is the lender of the loan represented by the Series 2022A Note, the interest rate on the Series 2022A Note shall be subject to the provisions of 12 U.S.C. 2205 and shall not be subject to any interest rate limitation imposed by the constitution or laws of the State of Colorado or this Ordinance. All other details regarding the Series 2022A Note, not inconsistent herewith, shall be determined and certified by the Final Terms Certificate.

Section 4. Transfer and Exchange; Transfer Restrictions. Neither the rights or obligations of the Town, acting by and through the Enterprise, under the Loan Agreement nor any interest therein may be assigned or delegated by the Town without the prior written consent of the Lender. The Series 2022A Note may be transferred or exchanged at the principal office of the Paying Agent or at such other location designated by the Paying Agent for such purpose, in whole or in part, for a Series 2022A Note or Notes in a like principal amount of the same Maturity Date and interest rate, upon payment by the transferee of any tax or governmental charge required to be paid with respect to such transfer or exchange. Upon surrender for transfer of the Series 2022A Note, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the Town, acting by and through the Enterprise, shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Series 2022A Note. The transferring Owner shall pay any reasonable costs of the Town, acting by and through the Enterprise, incurred in connection with the transfer of the Series 2022A Note.

Notwithstanding the procedure described in the immediately preceding paragraph and except as expressly permitted by the Loan Agreement, neither the Series 2022A Note nor any interest therein shall be transferred by the Lender or any subsequent Owner unless the transferee is a Qualified Institutional Buyer or Accredited Investor within the meaning of Regulation D under the Securities Act of 1933 and the transferee delivers to the Town a lender letter in substantially the form set forth in Exhibit C to the Loan Agreement. Any transfer or purported transfer of any interest in the Series 2022A Note in violation of the foregoing shall be void and the Town shall have no obligation to recognize the ownership interest of, take any action on behalf of or make any payment to, the transferee or purported transferee.

Section 5. Source of Payment. The Series 2022A Note shall be a special, limited obligation of the Town, acting by and through the Enterprise, payable solely out of the proceeds of the Series 2022A Note, the Net Revenues allocated as provided in Section 4.09 of the Loan Agreement, USDA Direct Loan Proceeds and all amounts held in any Fund or Account established by the Loan Agreement (except the Rebate Fund), including investments thereof, and shall never constitute a general obligation of the Town, and the full faith and credit of the Town is not pledged therefor. The creation, perfection, enforcement and priority of the pledge of the Net Revenues and the USDA Direct Loan Proceeds to secure or pay the Series 2022A Note shall be governed by Section 11-57-208 of the hereinafter defined Supplemental Public Securities Act, and by this Ordinance. The Net Revenues and the USDA Direct Loan Proceeds pledged for the payment of the Series 2022A Note, as received by or otherwise credited to the Town, acting by and through the Enterprise, shall immediately be subject to the lien and pledge of the Loan Agreement and this Ordinance without any physical delivery, filing or further act. Except as expressly provided in the Loan Agreement, the lien of such pledge of the Net Revenues and the USDA Direct Loan Proceeds for payment of the Series 2022A Note and the obligation to perform the contractual provisions made herein and in the Loan Agreement shall have priority over any or all other obligations and liabilities of the Town, acting by and through the Enterprise. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract or otherwise against the Town, acting by and through the Enterprise, irrespective of whether such persons have notice of such liens.

Section 6. Application of the Supplemental Public Securities Act; Final Terms Certificate. The Town, acting by and through the Enterprise, hereby elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Public Securities Act”), to the Series 2022A Note to the extent not inconsistent with the express provisions of this Ordinance. Pursuant to the Supplemental Public Securities Act, there is hereby delegated to the Mayor, the Town Administrator or the Finance Director of the Town the authority to confirm, by the Final Terms Certificate, the final terms of the Series 2022A Note within the parameters authorized by this Ordinance, including but not limited to: (a) the selection of the Lender and the acceptance of any term sheet provided by the Lender; (b) interest rate or rates (including any variable rate of interest and spread applicable thereto) of the Series 2022A Note; (c) the conditions on which and the price at which the Series 2022A Note may be redeemed before maturity; (d) the price at which the Series 2022A Note will be sold; (e) the final principal amount of the Series 2022A Note and the denomination of the Series 2022A Note; (f) the final amortization schedule for the Series 2022A Note; and (g) the Maturity Date and principal and interest payment dates.

Section 7. Enterprise Status. The Board hereby determines that the Enterprise is an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution. The Town has and will continue to use its best efforts to maintain the System as an “enterprise” within the meaning Article X, Section 20 of the Colorado Constitution, and the meaning of Title 37, Article 45.1, C.R.S.

Section 8. Amendment of Ordinance. After the Series 2022A Note is issued, the Town shall not amend this Ordinance except as provided in the Loan Agreement.

Section 9. Authorization To Execute Documents. The Authorized Officers shall and are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance, including, but not limited to, the execution of such documents, certificates and affidavits as may be reasonably required by the Lender or bond counsel to the Town. The execution by any Authorized Officer of any document authorized herein shall be conclusive proof of the approval by the Town of the terms thereof. The Town Clerk or any deputy is hereby authorized and directed to attest, as necessary, all signatures and acts of the Mayor or any official of the Board or the Town in connection with the matters authorized by this Ordinance, and to place the seal of the Town, as necessary, on the documents authorized and approved by this Ordinance and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Mayor, Mayor Pro Tem, the Town Administrator, the Finance Director of the Town and all other officials, employees and agents of the Board or the Town are hereby authorized to execute and deliver for and on behalf of the Town or the Enterprise any and all additional certificates, documents and other papers in connection with the transactions contemplated by this Ordinance, and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance.

The Authorized Officers identified in Section 1 hereof are each hereby determined to each be an Authorized Officer for the purpose of performing acts or executing documents relating to the Series 2022A Note and the Loan Agreement and the loan evidenced by such documents.

Section 10. Costs and Expenses. All costs and expenses incurred in connection with the issuance and payment of the Series 2022A Note shall be paid either from the proceeds of the Series 2022A Note or from legally available moneys of the Town, acting by and through the Enterprise, if any, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 11. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209, C.R.S., if a member of the Board, or any officer or agent of the Town, acts in good faith, no civil recourse shall be available against such member, officer or agent for payment of the principal of or interest on the Series 2022A Note. Such recourse shall not be available either directly or indirectly through the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Series 2022A Note and as a part of the consideration for its sale or purchase, any person purchasing or selling such Series 2022A Note specifically waives any such recourse.

Section 12. Limitation of Actions. The Board elects to apply all of the provisions of the Supplemental Public Securities Act to the execution of the Loan Agreement and to the issuance of the Series 2022A Note. Pursuant Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Series 2022A Note shall be maintained against the Town unless commenced within 30 days after the date of passage of this Ordinance.

Section 13. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or by the officers and employees of the Town directed toward the undertaking of the Project and the issuance of the Series 2022A Note for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 14. Headings. The headings of the various sections and paragraphs in this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 15. Ordinance Irrepealable. After the Series 2022A Note has been issued, this Ordinance shall constitute a contract between the Owner of the Series 2022A Note and the Town, acting by and through the Enterprise, and shall be and remain irrepealable until the Series 2022A Note and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 16. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 17. Repealer. All orders, bylaws, resolutions and ordinances of the Town, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

Section 18. Recording and Authentication. This Ordinance, immediately upon its passage, shall be recorded in the Town book of Ordinances kept for this purpose, and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 19. Emergency Declaration. The Board hereby declares that, because the bid of the contractor for the Project must be accepted by the Town, acting by and through the Enterprise, by a date that is less than thirty days after the date hereof and the Project cannot be commenced until the contractor's bid for the Project is accepted, an emergency exists. The Board hereby further declares that, due to such emergency, this Ordinance is necessary to the immediate preservation of the public peace, welfare, health and safety of the residents of the Town and is being adopted as an emergency ordinance.

INTRODUCED, READ BY TITLE, APPROVED AND ADOPTED BY THE AFFIRMATIVE VOTE OF ____ MEMBERS OF THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO, ACTING AS THE GOVERNING BODY OF ITS WATER ACTIVITY ENTERPRISE THIS 29TH DAY OF SEPTEMBER 2022.

By _____
Mayor


ATTEST:

By _____
Town Clerk

I hereby certify that the above Ordinance was introduced at a special meeting of the Board of Trustees on the _____ day of _____, 2022 and published by title in a newspaper of general circulation in the Town of Estes Park, Colorado, on _____ the day of _____, 2022, all as required by the Statutes of the State of Colorado.

By _____
Town Clerk

APPROVED AS TO FORM:

By  _____
Daniel E. Kramer, Town Attorney

By _____
Richard L. Buddin, Bond Counsel

CONSTRUCTION LOAN AGREEMENT

by and between

**TOWN OF ESTES PARK, COLORADO,
acting by and through its Water Activity Enterprise**

and

**COBANK, ACB,
as Lender**

relating to not to exceed:

**\$4,493,000.00
Town of Estes Park, Colorado,
acting by and through its Water Activity Enterprise
Construction Loan Note
(Prospect Mountain Water Distribution Project)
Series 2022A
COBANK CIF # 00138635**

Dated as of October 11, 2022

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CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT, entered into as of October 11, 2022, by and between the **TOWN OF ESTES PARK, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE** (the “Borrower” or the “Enterprise”) and **COBANK, ACB**, as lender (together with its successors and assigns, the “Lender”).

WITNESSETH:

WHEREAS, the Town of Estes Park, Colorado (the “Town”) is a statutory town and political subdivision duly organized and existing pursuant to the constitution and laws of the State of Colorado; and

WHEREAS, the Board of Trustees (the “Board”) of the Town has formally established a Water Activity Enterprise (the “Enterprise”) pursuant to Ordinance No. 08-99; and

WHEREAS, the Town, acting by and through the Enterprise operates and maintains a municipal water system within the Town and surrounding areas for the distribution of treated water; and

WHEREAS, such municipal water system has been and continues to be operated by the Enterprise as a government-owned business, which is authorized to issue its own revenue bonds and receives under 10% of annual revenue in grants from all Colorado state and local governments combined, and the Enterprise is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Borrower is acting hereunder and in all respects in connection with the issuance of the Series 2022A Note (as defined herein) as an enterprise that has been duly and regularly established pursuant to the Enabling Law, which Enterprise has been and continues to be operated as a “water activity enterprise” within the meaning of Section 37-45.1-102(4), C.R.S. (the “Water Activity Enterprise Act”); and

WHEREAS, the Town, acting by and through the Enterprise, proposes to undertake to rebuild and upgrade the water distribution system of the former Prospect Mountain Water Company to Town standards (the “Project”), together with necessary and incidental costs; and

WHEREAS, in order to provide funds to pay a portion of the authorized costs of the Project, the Borrower has negotiated a loan from the Lender (the “Loan”), to be evidenced by the Borrower’s Construction Loan Note, Series 2022A (the “Series 2022A Note”), in an amount equal to the amount drawn on the Series 2022A Note, but not to exceed \$4,493,000.00, to be issued to the Lender in anticipation of the receipt of, and payable from, the proceeds of the USDA Direct Loan, as hereinafter defined (the “USDA Direct Loan Proceeds”) and, under the circumstances provided herein, from the Net Revenues (defined below); and

WHEREAS, upon completion of the Project and in order to provide funds for the permanent financing for the Project, (i) the United States Department of Agriculture, acting through the United States Department of Agriculture—Rural Development (“USDA-RD”)

proposes to make a loan to the Borrower in an amount not to exceed \$4,493,000.00 (the “USDA Direct Loan”), and (ii) USDA-RD proposes to grant funds to the Borrower in an amount not to exceed \$11,339,100.00 (the “USDA Grant” and together with the USDA Direct Loan, the “USDA Permanent Financing”); and

WHEREAS, the USDA Permanent Financing shall be conditioned pursuant to and in accordance with a letter of conditions provided by USDA-RD dated September 28, 2018, as amended on April 16, 2001 and September 27, 2022 (the “Letter of Conditions”); and

WHEREAS, the Borrower anticipates receipt of the USDA Direct Loan Proceeds, which amount, together with the Net Revenues (defined below) and all other payments to be received pursuant to this Agreement, shall be pledged to the Lender as security for the payment of the principal of and interest on the Series 2022A Note issued hereunder; and

WHEREAS, the Borrower has authorized the execution and delivery of this Agreement in order to provide for the authentication and delivery of the Series 2022A Note to the Lender, to establish and declare the terms and conditions upon which the Series 2022A Note is to be executed and delivered, to provide for the disbursement of the proceeds of the Series 2022A Note to the Borrower or to its order, to establish the terms and conditions of satisfying the Borrower’s obligations under the Series 2022A Note and to secure the payment of the principal thereof and interest thereon; and

WHEREAS, all acts and proceedings required by law necessary to make the Series 2022A Note, when executed, authenticated and delivered by the Borrower, duly issued, the valid and binding special and limited obligation of the Borrower, and to constitute this Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Agreement have been in all respects duly authorized.

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender hereby agree, for themselves and their successors and assigns, as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement and of any loan agreement supplemental hereto and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

“*Account*” or “*Accounts*” means any one or more, as the case may be, of the separate special accounts created and established in Article IV of this Agreement.

“*Act*” means the Supplemental Public Securities Act, Title 11, Article 57, Part 2, C.R.S.

“Additional Parity Obligations” means any Obligations heretofore or hereafter issued in compliance with Section 2.06 hereof having a lien on Net Revenues on a parity with the lien thereon of the Series 2022A Note.

“Advance” means an advancement of funds by the Lender to the Borrower hereunder pursuant to a requisition.

“Affiliate” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“Agreement” means this Construction Loan Agreement, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Agreement.

“Authorized Denomination” means \$50,000 and multiples of \$1.00 in excess of \$50,000, equal to the principal amount drawn by the Borrower under the Loan.

“Authorized Officer” means with respect to the Borrower, the Mayor, the Mayor Pro Tem, the Town Administrator, the Finance Director of the Town, or the Director of Utilities of the Town or any other person designated as an Authorized Officer by ordinance or resolution of the Borrower submitted to the Lender.

“Benchmark” means, initially, the Daily Simple SOFR Rate; provided that if a replacement of the Benchmark has occurred pursuant to Section 2.03, then *“Benchmark”* means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.03 hereof. Any reference to *“Benchmark”* shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Benchmark, a replacement benchmark rate, which may include a spread adjustment, that has been selected by the Lender in its sole discretion, giving due consideration to (a) any recommendation by a relevant governmental body of a replacement benchmark rate, the mechanism for determining such a rate or a spread adjustment, or (b) any evolving or then-prevailing market convention for determining a benchmark rate or a spread adjustment. Lender may effect such amendments to the Series 2022A Note and the other Loan Documents as the Lender, in its sole discretion, deems appropriate to reflect the adoption and implementation of such replacement rate, which amendments will become effective without any further action or consent of any other party to the Series 2022A Note or any other Loan Document; provided that the Lender shall give the Borrower notice of any such amendment. In no event shall any Benchmark Replacement be less than zero percent (0.00%).

“Board” means the Board of Trustees of the Town, acting as the governing body of the Enterprise.

“Bond Counsel” means Kutak Rock LLP or any other attorney at law or firm of attorneys who are of nationally recognized standing in matters pertaining to the tax-exempt nature of interest

on obligations issued by states or their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America.

“*Borrower*” means the Town of Estes Park, Colorado, acting by and through its Water Activity Enterprise.

“*Business Day*” means a day on which the Lender and the Federal Reserve Banks are open for business.

“*Capitalized Interest Fund*” means the fund by that name established pursuant to Section 4.04 of this Agreement.

“*Capital Lease*” means a lease used to finance equipment for, or additions, extensions or improvements to, the System which is classified for financial reporting purposes as a capital lease pursuant to GAAP.

“*Certificate*,” “*Statement*,” “*Request*,” “*Direction*” and “*Order*” of the Borrower mean, respectively, a written certificate, statement, request, direction or order signed in the name of the Borrower by an Authorized Officer. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Closing Date*” or “*Dated Date*” means, with respect to the Series 2022A Note, October 11, 2022.

“*Code*” means the Internal Revenue Code of 1986, as it may be amended, if applicable. Any reference to a provision of the Code shall include the applicable regulations of the Department of the Treasury promulgated or proposed with respect to such provision.

“*Collateral*” means all right, title, interest and privileges of the Borrower in, to and under (i) the Net Revenues, allocated as provided in Section 4.09 hereof, (ii) all amounts in the Capitalized Interest Fund, the Construction Fund, the Note Sinking Fund, and the Costs of Issuance Fund established hereunder (but excluding the Rebate Fund), and (iii) all interest or other income from investment of money in the Capitalized Interest Fund, the Construction Fund, the Note Sinking Fund, and the Costs of Issuance Fund (but excluding the Rebate Fund) established hereunder and (iv) all proceeds of the USDA Direct Loan.

“*Commitment Amount*” means the obligation of the Lender to make Advances hereunder in an aggregate principal amount not to exceed Four Million Four Hundred Ninety-Three Thousand Dollars (\$4,493,000.00), as the same may be reduced or modified at any time or from time to time pursuant to the terms hereof.

“*Commitment Termination Date*” means the earliest to occur of (a) 36 months from the Closing Date, (b) the date that Advances in the aggregate principal amount of the Commitment Amount have been advanced by the Lender or (c) the date that the Lender’s obligation to make Advances is terminated as provided in Article VI.

“*Construction Fund*” means the fund by that name established pursuant to Section 4.02 of this Agreement.

“*Consultant*” means a firm which is not, and no member, stockholder, director, officer or employee of which is, an officer or employee of the Borrower, and which is a professional management consultant reasonably selected by the Borrower, having significant experience in the field of water distribution, treatment management and financial matters.

“*Costs of Issuance*” means any items of expense directly or indirectly payable or reimbursable by the Borrower and directly or indirectly attributable to the authorization, sale and issuance of the Loan and the Series 2022A Note, including, but not limited to, printing costs, costs of preparation and reproduction of documents, initial fees and charges of the Lender, including the fees of counsel to the Lender, legal fees and charges, if any, the Borrower’s fees and direct out-of-pocket expenses incurred in issuing the Series 2022A Note, fees and disbursements of financial advisers, consultants and professionals, and costs of credit ratings.

“*Costs of Issuance Fund*” means the separate trust fund so designated that is created and established in Section 4.06 of this Agreement.

“*Daily Simple SOFR*” means SOFR for the day that is five U.S. Government Securities Business Days (as defined below) prior to (i) if such day is a U.S. Government Securities Business Day, such day, or (ii) if such day is not a U.S. Government Business Day, the U.S. Government Securities Business Day immediately preceding such day; any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“*Daily Simple SOFR Margin*” means 1.25%.

“*Daily Simple SOFR Rate*” means a variable rate per annum equal at all time to the Daily Simple SOFR Margin plus the higher of: (1) zero percent (0.00%); and (2) Daily Simple SOFR.

“*Debt Service Coverage Ratio*” means the ratio for the Fiscal Year in question of Net Revenues available to pay annual principal and interest coming due on the Series 2022A Note and all Additional Parity Obligations then Outstanding for such Fiscal Year to annual principal and interest coming due on the Series 2022A Note and all Additional Parity Obligations then Outstanding in such Fiscal Year, excluding any reserves therefor. The Debt Service Coverage Ratio and each component thereof will be determined by the Finance Director of the Town in accordance with GAAP consistently applied, except as expressly provided in this Agreement or the Note Ordinance.

“*Debt Service Requirements*” means with respect to the Series 2022A Note and any Additional Parity Obligations, the principal of and interest on such Obligations then Outstanding, without any premium, due in connection with the payment of such Obligations.

“*Effective Date*” means October 11, 2022.

“*Enabling Law*” means Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended; Part 4 of Article 35 of Title 31, Colorado Revised Statutes, as amended; Part 1 of

Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and all other laws of the State establishing the power of the Town to complete the financing contemplated by the Note Ordinance and this Agreement.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or to the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Eurocurrency Liabilities” has the meaning set forth in FRB Regulation D.

“Event of Default” means any of the events specified in Section 6.02 of this Agreement.

“Federal Bankruptcy Code” means United States Code, Title 11 Bankruptcy, as amended.

“Final Terms Certificate” means a certificate of the Mayor, the Town Administrator, or the Finance Director of the Town, dated on or before the Closing Date, confirming the final details of the Series 2022A Note.

“Fiscal Year” means the fiscal year of the Town commencing on the first day of January of a year and ending on December 31 of such year, or such other period as is established from time to time for accounting purposes of the Town.

“FRB Regulation D” means Regulation D as promulgated by the Board of Governors of the Federal Reserve System, 12 CFR Part 204, as amended.

“Fund” or *“Funds”* means any one or more, as the case may be, of the separate trust funds created and established in Article IV of this Agreement.

“GAAP” means generally accepted accounting principles applicable to governmental units, as published by the Governmental Accounting Standards Board.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including, without limitation, the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Investment Securities” means any securities which at the time of investment are legal investments for the Town under the laws of the State.

“*Lender*” means CoBank, ACB, or its successor and assigns, as Lender hereunder.

“*Letter of Conditions*” has the meaning provided in the Recitals to this Agreement.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under applicable law.

“*Loan*” means the construction loan with respect to the Project being provided by the Lender pursuant to this Agreement.

“*Loan Documents*” means this Agreement, the executed Series 2022A Note and the documents delivered on the Closing Date and identified in the closing agenda and index of documents dated the Closing Date, and any amendments to any of the foregoing.

“*Maturity Date*” means, with respect to the Series 2022A Note, the final scheduled maturity of principal of the Loan, i.e., August 1, 2025 or such later date as approved by the Lender in its discretion pursuant to a request for extension submitted to the Lender by the Borrower. Any extension of the Maturity Date must be requested by the Borrower in writing to the Lender no less than three months prior to the Maturity Date. The Maturity Date shall not exceed the estimated life of the Project, but in no event beyond 40 years from the date of the Series 2022A Note.

“*Net Revenues*” means, for any period, the Revenues during such period less Operating Expenses.

“*Note Fund*” means the special fund so designated and held by the Borrower that is created and established pursuant to Section 4.03 hereof.

“*Note Ordinance*” means, with respect to the Series 2022A Note, Ordinance No. ____-22 adopted by the Board, acting as the governing body of the Borrower, on September 29, 2022, authorizing the issuance of the Series 2022A Note and the execution of this Agreement and documents related thereto.

“*Note Register*” means the registration books of the Town kept by the Note Registrar to evidence the registration and transfer of the Series 2022A Note.

“*Note Registrar*” means the Town Treasurer, as keeper of the Note Register.

“*Note Sinking Fund*” means the fund by that name established pursuant to Section 4.05 of this Agreement.

“*Obligation*” or “*Obligations*” means any note, warrant, bond or any other obligation for the payment of borrowed money issued, incurred or assumed by the Borrower secured by Net Revenues, whether due and payable in all events, upon the occurrence of a condition precedent or upon the performance of work, rendering of services by others or otherwise, including all Capital

Leases and also including, without limitation, the Series 2022A Note and any Additional Parity Obligations.

“Operating Budget” means the operating budget of the Borrower adopted by the Board.

“Operating Expenses” means actual maintenance and operation costs of the System incurred by the Borrower in any particular period or charges made therefor during such period, but only if such charges are made in conformity with GAAP, including amounts reasonably required to be set aside in reserves for items of Operating Expenses the payment of which is not then immediately required.

Such Operating Expenses include, but are not limited to, expenses for ordinary repairs, renewals and replacements of the System, salaries and wages, employees’ health, hospitalization, pension and retirement expenses, fees for services, materials and supplies, rents, administrative and general expenses, insurance expenses, legal, engineering, accounting, trustee, paying agent and financial advisory fees and expenses and costs of other consulting and technical services, taxes (except as set forth in the following paragraph), payments in lieu of taxes and other governmental charges, payments to the United States Treasury pursuant to Section 148(f) of the Code or similar requirement to pay rebate, fuel costs, and any other current expenses or obligations required to be paid by the Borrower by law, all to the extent properly allocable to the System.

Such Operating Expenses do not include depreciation or obsolescence charges or reserves, amortization of intangibles or other bookkeeping entries of a similar nature, interest charges and charges for the payment of principal, or amortization, of bonded or other indebtedness of the Borrower, costs, or charges made therefor, for capital additions, replacements, betterments, extensions or improvements to or retirements from the System, which under GAAP are properly chargeable to the capital account or the reserve for depreciation, and do not include losses from the sale, abandonment, reclassification, revaluation or other disposition of any properties of the System nor such property items, including taxes and fuel, which are capitalized pursuant to the then existing accounting practice of the Borrower.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Outstanding” means all Obligations that have been issued by the Borrower hereunder or in compliance with Section 2.06 hereof except such Obligations: (i) canceled or delivered for cancellation; (ii) deemed to be paid; (iii) in lieu of which other Obligations have been authenticated under the constituent instruments defining the rights of the holders of such Obligations; and (iv) Obligations held by or for the account of the Borrower.

“Owner” means, whenever used herein with respect to the Series 2022A Note, the Lender and any successor registered owner of the Series 2022A Note.

“Parity Obligation Ordinances” means any ordinances heretofore or hereafter adopted by the Borrower or other document entered into by the Borrower authorizing the issuance of Additional Parity Obligations.

“Participant” means a Qualified Institutional Buyer that has purchased a participation from the Lender pursuant to a Participation Agreement.

“Participation Agreement” means any agreement entered into among the Lender and one or more Participants purchasing participations and named therein, pursuant to which such other Participant or Participants shall purchase from the Lender a participation or participations in this Agreement and the Series 2022A Note.

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

“Payment Date” means, with respect to the Series 2022A Note, (a) February 1 and August 1 of each year for the payment of interest on the Series 2022A Note in arrears, commencing February 1, 2023 and including the Maturity Date (or earlier, if the Series 2022A Note shall be prepaid pursuant to the terms of this Agreement), and the Maturity Date and any other date on which the principal of the Series 2022A Note or any portion thereof is required to be repaid or prepaid under the terms of this Agreement or the Series 2022A Note, or (b) any such other payment date or dates provided in the Final Terms Certificate.

“Person” or *“person”* means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“Plans and Specifications” means the plans and specifications for the Project approved by USDA-RD, as the same may be amended from time to time with the consent of the Lender and USDA-RD.

“Principal Balance of the Series 2022A Note” means the amount described in Section 2.01(d) herein.

“Project” means the rebuilding and upgrading of the water distribution system of the former Prospect Mountain Water Company to Town standards as approved by the USDA-RD in the Letter of Conditions.

“Project Costs” means, to the extent approved by USDA-RD (a) all costs and expenses of every nature incurred in the acquisition, construction, erection, equipment and furnishing of the Project; (b) the cost of any title opinions or title insurance premiums; (c) the cost of all utility facilities connected with the Project; (d) any and all expenses incurred by the Town or the Town, acting by and through the Enterprise, including those prior to the issuance of the Series 2022A Note, for planning, development and design, any and all expenses for architects’ and engineering fees, the fees and expenses of employees and regularly employed consultants, surveys, attorneys’ fees, and other items necessary to the commencement of the Project; (e) Costs of Issuance; (f) capitalized interest on the Series 2022A Note; and (g) all other expenses, fees, costs and outlays as being necessary or incident to the Project.

“Qualified Institutional Buyer” means “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof.

“Rebate Amount” is defined in the Tax Compliance Certificate.

“Rebate Analyst” is defined in the Tax Compliance Certificate.

“*Rebate Fund*” means the fund established by Section 4.07 hereof.

“*Rebate Year*” is defined in the Tax Compliance Certificate.

“*Relevant Governmental Body*” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*Revenues*” shall mean (a) all revenues, income, rents and receipts earned by the Borrower from or attributable to the ownership and operation of the System, (b) the proceeds of any insurance covering business interruption loss relating to the System, and (c) interest earned on any moneys or investments which are required to be paid into any fund or account pledged to the payment of any Obligation of the Borrower, including, but not limited to, this Agreement and the Series 2022A Note. Notwithstanding anything contained above, amounts deposited in a rate stabilization account shall not be deemed Revenues in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Revenues in the year withdrawn. *Notwithstanding the foregoing, for purposes of the pledge and lien created by this Agreement, “Net Revenues” shall not include any tax revenues received by the Borrower which are attributable to an ad valorem operating mill levy; provided, however, such amounts shall constitute “Revenues” hereunder available to pay Operating Expenses and shall be the first Revenues allocated therefor. For the avoidance of doubt, “Revenues” does not include proceeds of the USDA Permanent Financing.*

“*Series 2022A Note*” means the Construction Loan Note (Prospect Mountain Water Distribution Project), Series 2022A in the aggregate principal amount equal to the amount drawn under the Loan, but not to exceed \$4,493,000.00.

“*SOFR*” means, for any U.S. Government Securities Business Day, a rate per annum equal to the secured overnight financing rate for such day published (at such time as Lender may determine in its sole discretion) by the SOFR Administrator on its website (or any successor source identified by the SOFR Administrator from time to time) on the immediately succeeding U.S. Government Securities Business Day.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*State*” means the State of Colorado.

“*Subordinate Obligations*” means Obligations having a lien on Net Revenues subordinate and junior to the lien of the Series 2022A Note.

“*Supplemental Agreement*” means any loan agreement hereafter duly authorized and entered into between the Borrower and the Lender, supplementing, modifying or amending this Agreement; but only if and to the extent that such Supplemental Agreement is specifically permitted hereunder.

“*System*” means the Town’s water system now owned or hereafter acquired, including the Project, whether situated within or without its boundaries, including all present or future

improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto.

“*TABOR*” means Article X, Section 20 of the Colorado Constitution.

“*Tax Compliance Certificate*” means the Tax Compliance Certificate executed by the Borrower in connection with the issuance of the Series 2022A Note.

“*USDA Direct Loan*” means the future loan of funds from USDA-RD to the Borrower, pursuant to the terms of the Letter of Conditions, in an aggregate principal amount not to exceed \$4,493,000.00, which amount is intended to be sufficient to repay the Series 2022A Note.

“*USDA Direct Loan Proceeds*” means the proceeds received by the Borrower from the USDA Direct Loan.

“*USDA Grant*” means the grant of funds made by USDA-RD to the Borrower in an amount not to exceed \$11,339,100.00.

“*USDA Permanent Financing*” means, collectively, the USDA Direct Loan and the USDA Grant.

“*USDA-RD*” means the United States Department of Agriculture acting through the United States Department of Agriculture-Rural Development, its successors and assigns.

“*USDA-RD Commitment to Lend*” means a letter, in form satisfactory to the Lender, evidencing the commitment of USDA-RD to make the USDA Direct Loan in accordance with the Letter of Conditions upon completion of the Project.

“*U.S. Government Securities Business Day*” means any day except for (i) a Saturday, (ii) a Sunday, or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“*Water Fund*” means the separate trust fund so designated that is created and established by the Town pursuant to Ordinance 50-29 adopted on June 10, 1929.

“*Weekly Quoted Variable Rate*” means a rate per annum equal at all times to the rate of interest established by Lender on the first Business Day of each week. The rate established by Lender will be effective until the first Business Day of the next week. Each change in the rate will be applicable to all balances subject to this option and information about the then current rate will be made available upon telephonic request.

Section 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular article, section or subdivision hereof.

ARTICLE II

THE LOAN AND THE SERIES 2022A NOTE

Section 2.01. Agreement to Borrow and Lend. Subject to the terms, provisions and conditions of this Agreement and the other Loan Documents, the Borrower agrees to borrow from the Lender and the Lender agrees to lend to the Borrower, as follows:

(a) **Loan Amount:** The principal amount of the Loan shall not exceed the lesser of the amount drawn hereunder or \$4,493,000.00.

(b) **Closing Disbursements:** Upon the Borrower’s compliance with and satisfaction of all conditions precedent to the closing of the Loan, and upon the written approval of USDA-RD, the Lender agrees to disburse on the Closing Date not to exceed \$-0- for Costs of Issuance, not to exceed \$-0- for deposit into the Capitalized Interest Fund and not to exceed \$60,000.00 for deposit into the Construction Fund for other Project Costs.

(c) **Disbursements for Construction:** After the Closing Date, the Borrower shall be entitled to receive further successive disbursements of the proceeds of the Loan to the Construction Fund in accordance with Article IV hereof within ten (10) business days after compliance with all conditions precedent thereto provided in Section 4.02 hereof.

(d) **Principal Balance of the Series 2022A Note:** The Principal Balance of the Series 2022A Note as of any particular date shall include all amounts of Loan proceeds disbursed by the Lender, less any amounts of principal of the Series 2022A Note either prepaid or paid in the ordinary course as of such date.

(e) **Conditions Precedent:** No amount of the Loan may be disbursed prior to receipt by the Lender of the Letter of Conditions, the Borrower Letter of Intent to Meet Conditions signed by the Borrower pursuant to the Letter of Conditions, the USDA-RD Obligation of Funds signed by USDA-RD pursuant to the Letter of Conditions, and the USDA-RD Commitment to Lend, and the compliance with requirements for disbursement under Article IV of this Agreement.

Section 2.02. Authorization of the Series 2022A Note. The Series 2022A Note is authorized to be executed in an aggregate principal amount not to exceed \$4,493,000.00, which amount shall be equal to the amount drawn thereunder. The Series 2022A Note is executed in anticipation of receipt by the Borrower of the USDA Direct Loan and the USDA Grant and payable from the USDA Direct Loan Proceeds and the Net Revenues allocated as provided in Section 4.09

hereof. The Series 2022A Note is secured as provided in the following paragraph. The Series 2022A Note is not payable in any manner by taxation and does not constitute a general obligation of the Borrower.

The USDA Direct Loan Proceeds, together with the Net Revenues allocated as provided in Section 4.09 hereof, are hereby pledged by the Borrower to the payment of the Series 2022A Note and, to the extent that such USDA Direct Loan Proceeds exceed the authorized principal amount of the Series 2022A Note and the accrued interest thereon, the Borrower shall apply such excess funds as provided in the Letter of Conditions or obtain written approval from USDA-RD to apply such excess funds to the payment of other obligations issued to pay costs of the Project. If the Borrower does not request and obtain such written approval from USDA-RD, USDA-RD will deobligate any excess amounts that were previously designated but not applied to the payment of Project Costs, as provided in the Letter of Conditions.

This Agreement constitutes a continuing agreement with the registered Owner from time to time of the Series 2022A Note, to secure the full payment of the principal of and interest thereon, subject to the covenants, provisions and conditions herein contained.

The Borrower and the Lender agree and intend that the USDA Direct Loan is not intended to represent a direct or indirect federal guarantee of debt service on the Series 2022A Note and that disbursement of the USDA Direct Loan is subject to compliance with the stated terms of the Letter of Conditions.

Section 2.03. Terms of the Series 2022A Note. The Series 2022A Note shall be issued in an Authorized Denomination as a single, fully registered Series 2022A Note without coupons. Unless the Borrower shall otherwise direct, the Series 2022A Note shall be numbered 00138635T01.

The Series 2022A Note shall be dated as of the Closing Date, and shall mature on the Maturity Date, and shall bear interest from the Closing Date, at a rate equal to the Benchmark (initially, the Daily Simple SOFT Rate, subject to the provisions relating to Benchmark Replacement Setting below). The rate will be reset automatically, without the necessity of notice being provided to the Lender, the Borrower, or any other party, on the first U.S. Government Securities Business Day of each succeeding week, and each change in the rate will be applicable to all balances subject to this option. Information about the then-current rate will be made available upon telephonic request to the Lender. While CoBank, ACB remains the lender of the loan represented by the Series 2022A Note, such interest rate shall be subject to the provisions of 12 U.S.C. 2205 and shall not be subject to any interest rate limitation imposed by the constitution or laws of the State of Colorado. Interest on the Series 2022A Note shall be payable on each Payment Date thereafter through and including the Maturity Date and shall be calculated on the actual number of days it is Outstanding on the basis of a year consisting of 360 days.

If at any time the Lender determines that (1) any interest rate offered hereunder (each such interest rate, a “Benchmark”) has been, or is likely to be, discontinued; (2) any Benchmark is not or is likely to not be representative of the underlying market and economic reality that such Benchmark is intended to measure; or (3) any Benchmark does not, or is likely not to, adequately and fairly reflect the cost to the Lender of making or maintaining loans hereunder, or (4) any

Benchmark is, or is likely to be, unlawful, the Lender may amend the Series 2022A Note and any other Loan Document to replace such Benchmark with a Benchmark Replacement.

If at any time the Lender determines in its discretion that any Benchmark is unavailable for any reason on a temporary basis, the Lender may (i) calculate such Benchmark using such previous or historical publications of such Benchmark as the Lender determines in its discretion to be appropriate, or (ii) select and apply a Benchmark Replacement during such period.

The Lender will have the right to make from time to time any technical, administrative or operational changes that the Lender decides in its discretion may be appropriate to permit or enhance the efficient administration of any Benchmark or the adoption, implementation or administration of any Benchmark Replacement. Any amendments implementing such changes will become effective without any further action or consent of any other party to the Series 2022A Note or any other Loan Document; provided that the Lender shall give the Borrower notice of any such amendment.

The Principal Balance of the Series 2022A Note shall bear interest only from and including the date of its initial authentication and delivery through and including the Maturity Date (or earlier, should the Series 2022A Note be prepaid pursuant to the terms of this Section 2.03). Principal of (if any) and interest on the Series 2022A Note shall be paid on each Payment Date through and including the Maturity Date (or earlier, should the Series 2022A Note be prepaid pursuant to the terms of this Section 2.03 or Section 5.25 hereof. The principal (if any) and interest so payable on any Payment Date will be paid to the persons in whose names the Series 2022A Note is registered, except as provided below.

Principal of and interest on the Series 2022A Note shall be paid to the Owner of the Series 2022A Note by check or draft or at the request of the Owner, by wire transfer to the Owner. Notwithstanding the foregoing, payments of the Series 2022A Note will be made by automated clearing house (ACH), unless otherwise agreed in writing by Lender.

The Series 2022A Note may be prepaid, at the option of the Borrower, in whole or in part, on any date at a price equal to the principal amount thereof then Outstanding plus accrued interest to the date of prepayment, without premium, and shall be repaid as provided in Section 5.25 of this Agreement. The Borrower covenants that it will apply the proceeds of the USDA Direct Loan promptly upon receipt to the payment of the Series 2022A Note.

Section 2.04. Form of the Series 2022A Note. The Series 2022A Note, the Certificate of Authentication and the form of Assignment shall be substantially in the respective forms thereof set forth in Exhibit A hereto and consistent with this Agreement.

The Series 2022A Note shall be in fully registered form, and the Owner of the Series 2022A Note shall be regarded as the absolute owner thereof for all purposes of this Agreement.

Section 2.05. Execution of the Series 2022A Note. The Series 2022A Note shall be executed in the name and on behalf of the Borrower with the manual signature of the Mayor or Mayor Pro Tem, shall bear a manual or facsimile of the Seal of the Town, and shall be attested by the manual signature of the Town Clerk. The Series 2022A Note shall then be authenticated by the Note Registrar. In case any of the officers who shall have signed or attested the Series 2022A

Note shall cease to be such officer or officers of the Town before the Series 2022A Note so signed or attested shall have been authenticated or issued, the Series 2022A Note may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Borrower as though those who signed and attested the same had continued to be such officers of the Town, and also the Series 2022A Note may be signed and attested on behalf of the Town by such persons as at the actual date of execution of the Series 2022A Note shall be the proper officers of the Town although at the nominal date of the Series 2022A Note any such person shall not have been such officer of the Town.

Only the Series 2022A Note that bears thereon a Certificate of Authentication substantially in the form hereinbefore recited, manually executed by the Note Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such Certificate of Authentication of the Note Registrar shall be conclusive evidence that the Series 2022A Note so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefit of this Agreement.

Section 2.06. Issuance of Additional Parity Obligations. Except as provided in this Section 2.06, the Borrower shall not issue any Additional Parity Obligations, regardless of lien priority or source of payment, without first obtaining the prior written consent of the Lender and USDA-RD.

Unless otherwise agreed to in writing by the Lender, while this Agreement is in effect, the Borrower shall not:

- (a) Create, incur, assume or allow to exist, directly or indirectly, any indebtedness or liability for borrowed money (including trade or bankers' acceptances), letters of credit, or for the deferred purchase price of property or services (including leases that should be capitalized on the books of the lessee in accordance with GAAP), except for:
 - i. debt to the Lender.
 - ii. accounts payable to trade creditors incurred in the ordinary course of business.
 - iii. current operating liabilities (other than for borrowed money) incurred in the ordinary course of business.
 - iv. debt of the Borrower to the State Revolving Fund ("SRF"), including the Colorado Water Resources and Power Development Authority (the "Water and Power Authority").
 - v. debt of the Borrower to USDA-RD.
 - vi. purchase money security indebtedness, provided that such indebtedness does not exceed 100% of the purchase price of the asset(s) being acquired.

- vii. not to exceed \$100,000 of obligations outstanding within a Fiscal Year under an operating line of credit or similar facility.
- viii. any lease or installment purchase obligation secured by the leased or purchased property and made subject to annual appropriation by the Town or the Borrower.
- ix. obligations secured solely by a pledge of assets other than the System or revenues generated from facilities operated by the Borrower other than the System.
- x. Additional Parity Obligations to finance the acquisition, repair and improvement of the Glacier Creek Water Treatment Plant.

(b) Assume, guarantee, become liable as a surety, endorse, contingently agree to purchase, or otherwise be or become liable, directly or indirectly (including, but not limited to, by means of a maintenance agreement, an asset or stock purchase agreement, or any other agreement designed to ensure any creditor against loss), for or on account of the obligation of any person or entity, except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of the Borrower's business.

(c) Create, incur, assume, or allow to exist any mortgage, deed of trust, pledge, lien (including the lien of an attachment, judgment, or execution), security interest, or other encumbrance of any kind upon any of the System's property, real or personal (collectively, "Liens"). The foregoing restrictions will not apply to:

- i. Liens in favor of Lender.
- ii. Liens in favor of USDA-RD to secure indebtedness permitted hereunder.
- iii. Liens in favor of the SRF or the Water and Power Authority to secure indebtedness permitted hereunder.
- iv. Liens for taxes, assessments, or governmental charges that are not past due.
- v. pledges and deposits under workers' compensation, unemployment insurance, and social security laws.
- vi. pledges and deposits to secure the performance of bids, tenders, contracts (other than contracts for payment of money), and like obligations arising in the ordinary course of business as conducted on the date hereof.

- vii. Liens imposed by State law in favor of mechanics, material suppliers, warehouses, and like persons that secure obligations that are not past due.
- viii. easements, rights-of-way, restrictions, and other similar encumbrances that, in the aggregate, do not materially interfere with the occupation, use, and enjoyment of the property or assets encumbered thereby in the normal course of business or materially impair the value of the property subject thereto.
- ix. purchase money Liens to secure indebtedness permitted hereunder.
- x. Liens on System Revenues securing revenue bonds.

(d) The Borrower shall not issue or incur any indebtedness or obligation payable from or secured by the USDA Direct Loan Proceeds.

Section 2.07. Supplemental Ordinances. Except as provided in Section 2.06, Additional Parity Obligations or Subordinate Obligations shall be issued only with the prior written approval of USDA-RD and the Lender, and after authorization thereof by a Parity Obligation Ordinance, supplemental ordinances or other instrument, stating the purpose or purposes of the issuance of such additional Obligations, directing the application of the proceeds thereof to such purpose or purposes, directing the execution thereof, and determining or delegating the determination of the date, principal amount, maturity or maturities, maximum rate or rates of interest, and prior prepayment privileges with respect thereto, and providing for payments to and from the Water Fund in accordance with this Agreement.

Section 2.08. Note Register. The Note Registrar will keep or cause to be kept, at the office of the Note Registrar, sufficient records for the registration and transfer of the Series 2022A Note, which shall, subject to such reasonable procedures and policies of the Note Registrar, be open to inspection during regular business hours by the Borrower and the Owners; and, upon presentation for such purpose, the Note Registrar shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the Series 2022A Note as hereinbefore provided.

Section 2.09. Replacement of the Series 2022A Note. Upon receipt by the Board of evidence satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of the Series 2022A Note and, in the case of a lost, stolen or destroyed Series 2022A Note, of indemnity satisfactory to it, and in the case of a mutilated Series 2022A Note upon surrender and cancellation of the Series 2022A Note, (a) the Borrower shall execute and deliver a new Series 2022A Note of the same principal amount, interest rate and maturity date in lieu of such lost, stolen, destroyed or mutilated Series 2022A Note; or (b) if such lost, stolen, destroyed or mutilated Series 2022A Note shall have matured or have been prepaid as provided in Section 2.03 hereof, in lieu of executing and delivering a new Series 2022A Note as aforesaid, the Borrower may pay such Series 2022A Note. Any such new Series 2022A Note shall bear a number not previously assigned. The applicant for any such new Series 2022A Note may be required to pay all expenses and charges of the Borrower in connection with the issuance of such Series 2022A Note. The Series 2022A Note

shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Series 2022A Notes, negotiable instruments or other securities.

ARTICLE III

ISSUANCE OF SERIES 2022A NOTE; APPLICATION OF PROCEEDS

Section 3.01. Issuance of the Series 2022A Note. Upon execution of this Agreement, the Borrower may execute and, upon satisfaction of the conditions set forth in this Section, the Note Registrar shall authenticate and deliver the Series 2022A Note in the principal amount set forth in Section 2.02 hereof. Prior to the authentication and delivery of the Series 2022A Note, there shall have been filed with the Lender each of the following:

- (a) a certified copy of the Note Ordinance and a copy of the executed Final Terms Certificate;
- (b) a copy of this Agreement, duly executed; and
- (c) a copy of the duly executed Bond Counsel opinion, addressed to the Borrower and the Lender.

The proceeds of the Series 2022A Note shall be applied to the funds and Accounts provided in Section 2.01 and Article IV hereof.

Section 3.02. Validity of the Series 2022A Note. Pursuant to the Act, Enabling Law and the Note Ordinance, the Series 2022A Note shall recite that it is issued under the authority of the Note Ordinance and the Act. Such recital shall conclusively impart full compliance with all the provisions of the Note Ordinance and the Act and shall be conclusive evidence of the validity and regularity of the issuance of the Series 2022A Note after its delivery for value, and the Series 2022A Note issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

ARTICLE IV

PAYMENT OF PRINCIPAL OF AND INTEREST ON THE SERIES 2022A NOTE; CREATION OF FUNDS AND ACCOUNTS

Section 4.01. Source of Payment of the Series 2022A Note; Pledge. The Series 2022A Note herein authorized and all payments to be made by the Borrower thereon and into the various funds established under this Agreement are limited obligations of the Borrower payable solely from the proceeds of the Series 2022A Note, the Net Revenues allocated as provided in Section 4.09 hereof, the USDA Direct Loan Proceeds (on an exclusive lien basis), and all amounts held in any Fund or Account established by this Agreement (except the Rebate Fund), including investments thereof, which amounts, if any, are hereby pledged by the Borrower to the Lender to secure the payment of the principal of and interest on the Series 2022A Note in accordance with its terms and the provisions of this Agreement, subject only to the provisions of this Agreement permitting the application or exercise thereof for or to the purposes and on the terms and conditions

herein set forth. Pursuant to the Act, this pledge shall be valid and binding from and after the date of the delivery of the Series 2022A Note, and the moneys received by the Borrower and hereby pledged shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act.

Section 4.02. Construction Fund. The Borrower shall establish and maintain a separate fund known as the Construction Fund (the “Construction Fund”) with an insured banking institution acceptable to the Lender for the purpose of accounting for Project Costs. The Lender may disburse Loan proceeds to the Construction Fund, to the Borrower for reimbursement or directly to the parties identified in the related requisitions to whom payment is due.

Loan proceeds shall be disbursed for the payment of Project Costs, subject to the written concurrence in such disbursements by USDA-RD. Each payment of Project Costs shall be made only upon receipt by the Lender of a requisition, in substantially the form set forth in Exhibit B hereto, signed by an Authorized Officer of the Borrower and approved by USDA-RD, together with a detailed explanation showing the payment to be necessary and reasonable, stating:

- (a) the requisition number;
- (b) the name and address of the person, firm or corporation to whom payment is due or was made;
- (c) the amount to be paid or for which reimbursement is sought;
- (d) that none of the items for which the payment or reimbursement is proposed to be made has been the subject of any payment or reimbursement theretofore made from the Construction Fund; and
- (e) the nature of each item for which the payment or reimbursement is proposed to be made and that such item is or was reasonable and necessary in connection with the design, planning, acquisition, construction, improvement or equipping of the Project, and in all cases is a proper charge against the Construction Fund.

Borrowings may only be made on a day which is a Business Day and requests for borrowings must be received by 12:00 p.m. Denver, Colorado time on the date the borrowing is desired.

Any amounts remaining on deposit in the Construction Fund after completion of the Project shall, at the direction of the Borrower, be deposited in the Note Sinking Fund for future payments of principal and interest on the Series 2022A Note, applied to the acquisition and installation of additions, improvements and expansion of the Project or applied as otherwise provided by the Letter of Conditions.

The Borrower shall cause to be kept and maintained adequate records pertaining to the Construction Fund and all disbursements therefrom. As required by USDA-RD or the Lender, the Borrower shall file copies of the records pertaining to the Construction Fund and all disbursements from such Fund with USDA-RD or the Lender. Moneys in the Construction Fund shall be invested and reinvested in Investment Securities pursuant to Section 4.10 hereof.

Section 4.03. Note Fund. There is hereby created a special and separate fund to be held by the Borrower and to be known as the “Series 2022A Note Fund,” which Fund shall consist of a Principal Account and an Interest Account.

During each Fiscal Year, there shall be deposited for credit to the Note Fund, and to the applicable Accounts therein, from the Net Revenues allocated as provided in Section 4.09 hereof, simultaneously with any deposits required by any Parity Obligation Ordinance adopted in compliance with this Agreement, the following amounts:

(a) on or before the Business Day preceding each Payment Date, the Borrower shall credit to the Interest Account an amount determined by the Lender to be the amount of the next maturing installment of interest on the Series 2022A Note, except to the extent payment of interest on the Series 2022A Note is provided by capitalized interest pursuant to Section 4.04 hereof.

(b) on or before the Business Day preceding the Maturity Date, the Borrower shall credit to the Principal Account an amount sufficient to pay the Outstanding principal of the Series 2022A Note to the extent not paid from the Note Sinking Fund.

The moneys deposited for credit to the Note Fund shall be used by the Borrower to pay the Debt Service Requirements of the Series 2022A Note and Additional Parity Obligations payable from the Note Fund as the same become due and payable during each Fiscal Year, provided that funds advanced by the Lender for deposit to the Capitalized Interest Fund shall be used only for the payment of interest on the Series 2022A Note.

Section 4.04. Capitalized Interest Fund. The Borrower shall establish and maintain, so long as the Series 2022A Note is Outstanding, a separate fund to be known as the Capitalized Interest Fund (the “Capitalized Interest Fund”). During the period of acquisition and construction of the Project, amounts available to be requisitioned from Loan Proceeds or already on deposit in the Capitalized Interest Fund shall, to the extent approved by USDA-RD, be applied to the Capitalized Interest Account of the Note Fund and used to pay interest on the Series 2022A Note. Money on deposit in the Capitalized Interest Fund, other than income thereon which may be transferred as directed by the Borrower with the written consent of the Lender to other funds created pursuant to this Agreement, shall be used to pay interest on the Series 2022A Note as it becomes due.

Section 4.05. Note Sinking Fund. The Borrower shall establish and maintain, so long as the Series 2022A Note is Outstanding, a separate fund to be known as the Note Sinking Fund (the “Note Sinking Fund”). There shall be deposited into the Note Sinking Fund the USDA Direct Loan Proceeds (or proceeds of another loan to provide permanent financing for the Project, as described in Section 5.02 hereof) to pay principal of the Series 2022A Note upon prepayment or upon the Maturity Date.

Income earned by money on deposit in the Note Sinking Fund, or remaining after prepayment of the Series 2022A Note in full, may be transferred at the Borrower’s option to any of the other funds created hereunder or applied as provided in the Letter of Conditions.

Section 4.06. Costs of Issuance Fund. The Borrower shall establish and maintain a separate fund to be known as the Costs of Issuance Fund (the “Costs of Issuance Fund”). Upon the receipt and approval by the Lender and USDA-RD of a requisition, in substantially the form attached hereto as Exhibit B, moneys in the Costs of Issuance Fund shall be requisitioned from the Lender and disbursed by or on behalf of the Borrower from time to time in amounts equal to the amount of costs and expenses of issuing the Series 2022A Note certified in such requisitions. At such time as all such fees and expenses have been paid, and in any case not later than six (6) months from the Closing Date, the Borrower shall transfer any moneys remaining in the Costs of Issuance Fund to the Construction Fund.

Section 4.07. Rebate Fund. The Borrower shall establish and maintain so long as the Series 2022A Note is outstanding and subject to a requirement of the Code that arbitrage profits be rebated to the United States of America, a separate fund to be known as the “Rebate Fund” (the “Rebate Fund”). The Borrower shall make deposits and disbursements from the Rebate Fund in accordance with the Tax Compliance Certificate, shall invest the amounts held in the Rebate Fund and shall deposit income from such investments immediately upon receipt thereof in the Rebate Fund. Anything in this Agreement to the contrary notwithstanding, this Section 4.07 and the Tax Compliance Certificate may be superseded or amended by new instructions delivered by the Borrower and accompanied by an opinion of Bond Counsel addressed to the Borrower to the effect that the use of the new instructions will not cause interest on the Series 2022A Note to be included in gross income for federal income tax purposes.

If a deposit to the Rebate Fund is required as a result of the computations made or caused to be made by the Borrower, the Borrower shall deposit such payment into the Rebate Fund. If amounts in excess of that required to be rebated to the United States of America accumulate in the Rebate Fund, such amounts shall be retained by the Borrower. Records of the determinations required by this Section and the instructions must be retained by the Borrower until six (6) years after the Series 2022A Note is no longer Outstanding.

It is anticipated that the Series 2022A Note will be exempt from rebate pursuant to the two-year construction exception (Section 1.148-7(f) of the Treasury Regulations). If such exception or an alternative exception to the arbitrage rebate requirements is not met, the Borrower will comply with the following rebate requirements. Promptly after each Rebate Year, and not later than thirty (30) days after the prepayment, payment at maturity or other retirement of the Series 2022A Note, the Borrower shall engage, and furnish information to, the Rebate Analyst and cause the Rebate Analyst to calculate the Rebate Amount with respect to the Series 2022A Note. The Borrower shall receive a copy of the report of the Rebate Analyst. The Borrower shall determine if the amount in the Rebate Fund is equal to the calculated Rebate Amount. If the amount in the Rebate Fund is in excess of the amount required to be therein in accordance with the report of the Rebate Analyst, then such excess shall be transferred to the Capitalized Interest Fund. To the extent the moneys in the Rebate Fund are less than the amount required to be deposited therein, the Borrower shall transfer such amounts necessary for the anticipated Rebate Amount payment to the United States Treasury from the Capitalized Interest Fund in accordance with this Agreement or from any other available monies of the Borrower or the Town.

Section 4.08. Payment to the Borrower. Any moneys remaining in all Funds and Accounts after all obligations of the Borrower to the Lender under the Series 2022A Note and this

Agreement have been paid in full shall be paid to the Borrower or, if applicable, the persons legally entitled thereto.

Section 4.09. Water Fund. Except as otherwise provided herein, the entire Revenues, upon receipt thereof from time to time during each Fiscal Year, shall be deposited immediately into the special and separate fund known as the Water Fund (the “Water Fund”), which shall be held by the Borrower and maintained as a book account and kept separate from all other accounts as a trust account solely for the purposes herein designated therefor. As a first charge on the Water Fund there shall be paid Operating Expenses of the Borrower as they become due and payable each month. The remaining Net Revenues on deposit in the Water Fund shall be applied in the following order of priority:

FIRST, to pay amounts due in the then current Fiscal Year under the Governmental Agency Bond issued by the Borrower to the Colorado Water Resources and Power Development Authority (the “CWRPDA”) on June 12, 2008, and under the Loan Agreement dated as of June 1, 2008, between the CWRPDA and the Borrower;

SECOND, monthly, the “Pledged Revenues,” as defined in Ordinance No. 02-20 (“Ordinance No. 02-20”), constituting the capital cost fee to be paid monthly per lot by the users of the System in the Park Entrance Estates Neighborhood, shall be deposited in the Bond Account, the Reserve Account and a short lived asset replacement reserve in accordance with Ordinance No. 02-20;

THIRD, to the Note Fund in the manner set forth in Section 4.03 hereof and to any Note fund created by any Parity Obligation Ordinance adopted in compliance with this Agreement, pursuant to similar sections contained in such Parity Obligation Ordinance, provided, however, that payment of interest on the Series 2022A Note provided by capitalized interest need not be deposited into the Note Fund;

FOURTH, to the Rebate Fund as determined by the Borrower in accordance with the Tax Compliance Certificate from time to time and in accordance with Section 4.07 hereof and to any rebate fund created by any Parity Obligation Ordinance adopted in compliance with this Agreement;

FIFTH, to the payment of the Debt Service Requirements of Subordinate Obligations issued under ordinances adopted in compliance with this Agreement or any Parity Obligation Ordinance; and

SIXTH, subject to the payments required or permitted by this Article IV, any remaining Net Revenues may be used by the Borrower for any lawful purpose.

Section 4.10. Investment of Money. All money held in any funds or Accounts established pursuant to this Agreement shall be invested solely in Investment Securities which shall mature not later than the date when the amounts will foreseeably be needed for purposes set forth in this Agreement, but in no event later than the Maturity Date, and which are permissible investments pursuant to State law. All Investment Securities shall be acquired subject to the limitations set forth in Section 5.09 hereof, compliance with which shall be the sole responsibility of the Borrower.

ARTICLE V

GENERAL COVENANTS

Section 5.01. General. The Town is duly organized and validly existing as a municipal corporation and statutory Town under the Constitution and laws of the State of Colorado. The Borrower is authorized to enter into the transactions contemplated by this Agreement under the Enabling Law and pursuant to the Note Ordinance. The Borrower hereby covenants and agrees with the Owner, and makes provisions which shall be a part of its contract with such Owner, to the effect and with the purpose set forth in the following Sections of this Article.

Section 5.02. Covenant to Enter into USDA Permanent Financing; Payment of Principal, Premium, if any, and Interest. The Borrower has received the Letter of Conditions and the USDA-RD Commitment to Lend. The Borrower covenants to take all necessary actions reasonably required to obtain the USDA Permanent Financing. The Borrower covenants, to and for the benefit of the Owner, to proceed with the Project with due diligence to completion in accordance with the Plans and Specifications, to comply with the terms and conditions of the Letter of Conditions and to enter into the USDA Permanent Financing and immediately deposit the USDA Direct Loan Proceeds to the Note Sinking Fund if and when received to be used to pay the Series 2022A Note as provided in Section 4.05 hereof.

The Borrower covenants that it will promptly pay the principal of and interest on the Series 2022A Note issued under this Agreement at the place, on the dates and in the manner provided herein and in the Series 2022A Note according to the true intent and meaning thereof. The principal of and interest on the Series 2022A Note are limited obligations of the Borrower and are payable solely from the Collateral and shall be a valid claim of the holder thereof against the Collateral. The Series 2022A Note is not payable from or secured by property tax revenues and is not a general obligation of the Town.

If USDA-RD does not make the USDA Direct Loan, the Borrower shall apply all Net Revenues and other Collateral which is available from time to time to the payment of the principal of and interest on the Series 2022A Note, and the Borrower shall promptly obtain another loan to provide other permanent financing for the Project, the proceeds of which will be deposited to the Series 2022A Note Sinking Fund when received to pay the Series 2022A Note as provided in Section 4.05 hereof.

Section 5.03. Performance of Duties. The Town, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Revenues and the System required by the Constitution and laws of the State and the ordinances, resolutions and contracts of the Town or the Borrower, including, without limitation, the proper segregation of the proceeds of the Series 2022A Note and the Revenues and their application from time to time to the respective funds provided therefor.

Section 5.04. Contractual Obligations. The Borrower shall perform all contractual obligations undertaken by it under any agreements relating to the Series 2022A Note, the Net Revenues, the Project and the System, or any combination thereof.

Section 5.05. Maintenance of Existence; Compliance with Laws; Operation and Maintenance. The Borrower shall faithfully and punctually perform all duties with reference to the Project required and provided by the Constitution and laws of the State.

The Borrower agrees to pay all expenses of the operation and maintenance of the System, including adequate insurance thereon and insurance against all liability for injury to persons or property arising from its operation as hereinafter provided.

The Borrower shall procure and maintain all necessary licenses and permits and, if appropriate, maintain accreditation of the System. The Borrower will operate the System as a revenue-producing facility in an efficient and economical manner and will keep and maintain the same in good repair and working order. The Borrower will use the Project for purposes authorized by law and will not install, use, operate or maintain the Project improperly, carelessly, in violation of the applicable law or in a manner contrary to that contemplated by this Agreement.

Section 5.06. Further Assurances. At any and all times the Borrower shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver, and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Net Revenues and other funds hereby pledged, or intended so to be, or which the Borrower may hereafter become bound to pledge, or as may be reasonable and required to carry out the purposes of this Agreement. The Borrower, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Net Revenues and other funds pledged hereunder and all the rights of every Owner of the Series 2022A Note against all claims and demands of all Persons whomsoever.

Section 5.07. Payment of Notes. The Borrower agrees to pay the Debt Service Requirements of the Series 2022A Note and any Additional Parity Obligations now outstanding or issued in compliance with Section 2.06 hereof when due and payable at the places, on the dates and in the manner specified herein.

Section 5.08. Corporate Existence. The Town shall maintain its corporate identity and existence, and agrees to continue to maintain the Enterprise as an “enterprise” within the meaning of TABOR for so long as the Series 2022A Note remains Outstanding, unless another body corporate and politic, by operation of law, succeeds in writing to the powers, privileges, rights, liabilities, disabilities, duties and immunities of the Borrower and is obligated by law to operate and maintain the System and to fix and collect the Revenues as herein provided; and provided that the successor body corporate and politic shall provide a certification to the Owner of the Series 2022A Note to the effect that such succession will not adversely and materially affect at any time the privileges and rights of the Owner of the Series 2022A Note and will provide the Owner of the Series 2022A Note with an opinion of Bond Counsel that the succession will not adversely affect the excludability from gross income of interest on the Series 2022A Note for federal income tax purposes.

Section 5.09. Tax Covenants. It is the intention of the Town that interest on the Series 2022A Note be and remain excludable from gross income for federal income tax purposes

pursuant to the appropriate provisions of the Code and the Treasury Regulations in effect with respect thereto. In furtherance thereof, the Town covenants for the benefit of the Lender that it will not take any action or omit to take any action with respect to the Series 2022A Note, the proceeds thereof, any other funds of the Town or any facilities financed or refinanced with the proceeds of the Series 2022A Note if such action or omission (i) would cause the interest on the Series 2022A Note to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), or (ii) would cause interest on the Series 2022A Note to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Series 2022A Note until the date on which all obligations of the Town in fulfilling the above covenant under the Code have been met.

Section 5.10. Liens and Encumbrances. The Borrower will not create or suffer to be created any pledge, lien, encumbrance or charge upon the System or upon the Revenues therefrom or the Collateral except as permitted by this Agreement and subject to the prior written consent of the Lender and USDA-RD where required, or it will make adequate provisions to satisfy and discharge, within 60 days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System or upon the Revenues therefrom or the Collateral; provided, however, that nothing herein shall apply to any lien or charge upon property which is financed pursuant to a Capital Lease excepted from the definition of “Obligation” or hereunder authorized in compliance with the provisions of Section 2.06 hereof. The Borrower will not create or suffer to be created any pledge, lien, encumbrance or charge upon the USDA Direct Loan Proceeds.

Section 5.11. Conditions Precedent. Upon the date of issuance of the Series 2022A Note, all conditions, acts and things required by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Enabling Law, and this Agreement to exist, to have happened, and to have been performed precedent to or in the issuance of the Series 2022A Note shall exist, have happened and have been performed, and the Series 2022A Note, together with all other obligations of the Borrower, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States of America or the Constitution or laws of the State.

Section 5.12. Rate Maintenance. Rates, fees and other charges for all services rendered by the System shall be reasonable and just, taking into account and consideration Operating Expenses, the cost and value of the System and the proper and necessary allowances for the depreciation thereof and the amounts necessary for the retirement of the Series 2022A Note and other Obligations or obligations payable from the Revenues, accruing interest thereon, and reserves therefor, which shall generate Net Revenues in each Fiscal Year sufficient to pay Operating Expenses and to maintain a Debt Service Coverage Ratio not less than 1.00:1.00. If, as of the end of any Fiscal Year, the Debt Service Coverage Ratio is less than 1.00:1.00, the Town shall engage a Consultant not later than 90 days after the end of such Fiscal Year to make written recommendations with respect to the Borrower’s operations, including but not limited to rates, fees, contractual charges, expenses, services and lines of business in order that the Debt Service Coverage Ratio required above will be met at the earliest possible date. The Town agrees to cause the Consultant to make its recommendations within 60 days of the date it is engaged. A copy of any such Consultant’s report shall be made available, upon written request, to the Owners of the

Series 2022A Notes. The Town agrees to consider the recommendations of the Consultant with respect to such matters.

Section 5.13. Collection of Charges. The Town shall cause all rates, fees, and charges to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Net Revenues shall be adequate to meet the requirements of this Agreement and any Additional Parity Obligation Ordinance or instrument supplemental hereto.

Section 5.14. Alienating System Facilities and Other Assets. The Town agrees it will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, its interest in the System facilities, or any part thereof, including any and all extensions and additions that may be made thereto, accounts receivable, inventory or any intangible property without the prior written consent of the Owner until the Series 2022A Note shall have been paid in full, both principal and interest, except that the Town may sell or otherwise dispose of any portion of the System which shall have been replaced by other property of at least equal value, or which shall become obsolete or shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of the Series 2022A Note; provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues in accordance with the provisions of Section 6.05 hereof.

Section 5.15. Loss from Condemnation or Casualty. If any part of the System is taken by the exercise of the power of eminent domain or damaged or destroyed, the amount of any award or insurance proceeds received by the Town as a result of such taking, damage or destruction shall be paid into the Water Fund or into a capital improvement account pertaining to the System for the purposes thereof, or applied to the prepayment of the Series 2022A Note, all as the Town may direct with the consent of the Owner of the Series 2022A Note. The Borrower shall not by reason of a casualty or the payment of a condemnation award be entitled to any reimbursement by the Owner or any postponement, diminution, or abatement of the Borrower's obligation to pay the Debt Service Requirements of the Series 2022A Note.

Section 5.16. Nonsectarian Use. The Town agrees that no proceeds of the Series 2022A Note shall be used to acquire, construct, install or finance any facilities which are intended to be used primarily for sectarian purposes, nor shall any portion of the Project be used for such purposes.

Section 5.17. Licenses and Qualifications. The Town will do all things necessary to obtain, renew and secure all permits, licenses and other governmental approvals necessary for operation of the System and to establish and maintain the status of the Town as a provider of water services eligible for reimbursement under governmental programs providing for the payment or reimbursement for services rendered.

Section 5.18. Operating Budget. The Town and officials of the Town shall annually and at such other times as may be provided by law prepare and adopt an Operating Budget pertaining to the System.

Section 5.19. Payment of Governmental Charges. The Town shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within 90 days after the same shall become payable, all lawful claims and demands for taxes, assessments or other municipal or governmental charges which, if unpaid, might by law become a lien upon the System, or any part thereof, or the Net Revenues. The Town shall duly observe and comply with all requirements of any municipal or governmental authority relative to the System, or any part thereof.

Section 5.20. Protection of Obligation. The Town and its officers, agents and employees shall not take any action which might prejudice the security for the payment of the Debt Service Requirements of the Series 2022A Note according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Owner of the Series 2022A Note or any other Obligation might be prejudicially and materially impaired or diminished; provided that the foregoing shall not prohibit the incurrence of obligations or liens permitted under the provisions of Section 2.06 hereof.

Section 5.21. Additional Obligations. The Borrower shall not hereafter issue any Obligations relating to the System and payable from the Net Revenues, except in compliance with Section 2.06 hereof. The Borrower shall not issue or incur any indebtedness or obligations payable from or secured by the USDA Direct Loan Proceeds.

Section 5.22. Maintenance of Records and Access to Information. So long as the Series 2022A Note remains Outstanding, proper books of record and account shall be kept by the Town, separate and apart from all other records and accounts.

The Town agrees to furnish the Owner, promptly upon the receipt of a written request therefrom, any additional documents, financial information, data or projections reasonably requested by the Owner. Such documents and records shall be open to inspection during normal business hours by the Owners.

Section 5.23. Designation of Additional Paying Agents. The Town may cause the necessary arrangements to be made through the Lender and to be thereafter continued for the designation of alternate paying agents, if any, and for the making available of funds hereunder for the payment of such of the Series 2022A Note.

Section 5.24. Insurance. The Town will carry fire and extended insurance coverage on all structures of the System in an amount equal to at least the depreciated replacement value, loss of use insurance, workers' compensation insurance, public liability insurance, property damage insurance, and other types of insurance with respect to the System in such amounts and to such extent as is customary in the case of similarly situated entities engaged in similar activities, and to the extent reasonably necessary to protect the interests of the Town and the Owner. On or prior to the Closing Date, the Town shall furnish the Owner a certificate of insurance evidencing the insurance policies referenced above and USDA-RD or its successor agency shall be listed as loss payee on such insurance policies in a manner acceptable to the Owner. The cost of such insurance shall be considered and paid as an Operating Expense of the Borrower. In the event of property loss or damage to the Project, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged; any remainder shall be subject to application by the

Borrower to a Borrower costs contingency fund for use as Project Costs or, upon completion of the Project, for the payment of the Series 2022A Note.

In accordance with USDA regulations, fidelity bond coverage or employee dishonesty insurance coverage is required for all persons having access to funds contemplated by this Agreement. Coverage may be provided for all individual positions or persons or otherwise provided through “blanket” coverage providing protection for all appropriate employees and/or officials. Pursuant to the Letter of Conditions, the amount of the fidelity bond coverage shall be at least equal to the estimated total annual debt service requirements for the USDA Direct Loan outstanding from time to time, provided that a different amount may be determined by USDA-RD.

Section 5.25. Borrower’s Covenants Regarding USDA Permanent Financing; Mandatory Prepayment. The Borrower shall apply the proceeds of the Series 2022A Note and amounts in the Construction Fund solely to pay Costs of Issuance, and to the payment or reimbursement of Project Costs which are eligible to be financed by the USDA Permanent Financing (including the payment of temporary obligations issued for such purpose), with any remaining proceeds to pay principal of and interest on the Series 2022A Note. The Borrower shall apply the proceeds of the USDA Direct Loan promptly when received to repay the Series 2022A Note upon maturity or earlier prepayment. The Borrower additionally represents and warrants that it has (a) received all approvals of USDA-RD required as of the Effective Date in connection with the Project, and (b) received the Letter of Conditions and USDA-RD Commitment to Lend relating to the Project, which provide that the USDA Permanent Financing will be made upon completion of the Project, which is expected on or before the Maturity Date if the conditions of the Letter of Conditions are met.

The Borrower shall perform the terms and conditions of the Letter of Conditions in a timely manner.

The Borrower will not unilaterally terminate, or enter into any agreement to terminate, the Letter of Conditions, and will give to the Lender prompt written notice, appropriately documented, of any amendment to or modification of the Letter of Conditions, or of any determination by USDA-RD of the Borrower's inability to satisfy the conditions set forth in the Letter of Conditions.

The Borrower shall prepay the Series 2022A Note immediately: (i) upon the receipt of proceeds of the USDA Direct Loan; or, if earlier, (ii) if and when the interest rate applicable to the Series 2022A Note shall exceed the maximum rate of interest permitted under C.R.S. Section 5-12-103. Full repayment under this provision will evidence the Borrower’s request for cancellation of the Commitment. Unless otherwise agreed, all prepayment, whether voluntary or mandatory, will be applied to principal installments in the inverse order in which they become due.

Section 5.26. Maintenance and Modifications of the Project. The Borrower agrees that during the term of this Agreement the Project shall be constructed, operated and maintained, in compliance with all governmental laws, building codes, ordinances, and regulations and zoning laws as shall be applicable to the Project, unless the same are being contested in good faith by appropriate proceedings which operate to stay any action to foreclose or otherwise realize on any property of the Borrower. The Borrower agrees that during the term of this Agreement it will at its own expense (a) keep the System in a safe condition required by law and (b) except to the extent

the Borrower has determined that any portion of the Project is obsolete or not useful in its operations, keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof all of which shall be accomplished in a workmanlike manner in accordance with all applicable laws. The Borrower may also, at its own expense, make from time to time any additions, modifications or improvements to the System (including modifications to the System, if any) it may deem desirable for its purposes that do not substantially reduce its value; provided that all such additions, modifications and improvements made by the Borrower which are affixed to the System facilities shall become a part of the System. The Borrower will not permit the removal of any personal property from the System unless such personal property is obsolete, sold for fair market value or will be replaced with personal property of an equal or greater value. The Borrower will not permit any liens, security interests or other encumbrances to be established or to remain against the Project for labor or materials furnished in connection with the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it to the Project; provided that if the Borrower first notifies the Lender of its intention to do so, the Borrower may, so long as no Event of Default has occurred and is continuing, diligently prosecute, in good faith, at its own expense, a contest of any liens filed or established against the Project and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Project or any part thereof will be subject to loss or forfeiture, in which event the Borrower shall promptly pay and cause to be satisfied and discharged all such unpaid items. In the event that the Borrower shall fail to pay any of the expenses required by this Section to be paid by the Borrower, the Lender may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the Lender shall become an additional obligation of the Borrower under this Agreement to the one making the advance, which amount the Borrower agrees to pay on demand together with interest thereon at a rate which shall be three percent (3%) per annum above the highest rate of interest borne by the Series 2022A Note or the maximum rate permitted by law if less than such rate. In the event that the Lender makes any such advance which may result in additional obligations under this Section 5.26, it shall promptly notify the Borrower and USDA-RD.

Section 5.27. Reporting Requirements. The Borrower shall provide the Lender:

- (a) as soon as available, but in no event more than 210 days after the end of each Fiscal Year of the Borrower occurring during the term hereof, audited annual financial statements of the Borrower. Such financial statements will: (1) be audited by independent certified public accountants selected by the Borrower and acceptable to the Lender; (2) be accompanied by a report of such accountants containing an opinion thereon acceptable to the Lender; (3) be prepared in accordance with GAAP, and in reasonable detail and in comparative form acceptable to the Lender; and (4) include a balance sheet, a statement of income, a statement of retained earnings, a statement of cash flows, and all notes and schedules relating thereto; and
- (b) such interim financial statements as Lender may request from time to time prepared in reasonable detail acceptable to the Lender and, if required by written notice from the Lender, certified by an authorized officer or employee of the Borrower acceptable to the Lender.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES OF REGISTERED OWNER

Section 6.01. Extension of Payment. In case the time for the payment of any of the principal of or the interest on the Series 2022A Note shall be extended, whether or not such extension be by or with the consent of the Borrower, in the case of a subsequent default hereunder, such extended principal or interest shall not be entitled to the benefit or security of this Agreement except on the same basis as the principal and interest of the Series 2022A Note then outstanding, the time for the payment of which shall not have been extended.

Section 6.02. Events of Default. Each of the following events is hereby declared an “Event of Default”:

(a) payment of any installment of interest payable on the Series 2022A Note shall not be made when the same shall become due and payable either at maturity, by mandatory prepayment, through failure to make any payment to any fund hereunder or otherwise; or

(b) payment of the principal payable on the Series 2022A Note shall not be made when the same shall become due and payable, either at maturity, by mandatory prepayment, through failure to make any payment to any fund hereunder or otherwise; or

(c) the Borrower shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Series 2022A Note, in this Agreement or any agreement supplemental hereto to be performed on the part of the Borrower, as the case may be (other than defaults specified in (a) or (b) above), and such default shall continue for the period of thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Borrower by the Lender at its discretion; provided however, if such default can be cured but cannot be cured within such thirty (30) days, it shall not constitute a default hereunder if the Borrower takes action to cure such default within such thirty (30) days and diligently pursues such action until such default is cured; or

(d) if the Borrower shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of a bankruptcy proceeding against the Borrower, or shall file a petition or answer or consent seeking reorganization or arrangement under the Federal Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of the Borrower or its properties, or shall make assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due.

Section 6.03. Remedies; Rights of Owner. Upon the occurrence of any Event of Default, the Owners may proceed in law or in equity by suit, action or mandamus to enforce and compel performance of the duties set forth in this Agreement. In addition, upon the occurrence and during the continuance of an Event of Default (or any event or circumstance which, with the passing of

time or the giving of notice or both, could become an Event of Default), the Lender will have no obligation to make any further Advances or otherwise extend or continue to extend credit to the Borrower and may discontinue doing so at any time without prior notice or other limitation. Further, upon the occurrence and during the continuance of any Event of Default, the Lender may, upon notice to the Borrower, terminate any commitment, declare the unpaid principal balance of the Obligations and all accrued interest thereon and other amounts payable under the Loan Documents to be immediately due and payable (only to the extent permitted by law), and exercise all other rights and remedies legally available to the Lender.

No remedy by the terms of this Agreement conferred upon or reserved to the Lender (or to any Owners of the Series 2022A Note) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Lender or to any Owner of the Series 2022A Note hereunder now or hereafter existing at law or in equity or by statute. No punitive or consequential damages shall be awarded as a remedy, and no waiver of the provisions of the Colorado Governmental Immunity Act shall be inferred from the provisions of this Agreement or any of the transactions contemplated hereby.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default, hereunder, whether by the Lender or by any Owners of the Series 2022A Note, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 6.04. Direction of Proceedings by Owner. Except as otherwise provided in this Agreement, the Owner or Owners of 75% in aggregate principal amount of the Series 2022A Note then outstanding shall have the right, at any time, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Agreement; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Agreement.

Section 6.05. Application of Money. Any money collected by the Owners pursuant to this Agreement shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Owners, be applied in the following order, at the date or dates fixed by the Owners and, in case of the distribution of such money on account of principal or interest, upon surrender thereof if fully paid:

FIRST: in case the principal of the Series 2022A Note shall not have become due, to the payment of interest on the Series 2022A Note, in the order of the maturity of the installments of such interest, with interest, to the extent that such interest has been collected by the Lender, upon the overdue installments of interest at the rate borne by the Series 2022A Note, such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

SECOND: to the payment of the amount then owing and unpaid upon the Series 2022A Note for principal and interest, with interest on the overdue principal and, to the extent that such interest has been collected by the Lender, upon overdue installments of interest at the rate borne by the Series 2022A Note; and in case such moneys shall be insufficient to pay in full the amount so due and unpaid upon the Series 2022A Note, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Series 2022A Note over any other Series 2022A Note, ratably to the aggregate of such principal and accrued and unpaid interest;

THIRD: to the payment of all other amounts due the Owners; and

FOURTH: the remainder, if any, shall be paid to the Borrower, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 6.06. Remedies Vested in Lender. All rights of action including the right to file proof of claims under this Agreement or under the Series 2022A Note may be enforced by the Lender or the Owners without the possession of the Series 2022A Note or the production thereof in any trial or other proceedings relating thereto and any recovery of judgment shall be for the equal benefit of the Owner or Owners of the Outstanding Series 2022A Note.

Section 6.07. Termination of Proceedings. In case the Owners shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owners, then and in every case the Owners and the Borrower shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder with respect to the property pledged and assigned hereunder, and all rights, remedies and powers of the Owners shall continue as if no such proceedings had been taken.

Section 6.08. Waiver of Events of Default. The Owners may in their discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal; provided, however, that there shall not be waived (i) any Event of Default in the payment of the principal of the Outstanding Series 2022A Note when due whether by mandatory redemption through the Note Sinking Fund or at the dates of maturity specified therein or (ii) any default in the payment when due of the interest on the Series 2022A Note, except where such payment is waived by the Owner or unless prior to such waiver or rescission all arrears of interest, with interest thereon (to the extent permitted by law) at the rate borne by the Series 2022A Note in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Lender and any paying agent in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission or in case any proceeding taken by the Lender on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Borrower and the Owner shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 6.09. Payment of Series 2022A Note from Additional Sources. At its sole discretion, the Borrower may appropriate to the payment of the Series 2022A Note proceeds to be received from state or federal grants and/or income or revenues from sources to be received and expended for the Project during the period of Project construction and acquisition, including but not limited to, the legally available revenues of the Borrower.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Liability of Borrower Limited. Subject to the limited sources of payment herein referred to, the Borrower covenants that it will promptly pay the principal of and interest on the Series 2022A Note issued pursuant to this Agreement at the place, on the dates and in the manner provided herein and in the Series 2022A Note according to the true intent and meaning thereof.

Section 7.02. Successor is Deemed Included in all References to Predecessor. Whenever in this Agreement either the Borrower or the Lender is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the Borrower and the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 7.03. Limitation of Rights to Parties and Owner. Nothing in this Agreement or in the Series 2022A Note expressed or implied is intended or shall be construed to give to any person other than the Borrower, the Lender, or the Owner of the Series 2022A Note, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision therein or herein contained, and, except as otherwise expressly stated herein, all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Borrower and the Owners of the Series 2022A Note.

Section 7.04. Waiver of Notice. Except as otherwise provided herein, whenever in this Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 7.05. Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement or in the Series 2022A Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 7.06. Notices. Any notice to or demand upon the following parties shall be given by electronic means, by certified mail, return receipt requested, or delivered as follows:

If to the Borrower: Town of Estes Park, Colorado
P.O. Box 1200
170 MacGregor Avenue
Estes Park, CO 80517
Telephone: (970) 577-3560
Attention: Finance Director

If to the Lender: CoBank, ACB
6340 South Fiddlers Green Circle
Greenwood Village, CO 80111
Telephone: (800) 542-8072
Fax: (303) 224-6101
Attention: Credit Information Services

If to USDA-RD: United States Department of Agriculture, Rural
Development
Colorado State Office
Denver Federal Center
P.O. Box 25426
Denver, CO 80225
Telephone: (303) 236-9790
Attention: Community Programs Director

Section 7.07. Evidence of Rights of Owner. Any request, consent or other instrument required or permitted by this Agreement to be signed and executed by an Owner shall be signed or executed by such Owner in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of the Series 2022A Note transferable by delivery, shall be sufficient for any purpose of this Agreement and shall be conclusive in favor of the Lender or the Borrower if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

Any request, consent, or other instrument or writing of the Owner shall bind every future Owner of the same Series 2022A Note and the Owner of every Series 2022A Note issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Lender or the Borrower in accordance therewith or reliance thereon.

Section 7.08. Funds and Accounts. Any Fund or Account required by this Agreement to be established and maintained by the Borrower may be established and maintained in the accounting records of the Borrower either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either

as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and for the protection of the security of the Series 2022A Note and the rights of every Owner thereof.

Section 7.09. Waiver of Personal Liability. No member, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of the principal of or interest on the Series 2022A Note or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

Section 7.10. Applicable Provisions of Law. This Agreement shall be governed by and construed in accordance with the laws of the State without regard to choice of law analysis. Jurisdiction and venue shall lie in the District Court for Larimer County, Colorado.

Section 7.11. No Sovereign Immunity. The Borrower hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to the Series 2022A Note or this Agreement.

Section 7.12. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the Lender. The Lender may assign its rights, obligations and interests hereunder only to a Qualified Institutional Buyer or Accredited Investor that executes and delivers to the Borrower a Lender Letter in substantially the form set forth in Exhibit C hereto. Any assignment pursuant to this Section 7.12 shall be in accordance with the procedures established by Section 4 of the Note Ordinance.

Section 7.13. Participations. The Lender shall have the right to grant participations in all or a portion of its interest in the Series 2022A Note and this Agreement to one or more Qualified Institutional Buyers pursuant to a Participation Agreement; provided, however, that (i) no such participation by any such participant shall in any way affect the obligations of the Lender hereunder and (ii) the Borrower shall be required to deal only with the Lender, with respect to any matters under this Agreement and the Series 2022A Note and no such Participant shall be entitled to enforce any provision hereunder against the Borrower. The Lender shall maintain a registry of all participations hereunder, which together with the Participation Agreement shall be provided to the Borrower at any time upon reasonable request.

In addition to the rights of the Lender set forth above, the Lender may at any time pledge or grant a security interest in all or any portion of its rights or interests hereunder and/or the Loan Documents to secure obligations of the Lender or an Affiliate of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

Section 7.14. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 7.15. Termination. This Agreement shall terminate upon payment in full by the Borrower of the Loan.

Section 7.16. No Fiduciary Relationship. Inasmuch as the Loan represents a negotiated transaction, the Borrower understands, and hereby confirms, that the Lender is not acting as a fiduciary of the Borrower, but rather is acting solely for its own account. The Borrower acknowledges and agrees that, in connection with the execution and delivery of this Agreement: (a) the transactions contemplated by this Agreement are arm's length commercial transactions between the Borrower and the Lender, (b) in connection with such transactions, the Lender and its affiliates are acting solely as a principal and not as an advisor (including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules")), (c) the Lender and its affiliates are relying on the lender exemption in the Municipal Advisor Rules, (d) the Lender and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the Borrower with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Lender, or any affiliate of the Lender, has provided other services or advised, or is currently providing other services or advising the Borrower on other matters), (e) the Lender and its affiliates have financial and other interests that differ from those of the Borrower, and (f) the Borrower has consulted with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

Section 7.17. Electronic Execution of Assignments; Electronic Records. The words "execution," "signed," "signature," and words of like import in any assignment and assumption agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, or any other state laws based on the Uniform Electronic Transactions Act. The Lender is authorized to create electronic images and to destroy paper originals of any imaged documents and any such images maintained by the Lender as a part of its normal business processes shall be given the same legal effect as the paper originals. The Lender is authorized, when appropriate, to convert any instrument into a "transferable record" under the Uniform Electronic Transactions Act ("UETA"), with the image of such instrument in the Lender's possession constituting an "authoritative copy" under UETA.

Section 7.18. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Event of Default at the time of entering into this Agreement, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied.

Section 7.19. USA PATRIOT Act Notification. The following notification is provided to the Borrower pursuant to Section 326 of the PATRIOT Act:

The Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the PATRIOT Act

Section 7.20. Fees. No Origination Fee is payable to the Lender in connection with the origination of the Loan. In consideration of the foregoing, the Borrower agrees to pay a portion of the fees of legal counsel to Lender on the execution hereof in the amount of up to \$5,000.

Section 7.21. Amendment of Agreement. This Agreement may not be amended without the prior written consent of the Lender.

Section 7.22. Execution in Several Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Borrower and the Lender shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Borrower and the Lender have caused this Agreement to be duly executed and attested, all as of the day and year first above written.

[SEAL]

TOWN OF ESTES PARK, COLORADO,
ACTING BY AND THROUGH ITS WATER
ACTIVITY ENTERPRISE

By _____
Mayor

Attested:

By _____
Town Clerk

COBANK, ACB, as Lender

By _____
Authorized Representative

APPROVED AS TO FORM:

By:  _____
Daniel E. Kramer, Town Attorney

By: _____
Richard L. Buddin, Bond Counsel

EXHIBIT A
FORM OF SERIES 2022A NOTE

THIS SERIES 2022A NOTE WAS ISSUED AS AN EXEMPT SECURITY OR IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED. UNDER NO CIRCUMSTANCES SHALL THIS SERIES 2022A NOTE BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED OR DISPOSED OF EXCEPT IN THE MANNER PROVIDED IN SECTION 7.12 OF THE AGREEMENT AND THE NOTE ORDINANCE PURSUANT TO WHICH IT WAS ISSUED AND IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL SECURITIES LAWS. ANY TRANSFER OR PURPORTED TRANSFER IN VIOLATION OF SUCH SECTIONS OR SUCH LAWS SHALL BE VOID AND OF NO EFFECT.

**UNITED STATES OF AMERICA
STATE OF COLORADO
COUNTY OF LARIMER**

**TOWN OF ESTES PARK, COLORADO,
ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE**

**CONSTRUCTION LOAN NOTE
(PROSPECT MOUNTAIN WATER DISTRIBUTION PROJECT)
SERIES 2022A**

No. 00138635T01

Not to Exceed \$4,493,000.00

Interest Rate

Variable

Final Principal Payment Date

August 1, 2025

Dated Date

October 11, 2022

REGISTERED OWNER: COBANK, ACB

PRINCIPAL SUM: NOT TO EXCEED FOUR MILLION FOUR HUNDRED NINETY-THREE THOUSAND DOLLARS

The Town of Estes Park, Colorado, acting by and through its Water Activity Enterprise (the “Borrower”), for value received, hereby promises to pay, in lawful money of the United States of America, to the Registered Owner specified above (the “Lender”) or registered assigns, on the final principal payment date specified above (the “Maturity Date”), unless the maturity of this Series 2022A Note is extended by the Lender or unless this Series 2022A Note shall be prepaid and payment of the prepayment price made or provided for, but solely from the sources hereinafter

identified, the Principal Sum specified above (or so much thereof as has been advanced by the Lender (the “Principal Balance”)) and to pay interest on such Principal Balance in like manner, but solely from the sources hereinafter identified, at the interest rate equal to the Benchmark (initially, the Daily Simple SOFR Rate) (both as defined in the Agreement defined hereinafter) payable on the Payment Date. As used herein, the term “Payment Date” means (a) February 1 and August 1 of each year for the payment of interest on this Series 2022A Note in arrears, commencing February 1, 2023 and including the Maturity Date (or earlier, if this Series 2022A Note shall be prepaid pursuant to the terms of the Agreement) and (b) the Maturity Date and any other date on which the principal of this Series 2022A Note or any portion thereof is required to be repaid or prepaid under the terms of the Agreement. This Series 2022A Note shall bear interest at a variable interest rate, calculated as provided in the Agreement (as defined hereinafter) on the actual number of days this Series 2022A Note is Outstanding on the basis of a year consisting of 360 days, through and including the Maturity Date. The Maturity Date may (at the sole discretion of the Lender) be extended as provided in the Agreement (as defined hereinafter).

Interest payments hereon shall be made to the Registered Owner hereof appearing on the registration books of the Borrower maintained by the Town Treasurer as note registrar (the “Note Registrar”) by check or draft or at the request of the Registered Owner, by wire transfer or automated clearing house (ACH) payment to a bank account number maintained by such Registered Owner in the United States of America and designated in written instructions given to the Note Registrar at least fifteen (15) days prior to a Payment Date.

This Series 2022A Note is issued by the Borrower in anticipation of the receipt of the USDA Direct Loan (as defined in the Agreement) to be received by the Borrower and in conformity with an ordinance of the Borrower (the “Note Ordinance”) and a Construction Loan Agreement dated as of October 11, 2022 (the “Agreement”), by and between the Borrower and the Lender, and reference is hereby made to the Note Ordinance and the Agreement for a more complete statement as to the source of payment of the Series 2022A Note and the rights of the Lender as Owner of the Series 2022A Note. The proceeds of the Series 2022A Note will be used to: (i) finance the rebuilding and upgrading of the water distribution system of the former Prospect Mountain Water Company to Town standards by the Borrower (the “Project”); (ii) fund capitalized interest, if any; and (iii) pay the costs of issuance of this Series 2022A Note, each to the extent approved in writing by USDA-RD.

This Series 2022A Note, including the interest hereon, is a limited obligation of the Borrower payable solely from the future proceeds of the USDA Direct Loan, the Net Revenues and any other legally available moneys of the Borrower authorized for such use under the Agreement. This Series 2022A Note and the interest hereon are not payable in any manner by taxation and do not constitute a debt of the Town of Estes Park, Colorado (the “Town”), within the meaning of any constitutional or statutory provision.

Reference is hereby made to the Agreement for a description of the rights, duties and obligations of the Borrower, the Town, the Lender, the Owner of this Series 2022A Note, the terms upon which this Series 2022A Note is sold and the terms and conditions upon which this Series 2022A Note will be paid at or prior to maturity, or will be deemed to be paid upon the making of provision for payment. Any capitalized term used in this Series 2022A Note but not defined in this Series 2022A Note is used with the meaning set forth in the Agreement.

This Series 2022A Note may only be transferred or exchanged at the principal office of the Note Registrar and only as provided in the Note Ordinance and the Agreement. The transferring Owner shall pay any reasonable costs of the Borrower incurred in connection with the transfer of this Series 2022A Note. This Series 2022A Note shall not be valid or become obligatory for any purpose or be entitled to the security or benefit of the Note Ordinance until the Certificate of Authentication hereon shall have been signed by the Note Registrar.

This Series 2022A Note is issued pursuant to the Supplemental Public Securities Act, Part 2 of Article 57 of Title 11, C.R.S., and such recital shall be conclusive evidence of the validity and the regularity of issuance of this Series 2022A Note after its delivery for value.

It is hereby certified and recited that all acts, conditions and things required by the laws and Constitution of the State of Colorado, to exist, to be done or to be performed precedent to the lawful issue of this Series 2022A Note do exist and have been done and performed in regular and due form, time and manner.

IN WITNESS WHEREOF, the Town of Estes Park, Colorado, acting by and through its Water Activity Enterprise, has caused this Series 2022A Note to be executed with the duly authorized manual signature of the Mayor, to be sealed with the seal of the Town or a facsimile thereof and to be attested by the manual signature of the Town Clerk, all as of the Dated Date set out above.

(SEAL)

**TOWN OF ESTES PARK, COLORADO,
ACTING BY AND THROUGH ITS WATER
ACTIVITY ENTERPRISE**

By _____
Mayor

Attest:

By _____
Town Clerk

CERTIFICATE OF AUTHENTICATION

This is the Series 2022A Note delivered pursuant to the Note Ordinance mentioned within.

Date of Authentication: _____, 2022

Town Treasurer, as Note Registrar

By: _____

The following abbreviations, when used in the inscription on the face of this Series 2022A Note, shall be construed as though they were written out in full according to applicable laws or regulations: TEN COM - as tenants in common, TEN ENT - as tenants by the entireties, JT TEN - as joint tenants with right of survivorship and not as tenants in common.

UNIF TRANS MIN ACT

Under Uniform Transfers to Minors Act

(CUST)

(MINOR)

(STATE)

Custodian

Additional abbreviations may also be used though not in the above list.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto _____
the within Series 2022A Note and all rights thereunder, and hereby irrevocably constitutes and
appoints _____ attorney to transfer the within
Series 2022A Note on the books kept for registration thereof, with full power of substitution in the
premises.

Dated: _____

NOTICE: The signature to this Assignment must correspond with the name as it appears
upon the face of the within Series 2022A Note in every particular, without alteration or any change
whatever.

Signature: _____

**PLEASE INSERT TAX IDENTIFICATION OR SOCIAL SECURITY NUMBER
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE**

EXHIBIT B
FORM OF REQUISITION

**Town of Estes Park, Colorado,
acting by and through its
Water Activity Enterprise**

Requisition No. ____

CoBank, ACB
6340 South Fiddlers Green Circle
Greenwood Village, CO 80111
Attention: _____

The undersigned Town of Estes Park, Colorado, acting by and through its Water Activity Enterprise (the “Borrower”), pursuant to a Construction Loan Agreement dated as of October 11, 2022 (the “Agreement”) between the Borrower and CoBank, ACB, as lender thereunder (the “Lender”), hereby requisitions the following sum from the [Construction Fund/Costs of Issuance Fund] established under the Agreement, and in connection with such request, certifies and warrants as follows:

Total Requisition Amount: \$ _____

Name and Address of Payee: _____

The sum of \$ _____ by wire transfer to:

Account Name: _____
Bank Name: _____
Address _____

ABA No.: _____

Account Number: _____

Reference: _____

Name and Address of Payee: _____

The sum of \$ _____ by wire transfer to:

Account Name: _____
Bank Name: _____
Address _____

ABA No.: _____

Account Number: _____

Reference: _____

The Borrower further certifies and warrants that (a) the obligation described above has been properly incurred, is a proper charge against the [Construction Fund/Costs of Issuance Fund] and has not been the basis of any previous withdrawal or requisition; (b) all conditions required by the Agreement to be met prior to the disbursement of the above amount have been satisfied; (c) the disbursement requested is due and payable and will be used for ["Project Costs"/"Costs of Issuance"] permitted under the Agreement; (d) each item for which this payment or reimbursement is proposed to be made is or was reasonable and necessary in connection with the design, planning, acquisition, construction, improvement or equipping of the Project; and (e) the requirements of all applicable contracts related hereto with respect to lien waivers for work on the Project have been met.

The Borrower has attached hereto a copy of each Payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Lender cannot process such disbursement request until the Lender is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

TOWN OF ESTES PARK, COLORADO,
ACTING BY AND THROUGH ITS WATER
ACTIVITY ENTERPRISE

Date: _____

By: _____
Authorized Officer

Attach: Invoice supporting payment

Acceptance and Acknowledgement:

UNITED STATES DEPARTMENT
OF AGRICULTURE–RURAL
DEVELOPMENT*

Date: _____

By: _____
Authorized Officer

* The review and acceptance by USDA-RD or CoBank of this Requisition does not attest to the correctness of the quantities or amounts shown or that the work has been performed in accordance with construction contract documents.

COBANK, ACB

Date: _____

By: _____
Authorized Officer

EXHIBIT C
FORM OF LENDER LETTER

_____, 2022

Town of Estes Park, Colorado

Re: \$4,493,000.00 Town of Estes Park, Colorado (the “Town”) acting by and through its Water Activity Enterprise (the “Borrower”), Construction Loan Note (Prospect Mountain Water Distribution Project), Series 2022A (the “Obligation”)

Ladies and Gentlemen:

In connection with certain financing (the “Loan”) by CoBank, ACB (the “Lender”) evidenced by the Lender’s acquisition of the above-referenced Obligation, the Lender hereby states:

1. The Lender has knowledge and experience in financial and business matters relating to the Loan and the Obligation and is capable of evaluating the risks and merits of the Loan and the Obligation and is able to bear the economic risks thereof.

2. The Lender has made such investigation of the financial information provided by the Town as the Lender, in the exercise of its business judgment, considers appropriate under the circumstances. In making its decision to acquire the Obligation, the Lender has relied on the accuracy and completeness of the information provided by the Town. The Lender has not required the Town to deliver any offering document or obtain any credit rating in connection with the issuance of the Obligation.

3. The Lender is aware that investment in the Obligation involves various risks, that the Obligation is not a general obligation of the Town or the Borrower, and that payment of the Obligation is secured only from the sources described in the ordinance of the Town authorizing the Obligation (the “Authorizing Measure”) and the Construction Loan Agreement and the related Loan documents identified therein.

4. Neither the Lender nor any of its affiliates is acting as a fiduciary for the Town or the Borrower or in the capacity of broker, dealer, underwriter, or municipal advisor with respect to the Loan or the Obligation. Neither the Lender nor any of its affiliates has provided or will provide any financial, legal, tax, accounting or other advice to the Town or the Borrower with respect to the Loan or the Obligation; it being understood that the Town has sought and obtained and will obtain such advice (including as it relates to structure, timing, terms, and similar matters) with respect to the Loan and the Obligation from its own advisors (and not the Lender or any of its affiliates) to the extent that the Town desired or desires to obtain such advice.

5. The Lender acknowledges that neither the Authorizing Measure nor the Construction Loan Agreement is being qualified under the Trust Indenture Act of 1939, as amended, and that neither the Obligation nor the Construction Loan Agreement is being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, as amended, and that neither the Town, the Borrower nor Bond Counsel shall have any obligation to effect any such registration or qualification.

6. The Lender is not acting as a broker or other intermediary and is making the Loan and acquiring the Obligation as an investment for its own account and not with a present view to a resale or other distribution to the public. The Lender understands that the Obligation may not be transferred except in compliance with applicable federal and state laws.

7. The Lender is an “accredited investor” within the meaning of the Securities Act of 1933, as amended, and Regulation D thereunder.

COBANK, ACB, as Lender

By _____
Authorized Representative



9/29/2022

A brief background of the Town's Public Process to Transfer the PMWC to the Town

Foundational requirements:

- The PMWC system must be rebuilt to current Town Water Enterprise standards
- The existing Town water customers will not subsidize reconstruction of the bankrupt PMWC.
- All costs of construction and administration must be funded by the water customers within PMWC's service area.

1964	Prospect Mountain Water Company (PMWC) Formation
4/22/2015	PMWC Bankruptcy
10/9/2015	Public Meeting By the Town for PMWC's Customers
4/19/2017	DOLA grant to Larimer County Health, \$25k for Preliminary Engineering and Environment Reports
6/1/2018	Reports, Preliminary Engineering and Environmental
7/25/2018	Public Meeting By the Town For PMWC Customers
8/15/2018	Pole of PMWC's customers, 78.5% of Owners Responded, 100% Favored Funding the Reconstruction Project, bringing the water system up to Town Standards
9/28/2018	Financing from the USDA, \$11M (\$4,493,000 as a loan and \$6,547,000 as a grant)
10/3/2018	Public Meeting by the Town For PMWC Customers
6/11/2019	Voluntary Transfer Agreement Approval by Bankruptcy Court & Colorado Public Utilities Commission
2/25/2020	Project Budget Approved, RESOLUTION 12-20
3/1/2021	Eminent Domain Resolution 24-21
8/10/2022	Construction Bids for the Project were Opened
9/20/2022	USDA increased Financing to match the Increased Project costs

Memo



To: Honorable Mayor Koenig
Board of Trustees

Through: Town Administrator Machalek

From: Finance Director Hudson
Project Manager Wesley

Date: September 29, 2022

RE: *Resolution 81-22 Supplemental Budget Appropriations #4 to the 2022 Budget*

<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> ORDINANCE	<input type="checkbox"/> LAND USE
<input type="checkbox"/> CONTRACT/AGREEMENT	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> OTHER _____

QUASI-JUDICIAL ☐ YES ☒ NO

Objective:

Appropriate additional funding for replacement of the water distribution system for customers previously served by the now bankrupt Prospect Mountain Water Company (PMWC) and adjust sales tax revenue estimates for 2022.

Present Situation:

The Town Board acting by and through its Water Activity Enterprise agreed to a [voluntary water system transfer agreement](#) of the bankrupt PMWC on February 26, 2019. The agreement requires the former PMWC water customers to fund the reconstruction of that water distribution system to current Town standards.

Construction bids were opened on August 8th and the actual construction cost requires additional funding. The USDA-RD is financing the completed project with a \$4,493,000 loan and the balance, \$10,535,000 as a grant.

The Water Enterprise requires additional appropriations based on the increased USDA-RD financing, in order to begin project construction.

In addition, sales tax revenues and related expenditures to the Estes Valley Fire Protection District and the Estes Valley Recreation and Park District are also being adjusted based on actual year to date collections and revised estimates for the remainder of the year.

Proposal:

Staff is seeking approval of the budget resolution authorizing the proposed budget amendments as summarized below and detailed in the attached "Schedule of Budgeted Appropriation Changes" found in Exhibit B.

General Fund – Increase of \$107,886

This is the increase in the transfer to Estes Valley Fire Protection District for their 7% share of the increase in estimated sales tax revenues included in this amendment.

Community Center Fund – Increase of \$96,327

This is the increase in the transfer to the Estes Valley Recreation and Parks District resulting from the increase in estimated sales tax revenues included in this amendment.

Water Fund – Increase of \$4,497,102

This is the increased funding for the former PMWC waterline replacement project as explained above.

Advantages:

- Provides funding to upgrade the former PMWC infrastructure with up-to-date, Town compatible technology
- Project will improve water infrastructure reliability and quality
- Project will improve fire protection to the former PMWC neighborhoods
- Revenue estimates for sales taxes will be updated to the current estimate and demonstrates compliance with the budget principle of ongoing revenues exceeding ongoing expenses

Disadvantages:

- There is an increase in administrative workload associated with the project; however, JVA has proven to make this easier with excellent engineering and project management on the Park Entrance Mutual Pipeline and Water Company redesign and system construction project.

Action Recommended:

Staff recommends approval of the 2022 supplemental budget appropriation # 4 resolution.

Finance/Resource Impact:

General Fund reserves continue to meet the 25% reserve requirement in Policy 660. Water Fund appropriations increased \$4,497,102, funded by increases in grant and loan proceeds from USDA.

Level of Public Interest:

Low

Sample Motion:

I move to **approve/deny** Resolution 81-22 appropriating additional sums of money for the Town of Estes Park for the budget year ended December 31, 2022.

Attachments:

1. Resolution 81-22 Supplemental Budget Appropriations #4 to the 2022 Budget.
2. Recaps of Proposed Budget Adjustments and Supporting Documents

RESOLUTION 81-22

SUPPLEMENTAL BUDGET APPROPRIATIONS #4 TO THE 2022 BUDGET

WHEREAS, the Board of Trustees of the Town of Estes Park adopted the 2022 annual budget in accordance with the Local Government Budget Law on November 9th, 2021; and

WHEREAS, additional projects and activities have been identified that were not known or included in the original annual budget; and

WHEREAS, it is not only required by law, but also necessary to appropriate the revenues provided in the budget to and for the purposes described below, so as not to impair the operations of the Town of Estes Park.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO:

That the appropriations for 2022 be increased by \$4,701,315 for the funds specified below and these amounts are hereby appropriated from additional revenue or available fund balance of each fund.

Fund #	Fund Name	Existing Appropriations	Amendment	Amended Appropriations
101	General Fund	28,160,058	107,886	28,267,944
204	Community Reinvestment Fund	6,215,386	0	6,215,386
211	Conservation Trust Fund	34,000	0	34,000
220	Larimer County Open Space Fund	1,188,692	0	1,188,692
236	Emergency Response System Fund	65,245	0	65,245
238	Community Center Fund	1,016,766	96,327	1,113,093
244	Trails Fund	3,313,648	0	3,313,648
256	Parking Services Fund	864,804	0	864,804
260	Street Fund	3,540,466	0	3,540,466
502	Power and Communications Fund	31,829,954	0	31,829,954
503	Water Fund	33,611,782	4,497,102	38,108,884
606	Medical Insurance Fund	4,145,000	0	4,145,000
612	Fleet Maintenance Fund	1,543,440	0	1,543,440
625	Information Technology Fund	979,344	0	979,344
635	Vehicle Replacement Fund	810,713	0	810,713
645	Risk Management Fund	395,500	0	395,500
	Total All Funds	117,714,798	4,701,315	122,416,113

DATED this _____ day of _____, 2022.

TOWN OF ESTES PARK

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:



Town Attorney

Attachment 2

**TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
RECAP OF BUDGET
ALL FUNDS**

	101	204	211	220	236	238	244	256	260
	GENERAL FUND	COMMUNITY REINVESTMENT	CONSERVATION TRUST	LARIMER COUNTY OPEN SPACE	EMERGENCY RESPONSE	COMMUNITY CENTER	TRAILS	PARKING SERVICES	STREET
Revenues	\$24,611,373	\$5,915,916	\$34,100	\$968,501	\$111,409	\$1,113,093	\$2,560,491	\$816,095	\$3,721,423
Expenses	28,267,944	6,215,386	34,000	1,188,692	65,245	1,113,093	3,313,648	864,804	3,540,466
Net	(3,656,571)	(299,470)	100	(220,191)	46,164	0	(753,157)	(48,709)	180,957
Estimated Beginning Fund Balance, 1/1/22	16,166,887	299,641	71,789	1,101,165	155,143	11	1,299,668	295,807	2,648,123
Estimated Ending Fund Balance, 12/31/22	<u>\$12,510,316</u>	<u>\$171</u>	<u>\$71,889</u>	<u>\$880,974</u>	<u>\$201,307</u>	<u>\$11</u>	<u>\$546,511</u>	<u>\$247,098</u>	<u>\$2,829,080</u>

	502	503	606	612	625	635	645	
	POWER AND COMMUNICATIONS	WATER	MEDICAL INSURANCE	FLEET	INFORMATION TECHNOLOGY	VEHICLE REPLACEMENT	RISK MANAGEMENT	TOTAL
Revenues	\$20,509,610	\$30,962,272	\$3,335,368	\$1,032,597	\$939,672	\$647,057	\$395,500	\$97,674,477
Expenses	31,829,954	38,108,884	4,145,000	1,543,440	979,344	810,713	395,500	122,416,113
Net	(11,320,344)	(7,146,612)	(809,632)	(510,843)	(39,672)	(163,656)	0	(24,741,636)
Estimated Beginning Fund Balance, 1/1/22	19,477,782	10,946,462	2,447,376	656,965	653,393	1,438,512	35,866	57,694,590
Estimated Ending Fund Balance, 12/31/22	<u>\$8,157,438</u>	<u>\$3,799,850</u>	<u>\$1,637,744</u>	<u>\$146,122</u>	<u>\$613,721</u>	<u>\$1,274,856</u>	<u>\$35,866</u>	<u>\$32,952,954</u>

**TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
RECAP OF BUDGETED RESERVES
ALL FUNDS**

	101	204	211	220	236	238	244	256	260
	GENERAL FUND	COMMUNITY REINVESTMENT	CONSERVATION TRUST	LARIMER COUNTY OPEN SPACE	EMERGENCY RESPONSE	COMMUNITY CENTER	TRAILS	PARKING SERVICES	STREET
Estimated Ending Fund Balance, 12/31/22	12,510,316	171	71,889	880,974	201,307	11	546,511	247,098	2,829,080
Add Back Contingencies included in Budgeted Expenses	250,000	-	-	-	-	-	-	-	-
Add Back Reserves included in Budgeted Expenses	97,000	-	-	-	-	-	-	-	-
Adjusted Ending Fund Balance, 12/31/22	<u>\$12,857,316</u>	<u>\$171</u>	<u>\$71,889</u>	<u>\$880,974</u>	<u>\$201,307</u>	<u>\$11</u>	<u>\$546,511</u>	<u>\$247,098</u>	<u>\$2,829,080</u>
Contingency - Grants *	250,000	-	-	-	-	-	-	-	-
Contingency - Med Ins Claims **	-	-	-	-	-	-	-	-	-
Budgeted Reserves ***									
Pkg Garage Maint Reserve 101-1700-417-37-99	48,000	-	-	-	-	-	-	-	-
Workforce Housing Reserve	85,000	-	-	-	-	-	-	-	-
Capital Reserves	1,700,000	-	-	-	-	-	-	-	-
Nonspendable Prepaid Fund Bal & Restr Donations	207,739	-	-	-	-	-	-	-	-
Policy 660 Fund Balance Reserves	6,032,812	-	-	-	-	-	-	-	-
Total Reserved Fund Balance	<u>8,323,551</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Unreserved Budgetary Fund Balance	<u>\$4,533,766</u>	<u>\$171</u>	<u>\$71,889</u>	<u>\$880,974</u>	<u>\$201,307</u>	<u>\$11</u>	<u>\$546,511</u>	<u>\$247,098</u>	<u>\$2,829,080</u>

	502	503	606	612	625	635	645	
	POWER AND COMMUNICATIONS	WATER	MEDICAL INSURANCE	FLEET	INFORMATION TECHNOLOGY	VEHICLE REPLACEMENT	RISK MANAGEMENT	TOTAL
Estimated Ending Fund Balance, 12/31/21	8,157,438	3,799,850	1,637,744	146,122	613,721	1,274,856	35,866	32,952,954
Add Back Contingencies included in Budgeted Expenses	-	-	750,000	-	-	-	-	1,000,000
Add Back Reserves included in Budgeted Expenses	-	-	-	-	-	-	-	97,000
Adjusted Ending Fund Balance, 12/31/22	<u>\$8,157,438</u>	<u>\$3,799,850</u>	<u>\$2,387,744</u>	<u>\$146,122</u>	<u>\$613,721</u>	<u>\$1,274,856</u>	<u>\$35,866</u>	<u>\$34,049,954</u>
Contingency - Grants *	-	-	-	-	-	-	-	250,000
Contingency - Med Ins Claims **	-	-	750,000	-	-	-	-	750,000
Budgeted Reserves ***								
Pkg Garage Maint Reserve 101-1700-417-37-99	-	-	-	-	-	-	-	48,000
Workforce Housing Reserve	-	-	-	-	-	-	-	85,000
Capital Reserves	-	-	-	-	-	-	-	1,700,000
Nonspendable Prepaid Fund Bal & Restr Donations	-	-	-	-	-	-	-	207,739
Equipment Reserve	1,975,931	641,687	-	-	-	1,274,856	-	3,892,474
Policy 660 Fund Balance Reserves	4,389,295	1,280,235	1,227,144	154,344	200,000	-	-	13,283,829
Total Reserved Fund Balance	<u>6,365,226</u>	<u>1,921,922</u>	<u>1,227,144</u>	<u>154,344</u>	<u>200,000</u>	<u>1,274,856</u>	<u>-</u>	<u>19,217,042</u>
Unreserved Budgetary Fund Balance	<u>1,792,212</u>	<u>1,877,929</u>	<u>1,160,600</u>	<u>(8,222)</u>	<u>413,721</u>	<u>-</u>	<u>35,866</u>	<u>14,832,912</u>

* The Grant contingency is intended to be used only to manage unanticipated delays in collection of grant funds. Transfers may be necessary to cover these deferrals in other funds so a contingency budget has been developed for that purpose. It is not anticipated to be used so it is added back for budgetary fund balance reserve comparisons.

** The Medical Insurance Claims contingency is budgeted to cover unanticipated large medical claims at year end. Final claim expenses are not known until Feb or March of the following year, much too late to amend the budget, resulting in the possibility of large claims paid out exceeding budgeted expenditures. This contingency has been developed to avoid appearance of a budgetary violation when year end liabilities dramatically exceed historical amounts. Since this is not anticipated to be used, the reserve is added back for budgetary fund balance reserve comparisons.

*** These miscellaneous reserves include current year additions to the reserves budgeted as expenses plus amounts accumulated in prior years. The current year additions are added back to fund balance since these appropriations are budget management accounts and are not intended to be spent in the current budgeted year.

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY OF ANTICIPATED REVENUE
ALL FUNDS

Fund/Dept	Fund Name	2019 Actual	2020 Actual	2021 Actual	2022 Approved	2022 Amended
101	GENERAL FUND	22,300,431	18,324,050	23,037,469	23,070,147	24,611,373
204	COMMUNITY REINVESTMENT	3,396,952	1,313,175	1,376,520	5,915,916	5,915,916
211	CONSERVATION TRUST	38,679	33,086	38,116	34,100	34,100
220	LARIMER COUNTY OPEN SPACE	572,500	810,449	2,119,841	968,501	968,501
236	EMERGENCY RESPONSE	373,961	75,881	114,596	101,777	111,409
238	COMMUNITY CENTER	816,967	756,452	1,046,550	1,016,766	1,113,093
244	TRAILS	999,193	430,886	652,047	2,507,328	2,560,491
256	PARKING SERVICES	-	365,882	929,474	816,095	816,095
260	STREET	2,047,078	1,848,541	2,511,225	3,490,239	3,721,423
502	POWER AND COMMUNICATIONS	20,021,167	19,557,503	20,840,078	20,509,610	20,509,610
503	WATER	7,304,661	6,870,008	7,179,700	26,974,272	30,962,272
606	MEDICAL INSURANCE	3,440,602	3,574,638	3,406,910	3,335,368	3,335,368
612	FLEET	521,653	365,239	617,575	1,032,597	1,032,597
625	INFORMATION TECHNOLOGY	850,161	906,802	970,234	939,672	939,672
635	VEHICLE REPLACEMENT	495,512	478,563	478,818	647,057	647,057
645	RISK MANAGEMENT	271,671	307,631	363,558	395,500	395,500
	TOTAL	63,451,188	56,018,786	65,682,711	91,754,945	97,674,477

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY OF APPROPRIATIONS
ALL FUNDS

Fund/Dept	Fund Name	2019 Actual	2020 Actual	2021 Actual	2022 Approved	2022 Amended
101	GENERAL FUND					
101-1100	Legislative	244,133	229,068	230,716	401,635	401,635
101-1190	Town Attorney	157,524	270,372	320,880	349,397	349,397
101-1200	Judicial	79,935	68,179	64,201	81,476	81,476
101-1300	Town Administrator's Office	333,761	346,845	348,020	385,216	385,216
101-1400	Town Clerk's Office	389,566	288,595	261,851	388,364	388,364
101-1500	Finance	545,941	552,905	603,905	669,016	669,016
101-1600	Planning	683,115	565,588	701,202	1,066,398	1,066,398
101-1700	Facilities	1,126,354	1,065,982	909,953	1,194,496	1,194,496
101-1800	Employee Benefits	120,124	181,909	198,520	411,671	411,671
101-1900	Community Service Grants	1,229,985	1,634,290	1,625,994	1,436,653	1,544,539
101-1945	Workforce Housing	-	-	-	598,000	598,000
101-2100	Police - Patrol	3,613,063	3,852,231	4,404,113	4,842,144	4,842,144
101-2155	Police - Communications	1,020,236	960,067	1,000,408	1,261,540	1,261,540
101-2175	Police - Comm Svcs	313,582	369,657	375,410	391,470	391,470
101-2185	Police - Code Enforcement	98,345	127,757	132,084	146,690	146,690
101-2300	Building Safety Divison	620,963	506,550	609,886	649,997	649,997
101-2400	Engineering	314,032	332,073	354,343	511,189	511,189
101-2600	Visitor Center	487,629	403,016	408,476	627,701	627,701
101-3100	Streets	1,027,385	905,366	1,041,637	1,489,333	1,489,333
101-3175	Stormwater Maintenance	-	-	-	402,652	402,652
101-5200	Parks	1,087,145	974,428	995,866	1,648,511	1,648,511
101-5500	Special Events	1,834,159	1,369,265	1,795,301	2,303,521	2,303,521
101-5600	Transportation	620,908	887,723	641,695	1,401,994	1,401,994
101-5690	Parking	179,474	-	-	-	-
101-5700	Museum	391,419	395,116	401,043	466,078	466,078
101-9000	Transfers	3,199,789	1,345,138	1,371,857	5,034,919	5,034,919
101	GENERAL FUND	19,718,567	17,632,120	18,797,360	28,160,058	28,267,944
204	COMMUNITY REINVESTMENT	4,756,051	1,097,534	1,292,521	6,215,386	6,215,386
211	CONSERVATION TRUST	17,207	7,191	84,297	34,000	34,000
220	LARIMER COUNTY OPEN SPACE	421,580	1,574,680	958,840	1,188,692	1,188,692
236	EMERGENCY RESPONSE	363,110	53,655	71,888	65,245	65,245
238	COMMUNITY CENTER	793,392	780,025	1,046,540	1,016,766	1,113,093
244	TRAILS	813,685	325,427	256,068	3,313,648	3,313,648
256	PARKING SERVICES	-	322,855	676,695	864,804	864,804
260	STREET	4,360,260	1,290,332	1,666,083	3,540,466	3,540,466
502	POWER AND COMMUNICATIONS	20,995,894	26,322,059	28,951,259	31,829,954	31,829,954
503	WATER	5,805,350	7,297,503	4,949,517	33,611,782	38,108,884
606	MEDICAL INSURANCE	2,636,662	3,301,785	3,265,130	4,145,000	4,145,000
612	FLEET	425,540	364,124	534,976	1,543,440	1,543,440
625	INFORMATION TECHNOLOGY	819,474	709,405	821,222	979,344	979,344
635	VEHICLE REPLACEMENT	243,430	123,559	7,572	810,713	810,713
645	RISK MANAGEMENT	271,627	307,015	328,353	395,500	395,500
	TOTAL ALL FUNDS	62,441,829	61,509,269	63,708,322	117,714,798	122,416,113

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
GENERAL FUND # 101

					2022	Current	2022
	Dept #	2019 Actual	2020 Actual	2021 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE							
Taxes		14,431,402	13,467,699	18,201,848	17,669,731	1,541,226	19,210,957
Licenses and permits		809,296	630,290	762,931	704,150	-	704,150
Intergovernmental		638,151	1,385,415	1,111,437	1,435,608	-	1,435,608
Charges for services		756,871	310,959	464,496	671,538	-	671,538
Fines and forfeitures		61,890	37,284	35,174	37,000	-	37,000
Rental income		312,372	293,228	218,359	195,791	-	195,791
Investment income		166,001	110,437	(15,694)	175,000	-	175,000
Donations		141,447	41,510	51,992	42,800	-	42,800
Miscellaneous		235,563	188,022	189,608	525,779	-	525,779
Transfers-In from other funds		4,747,438	1,858,565	2,012,028	1,612,750	-	1,612,750
Sale of assets		-	641	5,290	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		22,300,431	18,324,050	23,037,469	23,070,147	1,541,226	24,611,373
EXPENDITURES							
Legislative	1100	244,133	229,068	230,716	401,635	-	401,635
Attorney	1190	157,524	270,372	320,880	349,397	-	349,397
Judicial	1200	79,935	68,179	64,201	81,476	-	81,476
Town Administrator	1300	333,761	346,845	348,020	385,216	-	385,216
Town Clerk	1400	389,566	288,595	261,851	388,364	-	388,364
Finance	1500	545,941	552,905	603,905	669,016	-	669,016
Planning	1600	683,115	565,588	701,202	1,066,398	-	1,066,398
Facilities	1700	1,126,354	1,065,982	909,953	1,194,496	-	1,194,496
Human Resources	1800	120,124	181,909	198,520	411,671	-	411,671
Outside Entity Funding	1900	1,229,985	1,634,290	1,625,994	1,436,653	107,886	1,544,539
Workforce Housing	1945	-	-	-	598,000	-	598,000
Police - Patrol	2100	3,613,063	3,852,231	4,404,113	4,842,144	-	4,842,144
Police - Communications	2155	1,020,236	960,067	1,000,408	1,261,540	-	1,261,540
Police - Comm Svc	2175	313,582	369,657	375,410	391,470	-	391,470
Police - Code Enforcement	2185	98,345	127,757	132,084	146,690	-	146,690
Building Safety	2300	620,963	506,550	609,886	649,997	-	649,997
Engineering	2400	314,032	332,073	354,343	511,189	-	511,189
Visitor Services	2600	487,629	403,016	408,476	627,701	-	627,701
Streets	3100	1,027,385	905,366	1,041,637	1,489,333	-	1,489,333
Stormwater Maintenance	3175	-	-	-	402,652	-	402,652
Parks	5200	1,087,145	974,428	995,866	1,648,511	-	1,648,511
Senior Center	5304	-	-	-	-	-	-
Special Events	5500	1,834,159	1,369,265	1,795,301	2,303,521	-	2,303,521
Transit	5600	620,908	887,723	641,695	1,401,994	-	1,401,994
Parking	5690	179,474	-	-	-	-	-
Museum	5700	391,419	395,116	401,043	466,078	-	466,078
Transfers Out	9000	3,199,789	1,345,138	1,371,857	4,784,919	-	4,784,919
Contingency - Grants	9000	-	-	-	250,000	-	250,000
Rounding		(8)	(15)	-	-	-	-
Total Expenditures		19,718,559	17,632,105	18,797,360	28,160,058	107,886	28,267,944
Net Income (Loss)		2,581,872	691,945	4,240,109	(5,089,911)	1,433,340	(3,656,571)
Beginning Fund Balance		8,652,961	11,234,833	11,926,778	16,166,887	16,166,887	16,166,887
Ending Fund Balance		11,234,833	11,926,778	16,166,887	11,076,976	17,600,227	12,510,316

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
COMMUNITY REINVESTMENT FUND # 204

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		-	-	-	-	-
Licenses and permits		-	-	-	-	-
Intergovernmental		173,516	480,761	1,230,116	-	1,230,116
Charges for services		-	-	-	-	-
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		38,647	15,867	500	-	500
Donations		-	-	-	-	-
Miscellaneous		-	-	4,684	-	-
Transfers-In from other funds		3,184,789	816,547	1,371,857	-	4,667,300
Sale of assets		-	-	18,000	-	18,000
Financing Proceeds		-	-	-	-	-
Total Revenues		3,396,952	1,313,175	1,376,520	5,915,916	-
EXPENDITURES						
Community Reinvestment Fund	5400	72,264	49,613	93,017	159,238	-
Capital Outlay	5400	941,453	131,093	280,504	5,128,013	-
Debt Service	6700	916,866	916,828	919,000	928,135	-
Transfers Out	9000	2,825,468	-	-	-	-
Rounding		-	(1)	-	-	-
Total Expenditures		4,756,051	1,097,533	1,292,521	6,215,386	-
Net Income (Loss)		(1,359,099)	215,642	83,999	(299,470)	-
Beginning Fund Balance		1,359,099	-	215,642	299,641	299,641
Ending Fund Balance		-	215,642	299,641	171	299,641

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
CONSERVATION TRUST FUND # 211

	Dept #	2019 Actual	2020 Actual	2021 Actual	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
REVENUE							
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		35,949	32,536	38,161	34,000	-	34,000
Charges for services		-	-	-	-	-	-
Fines and forfeitures		-	-	-	-	-	-
Rental income		-	-	-	-	-	-
Investment income		970	550	(46)	100	-	100
Donations		-	-	-	-	-	-
Miscellaneous		1,760	-	-	-	-	-
Transfers-In from other funds		-	-	-	-	-	-
Sale of assets		-	-	-	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		38,679	33,086	38,116	34,100	-	34,100
EXPENDITURES							
Conservation Trust Fund		17,207	7,191	84,297	34,000	-	34,000
Rounding		-	-	-	-	-	-
Total Expenditures		17,207	7,191	84,297	34,000	-	34,000
Net Income (Loss)		21,472	25,895	(46,182)	100	-	100
Beginning Fund Balance		70,605	92,077	117,972	71,789	71,789	71,789
Ending Fund Balance		92,077	117,972	71,790	71,889	71,789	71,889

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
LARIMER COUNTY OPEN SPACE FUND # 220

	Dept #	2019 Actual	2020 Actual	2021 Actual	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
REVENUE							
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		561,059	592,904	2,120,769	966,501	-	966,501
Charges for services		-	-	-	-	-	-
Fines and forfeitures		-	-	-	-	-	-
Rental income		-	-	-	-	-	-
Investment income		11,441	7,545	(928)	2,000	-	2,000
Donations		-	-	-	-	-	-
Miscellaneous		-	-	-	-	-	-
Transfers-In from other funds		-	210,000	-	-	-	-
Sale of assets		-	-	-	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		572,500	810,449	2,119,841	968,501	-	968,501
EXPENDITURES							
Open Space	4600	82,355	80,770	90,839	123,749	-	123,749
Capital Outlay	4600	39,225	1,493,910	658,001	1,064,943	-	1,064,943
Transfers Out	9000	300,000	-	210,000	-	-	-
Rounding		-	1	-	-	-	-
Total Expenditures		421,580	1,574,681	958,840	1,188,692	-	1,188,692
Net Income (Loss)		150,920	(764,232)	1,161,000	(220,191)	-	(220,191)
Beginning Fund Balance		553,476	704,396	(59,836)	1,101,165	1,101,165	1,101,165
Ending Fund Balance		704,396	(59,836)	1,101,164	880,974	1,101,165	880,974

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
EMERGENCY RESPONSE SYSTEM FUND # 236

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		81,697	75,645	104,655	101,677	9,632
Licenses and permits		-	-	-	-	-
Intergovernmental		-	-	9,960	-	-
Charges for services		-	-	-	-	-
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		419	236	(19)	100	-
Donations		-	-	-	-	100
Miscellaneous		-	-	-	-	-
Transfers-In from other funds		-	-	-	-	-
Sale of assets		-	-	-	-	-
Financing Proceeds		291,845	-	-	-	-
Total Revenues		373,961	75,881	114,596	101,777	9,632
EXPENDITURES						
Emergency Response System	3600	7,962	5,112	23,344	16,700	-
Debt Service	3600	48,544	48,543	48,544	48,545	-
Capital Outlay	3600	306,604	-	-	-	-
Transfers Out	9000	-	-	-	-	-
Rounding		1	3	-	-	-
Total Expenditures		363,111	53,658	71,888	65,245	-
Net Income (Loss)		10,850	22,223	42,708	36,532	9,632
Beginning Fund Balance		79,363	90,213	112,436	155,143	155,143
Ending Fund Balance		90,213	112,436	155,144	191,675	164,775
						201,307

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
COMMUNITY CENTER FUND # 238

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		816,967	756,447	1,046,550	1,016,766	96,327
Licenses and permits		-	-	-	-	-
Intergovernmental		-	-	-	-	-
Charges for services		-	-	-	-	-
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		-	5	-	-	-
Donations		-	-	-	-	-
Miscellaneous		-	-	-	-	-
Transfers-In from other funds					-	-
Sale of assets					-	-
Financing Proceeds					-	-
Total Revenues		816,967	756,452	1,046,550	1,016,766	96,327
EXPENDITURES						
Community Center	3800	793,392	780,025	1,046,540	1,016,766	96,327
Transfers Out	9000	-	-	-	-	-
Rounding		-	1	-	-	-
Total Expenditures		793,392	780,026	1,046,540	1,016,766	96,327
Net Income (Loss)		23,575	(23,574)	10	-	-
Beginning Fund Balance		-	23,575	1	11	11
Ending Fund Balance		23,575	1	11	11	11

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
TRAILS EXPANSION FUND # 244

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		408,484	378,223	523,275	508,383	53,163
Licenses and permits		-	-	-	-	-
Intergovernmental		286,000	50,000	120,039	1,998,745	1,998,745
Charges for services		-	-	-	-	-
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		4,709	2,663	(286)	200	200
Donations		-	-	-	-	-
Miscellaneous		-	-	9,018	-	-
Transfers-In from other funds		300,000	-	-	-	-
Sale of assets		-	-	-	-	-
Financing Proceeds		-	-	-	-	-
Total Revenues		999,193	430,886	652,047	2,507,328	53,163
EXPENDITURES						
Trails Expansion Operations	3400	40,220	32,056	34,213	103,904	-
Capital Outlay	3400	773,465	293,371	221,855	3,209,744	-
Transfers Out	9000	-	-	-	-	-
Rounding		2	(3)	-	-	-
Total Expenditures		813,687	325,424	256,068	3,313,648	-
Net Income (Loss)		185,506	105,462	395,979	(806,320)	53,163
Beginning Fund Balance		612,721	798,227	903,689	1,299,668	1,299,668
Ending Fund Balance		798,227	903,689	1,299,668	493,348	1,352,831

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
PARKING SERVICES FUND # 256

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		-	-	-	-	-
Licenses and permits		-	60	4,000	-	4,000
Intergovernmental		-	24,500	-	-	-
Charges for services		-	-	795,000	-	795,000
Fines and forfeitures		-	22,641	17,095	-	17,095
Rental income		-	-	-	-	-
Investment income		-	-	-	-	-
Donations		-	-	-	-	-
Miscellaneous		-	90	45	-	-
Transfers-In from other funds		-	318,591	-	-	-
Sale of assets		-	-	-	-	-
Financing Proceeds		-	-	-	-	-
Total Revenues		-	365,882	929,474	816,095	-
EXPENDITURES						
Parking Services Operations	5690	-	322,396	578,223	813,042	-
Capital Outlay	5690	-	459	98,472	51,762	-
Transfers Out	9000	-	-	-	-	-
Rounding		-	(1)	-	-	-
Total Expenditures		-	322,854	676,695	864,804	-
Net Income (Loss)		-	43,028	252,779	(48,709)	-
Beginning Fund Balance		-	-	43,028	295,807	295,807
Ending Fund Balance		-	43,028	295,807	247,098	295,807

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
STREET IMPROVEMENT FUND # 260

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						-
Taxes		1,960,721	1,815,472	2,511,721	2,440,239	231,184
Licenses and permits		-	-	-	-	2,671,423
Intergovernmental		-	-	1,235	1,030,000	-
Charges for services		-	-	-	-	1,030,000
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		86,357	33,069	(1,731)	20,000	-
Donations		-	-	-	-	20,000
Miscellaneous		-	-	-	-	-
Transfers-In from other funds		-	-	-	-	-
Sale of assets		-	-	-	-	-
Financing Proceeds		-	-	-	-	-
Total Revenues		2,047,078	1,848,541	2,511,225	3,490,239	231,184
						3,721,423
EXPENDITURES						-
Street Improvement Operations	2000	588,488	581,815	545,029	745,456	-
Capital Outlay	2000	3,771,772	708,517	1,121,054	2,795,010	-
Transfers Out	9000	-	-	-	-	-
Rounding		(2)	1	-	-	-
Total Expenditures		4,360,258	1,290,333	1,666,083	3,540,466	-
						3,540,466
Net Income (Loss)		(2,313,180)	558,208	845,142	(50,227)	231,184
						180,957
Beginning Fund Balance		3,557,952	1,244,772	1,802,980	2,648,123	2,648,123
						2,648,123
Ending Fund Balance		1,244,772	1,802,980	2,648,122	2,597,896	2,879,307
						2,829,080

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
POWER AND COMMUNICATIONS FUND # 502

	Dept #	2019 Actual	2020 Actual	2021 Actual	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
REVENUE							
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		6,548	(759)	4,375	-	-	-
Charges for services		19,072,995	19,045,257	20,433,601	20,289,610	-	20,289,610
Fines and forfeitures		-	-	-	-	-	-
Rental income		2,745	5,400	5,400	-	-	-
Investment income		316,767	311,020	4,651	122,000	-	122,000
Donations		487,398	-	-	-	-	-
Miscellaneous		144,708	196,585	281,464	98,000	-	98,000
Transfers-In from other funds		-	-	-	-	-	-
Sale of assets		(9,994)	-	110,588	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		20,021,167	19,557,503	20,840,078	20,509,610	-	20,509,610
EXPENDITURES							
Source of Supply	6100	8,142,386	7,718,129	7,963,435	8,168,860	-	8,168,860
Distribution	6301	3,430,531	3,898,088	4,798,010	4,817,061	-	4,817,061
Customer Accounts	6401	421,817	495,490	435,368	585,510	-	585,510
Admin & General	6501	2,164,940	2,099,898	2,072,627	2,578,933	-	2,578,933
Debt Service	6700	489,968	974,346	930,064	1,792,940	-	1,792,940
Broadband	6900	442,826	675,547	1,033,569	1,406,817	-	1,406,817
Capital Outlay	7001	4,130,498	8,740,532	10,048,158	10,991,833	-	10,991,833
Transfers Out	6600	1,772,928	1,720,029	1,670,028	1,488,000	-	1,488,000
Rounding		(1)	1	-	-	-	-
Total Expenditures		20,995,893	26,322,060	28,951,259	31,829,954	-	31,829,954
Net Income (Loss)		(974,726)	(6,764,557)	(8,111,181)	(11,320,344)	-	(11,320,344)
Beginning Fund Balance		8,969,681	37,175,241	28,716,335	19,477,782	19,477,782	19,477,782
Ending Fund Balance		7,994,955	30,410,684	20,605,154	8,157,438	19,477,782	8,157,438

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
WATER FUND # 503

					2022	Current	2022
	Dept #	2019 Actual	2020 Actual	2021 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE							
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		348,087	97,309	3,999	8,991,000	3,988,000	12,979,000
Charges for services		6,636,801	6,584,836	7,166,538	5,580,272	-	5,580,272
Fines and forfeitures		-	-	-	-	-	-
Rental income		-	-	-	-	-	-
Investment income		221,134	136,974	(11,490)	100,000	-	100,000
Donations		-	-	-	-	-	-
Miscellaneous		103,852	50,889	24,613	-	-	-
Transfers-In from other funds		-	-	-	-	-	-
Sale of assets		(5,213)	-	(3,961)	135,000	-	135,000
Financing Proceeds		-	-	-	12,168,000	-	12,168,000
Total Revenues		7,304,661	6,870,008	7,179,700	26,974,272	3,988,000	30,962,272
EXPENDITURES							
Source of Supply	6100	105,523	146,014	125,029	120,000	-	120,000
Purification	6200	880,041	894,748	821,889	1,174,434	-	1,174,434
Distribution	6300	1,490,360	1,583,472	1,531,073	2,135,845	-	2,135,845
Customer Accounts	6400	245,114	293,507	295,013	416,689	-	416,689
Admin & General	6500	764,451	816,504	880,288	1,273,971	-	1,273,971
Debt Service	6700	104,892	127,513	106,581	487,181	-	487,181
Capital Outlay	7000	2,065,927	3,297,209	1,057,644	27,878,912	4,497,102	32,376,014
Transfers Out	6600	149,042	138,536	132,000	124,750	-	124,750
Rounding		1	(3)	-	-	-	-
Total Expenditures		5,805,351	7,297,500	4,949,517	33,611,782	4,497,102	38,108,884
Net Income (Loss)		1,499,310	(427,492)	2,230,183	(6,637,510)	(509,102)	(7,146,612)
Beginning Fund Balance		8,070,619	9,354,291	9,123,115	10,946,462	10,946,462	10,946,462
Ending Fund Balance		9,569,929	8,926,799	11,353,298	4,308,952	10,437,360	3,799,850

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
MEDICAL INSURANCE FUND # 606

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		-	-	-	-	-
Licenses and permits		-	-	-	-	-
Intergovernmental		-	-	-	-	-
Charges for services		944,889	887,817	250,000	-	250,000
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		35,806	22,987	20,000	-	20,000
Donations		-	-	-	-	-
Miscellaneous		2,459,907	2,663,834	3,065,368	-	3,065,368
Transfers-In from other funds		-	-	-	-	-
Sale of assets		-	-	-	-	-
Financing Proceeds		-	-	-	-	-
Total Revenues		3,440,602	3,574,638	3,335,368	-	3,335,368
EXPENDITURES						
Medical Insurance Fund Operations	4200	2,636,662	3,301,785	3,395,000	-	3,395,000
Contingency - Med Ins Claims	4200	-	-	750,000	-	750,000
Rounding		(1)	-	-	-	-
Total Expenditures		2,636,661	3,301,785	4,145,000	-	4,145,000
Net Income (Loss)		803,941	272,853	(809,632)	-	(809,632)
Beginning Fund Balance		1,228,803	2,032,744	2,447,376	2,447,376	2,447,376
Ending Fund Balance		2,032,744	2,305,597	1,637,744	2,447,376	1,637,744

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
FLEET MAINTENANCE FUND # 612

				2022	Current	2022
	Dept #	2019 Actual	2020 Actual	Approved Budget	Proposed Amendment	Amended Budget
REVENUE						
Taxes		-	-	-	-	-
Licenses and permits		-	-	-	-	-
Intergovernmental		10	-	300,800	-	300,800
Charges for services		505,992	361,131	592,797	-	592,797
Fines and forfeitures		-	-	-	-	-
Rental income		-	-	-	-	-
Investment income		7,321	4,138	4,000	-	4,000
Donations		-	-	-	-	-
Miscellaneous		580	-	-	-	-
Transfers-In from other funds		-	-	135,000	-	135,000
Sale of assets		7,750	(30)	-	-	-
Financing Proceeds		-	-	-	-	-
Total Revenues		521,653	365,239	1,032,597	-	1,032,597
EXPENDITURES						
Fleet Maintenance	4300	409,863	364,124	613,949	-	613,949
Capital Outlay	7000	15,677	-	929,491	-	929,491
Rounding		(1)	-	-	-	-
Total Expenditures		425,539	364,124	1,543,440	-	1,543,440
Net Income (Loss)		96,114	1,115	(510,843)	-	(510,843)
Beginning Fund Balance		477,135	573,249	656,965	656,965	656,965
Ending Fund Balance		573,249	574,364	146,122	656,965	146,122

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
INFORMATION SYSTEMS TECHNOLOGY FUND # 625

	Dept #	2019 Actual	2020 Actual	2021 Actual	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
REVENUE							
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		(7)	5,000	15,691	-	-	-
Charges for services		841,570	896,096	953,242	935,672	-	935,672
Fines and forfeitures		-	-	-	-	-	-
Rental income		-	-	-	-	-	-
Investment income		6,751	3,815	(314)	4,000	-	4,000
Donations		-	-	-	-	-	-
Miscellaneous		1,847	1,891	1,615	-	-	-
Transfers-In from other funds		-	-	-	-	-	-
Sale of assets		-	-	-	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		850,161	906,802	970,234	939,672	-	939,672
EXPENDITURES							
IT Operations	2500	739,274	654,012	759,722	872,844	-	872,844
Capital Outlay	2500	80,200	55,393	61,500	106,500	-	106,500
Transfers Out	9000	-	-	-	-	-	-
Rounding		(1)	-	-	-	-	-
Total Expenditures		819,473	709,405	821,222	979,344	-	979,344
Net Income (Loss)		30,688	197,397	149,013	(39,672)	-	(39,672)
Beginning Fund Balance		276,297	306,985	504,382	653,393	653,393	653,393
Ending Fund Balance		306,985	504,382	653,395	613,721	653,393	613,721

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
VEHICLE REPLACEMENT FUND # 635

	Dept #	2019 Actual	2020 Actual	2021 Actual	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
REVENUE							
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		-	-	-	-	-	-
Charges for services		455,898	478,139	517,006	646,557	-	646,557
Fines and forfeitures		-	-	-	-	-	-
Rental income		-	-	-	-	-	-
Investment income		857	484	201	500	-	500
Donations		-	-	-	-	-	-
Miscellaneous		-	-	-	-	-	-
Transfers-In from other funds		15,000	-	-	-	-	-
Sale of assets		23,757	(60)	(38,389)	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		495,512	478,563	478,818	647,057	-	647,057
EXPENDITURES							
Fleet Replacement Operations	3500	-	-	-	-	-	-
Capital Outlay	7000	243,430	123,559	7,572	793,332	-	793,332
Transfers Out	9000	-	-	-	17,381	-	17,381
Rounding		-	2	-	-	-	-
Total Expenditures		243,430	123,561	7,572	810,713	-	810,713
Net Income (Loss)		252,082	355,002	471,246	(163,656)	-	(163,656)
Beginning Fund Balance		319,092	571,174	926,176	1,438,512	1,438,512	1,438,512
Ending Fund Balance		571,174	926,176	1,397,422	1,274,856	1,438,512	1,274,856

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY BY FUND & DEPARTMENT
RISK MANAGEMENT FUND # 645

	Dept #	2019 Actual	2020 Actual	2021 Actual	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
REVENUE							-
Taxes		-	-	-	-	-	-
Licenses and permits		-	-	-	-	-	-
Intergovernmental		-	-	-	-	-	-
Charges for services		271,616	307,344	358,356	395,500	-	395,500
Fines and forfeitures		-	-	-	-	-	-
Rental income		-	-	-	-	-	-
Investment income		-	-	-	-	-	-
Donations		-	-	-	-	-	-
Miscellaneous		55	287	5,202	-	-	-
Transfers-In from other funds		-	-	-	-	-	-
Sale of assets		-	-	-	-	-	-
Financing Proceeds		-	-	-	-	-	-
Total Revenues		271,671	307,631	363,558	395,500	-	395,500
EXPENDITURES							
Risk Management Operations	4100	271,627	307,015	328,353	395,500	-	395,500
Rounding		-	-	-	-	-	-
Total Expenditures		271,627	307,015	328,353	395,500	-	395,500
Net Income (Loss)		44	616	35,205	-	-	-
Beginning Fund Balance		-	44	660	35,866	35,866	35,866
Ending Fund Balance		44	660	35,865	35,866	35,866	35,866

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
ONGOING REVENUES VS ONGONG EXPENDITURES
GENERAL & COMMUNITY REINVESTMENT FUNDS

	General Fund	Community Reinvestment Fund	Total
Total Revenues	24,611,373	5,915,916	30,527,289
Less:			
Capital & One Time Grants (One time funds)	953,564	1,230,116	2,183,680
Transfer from Fleet Replacement Fund	-	17,381	
Transfers between GF & CRF	-	4,649,919	4,649,919
	953,564	5,897,416	6,850,980
Net Ongoing Revenues	23,657,809	18,500	23,676,309
Total Expenditures	28,267,944	6,215,386	34,483,330
Less:			
Transfers between GF & CRF	4,649,919	-	4,649,919
Less Significant One Time Expenditures:			
Parking Garage Maint Reserve 101-1700-417-37-99	12,000	-	12,000
Workforce Housing Reserve 101-1945-419-37-98	85,000	-	85,000
Workforce Housing Assistance	415,000	-	415,000
Conting-Grants 101-1900-419-60-02	250,000	-	250,000
Comprehensive Land Use Plan	231,532	-	231,532
Housing Needs Study	73,000	-	73,000
Facility Needs Study	-	21,990	21,990
Capital	574,151	5,128,013	5,702,164
One Time Transfer to Fleet for final Water Shop Pmt	135,000	-	135,000
	1,775,683	5,150,003	6,925,686
Net Ongoing Expenditures	21,842,342	1,065,383	22,907,725
Net Ongoing Rev vs Exp	1,815,467	(1,046,883)	768,584

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
FUND BALANCE RESERVE RATIO
GENERAL & COMMUNITY REINVESTMENT FUNDS

	General Fund	Comm Reinvestment Fund	Total
Fund Balance	\$ 12,510,316	\$ 171	\$ 12,510,487
Reserves to Exclude			
Parking Garage Maintenance Reserve	48,000		48,000
Capital Reserves	1,700,000		1,700,000
Workforce Housing Reserve	85,000		85,000
Prepays and Restricted Donations Estimate	207,739		207,739
	2,040,739	-	2,040,739
Fund Balance Subject to Reserve Calculation	10,469,577	171	10,469,748
 Total Expenditures	 28,267,944	 6,215,386	 34,483,330
Less Transfers Out Between GF & CRF	4,649,919	-	4,649,919
Net Expenditures	23,618,025	6,215,386	29,833,411
Less Capital Expenditures			
General Fund	574,151	-	574,151
Community Reinvestment Fund	-	5,128,013	5,128,013
Total Capital to Exclude	574,151	5,128,013	5,702,164
Total Expenditures Subject to Reserve Calculation	\$ 23,043,874	\$ 1,087,373	\$ 24,131,247
 25% Reserve Per Policy 660			6,032,812
 Projected Reserve Ratio as of 12-31-2022			43.4%

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SUMMARY OF BUDGETED GRANT REVENUES, DONATIONS AND DEBT PROCEEDS
ALL FUNDS

Fund	Account #	Project Code	Project Descr	Grant Program / Grantor	Federal / State / Other	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
101	101-1600-334.20-00	EVLGT	EV Land Trust Grant	GOCO	S	\$ -		\$ -
101	101-1600-334.20-00	COMPPL	Comp Plan Grant	DOLA	S	150,000		150,000
101	101-1945-334.20-00	*22HSN	Housing Needs Study Grant	DOLA	S	51,000		51,000
			Colorado Small Business Relief Program					
101	101-1900-334.20-00	COVBUS		State of Colorado	S	-		-
101	101-2100-333.00-00	BVEST	Bulletproof Vest Partnership Program	US Dept of Justice	F	1,500		1,500
			High Visibility Enforcement (Seatbelt and DUI Checkpoints)					
101	101-2100-334.20-00	CDOT		State of Colorado	S	-		-
101	101-2100-334.20-00	PDPOST	PD Post Grants	State of Colorado	S	-		-
101	101-2100-334.20-00	PDPOST	PD Post Grants	State of Colorado	S	5,834		5,834
101	101-2100-334.20-00	LEAF	LEAF	State of Colorado	S	-		-
101	101-2100-334.20-00	PDPOST	PD Post Grants	State of Colorado	S	5,000		5,000
101	101-2100-334.20-00	LEAF	LEAF	State of Colorado	S	7,000		7,000
101	101-2100-334.20-00	PDPOST	PD Post Grants	State of Colorado		5,625		5,625
			High Visibility Enforcement (Seatbelt and DUI Checkpoints)					
101	101-2100-334.20-00	CDOT		State of Colorado	S	5,000		5,000
101	101-2175-334.20-00	LPTOP2	Restorative Justice Remote Conferencing	CDOT-RMS Grant	S	-		-
101	101-3100-334.20-00	*SIGNS	Revitalizing Main St Program	CDOT	F	-		-
101	101-5500-334.20-00	*WINTR	Revitalizing Main St Program	CDOT	S	-		-
101	101-5600-333.00-00	ELTRL2	Electric Trolley #2	CDOT	F	382,547		382,547
101	101-5600-333.00-00	COVTRN	COVID-19 Transit Operations	CARES Act	F	-		-
			Coronavirus Response & Relief					
101	101-5600-333.00-00	CRRSAA	Suppl Approp Allocation	CRRSSA Federal Grant	F	361,017		361,017
101	101-5600-333.00-00	*TR22	2022 Transit 5311 Operating Grant	FTA-5311	F	51,481		51,481
101	101-5700-365.20-00	MUSSCN	Museum Large Format Scanner	Trust Fund Donation	O	5,663		5,663
				Friends of the Museum				
101	101-5700-365.20-00	MUSSCN	Museum Large Format Scanner	Foundation	O	3,337		3,337
101 Total						1,035,004	-	1,035,004
204	204-0000-333.00-00	COMMDR	Community Drive Intersection	CDOT	F	750,000	-	750,000
			Big Thompson Flood Mitigation Design					
204	204-0000-333.00-00	BIGTHF		FEMA	F	410,625		410,625
204	204-0000-334.20-00	WILL22	Willow Knolls - Birch Ruins Walkway	State of Colorado	S	19,491		19,491
204	204-0000-334.20-00	34STDY	US 34 Corridor Study	CDOT	S	50,000		50,000
204 Total						1,230,116	-	1,230,116

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220	220-0000-333.00-00	FRTR3	Fall River Trail Phase 3	Dept of Interior - Nat'l Park Service	F	-		-
220	220-0000-333.00-00	FRTR2A	Fall River Trail Phase 2A Big Thompson River Picnic Area (Pkg Gar)	Recreation Trail Grant Program	F	-		-
220	220-0000-334.10-00	PICNIC	Fall River Trail Phase 1B	GOCO	S	43,275		43,275
220	220-0000-334.30-00	FRTR1B	Climbing Rock Big Thompson River Picnic Area	MTF M405-026	S	448,226		448,226
220	220-0000-334.30-00	ROCK		Visit Estes Park	O	-		-
220 Total						491,501	-	491,501
236	236-0000-334.20-00	LPTOP3	Police EOC Computer Repl	CDOT-RMS Grant	S	-		-
236 Total						-	-	-
244	244-0000-333.00-00	GRAVES	Graves Ave Trail Grant	Safe Routes to School	F	500,000		500,000
244	244-0000-333.00-00	FRTR1A	Fall River Trail Phase 1A	TAP M405-025	F	955,000		955,000
244	244-0000-334.30-00	FRTR2B	Fall River Trail Phase 2B	Colorado the Beautiful	S	363,706		363,706
244	244-0000-334.40-00	FRTR3	Fall River Trail Phase 3	Rocky Mnt Conservancy	O	120,039		120,039
244	244-0000-334.40-00	FRTR2B	Fall River Trail Phase 2B	EV Parks and Rec District	O	50,000		50,000
244	244-0000-334.40-00	FRTR2B	Fall River Trail Phase 2B	Larimer County Dept of Nat Res	O	10,000		10,000
244 Total						1,998,745	-	1,998,745
256	256-0000-334.20-00	*EVPLN	Electric Vehicle Infrastructure Plan	DOLA - EIAF	S	-		-
256 Total						-	-	-
260	260-0000-334.30-00	EPMOBH	EP Mobility Hub - Visitor Center Parking Lot	CDOT	S	1,030,000		1,030,000
260 Total						1,030,000	-	1,030,000

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503	503-0000-333.00-00	PMLOAN	Prospect Mtn Water Dist Waterline GC Disinfection Outreach &	USDA Grant	F	6,547,000	3,988,000	10,535,000
503	503-0000-333.00-00	GCDOVE	Verification Effort	USDAGrant	F	2,369,000		2,369,000
503	503-0000-333.00-00	WUSBOR	BOR Water Meter Project	US BOR	F	75,000		75,000
503	503-0000-388.40-00	PMLOAN	Prospect Mtn Water Dist Waterline GC Disinfection Outreach &	USDA Loan	F	7,675,000		7,675,000
503	503-0000-388.40-00	GCDOVE	Verification Effort	USDA Loan	F	4,493,000		4,493,000
503 Total						21,159,000	3,988,000	25,147,000
612	612-0000-333.00-00	ELTRCH	Trolly Charging Station	CDOT Grant	F	300,800		300,800
612 Total						300,800	-	300,800
625	625-0000-334.20-00	HOTSPT	Wireless Hotspot Grant		S	-		-
625	625-0000-334.20-00	PHONES	Phone System Upgrade	CDOT-RMS	S	-		-
625	625-0000-334.20-00	LPTOP1	Laptop Grant	CDOT CanDo Program	S	-		-
625 Total						-	-	-
Grand Total						\$ 27,245,166	\$ 3,988,000	\$ 31,233,166

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
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Project Name/Description	Project Code	ACCOUNT NUMBER	ACCOUNT DESCRIPTION	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
DOCUMENT MANAGEMENT SOFTWARE & EQUIP	DOCMGT	101-1400-414.37-01	SOFTWARE	\$ 32,194	\$ -	\$ 32,194
COMPREHENSIVE LAND USE PLAN	COMPPL	101-1600-416.22-13	CONTRACT/SKILLED SVCS	231,532		231,532
PARKING GARAGE MAINTENANCE RESERVE	PKGRES	101-1700-417.37-99	MAINTENANCE RESERVE	12,000		12,000
HOUSING STUDY/NEEDS ASSESSMENT	*22HSN	101-1945-419.22-98	PROFESSIONAL SERVICES - OTHER	73,000		73,000
WORKFORCE HOUSING ASSISTANCE	NA	101-1945-419.29-80	WORKFORCE HSNG ASSISTANCE	415,000		415,000
WORKFORCE HOUSING RESERVE	WFHRES	101-1945-419.37-98	WORKFORCE HSNG RESERVES	85,000		85,000
VISITOR CENTER MAIN DOOR REPLACEMENT	VCDOOR	101-2600-426.32-22	BUILDING REMODELING	55,000		55,000
VARIABLE MESSAGE SIGNS (CDOT COVID GRANT)	*SIGNS	101-3100-431.34-98	OTHER MACHINERY/EQUIPMENT	8,587		8,587
2022 TRANSIT 5311 OPERATING GRANT	*TR22	101-5600-456.22-60	TRANSPORTATION FEES	51,481		51,481
CRRSAA TRANSPORTATION GRANT	CRRSAA	101-5600-456.22-60	TRANSPORTATION FEES	361,017		361,017
CRRSAA TRANSPORTATION GRANT	CRRSAA	101-5600-456-25-04	VEHICLES & EQUIP R&M	1,300		1,300
ELECTRIC TROLLEY #2 - 2ND GRANT	ELTRL2	101-5600-456.34-42	VEHICLES/TRUCKS	454,370		454,370
COBB-MACDONALD CABIN RE-ROOF	CBNRF	101-5700-457.32-22	BUILDING REMODELING	15,000		15,000
MUSEUM LARGE FORMAT SCANNER	MUSSCN	101-5700-457.33-32	OFFICE EQUIPMENT	9,000		9,000
TOTAL GENERAL FUND				1,804,481	-	1,804,481
TOWN WIDE FACILITIES SPACE NEEDS STUDY	*SPACE	204-5400-544.22-98	PROF SVCS - OTHER	21,990		21,990
FACILITY OPPORTUNITY SITES - FIRST RIGHT OF REFUSAL	FACOPP	204-5400-544.31-11	LAND	100,000		100,000
WILLOW KNOLLS - BIRCH RUINS WALKWAY	WILL22	204-5400-544.31-13	LAND IMPROVEMENTS	26,000		26,000
MUSEUM ANNEX FOUNDATION REPAIRS	MUSANX	204-5400-544.32-22	BUILDING REMODELING	12,200		12,200
MUSEUM BOYD BUILDING ROOF REPLACEMENT	BOYDRF	204-5400-544.32-22	BUILDING REMODELING	32,000		32,000
STREET SHOP REMODEL	STSHOP	204-5400-544.32-22	BUILDING REMODELING	299,000		299,000
TREGENT RESTROOM REMODEL	TREGRR	204-5400-544.32-22	BUILDING REMODELING	286,000		286,000
EVENT CENTER ARENA FOOTING RENOVATION	ARNA22	204-5400-544.32-22	BUILDING REMODELING	90,128		90,128
EVENT COMPLEX PAVING	MPECPV	204-5400-544.32-22	BUILDING REMODELING	250,000		250,000
PERFORMANCE PARK REFURBISHMENT	PERFPK	204-5400-544.32-22	BUILDING REMODELING	200,000		200,000
TOWN HALL AC UNIT REPLACEMENT - PHASE 1 & 2	ACUNIT	204-5400-544.33-31	FURNITURE/FIXTURES	440,000		440,000
EVENT CENTER PUBLIC ACCESS WIRELESS INTERNET	ECWIRE	204-5400-544.33-36	COMMUNICATION EQUIPMENT	100,000		100,000
EVENT CENTER SECURITY CAMERA SYSTEM	ECSEC	204-5400-544.33-98	EQUIPMENT-OTHER	148,500		148,500
STORMWATER CREW PICKUP	G68C	204-5400-544.34-41	AUTOMOBILES	62,381		62,381
NEW OFFICER PATROL CAR	G158	204-5400-544.34-41	AUTOMOBILES	70,000		70,000
COMMUNITY DR INTERSECTION CONSTRUCTION	CDINTR	204-5400-544.35-51	STREETS	1,338,244		1,338,244
COMMUNITY DR ENGINEERING DESIGN	COMMDR	204-5400-544.35-51	STREETS	160,827		160,827
BIG THOMPSON FLOOD MITIGATION DESIGN	BIGTHF	204-5400-544.35-53	STORM DRAINAGE	550,000		550,000
GRAVES AVE IMPROVEMENT- SCOPE EXPANSION	GRAVES	204-5400-544.35-60	WALKWAYS & BIKEWAYS	250,000		250,000
DOWNTOWN WAYFINDING PROJECT - PHASE 1 & 2	WAYFND	204-5400-544.35-63	WAYFINDING SIGNAGE	212,733		212,733
FLAP/RAMP ESTIMATED COSTS	FLAP	204-5400-544.36-60	FED GRANT - FLAP	500,000		500,000
TOTAL COMMUNITY REINVESTMENT FUND				5,150,003	-	5,150,003

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BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SCHEDULE OF BUDGETED PROJECTS
ALL FUNDS**

Project Name/Description	Project Code	ACCOUNT NUMBER	ACCOUNT DESCRIPTION	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
THUMB OPEN SPACE ACQUISITION	THMBGO	211-5900-459.31-11	LAND	-		-
THUMB OPEN SPACE PARKING IMPROVEMENTS	THMBPK	211-5900-459.35-61	PARK IMPROVEMENTS	19,000		19,000
TOTAL CONSERVATION TRUST FUND				19,000	-	19,000
THUMB OPEN SPACE ECOLOGICAL ASSESSMENT	*THUMB	220-4600-462-22-13	PROF SVCS - CONTRACT/SKILLED SVC	2,080		2,080
THUMB OPEN SPACE ROCK FALL STUDY	*THUMB	220-4600-462-22-13	PROF SVCS - CONTRACT/SKILLED SVC	10,000		10,000
BIG THOMPSON RIVER PICNIC AREA (PKG GAR PAVILION) (GOCC	PICNIC	220-4600-462.35-61	PARK IMPROVEMENTS	41,094		41,094
THUMB OS - GATE ON CURRY DRIVE	THGATE	220-4600-462.35-61	PARK IMPROVEMENTS	16,000		16,000
THUMB OS - KIOSK & SIGNS	THKIOS	220-4600-462.35-61	PARK IMPROVEMENTS	6,500		6,500
THUMB OS - TRAIL IMPROVEMENTS	THTIMP	220-4600-462.35-61	PARK IMPROVEMENTS	30,240		30,240
CLIMBING ROCK BIG THOMPSON RIVER PICNIC AREA	ROCK	220-4600-462.35-61	PARK IMPROVEMENTS	34,489		34,489
FALL RIVER TRAIL PHASE 1B (MTF GRANT)	FRTR1B	220-4600-462.36-60	FALL RIVER TRAIL IMPR	936,620		936,620
FALL RIVER TRAIL PHASE 2A	FRTR2A	220-4600-462.36-60	FALL RIVER TRAIL IMPR	-		-
FALL RIVER TRAIL PHASE 3	FRTR3	220-4600-462.36-60	FALL RIVER TRAIL IMPR	-		-
TOTAL LARIMER COUNTY OPEN SPACE FUND				1,077,023	-	1,077,023
POLICE EOC COMPUTER REPL	LPTOP3	236-3600-436.26-33	DATA PROCESSING EQUIPMENT	-		-
TOTAL EMERGENCY RESPONSE SYSTEM FUND				-	-	-
BRODIE TRAIL EXTENSION	BRODIE	244-3400-434.35-60	WALKWAYS & BIKEWAYS	-		-
GRAVES AVE TRAIL (SRT SCHOOL GRANT PROJECT)	GRAVES	244-3400-434.35-60	WALKWAYS & BIKEWAYS	999,242		999,242
MACGREGOR TRAIL EXTENSION	EVPRMT	244-3400-434.35-60	WALKWAYS & BIKEWAYS	12,500		12,500
FALL RIVER TRAIL	FRTRL	244-3400-434.36-60	FALL RIVER TRAIL IMPR	112,390		112,390
FALL RIVER TRAIL PHASE 1A (TAP GRANT)	FRTR1A	244-3400-434.36-60	FALL RIVER TRAIL IMPR	1,593,750		1,593,750
FALL RIVER TRAIL PHASE 2B	FRTR2B	244-3400-434.36-60	FALL RIVER TRAIL IMPR	491,862		491,862
FALL RIVER TRAIL PHASE 3	FRTR3	244-3400-434.36-60	FALL RIVER TRAIL IMPR	-		-
TOTAL TRAILS FUND				3,209,744	-	3,209,744
MISCELLANEOUS DATA PROCESSING EQUIP	EQUIP	256-5690-569.33-33	DATA PROCESSING EQUIPMENT	3,200		3,200
PARKING SERVICE SOFTWARE & EQUIP	PKSOFT	256-5690-569.33-33	DATA PROCESSING EQUIPMENT	48,562		48,562
TOTAL PARKING SERVICES FUND				51,762	-	51,762

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PINE KNOLLS DR IMPROVEMENTS	PKNOLL	260-2000-420.35-51	STREETS	70,462		70,462
WILDFIRE ROAD IMPROVEMENTS	WLD FIR	260-2000-420.35-51	STREETS	11,000		11,000
CLEAVE STREET MAJOR REHAB	CLEAVE	260-2000-420.35-51	STREETS	70,663		70,663
3RD STREET MAJOR REHAB	3STLR	260-2000-420.35-51	STREETS	604,200		604,200
OVERLAY PROGRAM 2021	OVRLAY	260-2000-420.35-51	STREETS	105,116		105,116
OVERLAY PROGRAM 2022	OVRLAY	260-2000-420.35-51	STREETS	635,000		635,000
PARKING LOT REHABILITATION	PARKLT	260-2000-420.35-52	PARKING LOT	11,569		11,569
EP MOBILITY HUB - VISITOR CTR PARKING LOT	EPMOBH	260-2000-420.35-52	PARKING LOT	1,287,000		1,287,000
FLAP/RAMP ESTIMATED COSTS	FLAP	260-2000-420.36-60	FED GRANT - FLAP	-		-
TOTAL STREET FUND				2,795,010	-	2,795,010
TRAILBLAZER BROADBAND OFFICE	TBNBND	502-7001-580.32-21	BUILDINGS	310,374		310,374
WOODSTOCK FACILITY LANDSCAPING	TBNBND	502-7001-580.32-22	BUILDING REMODELING	14,404		14,404
P&C UPSTAIRS REMODEL PROJECT	PCUPST	502-7001-580.32-22	BUILDING REMODELING	27,000		27,000
WOODSTOCK OFFICE FURNITURE	TBFURN	502-7001-580.33-32	FURNITURE/FIXTURES	44,773		44,773
METERS	ELMTR	502-7001-580.33-34	METERS	150,000		150,000
TRANSFORMER & TRIP SAVERS	TRANSF	502-7001-580.33-35	TRANSFORMERS	226,680		226,680
SMART METER PURCHASES	SMRTEL	502-7001-580.33-36	COMMUNICATION EQUIPMENT	70,000		70,000
VC, REPEATERS, SPARE VC CARDS	EQUIP	502-7001-580.33-36	COMMUNICATION EQUIPMENT	10,000		10,000
NONSPECIFIC EQUIPMENT	EQUIP	502-7001-580.33-41	TOOLS	40,000		40,000
2 REEL TRAILERS - #93370 & 93371	REELTR	502-7001-580.33-98	OTHER EQUIPMENT	48,000		48,000
3 PHASE REEL TRAILER	933104	502-7001-580.33-98	OTHER EQUIPMENT	130,000		130,000
REPL 2013 JEEP FREEDOM	93313C	502-7001-580.33-98	OTHER EQUIPMENT	36,344		36,344
NEW ONE TON PICKUP	93345	502-7001-580.33-98	OTHER EQUIPMENT	75,000		75,000
REPL 2003 JD 310SG BACKHOE	93328B	502-7001-580.33-98	OTHER EQUIPMENT	140,000		140,000
REPL 2015 CHEV 3500	93338B	502-7001-580.33-98	OTHER EQUIPMENT	75,000		75,000
REPL ONE TON TRUCK WITH TWO 1/2 TON TRUCKS	93319C	502-7001-580.33-98	OTHER EQUIPMENT	45,000		45,000
REPL ONE TON TRUCK WITH TWO 1/2 TON TRUCKS	93335A	502-7001-580.33-98	OTHER EQUIPMENT	45,000		45,000
STREET LIGHTING, POLES & FIXTURES	LIGHTS	502-7001-580.35-55	STREET LIGHTS	40,000		40,000
SMART FUSES (INTELLIRUPTER & TRIP SAVERS)	SMTFUS	502-7001-580.35-57	POWER LINE CONSTRUCTION	82,030		82,030
LINE REBUILD	LRBLDS	502-7001-580.35-57	POWER LINE CONSTRUCTION	248,481		248,481
NEW SERVICE CONNECTIONS	WOKEXT	502-7001-580.35-59	CUSTOMER SERVICE LINES	742,451		742,451
SMART GRID FIBER OPTIC INSTALL	SMTFBR	502-7001-580.35-66	FIBER OPTIC INSTALL	3,694		3,694
TRAILBLAZER BROADBAND CONSTRUCTION	TBNBND	502-7001-580.35-66	FIBER OPTIC INSTALL	8,255,488		8,255,488
GIS MAPPING IMPROVEMENTS	GIS18	502-7001-580.37-01	SOFTWARE DEVELOPMENT	104,114		104,114
SMART GRID SOFTWARE/MIDDLEWARE DEVELOPMENT	SMTGRD	502-7001-580.37-01	SOFTWARE DEVELOPMENT	20,000		20,000
UTILITY BILLING MODERNIZATON PROJECT	UBPRTL	502-7001-580.37-01	SOFTWARE DEVELOPMENT	5,000		5,000
TOTAL POWER & COMMUNICATIONS FUND				10,988,833	-	10,988,833
GLACIER CREEK WTP - DISCHARGE OUT STRUCTURE	GCDSCH	503-7000-580.32-22	BUILDING REMODELING	50,000		50,000
BROOK DRIVE WATER SHOP REMODEL (KEARNEY SHOP)	KEARNY	503-7000-580.32-22	BUILDING REMODELING	59,555		59,555
GCWTP ENGINEERING FOR INTAKE & PLANT IMPR	GCTRET	503-7000-580.32-22	BUILDING REMODELING	1,650,000		1,650,000

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GC DISINFECTION OUTREACH AND VERIFICATION EFFORT	GCDOVE	503-7000-580.32-22	BUILDING REMODELING	183,941		183,941
GENERAL OFFICE EQUIPMENT REPLACEMENT	EQUIP	503-7000-580.33-32	OFFICE EQUIPMENT	6,000		6,000
METER REPLACEMENT PROJECT	SMRTW	503-7000-580.33-34	METERS	250,000		250,000
BOR WATER METER REPLACEMENT PROJECT	WUSBOR	503-7000-580.33-34	METERS	183,390		183,390
SCADA UPGRADES AT GLACIER WTP	GPSCAD	503-7000-580.33-36	COMMUNICATION EQUIPMENT	57,523		57,523
SCADA VHF REPEATER & RADIOS	EQUIP	503-7000-580.33-36	COMMUNICATION EQUIPMENT	90,893		90,893
TOC AUTOSAMPLER & LAPTOP	ATSAMP	503-7000-580.33-37	LABORATORY EQUIPMENT	17,000		
STORAGE TANK MIXER	WTRMXR	503-7000-580.33-40	PURIFICATION EQUIPMENT	19,150		19,150
CONFINED SPACE ENTRY EQUIPMENT	WTTOOL	503-7000-580.33-41	TOOLS	15,000		15,000
SAFETY EQUIP (TRENCH BOXES AND SPEED SHORING EQUIP)	WTTOOL	503-7000-580.33-41	TOOLS	5,000		5,000
LEAK CORRELATOR EQUIP	LEAKCO	503-7000-580.33-98	OTHER EQUIPMENT	30,000		30,000
BULK WATER DISPENSER REPLACEMENT	WTRDIS	503-7000-580.33-98	OTHER EQUIPMENT	150,000		150,000
EXCAVATOR & SKID STEER ANNUAL TRADE-INS	EQUIP	503-7000-580.33-98	OTHER EQUIPMENT	8,000		8,000
CHEV COLORADO PICKUP	90314	503-7000-580.34-42	TRUCKS	3,345		3,345
JOBSITE UTV	90383	503-7000-580.34-42	TRUCKS	20,000		20,000
2011 FORD F-350 UNIT 9037A REPL	9037B	503-7000-580.34-42	TRUCKS	62,471		62,471
2007 FORD F-150 UNIT 90311A REPL	90311B	503-7000-580.34-42	TRUCKS	3,362		3,362
2013 Dodge 3500	90310B	503-7000-580.34-42	TRUCKS	64,000		64,000
2011 FORD EXPLORER REPL	9035B	503-7000-580.34-42	TRUCKS	31,300		31,300
2012 FORD F-350 4X4 REPL	9036B	503-7000-580.34-42	TRUCKS	59,700		59,700
PROSPECT MTN WATER DIST - LOAN IMPROVEMENTS	PMLOAN	503-7000-580.35-54	WATER SYSTEM	10,589,145	4,497,102	15,086,247
18" MAIN VALVE INSTALLATIONS	18VALV	503-7000-580.35-54	WATER SYSTEM	120,000		120,000
NCWCD MUNICIPAL SUBDISTRICT INCLUSIONS	NCWCD	503-7000-580.35-54	WATER SYSTEM	79,048		79,048
CIP ROCKWELL/WEST RIVERSIDE DR 16" MAIN	ROCKWL	503-7000-580.35-54	WATER SYSTEM	95,053		95,053
CIP BUREAU AREA PHASE 4	WTBRP4	503-7000-580.35-54	WATER SYSTEM	2,169,176		2,169,176
ACACIA 4" ABANDONMENT	ACACA4	503-7000-580.35-54	WATER SYSTEM	29,000		29,000
1360 BROOK DRIVE WATER SHOP WATERLINE (KEARNEY SHOP)	KEARNY	503-7000-580.35-54	WATER SYSTEM	39,950		39,950
PARKING STRUCTURE WATERLINE	PKGWTR	503-7000-580.35-54	WATER SYSTEM	225,000		225,000
BIG HORN DR WATER MAIN REPL	BHWTRM	503-7000-580.35-54	WATER SYSTEM	137,091		137,091
SPRUCE DRIVE WATER MAIN REPL	SPWTRM	503-7000-580.35-54	WATER SYSTEM	295,496		295,496
DEVILS GULCH WATER LINE EXTENSION	DEVEXT	503-7000-580.35-54	WATER SYSTEM	12,000		12,000
GC DISINFECTION OUTREACH AND VERIFICATION EFFORT	GCDOVE	503-7000-580.35-54	WATER SYSTEM	10,043,300		10,043,300
CARRIAGE DRIVE WATER MAIN REPL	CAHILL	503-7000-580.35-54	WATER SYSTEM	271,079		271,079
YMCA/THUNDER MOUNTAIN PUMP HOUSE	THRMTN	503-7000-580.35-54	WATER SYSTEM	217,798		217,798
THUNDER MOUNTAIN TANK FIBER	PMTANK	503-7000-580.35-54	WATER SYSTEM	52,000		52,000
ROCK GRIZZLY DIRT SCREEN	RCKGRZ	503-7000-580.35-54	WATER SYSTEM	21,000		21,000
UTILITY MASTER PLAN	WTRMPL	503-7000-580.35-62	UT SYSTEM MASTER PLAN	300,000		300,000
WTR RISK ASSESSMT & EMERG RESPONSE PLAN UPDATE	WTREMG	503-7000-580.35-62	UT SYSTEM MASTER PLAN	69,024		69,024
GIS WORK	WTRGIS	503-7000-580.37-01	SOFTWARE DEVELOPMENT	19,725		19,725
CIP USA WATER RIGHTS WITH BOR	WTRRBR	503-7000-580.37-10	WATER RIGHTS	31,797		31,797
WATER RIGHT ACQUISITION/RENEWAL	WTRRIT	503-7000-580.37-10	WATER RIGHTS	40,000		40,000
TOTAL WATER FUND				27,876,312	4,497,102	32,356,414

**TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SCHEDULE OF BUDGETED PROJECTS
ALL FUNDS**

Project Name/Description	Project Code	ACCOUNT NUMBER	ACCOUNT DESCRIPTION	2022 Approved Budget	Current Proposed Amendment	2022 Amended Budget
PURCH WATER SHOP FOR NEW FLEET MAINT FAC	FLSHOP	612-7000-610.32-21	BUILDINGS	400,000		400,000
DESIGN FOR REMODEL OF WATER SHOP FOR PW	FLSHOP	612-7000-610.32-22	BUILDING REMODELING	158,143		158,143
ELECTRIC TROLLEY FACILITY & CHG STATION	ELTRCH	612-7000-610.32-22	BUILDING REMODELING	371,348		371,348
TOTAL FLEET MAINTENANCE FUND				929,491	-	929,491
DELL SERVERS & 10 G SWITCHES & NAS STORAGE	NETWRK	625-2500-425.33-98	OTHER EQUIPMENT	89,000		89,000
MPEC SERVER ROOM AC UNIT	ACMPEC	625-2500-425.33-98	OTHER EQUIPMENT	17,500		17,500
TOTAL INFORMATION TECHNOLOGY FUND				106,500	-	106,500
POLICE G-155 CRUISER REPLACEMENT	G-155A	635-7000-435.34-42	TRUCKS	64,000		64,000
POLICE CRUISER G-98A	G-98B	635-7000-435.34-42	TRUCKS	21,068		21,068
POLICE CRUISER G-140A	G-140A	635-7000-435.34-42	TRUCKS	60,000		60,000
STREETS -NEW STREET SWEEPER COMBINE G116A & G97B	G116A	635-7000-435.34-42	TRUCKS	248,526		248,526
PARKS G-66B	G66C	635-7000-435.34-42	TRUCKS	42,000		42,000
FLEET G-61	G61A	635-7000-435.34-42	TRUCKS	70,450		70,450
POLICE CRUISER REPL	G142A	635-7000-435.34-42	TRUCKS	70,000		70,000
POLICE CRUISER REPL	G148A	635-7000-435.34-42	TRUCKS	70,000		70,000
POLICE CRUISER REPL	G71C	635-7000-435.34-42	TRUCKS	70,000		70,000
PARKS FORD RANGER PICKUP	G45C	635-7000-435.34-42	TRUCKS	30,000		30,000
PARKS 4X4 UTILITY VEHICLE	G114B	635-7000-435.34-42	TRUCKS	16,000		16,000
PARKS 4X4 UTILITY VEHICLE	G128A	635-7000-435.34-42	TRUCKS	16,000		16,000
PARKS VANTAGE CART REPLACEMENT	G202A	635-7000-435.34-42	TRUCKS	15,288		15,288
TOTAL VEHICLE REPLACEMENT FUND				793,332	-	793,332
TOTAL PROJECT RECAP				\$ 54,801,491	\$ 4,497,102	\$ 59,281,593

TOWN OF ESTES PARK
BA#4 - PROSPECT MOUNTAIN WATER PROJECT
SCHEDULE OF BUDGETED APPROPRIATION CHANGES
ALL FUNDS

Fund	Fund Name	Department	Division	Description Of Change	Type (One Time or Ongoing)	One Time Increase (Decrease)	Ongoing Increase (Decrease)	Total Changes Increase (Decrease)
101	General Fund	Outside Entity Funding	NA	Increase allocation to Fire District due to increase in sales tax revenue estimate	Ongoing	-	107,886	107,886
238	Community Center Fund	Community Center	NA	Increase allocation to the Rec District due to increase in sales tax revenue estimate	Ongoing	-	96,327	96,327
503	Water Fund	Utilities	Water	Increase appropriation for the Prospect Mountain Water line project based on latest construction bid and USDA approval	One Time	4,497,102	-	4,497,102
Total Expenditure Appropriation Changes						<u>4,497,102</u>	<u>204,213</u>	<u>4,701,315</u>



Memo

To: Honorable Mayor Koenig
Board of Trustees

Through: Town Administrator Machalek

From: Utilities Director Bergsten
Project Manager Wesley

Date: September 29, 2022

RE: Resolution 82-22 Awarding the USDA-RD Financed Construction Contract with Wagner Construction, Inc. to Rebuild the Former Prospect Mountain Water System

(Mark all that apply)

☐ PUBLIC HEARING ☐ ORDINANCE ☐ LAND USE
☐ CONTRACT/AGREEMENT ☒ RESOLUTION ☐ OTHER _____

QUASI-JUDICIAL ☐ YES ☒ NO

Objective:

Our objective is to outsource the Prospect Mountain Water reconstruction project. The functional replacement of the old water infrastructure with new infrastructure will help the staff provide high-quality, reliable drinking water and fire protection to the limited number of customers within the bankrupt Prospect Mountain Water Company's (PMWC's) service area.

Present Situation:

The Town Acting by and Through the Town's Water Activity Enterprise has:

1. Accepted USDA-RD financing to rebuild the PMWC water system;
2. Passed an ordinance authorizing the execution and delivery of a construction loan agreement and a construction loan note; and
3. Amended the 2022 Water Enterprise budget an increased appropriation for the project.

We received eight competitive bids on August 10th. We vetted the bids and found the lowest bidder, Wagner Construction, Inc., to be responsible, responsive.

Proposal:

Staff proposes the Board approval of the Resolution awarding the project to Wagner Construction, Inc.

Advantages:

- Upgrades the former PMWC infrastructure with up-to-date, Town compatible technology

- Improves water infrastructure reliability and quality
- Adds fire protection to the former PMWC neighborhoods

Disadvantages:

- There is an increase in administrative workload associated with the project; however; JVA has proven to make this easier with excellent engineering and project management on the Park Entrance Mutual Pipeline and Water Company redesign and system construction project.

Action Recommended:

Staff recommends approval of the Resolution.

Finance/Resource Impact:

\$10,732,588, Budgeted

Level of Public Interest

Low

Sample Motion:

I move to approve Resolution 82-22.

Attachments:

1. Resolution 82-22
2. Wagner Construction, Inc. Bid Form
3. Construction Contract with Wagner Construction, Inc.
4. Performance Bond
5. General Conditions
6. Project Manual Table of Contents

RESOLUTION 82-22

APPROVING A CONSTRUCTION CONTRACT WITH
WAGNER CONSTRUCTION, INC. FOR THE PROSPECT MOUNTAIN WATER
DISTRIBUTION IMPROVEMENTS PROJECT

WHEREAS, the United States Department of Agriculture’s Rural Development is providing project financing; and

WHEREAS, the Town Board acting by and through the Town's Water Activity Enterprise passed an ordinance authorizing a loan for the reconstruction of the Prospect Mountain Water system; and approving the interim construction loan agreement with CoBank; and

WHEREAS, the Water Activity Enterprise budget was increased to fund the reconstruction project; and

WHEREAS, the Water Activity Enterprise budget solicited competitive construction bids; and

WHEREAS, the Water Activity Enterprise vetted the construction bids and found the lowest bidder, Wagner Construction, Inc., to be responsive and responsible budget solicited competitive construction bids.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO, ACTING AS THE GOVERNING BODY OF ITS WATER ACTIVITY ENTERPRISE:

The Board approves, and authorizes the Mayor to sign, the construction contract referenced in the title of this resolution in substantially the form now before the Board.

DATED this _____ day of _____, 2022.

TOWN OF ESTES PARK

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:



Town Attorney

SECTION 00410

BID FORM

TOWN OF ESTES PARK, COLORADO

PROSPECT MOUNTAIN WATER DISTRIBUTION SYSTEM IMPROVEMENTS

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ARTICLE 1 – OWNER AND BIDDER

- 1.01 This Bid is submitted to: **The Town of Estes Park, 1180 Woodstock Dr., Estes Park, Colorado 80517**
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. List of Proposed Subcontractors;
 - C. List of Proposed Suppliers;
 - D. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids;
 - E. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - F. Required Bidder Qualification Statement with supporting data; ~~and~~
 - G. If Bid amount exceeds \$10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in the Supplementary Conditions of the Construction Contract (EJCDC C-800);
 - F. If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048);
 - G. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q Exhibit A-1, Certification for Contracts, Grants, and Loans.

ARTICLE 3 – BASIS OF BID – LUMP SUM BID AND UNIT PRICES

3.01 Unit Price Bids

- A. Bidder will perform the following Work at the indicated unit prices:

#	Description	Est. Quantity	Unit	Bid Unit Price	Bid Total
1	General Conditions	1	LS	\$1,225,000.00	\$1,225,000.00
2	Traffic Control	1	LS	\$25,000.00	\$25,000.00
3	Construction Surveying	1	LS	\$30,000.00	\$30,000.00
4	Utility Locates and Potholing	1	LS	\$140,000.00	\$140,000.00
5	Erosion and Sedimentation Control	1	LS	\$50,000.00	\$50,000.00

EJCDC® C-410, Bid Form for Construction Contract.

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Modified to include RD edits from RUS Bulletin 1780-26 (6/16/2020).

#	Description	Est. Quantity	Unit	Bid Unit Price	Bid Total
6	Seeding and Revegetation	5	ACRE	\$8000.00	\$40,000.00
7	Vault Demolition	2	EA	\$1,900.00	\$3,800.00
8	Remove, Relocate, and Demolish Existing 8,500 Gal. Steel Water Tank	1	LS	\$16,500.00	\$16,500.00
9	Temporary Piping for Existing Water Tank	1	LS	\$18,700.00	\$18,700.00
10	Pipeline Rock Excavation	4,585	CY	\$145.00	\$664,825.00
11	Pipeline Tree and Debris Removal	1	LS	\$85,000.00	\$85,000.00
12	Flexible Paving Cutting and Patching	10,126	SF	\$22.00	\$222,772.00
13	Rigid Paving Remove and Replace	1,000	SF	\$27.00	\$27,000.00
14	Pipeline Road Base	4,181	TONS	\$50.00	\$209,050.00
15	8-inch Ductile Iron Pipe	27,506	LF	\$149.00	\$4,098,394.00
16	6-inch Ductile Iron Pipe	425	LF	\$110.00	\$46,750.00
17	8-inch Bends	348	EA	\$830.00	\$288,840.00
18	8x8-inch Cross	1	EA	\$2,600.00	\$2,600.00
19	8-inch Plug	5	EA	\$550.00	\$2,750.00
20	8x8-inch Tee	21	EA	\$1,950.00	\$40,950.00
21	8x6-inch Tee	39	EA	\$1,800.00	\$70,200.00
22	4x6-inch Tee	1	EA	\$1,870.00	\$1,870.00
23	6x8-inch Tee	1	EA	\$1,650.00	\$1,650.00
24	8-inch Gate Valve	92	EA	\$2,900.00	\$266,800.00
25	6-inch Gate Valve	1	EA	\$2,600.00	\$2,600.00
26	4-inch Gate Valve	1	EA	\$2,325.00	\$2,325.00
27	Fire Hydrant Assembly	41	EA	\$7,000.00	\$287,000.00
28	Water Service Connection	135	EA	\$2,450.00	\$330,750.00
29	Water Service Extension	6,000	LF	\$30.00	\$180,000.00
30	Cut and Cap - Abandon Existing Waterline	2	EA	\$4,500.00	\$9,000.00
31	Concrete Encasement	300	LF	\$73.00	\$21,900.00

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#	Description	Est. Quantity	Unit	Bid Unit Price	Bid Total
32	Curb and Gutter - Remove and Replace	20	LF	\$125.00	\$2,500.00
33	Tank Access Drive and Ditch Rock Excavation	676	CY	\$130.00	\$87,880.00
34	Tank Access Drive and Ditch Tree and Debris Removal	1	LS	\$95,000.00	\$95,000.00
35	Tank Access Drive and Ditch Road Base	380	TONS	\$55.00	\$20,900.00
36	Tank Access Drive and Ditch Site Grading	1,714	CY	\$18.00	\$30,852.00
37	Tank Access Drive and Ditch Rock Check Dams	19	EA	\$640.00	\$12,160.00
38	Blueboard Insulation	15	LF	\$65.00	\$975.00
39	Little Prospect Lateral Rock Check Dam	1	LS	\$12,000.00	\$12,000.00
40	Remove and Replace Fence	100	LF	\$15.00	\$1,500.00
41	Interconnect Manhole and Assembly	1	EA	\$24,700.00	\$24,700.00
42	Air Vac/Release Valve and Vault	5	EA	\$9,475.00	\$47,375.00
43	Blow-off Valve Assembly	2	EA	\$4,000.00	\$8,000.00
44	8x6-inch DIP Reducer	2	EA	\$860.00	\$1,720.00
45	Booster Pump Station and Site Improvements	1	LS	\$910,000.00	\$910,000.00
46	180,000 Gallon Water Storage Tank and Site Improvements	1	LS	\$1,005,000.00	\$1,005,000.00

B. Bidder acknowledges that:

- each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
- estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

C. Total Bid Price

Total Bid Price (Total of all Unit Price Bids)	\$10,732,588.00
--	-----------------

3.02 Unit Price Alternate Proposals:

Bidder to include in other Bid item(s) the other costs (if any) associated with accepting such assignment and administering the assigned contract.

A. Alternate 1: Ranch Circle Lateral 3

The Ranch Circle Lateral 3 alternate proposal includes all work encompassed in the site work necessary to complete the lateral connection as described in Specification Section 01200 – Payment Procedures.

#	Description	Quantity	Unit	Unit Price	Total
10	Pipeline Rock Excavation	50	CY	\$150.00	\$7,750.00
11	Pipeline Tree and Debris Removal	1	LS	\$1,330.00	\$1,330.00
12	Flexible Paving Cutting and Patching	225	SF	\$50.00	\$11,250.00
15	8-inch Ductile Iron Pipe	320	LF	\$139.00	\$44,480.00
17	8-inch Bends	4	EA	\$827.00	\$3,308.00
21	8x6-inch Tee	1	EA	\$1,650.00	\$1,650.00
24	8-inch Gate Valve	1	EA	\$2,890.00	\$2,890.00
25	6-inch Gate Valve	1	EA	\$2,600.00	\$2,600.00
32	Curb and Gutter Remove and Replace	20	LF	\$145.00	\$2,900.00

1. Total Bid Price

Total Alternate 1 Bid Price (Total of all Unit Price Bids)	\$78,158.00
--	-------------

B. Alternate 2: Prospect Mountain Road Lateral 1

The Prospect Mountain Road Lateral 1 alternate proposal includes all work encompassed in the site work necessary to complete the lateral connection as described in Specification Section 01200 – Payment Procedures.

#	Description	Quantity	Unit	Unit Price	Total
10	Pipeline Rock Excavation	135	CY	\$150.00	\$20,250.00
11	Pipeline Tree and Debris Removal	1	LS	\$6,500.00	\$6,500.00
14	Pipeline Road Base	134	TONS	\$80.00	\$10,720.00
15	8-inch Ductile Iron Pipe	805	LF	\$139.00	\$111,895.00
16	6-inch Ductile Iron Pipe	26	LF	\$170.00	\$4,420.00
17	8-inch Bends	4	EA	\$820.00	\$3,280.00
20	8x8-inch Tee	1	EA	\$1,725.00	\$1,725.00

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Modified to include RD edits from RUS Bulletin 1780-26 (6/16/2020).

ARTICLE 8 – BIDDER’S REPRESENTATIONS

8.01 *Bidder’s Representations*

A. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work, **including all American Iron and Steel requirements.**
4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder’s (Contractor’s) safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

8.02 *Bidder's Certifications*

A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
 - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 - c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
 - d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

BIDDER hereby submits this Bid as set forth above:

Bidder:

Wagner Construction, Inc. - Colorado

(typed or printed name of organization)

By:



(individual's signature)

Name: Rob Richardson, PE

(typed or printed)

Title: Vice President

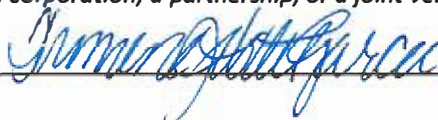
(typed or printed)

Date: August 10, 2022

(typed or printed)

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

Attest:



(individual's signature)

Name: Thomene Hottel Garcia

(typed or printed)

Title: Assistant Project Manager

(typed or printed)

Date: August 10, 2022

(typed or printed)

Address for giving notices:

757 Malelta Lane, Suite 201

Castle Rock, CO 80108

Bidder's Contact:

Name: Rob Richardson, PE

(typed or printed)

Title: Vice President

(typed or printed)

Phone: 720-620-8474

Email: r.richardson@wagnerconstructioninc.com

Address:

757 Malelta Lane, Suite 201

Castle Rock, CO 80108

Bidder's Contractor License No.: (if applicable)

JYIINITFS GF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF WAGNER CONSTRUCTION, INC.

The undersigned, Secretary of Wagner Construction, Inc. (the "Corporation" or "WCI"), hereby certifies that a meeting of the Board of Governors of the Corporation was held at 3151 Highway 53, International Falls, Minnesota on February 1, 2022.

Directors Present

Dennis Wagner
Wendy Wagner
Kalan Wagner
Marty Goulet

Meeting was called to order at 9:30am.

Upon a motion duly made and adopted, it was:

RESOLVED, Chris Schneider shall no longer be a Vice President of the corporation.

RESOLVED, Rob Richardson shall be a Vice President of the corporation with the authorizations resolved below and that said officer shall serve in such capacity until the next annual meeting of the directors or until their successors are duly elected and qualified.

Upon a motion duly made and unanimously adopted, it was:

RESOLVED, that the above officer is hereby authorized to sign construction contracts, bids, subcontracts and purchase orders on behalf of the corporation.

There being no further business brought before the meeting, the meeting was adjourned.
Meeting called to order at 9:40am.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Wendy Wagner", written in dark ink.

Wendy Wagner
Secretary — Wagner Construction, Inc.

The undersigned, being the directors of Wagner Construction, Inc., do hereby waive any and all notice of the above and foregoing special meeting of the Board of Directors of said corporation, and do consent to, verify, approve and confirm any and all business transacted at such meeting as hereinbefore set forth.


Dennis Wagner


Wendy Wagner


Kalan Wagner


Marty Goulet

SECTION 00451

QUALIFICATIONS STATEMENT

THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS

ARTICLE 1—GENERAL INFORMATION

1.01 Provide contact information for the Business:

Legal Name of Business:	Wagner Construction, Inc.		
Corporate Office			
Name:	Kalan Wagner	Phone number:	218-283-1867 x307
Title:	President	Email address:	k.wagner@wagnerconstructioninc.com
Business address of corporate office:	3151 Hwy 53		
	International Falls, MN 56649		
Local Office			
Name:	Rob Richardson, PE	Phone number:	720-620-8474
Title:	Vice President	Email address:	r.richardson@wagnerconstructioninc.com
Business address of local office:	757 Maleta Lane, Suite 201		
	Castle Rock, CO 80108		

1.02 Provide information on the Business's organizational structure:

Form of Business:	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation		
<input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Joint Venture comprised of the following companies:			
1.	Kalan Wagner, President		
2.	Rob Richardson, Vice President		
3.	Wendy Wagner, Secretary		
Provide a separate Qualification Statement for each Joint Venturer.			
Date Business was formed:	10/31/1985	State in which Business was formed:	MN
Is this Business authorized to operate in the Project location?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending	

- 1.03 Identify all businesses that own Business in whole or in part (25% or greater), or that are wholly or partly (25% or greater) owned by Business:

Name of business:	N/A	Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			

- 1.04 Provide information regarding the Business's officers, partners, and limits of authority.

Name:	Kalan Wagner	Title:	President
Authorized to sign contracts:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Limit of Authority:	\$ Unlimited
Name:	Rob Richardson, PE	Title:	Vice President
Authorized to sign contracts:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Limit of Authority:	\$ 100,000
Name:	Wendy Wagner	Title:	Secretary
Authorized to sign contracts:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Limit of Authority:	\$ 100,000
Name:	Mike Brewinski	Title:	Treasurer

ARTICLE 2—LICENSING

- 2.01 Provide information regarding licensure for Business:

Name of License:	Municipal Contractor's License Right of Way		
Licensing Agency:	City of Arvada		
License No:	AEC9604	Expiration Date:	12/22/2022
Name of License:	Contractor License Right of Way		
Licensing Agency:	City of Aurora		
License No:	2022 2125087 00 CL	Expiration Date:	04/01/2023

ARTICLE 3—DIVERSE BUSINESS CERTIFICATIONS

- 3.01 Provide information regarding Business's Diverse Business Certification, if any. Provide evidence of current certification.

Certification	Certifying Agency	Certification Date
<input type="checkbox"/> Disadvantaged Business Enterprise	N/A	
<input type="checkbox"/> Minority Business Enterprise		
<input type="checkbox"/> Woman-Owned Business Enterprise		

<input type="checkbox"/> Small Business Enterprise		
<input type="checkbox"/> Disabled Business Enterprise		
<input type="checkbox"/> Veteran-Owned Business Enterprise		
<input type="checkbox"/> Service-Disabled Veteran-Owned Business		
<input type="checkbox"/> HUBZone Business (Historically Underutilized) Business		
<input type="checkbox"/> Other		
<input checked="" type="checkbox"/> None		

ARTICLE 4—SAFETY

4.01 Provide information regarding Business's safety organization and safety performance.

Name of Business's Safety Officer:	William Rupert, CHST	
Safety Certifications		
Certification Name	Issuing Agency	Expiration
OSHA Course #510	Rocky Mountain Ed. Center	
OSHA Course #510	Rocky Mountain Ed. Center	

4.02 Provide Worker's Compensation Insurance Experience Modification Rate (EMR), Total Recordable Frequency Rate (TRFR) for incidents, and Total Number of Recorded Manhours (MH) for the last 3 years and the EMR, TRFR, and MH history for the last 3 years of any proposed Subcontractor(s) that will provide Work valued at 10% or more of the Contract Price. Provide documentation of the EMR history for Business and Subcontractor(s).

Year	9/23/21 - 9/23/22			9/23/20 - 9/23/21			9/23/19 - 9/23/20		
Company	EMR	TRFR	MH	EMR	TRFR	MH	EMR	TRFR	MH
SFM	1.07	4.01	229929	0.95	4.01	199423	0.70	1.93	206855

ARTICLE 5—FINANCIAL

5.01 Provide information regarding the Business's financial stability. Provide the most recent audited financial statement, and if such audited financial statement is not current, also provide the most current financial statement.

Financial Institution:	Deerwood Bank		
Business address:	2950 S. Hwy 169 (PO Box 429) Grand Rapids, MN 55744		
Date of Business's most recent financial statement:	2021	<input checked="" type="checkbox"/> Attached	
Date of Business's most recent audited financial statement:	N/A	<input type="checkbox"/> Attached	

Financial indicators from the most recent financial statement	
Contractor's Current Ratio (Current Assets ÷ Current Liabilities)	3.04
Contractor's Quick Ratio ((Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities)	2.93

ARTICLE 6—SURETY INFORMATION

- 6.01 Provide information regarding the surety company that will issue required bonds on behalf of the Business, including but not limited to performance and payment bonds.

Surety Name:	Marsh McLennan Agency Travelers Casualty and Surety Company of America		
Surety is a corporation organized and existing under the laws of the state of:	MN		
Is surety authorized to provide surety bonds in the Project location?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" published in Department Circular 570 (as amended) by the Bureau of the Fiscal Service, U.S. Department of the Treasury? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Mailing Address (principal place of business):	6160 Golden Hills Drive Minneapolis, MN 55416		
Physical Address (principal place of business):	6160 Golden Hills Drive Minneapolis, MN 55416		
Phone (main):	763-746-8000	Phone (claims):	

ARTICLE 7—INSURANCE

- 7.01 Provide information regarding Business's insurance company(s), including but not limited to its Commercial General Liability carrier. Provide information for each provider.

Name of insurance provider, and type of policy (CLE, auto, etc.):	
Insurance Provider	Type of Policy (Coverage Provided)
Western National Mutual Insurance	Commercial general liability
Western National Mutual Insurance	Automobile liability
Western National Mutual Insurance	Umbrella liability
Are providers licensed or authorized to issue policies in the Project location? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Does provider have an A.M. Best Rating of A-VII or better? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Mailing Address (principal place of business):	332 West Superior Street, Suite 700 Duluth, MN 55802

Physical Address (principal place of business):	332 West Superior Street, Suite 700		
	Duluth, MN 55802		
Phone (main):	800-862-6070	Phone (claims):	855-921-3164

ARTICLE 8—CONSTRUCTION EXPERIENCE

8.01 Provide information that will identify the overall size and capacity of the Business.

Average number of current full-time employees:	160
Estimate of revenue for the current year:	\$70,000,000
Estimate of revenue for the previous year:	\$58,956,000

8.02 Provide information regarding the Business's previous contracting experience.

Years of experience with projects like the proposed project: 37			
As a general contractor:	37	As a joint venturer:	
Has Business, or a predecessor in interest, or an affiliate identified in Paragraph 1.03:			
Been disqualified as a bidder by any local, state, or federal agency within the last 5 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Been barred from contracting by any local, state, or federal agency within the last 5 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Been released from a bid in the past 5 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Defaulted on a project or failed to complete any contract awarded to it? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Refused to construct or refused to provide materials defined in the contract documents or in a change order? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Been a party to any currently pending litigation or arbitration? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Provide full details in a separate attachment if the response to any of these questions is Yes.			

8.03 List all projects currently under contract in Schedule A and provide indicated information.

8.04 List a minimum of three and a maximum of six projects completed in the last 5 years in Schedule B and provide indicated information to demonstrate the Business's experience with projects similar in type and cost of construction.

8.05 In Schedule C, provide information on key individuals whom Business intends to assign to the Project. Provide resumes for those individuals included in Schedule C. Key individuals include the

Project Manager, Project Superintendent, Quality Manager, and Safety Manager. Resumes may be provided for Business's key leaders as well.

ARTICLE 9—REQUIRED ATTACHMENTS

9.01 Provide the following information with the Statement of Qualifications:

- A. If Business is a Joint Venture, separate Qualifications Statements for each Joint Venturer, as required in Paragraph 1.02.
- B. Diverse Business Certifications if required by Paragraph 3.01.
- C. Certification of Business's safety performance if required by Paragraph 4.02.
- D. Financial statements as required by Paragraph 5.01.
- E. Attachments providing additional information as required by Paragraph 8.02.
- F. Schedule A (Current Projects) as required by Paragraph 8.03.
- G. Schedule B (Previous Experience with Similar Projects) as required by Paragraph 8.04.
- H. Schedule C (Key Individuals) and resumes for the key individuals listed, as required by Paragraph 8.05.
- I. Additional items as pertinent.

This Statement of Qualifications is offered by:

Business: Wagner Construction, Inc. - Colorado
(typed or printed name of organization)

By: 
(individual's signature)

Name: Rob Richardson, PE
(typed or printed)

Title: Vice President
(typed or printed)

Date: August 10, 2022
(date signed)

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

Attest: 
(individual's signature)

Name: Thomene Hottel Garcia
(typed or printed)

Title: Assistant Project Manager
(typed or printed)

Address for giving notices:
757 Maleta Lane, Suite 201
Castle Rock, CO 80108

Designated Representative:
Name: Rob Richardson, PE
(typed or printed)

Title: Vice President
(typed or printed)

Address: 757 Maleta Lane, Suite 201
Castle Rock, CO 80108

Phone: 720-620-8474

Email: r.richardson@wagnerconstructioninc.com

June 10th, 2022

Wagner Construction, Inc.
3151 Highway 53
International Falls, MN 56649

To Whom it May Concern:

As per your request, below is your experience mod history for Wagner Construction, Inc.

09/23/2021 to 09/23/2022	@ 1.07
09/23/2020 to 09/23/2021	@ 0.95
09/23/2019 to 09/23/2020	@ 0.70
09/23/2018 to 09/23/2019	@ 0.69
09/23/2017 to 09/23/2018	@ 0.69

Please feel free to contact our office directly should you have any further questions.

Respectfully,

Jared Zezel
Client Executive

Marsh & McLennan Agency
332 West Superior Street | Suite 700 | Duluth, MN 55802

Direct 218-312-1071 | Main 218-722-7472

Income Statement
Wagner Construction, Inc.
Years Ended October 31, 2021 and 2020

	FY 20-21	FY 19-20
Gross Revenue from Construction		
Gross Revenue	\$58,956,001	\$47,182,586
Total Gross Revenue from Construction	\$58,956,001	\$47,182,586
Construction Expenses		
Construction Costs	\$46,288,036	\$46,398,163
Total Construction Expenses	\$46,288,036	\$46,398,163
Gross Profit	\$12,667,965	\$784,423
G&A Expenses		
General & Administrative Expenses	\$2,063,769	\$1,921,834
Total G&A Expenses	\$2,063,769	\$1,921,834
Income (Loss) from Operations	\$10,604,196	(\$1,137,411)
Other Income (Expenses)		
	\$1,433,913	\$2,687,822
Total Other Income (Expenses)	\$1,433,913	\$2,687,822
Net Income	\$12,038,109	\$1,550,411
Gross Profit %	21.49%	1.66%
Net Income %	20.42%	3.29%

Balance Sheet
Wagner Construction, Inc.
through October 2021

Assets	FY 20-21	FY 19-20
Current Assets		
Cash & Cash Equivalents	\$8,398,712	\$1,299,693
Interest Receivable	\$2,833	\$5,699
Accounts Receivable (Net of Allowance)	\$14,905,890	\$12,670,970
Prepaid Expense	\$0	\$120,486
Deposits	\$11,250	\$11,250
Income Tax Deposit - Current Porion	\$5,281	\$100,286
Notes Receivable - Current Portion	\$9,477	\$236,304
Costs and Estimated Earnings in Excess of Billing:	\$783,613	\$849,106
Total Current Assets	\$24,117,056	\$15,293,794
Property and Equipment		
Land	\$389,267	\$475,156
Buildings	\$751,524	\$751,524
Office Equipment	\$390,510	\$367,776
Leasehold Improvements	\$399,310	\$399,310
Equipment	\$28,543,192	\$31,324,251
	\$30,473,803	\$33,318,017
Accumulated Depreciation	(\$24,616,867)	(\$26,026,079)
Total Property and Equipment	\$5,856,936	\$7,291,938
Other Assets		
Notes Receivable - Net of Current Portion	\$146,183	\$155,661
Income Tax Deposit	\$0	\$39,626
Investments - Other	\$49,009	\$49,009
Total Other Assets	\$195,192	\$244,296
Total Assets	\$30,169,185	\$22,830,028
Liabilities and Owner's Equity		
Current Liabilities		
Current Portion of Long-Term Debt	\$255,162	\$528,610
Accounts and Subcontracts Payable	\$4,818,303	\$5,644,367
Accrued Liabilities - Wages and Benefits	\$332,885	\$624,963
Accrued Liabilities - Union and Administrative Due	\$3,048	\$5,289
Accrued Liabilities - Interest Payable	\$1,470	\$5,067
Accrued Liabilities - Insurance Payable	\$45,996	\$0
Accrued Liabilities - Profit Sharing Payable	\$162,966	\$164,648
Distribution Payable	\$440,734	\$0
Billings in Excess of Costs	\$1,847,955	\$2,604,223
Taxes Payable Other than Income Taxes	\$34,033	\$9,138
Total Current Liabilities	\$7,942,552	\$9,586,305
Long-Term Liabilities		
Notes Payable - Net of Current Portion	\$747,200	\$1,860,057
Total Long-Term Liabilities	\$747,200	\$1,860,057
Stockholders' Equity		
Common Stock	\$2,378	\$2,378
Additional Paid In Capital	\$1,150,546	\$1,150,546
Treasury Stock	(\$1,205,826)	(\$1,205,826)
Distributions	\$0	\$0
Retained Earnings	\$21,532,334	\$11,436,568
Total Stockholders' Equity	\$21,479,433	\$11,383,666
Total Liabilities and Owner's Equity	\$30,169,185	\$22,830,028

Contractor's Current Ratio	3.04	1.60
Contractor's Quick Ratio	2.93	1.46

Schedule A—Current Projects

Name of Organization	Wagner Construction, Inc. - Colorado				
Project Owner	The Steamboat Pinnacle Group, LLC		Project Name	Steamboat Springs, CO - Overlook Park Subdivision	
General Description of Project	Stormwater piping concrete sidewalks and trails; water service line; sanitary service and sanitary manholes.				
Project Cost	\$7,557,194.45		Date Project	10/1/2021	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager		Quality Control Manager
Name	Tyler LaChapell	Wayne Odem	William Rupert		Wayne Odem
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Todd Lambert		Steamboat Pinnacle Group	303-389-6773	
Designer	Matt McLeod		Four Points Surveying & Engineering	970-871-6772	walterm@fourpointsse.com
Construction Manager					

Project Owner	Jefferson Center Metropolitan District (JCMD)		Project Name	Arvada, CO - Candelas Indiana North	
General Description of Project	Utility installation; box culvert; drainage improvements; concrete/asphalt paving; grading; erosion control.				
Project Cost	\$5,893,721.28		Date Project	12/26/2021	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Quinn Traxler	Brett Morganflash	William Rupert	Dave Gomez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	David Solin		JCMD	303-987-0835	dsolin@sdmsi.com
Designer	Wesley Back	Project Manager	IDES	303-927-8571	wesback@idesllc.com
Construction Manager					

Project Owner	Watermark Equity Group		Project Name	Brighton, CO - Canvas @ Brighton	
General Description of Project	Earthwork; utilities; concrete/asphalt; retaining walls; street lighting; signage and striping.				
Project Cost	\$2,188,647.67		Date Project	5/9/2022	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Tyler LaChapell	Dave Gomez	William Rupert	Dave Gomez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	John Morgan	Director of Operations	Canvas PC Owner, LLC	312-813-5228	
Designer	Rodney Muller	President	Contour Services	303-229-8066	rodney@contourservices.com
Construction Manager					

Schedule A—Current Projects

Name of Organization	Wagner Construction, Inc. - Colorado						
Project Owner	HM Metropolitan District 1		Project Name	Aurora, CO - Box Elder 30in Second Creek Sewer			
General Description of Project	Installation of sanitary and sewer services; grading, erosion control; survey.						
Project Cost	\$2,562,795		Date Project	1/1/2022			
Key Project Personnel	Project Manager		Project Superintendent		Safety Manager	Quality Control Manager	
Name	Maurisio Ayala		Dave Gomez		William Rupert	Dave Gomez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
	Name		Title/Position		Organization	Telephone	Email
Owner	Rick Wells		President		HM Metropolitan District 1	303-779-5710	kathy.sauzo@claconnect.com
Designer	Parker Moore		Sr. Project Manager		MA Mortenson	303-945-6184	parker.moore@mortenson.com
Construction Manager							

Project Owner	HM Metropolitan District 1		Project Name	Aurora, CO - Box Elder 60th Avenue Utilities	
General Description of Project	Installation of sanitary and sewer services; grading; erosion control; survey.				
Project Cost	\$2,343,975		Date Project	1/1/2022	
Key Project Personnel	Project Manager	Project Superintendent		Safety Manager	Quality Control Manager
Name	Maurisio Ayala	Dave Gomez		William Rupert	Dave Gomez
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Rick Wells	President	HM Metropolitan District 1	303-779-5710	kathy.sauzo@claconnect.com
Designer	Parker Moore	Sr. Project Manager	MA Mortenson	303-945-6184	parker.moore@mortenson.com
Construction Manager					

Project Owner	Town of Castle Rock, CO		Project Name	Castle Rock, CO - Cobblestone 2MG Water Storage Tank 18	
General Description of Project	Excavation and backfill of access road; site pipelines; culverts; electrical instrumentation controls; landscaping.				
Project Cost	\$1,712,480		Date Project	7/11/2022	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Quinn Traxler	Dave Gomez	William Rupert	Dave Gomez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Josh Hansen	Project Manager	Town of Castle Rock	720-733-6000	jhansen@crgov.com
Designer	Matt Nedella	Project Manager	DN Tanks	972-823-3300	matt.nedella@dntanks.com
Construction Manager					

Schedule A—Current Projects

Name of Organization	Wagner Construction, Inc. - Colorado						
Project Owner	Jefferson Center Metropolitan District (JCMD)		Project Name	Arvada, CO - JCMD Pond Repair and Maintenance			
General Description of Project		Detention pond repairs; temporary erosion control and site restoration.					
Project Cost	\$64,102		Date Project	7/25/2022			
Key Project Personnel	Project Manager		Project Superintendent		Safety Manager	Quality Control Manager	
Name	Quinn Traxler		Brett Morganflash		William Rupert	Brett Morganflash	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
	Name		Title/Position		Organization	Telephone	Email
Owner	David Solin		District Secretary		JCMD	303-987-0835	dsolin@sdmsi.com
Designer	Wes Back		Project Manager		IDES	303-927-8751	wesback@idesllc.com
Construction Manager							

Project Owner	Town of Monument, CO		Project Name	Monument, CO - 2MG Waterline and Storage Tank	
General Description of Project	2MG water tank pipeline, waterline fittings, valves and hydrants; jack and bores; grading; erosion control, asphalt.				
Project Cost	\$6,963,916		Date Project	8/1/2022	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Quinn Traxler	Dave Gomez	William Rupert	Dave Gomez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Tom Tharnish	Public Works Director	Town of Monument	719-481-2954	ttharnish@tomgov.org
Designer	James Adams	PE	Forsgren Associates	720-214-5884	jadams@forsgren.com
Construction Manager					

Project Owner	East Cherry Creek Valley & Sanitation District		Project Name	Aurora, CO - Copperleaf Filing No. 28			
General Description of Project		Wet utilities; sanitary and storm sewer; earthwork; erosion control.					
Project Cost	\$6,267,332.40		Date Project	8/1/2022			
Key Project Personnel	Project Manager		Project Superintendent		Safety Manager	Quality Control Manager	
Name	Maurisio Ayala		Brett Morganflash		William Rupert	Brett Morganflash	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)							
	Name		Title/Position		Organization	Telephone	Email
Owner					Copperleaf SFR Owner, LLC		
Designer	David Stevens		Project Manager		Crossland Construction	303-861-0228	dstevens@crossland.com
Construction Manager							

Schedule B—Previous Experience with Similar Projects

Name of Organization	Wagner Construction, Inc. - Colorado				
Project Owner	Pinery Water & Wastewater District		Project Name	Parker, CO - 2018 Potable Waterline Replacement Project	
General Description of Project	PVC watermain, service lines, connections to existing services, meter pits; solenoid control vaults; existing asbestos cement water system				
Project Cost	\$4,065,000.00		Date Project	Completed March 2020	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Kalan Wagner	Steve Bouley		Steve Bouley	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Richard Krulish	Project Manager	Pinery Water District	303-841-2797	rkrulish@pinerywater.com
Designer	Brian Davies	Engineer	Farnsworth Group	970-484-7477	bdavies@f-w.com
Construction Manager					

Project Owner	Woodman Hills Metropolitan District		Project Name	Peyton, CO - West Water Pipeline	
General Description of Project	Site work for water and sewer. Utility installation of water pipeline, PVC water main, fittings and gate valves. Pump station and fire hydrants.				
Project Cost	\$1,536,056.49		Date Project	Completed October 2020	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Chris Schneider	Steve Bouley		Chris Schneider	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Jerry Jacobson	General Manager	Woodman Hills	719-495-2500	jerry@whmd.org
Designer	Mark Volle	Civil Engineer	JDS-Hydro	719-227-0072	mvolle@jdshydro.com
Construction Manager					

Project Owner	Woodman Hills Metropolitan District		Project Name	Peyton, CO - West Concrete Water Storage Tank	
General Description of Project	Construction of new concrete water storage tank				
Project Cost	\$575,870.57		Date Project	Completed December 2020	
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager		Quality Control Manager
Name	Chris Schneider	Steve Bouley			Chris Schneider
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Jerry Jacobson	General Manager	Woodman Hills	719-495-2500	jerry@whmd.org
Designer	Mark Volle	Civil Engineer	JDS-Hydro	719-227-0072	mvolle@jdshydro.com
Construction Manager					

Schedule B—Previous Experience with Similar Projects

Name of Organization	Wagner Construction, Inc. - Colorado				
Project Owner	Colorado Department of Human Services	Project Name	Denver, CO - Fort Logan Upgrade Campus Utility Infrastructure		
General Description of Project	Roadway and utility infrastructure replacement; water and sewer utilities; new storm drainage facilities.				
Project Cost	\$7,763,585.64	Date Project	Completed April 2022		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Quinn Traxler	Jake Centers	William Rupert	Jake Centers	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Eric Wilson	Project Manager	CO Dept Human Services	303-472-2128	eric.wilson@state.co.us
Designer	Phillip Kriebel	Engineer	Martin/Martin Consulting	303-431-6100	pkriebel@martinmartin.com
Construction Manager					

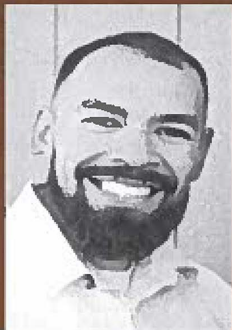
Project Owner	Town of Erie		Project Name	Erie, CO - Austin Avenue Water Main	
General Description of Project	Water line replacement.				
Project Cost	\$1,194,646.00	Date Project	Completed December 2021		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name	Chris Schneider	Dave Gomez	William Rupert	Dave Gomez	
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner	Wendi Palmer	Civil Engineer	Town of Erie	303-926-2875	wpalmer@erleco.gov
Designer	Wendi Palmer	Civil Engineer	Town of Erie	303-926-2875	wpalmer@erleco.gov
Construction Manager					

Project Owner			Project Name		
General Description of Project					
Project Cost		Date Project			
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

Schedule C—Key Individuals

Project Manager			
Name of individual		Maurisio Ayala	
Years of experience as project manager		1	
Years of experience with this organization		1	
Number of similar projects as project manager		2	
Number of similar projects in other positions		Several projects, resume provided upon request.	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Aurora, CO - Box Elder		100%	September 2022
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Crystal Davis	Name	Coty Wheatley
Title/Position	General Supintendent	Title/Position	Project Manager
Organization	Wanzek Construction	Organization	Wanzek Construction
Telephone	519-216-3168	Telephone	816-288-1602
Email	crdavis@wanzek.com	Email	cwheatley@wanzek.com
Project	Badger Buffalo compressor station / gas plant, Brighton CO	Project	Elora Solar project,
Candidate's role on project	Superintendent	Candidate's role on project	Ellora, TN Supintendent
Project Superintendent			
Name of individual		Brett Morganflash	
Years of experience as project superintendent		27	
Years of experience with this organization		Brett recently joined Wagner Construction	
Number of similar projects as project superintendent		Several projects, resume available upon request.	
Number of similar projects in other positions		Several projects, resume available upon request.	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Arvada, CO - Candelas Indiana North		100%	October 2022
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Lawrence Alcaraz	Name	Paul Bountry
Title/Position	Project Manager	Title/Position	Senior Project Manager/Capital Projects
Organization	Denver Water	Organization	City and County of Denver
Telephone	720-336-9978	Telephone	303-513-6052
Email	lawrence.alcaraz@denvergov.org	Email	paul.bountry@denvergov.org
Project	Various Denver Water projects	Project	Kennedy Golf Course
Candidate's role on project	Supintendent	Candidate's role on project	Supintendent

Safety Manager			
Name of individual		William Rupert	
Years of experience as project manager		12	
Years of experience with this organization		William recently joined Wagner Construction	
Number of similar projects as project manager		Several projects, resume is available upon request	
Number of similar projects in other positions		Several projects, resume is available upon request	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
William is the safety manager to all Colorado projects		25%	N/A
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Tanner Case	Name	Jesse McIntosh
Title/Position	Project site supervisor	Title/Position	Superintendent
Organization	Oneok, Inc.	Organization	City of Watford, ND
Telephone	661-964-8462	Telephone	218-230-9052
Email		Email	
Project	Compressor station build	Project	Hwy 85 Project
Candidate's role on project	Safety Manager	Candidate's role on project	Safety Manager
Quality Control Manager			
Name of individual		Maurisio Ayala	
Years of experience as project superintendent		11	
Years of experience with this organization		1	
Number of similar projects as project superintendent		Several projects, resume is available upon request	
Number of similar projects in other positions		Several projects, resume is available upon request	
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Aurora, CO - Box Elder		100%	October 2022
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name	Crystal Davis	Name	Coty Wheatley
Title/Position	Project Manager	Title/Position	Project Manager
Organization	Wanzak Construction	Organization	Wanzek construction
Telephone	519-216-3168	Telephone	816-288-1602
Email	crdavis@wanzek.com	Email	cwheatley@wanzek.com
Project	Badger Buffalo compressor station/ gas plant. Brighton, CO	Project	Elora Solar project, Elora TN
Candidate's role on project	Quality Control Manager	Candidate's role on project	Quality Control Manager



Maurisio Ayala

Construction Manager
Quality Control Manager
Wagner Construction, Inc. - Colorado

m.ayala@wagnerconstructioninc.com

(720) 470-0019

Maurisio is an experienced superintendent in concrete/industrial construction, estimating, recruiting and project controls. He loves to motivate his teams to keep projects moving forward for on time completion with the ability to adapt to change as projects require. Maurisio is also fluent in Spanish.

Experience

Construction Management
General Superintendent
Superintendent
Craft recruiter
Estimator
Project Engineer

Qualifications

Estimating software including HCSS – Heavy Bid
Scheduling software including P5

Certifications / Training

OSHA 10
OSHA 30
NCCCO rigging and signal person
AutoCad certified

Professional Experience

Since joining the Wagner Construction team in 2021, Maurisio has committed to bringing his 18 years' experience in concrete / industrial construction to Wagner's Colorado Division as a Construction Manager.

Relevant Project Experience

Aurora, CO – Box Elder (30" Second Creek Sewer and 60th Avenue Utilities

Contract Value Total | \$4,917,360

Construction Manager and Quality Control Manager. Installation of sanitary sewer, sanitary sewer services, rough grading, erosion control and construction survey.

New Town, NC - Hawkeye Compressor Station

Contract Value | \$20,000,000

General Superintendent, oversaw 120+ employees. 7,500 CY concrete: 10 compressor foundations, 130x650 compressor building, equipment foundation, pipe racks, slug catcher foundation, 2,000 CF epoxy grout.

Downtown Denver, CO - Xcel Energy Steam Plant

Contract Value | \$20-25,000,000

Quality Control Manager and Construction Manager. Installation of new additional steam boiler to facility-concrete work for building expansion, equipment foundations, new city sidewalk and electrical duct-bank.

Greeley, CO – Leprino Foods Combined Cycle Power Plant

Quality Control Manager. Two steam turbine foundations, HRSG foundation, slab on grade, pipe/electrical support, miscellaneous pump/equipment foundations.

Brighton, CO – Badger Buffalo Compression Station / Gas Plant

General Superintendent and Quality Control Manager. 6,500 CY concrete for a 300x200 compressor building, 12 compressor foundations, multiple scrubber foundations, flare foundations pipe/electrical rack supports and 2,800 CF epoxy grout.



Brett Morganflash

Superintendent
Wagner Construction, Inc. - Colorado

b.morganflash@wagnerconstructioninc.com

(303) 547-8132

Brett's construction experience began in 1994 as a laborer. His resume has grown extensively since then, with several CMAR projects under his belt. Since joining Wagner, he is the Superintendent of our Candelas Indiana North project in Arvada.

Certifications / Training

OSHA Competent Person – Trenching and Excavation
First Aid and CPR

Professional Experience

Wagner Construction welcomed Brett as our newest Superintendent July 2022. He has impressive experience with several Colorado municipalities and prior work with City and County of Denver and Denver Water.

Previous Project Experience

Greeley, CO – WPCF Nitrification Project Phase II (CMAR)

Superintendent. Construction of a new 1.1 MG aeration basin; modification of four existing aeration basins to convert operation from in-series to in-parallel and includes isolation gate replacement, diffused aeration system modifications, baffle walls and demolition of existing anoxic mixers and pumps; unaerated zones in an A2O process arrangement; MLR pump station; modifications to existing RAS pump station. Additional work included earthwork, internal traffic routing modifications, electrical, instrumentation and SCADA upgrades to support improvements.

Loveland, CO – 29th Street 5.5MG Water Storage Tank

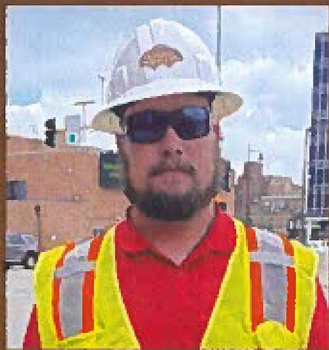
Superintendent. Construction of a 5.5 MG D115 post-tensioned concrete ground water storage tank that includes mass excavation and rock excavation. Also includes a two-story concrete structure for the metering vault and the installation of connective waterlines including 420 LF of 20" and 12" mortar-lined steel, 120 LF of 6" DIP and 80 LF of 6" PVC.

Eaton, CO – Old Eaton Pipeline Replacement Project, Phase I

Superintendent. Remove 1,500 LF of 16" DIP and replace with 1,500 LF of 20" PVC water main. The waterline was kept in service with a bypass consisting of 1,500 LF of 12" HDPE line.

Aurora, CO – Prairie Waters

Superintendent. New WTP that captures river water and uses purification technology to deliver an additional 10 MGD to the City of Aurora. Riverbank filtration extracts water from the alluvium and removes nitrate, pathogens and trace organic chemicals, high-intensity UV light and GAC filters remove remaining trace organics.



William Rupert

Health, Safety, and Environmental
Manager
Wagner Construction, Inc.

w.rupert@wagnerconstructioninc.com
(701) 240-5450

William Rupert has been performing diverse roles involving Health, Safety, and Environmental (HSE) for over 12 years. His experience spans HSE compliance for industrial construction, general construction, rail road, heavy highway, power, mining, oil and gas, military and governmental projects throughout the Midwest.

He has numerous tasks associated training certifications in a wide variety of areas ranging from rail road safety to off shore safety, driver safety, site security safety, hospitality safety & security, mining and emergency training, fall protection to Hazwoper. He has over 10 years of CFR 1926 experience, 10 years of CFR 1910 experience and 11 years' experience and an expert in environmental management.

Wagner Experience

HSE Manager and Trainer

Professional Experience

Billy Rupert has 12 years of experience as a safety professional prior to joining Wagner Construction, he is currently our HSE Manager. Billy is skilled in Health, Safety and Environmental management, compliance and training for general industry and construction industry. He has been a safety consultant in the oil and gas industry for the past 11 years, overseeing site safety compliance from upstream, midstream and downstream work. Billy was also a safety consultant for North Dakota Safety Council where he consulted and trained for many companies and clients that perform work within the state of North Dakota. Some of his biggest projects to date are the Trinity Hospital of Minot, Watford City Elementary School, Parshall, ND Highschool, New town, ND Tero Center and Visitor Center and Marathon Refinery turnovers in Mandan, ND. His education of OSHA standards and qualification help Wagner Construction maintain a safe and healthful workplace that is at or above standard requirements. Prior to Billy's professional career in safety, he was in the United States Navy for 5 years where he served as an ABH and SRF, logged over 3000 successful flight missions and completed many security detail missions. Billy was deployed to the Middle East on 3 tours from 2007-2012.

Training - Certifications

Billy is a certified Construction Health and Safety Technician; OSHA are as follows OSHA 511, OSHA 501, OSHA 510 and is an authorized OSHA 10 hour & 30-hour instructor in both general and construction industry. He is a certified instructor through the National Safety Council for first aid, CPR, AED instructor, defensive driving instructor, trenching and excavation instructor, and many other instructor qualifications for the National Safety Council. Billy is certified through Crane Institute of America to qualify rigging and signal persons and IVEs training as a heavy equipment Instructor. He is also an evaluator for operator qualifications for Midwest Energy Association and Veriforce for pipeline and utility. Billy has been a volunteer firefighter for 23 years and is current on all firefighter training requirements to include Firefighter 1 education and is on the Regions Dive Rescue team as a certified Diver. RSO and FRA safety as well training from BNSF as an contractor engineer and conductor.

Wagner Construction, Inc. | 3151 Hwy 53—International Falls, MN 56649
(218) 283-3700 | www.wagnerconstructioninc.com

An Equal Opportunity Employer.



Kalan Wagner

President
Wagner Construction, Inc.

k.wagner@wagnerconstructioninc.com

OFFICE | (218) 283-3700

Kalan Wagner has over 20 years of experience in a variety of leadership roles and is now owner of Wagner Construction, Inc. He is the 3rd generation of this family business his grandfather and father have established.

Mr. Wagner has grown the business in new markets and continues to develop opportunities for Wagner to partner with to deliver on their experience and trustworthiness.

Mr. Wagner's dedication to his employees and Wagner Construction, Inc. has positioned the company for future growth and prosperity.

Wagner Experience

President
Vice President
Operations Manager
Project Manager

Education

2005 | B.A. Real Estate and Construction Management—University of Denver

Professional Experience

Kalan Wagner is the President of Wagner Construction, Inc. after starting in the business at the age of 15 working as a laborer. Kalan's experience grew through the years of being actively involved the business from being a laborer up to a project manager and now the President. Through these experiences Kalan brings real world skills to each project throughout all phases and scopes of the work. Kalan has developed a structure and standardized procedures within the company to deliver consistent experiences on performance and documentation. With a commitment to innovation and technology, Kalan has positioned Wagner Construction, Inc. as a leader in current markets. New market opportunities will be managed with the same experience and systems that have made Wagner Construction, Inc. who they are today.

Commitment to Safety

Through an unfailing commitment to personal and environmental safety, Kalan has led a safety culture earning Wagner's ES&H program a Platinum status through the Harvard Construction Assessment Program. Platinum level has only been achieved by 2% of all contractors that have submitted to the program.

Risk Management

Kalan respects the importance of solid risk management tools, and through his leadership team's diverse expertise, he carefully considers and identifies potential risks while providing a complete proposal.

Process Honoring

By developing clear and executable policies and procedures, Kalan has advanced a culture within Wagner that delivers consistent outcomes on every project, no matter the scope, location, or professionals involved. This has laid the foundation for Wagner, as a company, to work off of one platform no matter the location of the project. This gives consistent results on work being completed both on time and on budget.

Valued Partnership

By relying on tangible experience both in the field and leadership roles, Kalan ensures that the company has one voice and delivers on being a value-added partner. Wagner's participation in the preconstruction and design process results in lower construction costs and less constructability issues throughout the project ultimately resulting in a successful project for the owner.

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(218) 283-3700 | www.wagnerconstructioninc.com

An Equal Opportunity Employer.



Rob Richardson, P.E.

Vice President
Wagner Construction, Inc.

r.richardson@wagnerconstructioninc.com

(720) 620-8474

Rob Richardson is experienced in the construction industry with an emphasis in civil construction operations.

Education

Registered Professional Engineer,
California

1991 | B.S. – Civil Engineering –
University of Washington

Additional Training

Current | American Red Cross Standard
First Aid Certification

2005 | Safety Trained Supervisor

1999 | Cost Reimbursement Contracting,
George Washington University

1992 | Caltrans Bridge Design Academy

Professional Experience

Starting his career in the construction industry in 1991, Rob, a registered Professional Engineer, is experienced, organized, and goal oriented. Combining his engineering knowledge with his experiences in the field, Rob is skilled, managing complex, heavy civil construction operations. His broad range of work experiences have shaped his vast knowledge and his goal achieving management style merges well with Wagner's collaborative environment.

Relevant Project Experience

C470 Express Lands Project – Littleton, CO

Contract Value | \$205MM

Project Manager and executive level representative on this design build project consisting of 13 miles of freeway reconstruction, adding express lanes in each direction.

Northeast Anthony Henday Drive Project

Contract Value | \$1.5B

Public Private Partnership (P3) roadway and bridge construction project in Edmonton, Alberta, Canada. This was a lump sum, design-build contract to complete the Edmonton ring road known as Anthony Henday Drive. It involved designing and constructing 27 km of multi-lane freeway, 47 bridges, associated drainage, utility relocation MSE walls, and appurtenances. Lead a staff of engineers, superintendents and multiple subcontractors and was directly responsible for all project construction and administrative functions such as cost, schedule, safety, quality, client communications, and change management related to bridge construction.

I-5 Widening at Carmenita Rd Project

Contract Value | \$86MM

Caltrans bridge construction project in Santa Fe Springs, California. This was a bid-build, lump sum, unit price contract to widen Interstate 5 in South Los Angeles County. It involved replacing an existing 2-lane steel girder bridge with a 6-lane cast-in-place bridge with aerial on and off ramps, new walls, drainage and appurtenances. Lead three engineers, two superintendents and multiple subcontractors and was directly responsible for all project construction and administrative functions such as cost, schedule, safety, quality, client communications, and change management.

COMPLIANCE STATEMENT

This statement relates to a proposed contract with Wagner Construction, Inc. - Colorado

(Name of borrower or grantee)

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

1. I ☒ have, ☐ have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I ☒ have, ☐ have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.
☒ If the proposed contract is for \$50,000 or more: or ☐ If the proposed nonconstruction contract is for \$50,000 or more and I have 50 or more employees, I also represent that:
3. I ☐ have, ☒ have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, ☐ I have, ☒ have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

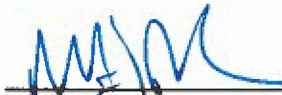
According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays the valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE 02 Aug 2022


(Signature of Bidder or Prospective Contractor)

757 Maleta Lane, Suite 201 Castle Rock, CO 80108

Address (including Zip Code)

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Wagner Construction, Inc. - Colorado
Organization Name

Prospect Mountain Water Distribution System
PR/Award Number or Project Name

Rob Richardson, PE
Name(s) and Title(s) of Authorized Representative(s)

Vice President


Signature(s)

02 Aug 2022
Date

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief,
that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Rob Richardson, PE

(name)

02 Aug 2022

(date)

Vice President

(title)

oOo

**Bidder / Quoter / Contractor
No Conflict of Interest Certification**

Project Name: Town of Estes Park Prospect Mountain Water Distribution System

Certification: Wagner Construction, Inc. - Colorado
Name of Bidder / Quoter / Contractor

hereby certifies and declares no direct or indirect conflict of interest exists with
Town of Estes Park

Name of Owner

or with USDA, Rural Development regarding financial interests.

If an owner or officer of the Bidder / Quoter / Contractor, or a relative or close associate thereof, is an elected or appointed official or employee of the Owner or of USDA, Rural Development the Bidder / Quoter / Contractor shall submit with the Bid/Quote a written identification of its owners, officers, or relatives or close associates thereof who may currently have or could create a conflict of interest regarding financial interests.

Complete one of the following:

☐ Potential or planned transactions related to the use of Federal Funds that may constitute or present the appearance of personal or organizational conflict of interest for the Project or contract are:

(attach additional information as-needed)

☒ There are no conflicts of interest, either personal or organizational, which currently exist or are anticipated for this Project or contract.

Attested:

Thomene Hottel Garcia
Signature

Thomene Hottel Garcia, Asst Project Manager
Name and Title

August 2, 2022
Date


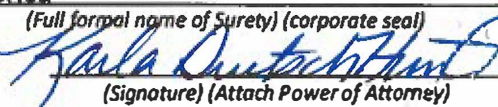


Authorized Representative:

Rob Richardson
Signature

Rob Richardson, PE - Vice President
Name and Title

02 Aug 2022
Date

BID BOND (PENAL SUM FORM)

Bidder Name: Wagner Construction, Inc. - Colorado Address (principal place of business): 3151 S Hwy 53, Suite 1 International Falls, MN 56649	Surety Name: Travelers Casualty and Surety Company of America Address (principal place of business): One Tower Square - 2SHS Hartford, CT 06183
Owner Name: Town of Estes Park Address (principal place of business): 170 MacGregor Ave. Estes Park, CO 80517	Bid Project (name and location): Prospect Mountain Water Distribution System Improvements - Estes Park, CO Bid Due Date: 8/10/2022
Bond Penal Sum: Five Percent (5%) of the Amount Bid Date of Bond: 7/20/2022	
Surety and Bidder, Intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder Wagner Construction, Inc. - Colorado	Surety Travelers Casualty and Surety Company of America
By: <u></u> <small>(Signature)</small>	By: <u></u> <small>(Signature) (Attach Power of Attorney)</small>
Name: <u>Rob Richardson</u> <small>(Printed or typed)</small>	Name: <u>Karla Deutsch-Hunt</u> <small>(Printed or typed)</small>
Title: <u>Vice President</u>	Title: <u>Attorney-in-Fact</u>
Attest: <u></u> <small>(Signature)</small>	Attest: <u></u> <small>(Signature)</small>
Name: <u>Thonene Hite/Carver</u> <small>(Printed or typed)</small>	Name: <u>Jodi Kelly</u> <small>(Printed or typed)</small>
Title: <u>Assistant Project Manager</u>	Title: <u>Asst.</u>
Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

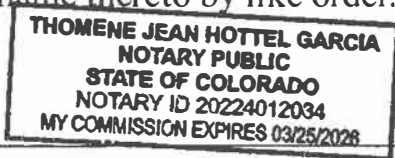
On this _____ day of _____, _____, before me
personally appeared _____
to me known to be the person _____ described in and who executed the foregoing
bond, and acknowledged that _____ he _____ executed the same as _____ free
act and deed.

Notary Public

CORPORATION ACKNOWLEDGMENT

STATE OF Colorado
COUNTY OF Douglas

On this 25th day of July, 2022, before me
personally came Rob Richardson to me known,
who being by me duly sworn, did depose and say; that he is the Vice President
of Wagner Construction, Inc. - Colorado,
the corporation described in and which executed the above instrument; that he knows the seal
of said corporation; affixed by order of the Board of Directors of said corporation, and that he
signed his name thereto by like order.



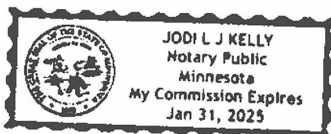
[Signature] /Notary Public

SURETY ACKNOWLEDGMENT

STATE OF MINNESOTA
COUNTY OF HENNEPIN

On this 20th day of July, 2022, before me
appeared KARLA DEUTSCH-HUNT to me personally known, who, being
duly sworn, did say that he is the Attorney-in-Fact of Travelers Casualty and Surety
Company of America
of Hartford, CT

that the seal affixed to the foregoing instrument is the corporation seal of said corporation;
that the said instrument was signed and sealed on behalf of said corporation by authority of
its Board of Directors; and he did also acknowledge that he executed the said instrument as
the free act and deed of said Company.



[Signature] Notary Public



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **KARLA DEUTSCH-HUNT** of **MINNEAPOLIS** Minnesota their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2026



Anna P. Nowik
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **20th** day of **July**, 2022



Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



Town of Estes Park – Prospect Mountain Water Distribution System

List of Proposed Subcontractors/Suppliers

Subcontractors
Powell Restoration
Martin Marietta
RMS Cranes
<i>Greiner Electric</i>
AFS
<i>Budger Blasting</i>

Suppliers
Barton Supply
AFS, Inc
Ferguson Pipe
SRM Concrete
Municipal Treatment Equipment
EFI Solutions

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that,
according to the records of this office,

Wagner Construction, Inc.

is an entity formed or registered under the law of Minnesota, has complied with all
applicable requirements of this office, and is in good standing with this office. This entity has
been assigned entity identification number 20101026140 and has provided the assumed entity
name for use in Colorado

Wagner Construction, Inc. - Colorado

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 08/08/2022 that have been posted, and by documents delivered to this office
electronically through 08/09/2022 @ 11:52:54 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this
official certificate at Denver, Colorado on 08/09/2022 @ 11:52:54 in accordance with applicable law. This
certificate is assigned Confirmation Number 14223316 .



Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



August 10, 2022

Town of Estes Park
1180 Woodstock Drive
Estes Park, CO 80514

RE: Prospect Mountain Water District System Improvements

To Whom It May Concern:

Wagner Construction, Inc. has authority to do business in Colorado. If the system improvements bid shall result in Wagner Construction, Inc. being the low bidder, we plan to obtain a Contractor's License within the time for acceptance of bids.

If you need anything further, please let us know.

Sincerely,

Rob Richardson, PE
Vice President

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT**

**PROSPECT MOUNTAIN WATER DISTRIBUTION SYSTEM
IMPROVEMENTS PROJECT
September 21, 2022**

This Agreement is by and between the **Town of Estes Park acting by and through its Water Activity Enterprise** ("Owner") and **Wagner Construction, Inc. - Colorado** ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **all necessary labor, supervision, equipment, tools, and materials for water distribution lines, connection to existing water main and services, hydrants, valves and valve boxes, construction of a new water storage tank, installation of a new packaged booster pump station, demolition of existing vaults, booster pump station, and water storage tank, and all associated site work related to this project.**

ARTICLE 3 – ENGINEER

- 3.01 The Owner has retained **JVA, Inc.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.
- 3.02 The part of the Project that pertains to the Work has been designed by **Engineer**

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*

- A. The Work will be substantially completed within **800** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **890** days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: Contractor shall pay Owner **\$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 - 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$5,000** for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
 - A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the **5th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such

Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

- a. **95** percent of the value of the Work completed (with the balance being retainage).
 - b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion **of the entire construction to be provided under the construction Contract Documents**, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **100** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

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

6.04 *Consent of Surety*

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of **5** percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to **00520-7**, inclusive).
 2. Performance bond (pages **00610-1** to **00610-3**, inclusive).
 3. Payment bond (pages **00615-1** to **00615-3**, inclusive).
 4. General Conditions (pages **00700-1** to **00700-70**, inclusive).
 5. Supplementary Conditions (pages **00800-1** to **00800-17**, inclusive).
 6. Specifications as listed in the table of contents of the Project Manual.

7. Drawings (not attached but incorporated by reference) consisting of 132 sheets with each sheet bearing the following general title: **Town of Estes Park Prospect Mountain Water Distribution System Improvements**
 8. Addenda (numbers 1 to 1, inclusive).
 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 46, inclusive).
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

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

This Agreement will be effective on _____, **2022** (which is the Effective Date of the Contract).

Owner:

Contractor:

**Town of Estes Park acting by and through its
Water Activity Enterprise**

Wagner Construction, Inc. - Colorado

(typed or printed name of organization)

(typed or printed name of organization)

By:

By:

(individual's signature)

(individual's signature)

Date:

Date:

(date signed)

(date signed)

Name:

Name:

(typed or printed)

(typed or printed)

Title:

Title:

(typed or printed)

(typed or printed)

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

Attest:

Attest:

(individual's signature)

(individual's signature)

Title:

Title:

(typed or printed)

(typed or printed)

Address for giving notices:

Address for giving notices:

170 MacGregor Avenue

757 Maleta Lane, Suite 201

Estes Park, CO 80517

Castle Rock, CO 80108

Designated Representative:

Designated Representative:

Name:

Name:

(typed or printed)

(typed or printed)

Title:

Title:

(typed or printed)

(typed or printed)

Address:

Address:

Phone:

Phone:

Email:

Email:

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

License No.:

(where applicable)

State:

SECTION 00610
PERFORMANCE BOND

Contractor Name: _____ Address (principal place of business): _____	Surety Name: _____ Address (principal place of business): _____
Owner Name: Town of Estes Park Mailing address (principal place of business): 170 MacGregor Ave., Estes Park, CO 80517	Contract Description (name and location): Prospect Mountain Water Distribution System Improvements, Estes Park, Colorado Contract Price: _____ Effective Date of Contract: _____, 2022
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows:
- 16.1. **The surety shall indemnify the Owner for the reasonable attorney's fees the Owner incurs to recover any sums found to be due and owing to the Owner by the Surety.**

SECTION 00700
STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
 - F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
 - G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
 - H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
 - I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
 - J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
 - K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

7.09 *Permits*

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

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

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

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

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

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

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

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

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
 - 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
 - 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

- attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
 - G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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



SET NO. _____

**PROJECT MANUAL
CONSTRUCTION SET**

TOWN OF ESTES PARK

PROSPECT MOUNTAIN WATER DISTRIBUTION SYSTEM



TOWN OF
ESTES PARK
COLORADO

SEPTEMBER 2022

PROJECT MANUAL

CONSTRUCTION SET

TOWN OF ESTES PARK

PROSPECT MOUNTAIN WATER DISTRIBUTION SYSTEM

JVA, Inc.
213 Linden St Suite #200,
Fort Collins, CO 80524

JVA Job No. 1066e

September 2022

PROJECT MANUAL
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00451D	Compliance Statement (RD Form 400-6)	2
00451E	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions (RD Form AD-1048)	2
00451F	Certification for Contracts, Grants, and Loans (RD Instruction 1940-Q, Exhibit A-1)	1
00451G	Bidder/Quoter/Contractor No Conflict of Interest Certification (CO RD Guide 32)	1
00451H	Engineer’s Certification of Final Plans and Specifications (RUS Bulletin 1780-26, Exhibit J)	1
00451I	Engineer’s Certification of American Iron and Steel Requirements (RUS Bulletin 1780-35, Exhibit B)	1
00510	Notice of Award (EJCDC C-510, 2018)	2
00520	Agreement Between Owner and Contractor for Construction Contract (EJCDC C-520, 2018)	7
00520A	Certificate of Owner’s Attorney and Agency Concurrence (RUS Bulletin 1780-26, Exhibit I)	1
00550	Notice to Proceed (EJCDC C-550, 2018)	1
00610	Performance Bond (EJCDC C-610, 2018)	4
00615	Payment Bond (EJCDC C-615, 2018)	4

00620	Contractor's Application for Payment (EJCDC C-620, 2018)	4
00625	Certificate of Substantial Completion (EJCDC C-625, 2018)	1
00700	Standard General Conditions of the Construction Contract (EJCDC C-700, 2018)	75
00800	Supplementary Conditions (EJCDC C-800, 2018)	37
00800A	Exhibit A – Software Requirements for Electronic Document Exchange (EJCDC C-800, 2018)	1
00800B	Exhibit B – Foreseeable Bad Weather Days (EJCDC C-800, 2018)	1
00800C	Geotechnical Baseline Report Supplement to the Supplementary Conditions	5
00901	Addendum 1	4
00940	Work Change Directive (EJCDC C-940, 2018)	1
00941	Change Order (EJCDC C-941, 2018)	2
00942	Field Order (EJCDC C-942, 2018)	1

DIVISION 1 – GENERAL REQUIREMENTS

01010	Summary of Work	6
01020	Geotechnical Report	2
01020A	Geophysical Exploration and Geotechnical Engineering Report (Terracon Consultants, Inc.)	45
01020B	Geotechnical Engineering Report (Terracon Consultants, Inc.)	81
01035	Modification Procedures	2
01039	Coordination and Meetings	6
01080	Identification Systems	3
01200	Payment Procedures	20
01340	Shop Drawings, Product Data, and Samples	13
01380	Construction Photographs	3
01400	Quality Control	6
01500	Construction Facilities and Temporary Controls	6
01550	Cutting and Patching	5
01600	Materials and Equipment	12
01650	Starting of Systems	2

01700	Contract Closeout	7
01730	Operation and Maintenance Data	6

DIVISION 2 – SITE WORK

02220	Demolition	5
02300	Earthwork	6
02370	Erosion and Sedimentation Control	6
02510	Water Distribution System	14
02740	Flexible Paving	5
02750	Rigid Paving	11
02950	Seeding	7

DIVISION 3 – CONCRETE

03300	Cast-In-Place Concrete	21
03600	Grout	3

DIVISION 5 – METALS

05500	Metal Fabrications	6
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DIVISION 7 – THERMAL AND MOISTURE PROTECTION

07210	Building Insulation	2
07600	Sheet Metal Flashing and Trim	2
07920	Joint Sealants	6

DIVISION 8 – OPENINGS

08100	Steel Doors and Frames	5
08710	Door Hardware	4

DIVISION 9 – FINISHES

09900	Coatings	9
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DIVISION 11 – EQUIPMENT

11302	Packaged Booster Pump Station	15
11385	Submersible Mixers	5
11460	Chemical Metering Pumps and Accessories	8

DIVISION 15 – MECHANICAL

15010	Basic Mechanical Requirements	7
15060	Pipe and Pipe Fittings	17
15066	Common Motor Requirements for HVAC Equipment	4
15075	Mechanical Identification	2
15090	Supports and Anchors	5
15100	Valves, Cocks and Hydrants	9
15500	Heating and Ventilating	9
15850	Air Outlets and Inlets	2
15950	Testing, Adjusting, and Balancing	11

DIVISION 16 – ELECTRICAL

16011	Short Circuit/Coordination Study and Arc-Flash Hazard Study	6
16050	Basic Electrical Materials and Methods	20
16200	Electric Motors	6
16280	480 Volt Manual Transfer Switch	4
16900	Instrumentation and Controls	12
16950	Programmable Logic Controllers	5
16951	Control Descriptions	4

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