



HIDEOUT, UTAH TOWN COUNCIL REGULAR MEETING

RESCHEDULED

August 8, 2024

Agenda

PUBLIC NOTICE IS HEREBY GIVEN that the Town Council of Hideout, Utah will hold its Regular Meeting electronically and in-person at Hideout Town Hall, located at 10860 N. Hideout Trail, Hideout Utah, for the purposes and at the times as described below on Thursday, August 8, 2024.

All public meetings are available via ZOOM conference call and YouTube Live.
Interested parties may join by dialing in as follows:

Zoom Meeting URL: <https://zoom.us/j/4356594739>
To join by telephone dial: US: +1 408 638 0986 **Meeting ID:** 435 659 4739
YouTube Live Channel: <https://www.youtube.com/channel/UCKdWnJad-WwvcAK75QjRb1w/>

Regular Meeting
5:00 PM

- I. Call to Order
- II. Roll Call
- III. Approval of Council Minutes
 - 1. [June 13, 2024 Town Council Special Public Hearing Minutes DRAFT](#)
 - 2. [June 13, 2024 Town Council Meeting Minutes DRAFT](#)
 - 3. [June 28, 2024 Town Council Special Meeting Minutes DRAFT](#)
- IV. Follow up of Items from Approved Minutes
- V. Public Input - Floor open for any attendee to speak on items not listed on the agenda
- VI. Agenda Items
 - 1. [Consideration and possible approval of Ordinance 2024-O-XX amending Hideout Municipal Code sections 10.08.18, 10.08.26 and 10.10.06 regarding retaining walls and undergrounding utilities](#)
 - 2. [Discussion and possible approval of a Franchise Agreement between Comcast and the Town of Hideout](#)
 - 3. [Consideration and possible approval of Ordinance 2024-O-XX amending sections of the Hideout Code updating sections in Chapter 1.16 Purchasing](#)
 - 4. [Discussion, consideration and possible approval of a contract award for 2024 street maintenance bid](#)
 - 5. [Discussion and consideration of adopting Resolution 2024-R-XX amending the Hideout Fee Schedule](#)
 - 6. [Discussion and possible approval of Ordinance 2024-O-XX amending Hideout Municipal Code Section 3.04.02 Appointment \(ALJ\); and Section 3.04.06 Powers and Duties \(ALJ\)](#)
 - 7. Station 56 Update
 - 8. Discussion of possibly rescheduling September Council Meeting due to the absence of Mayor Rubin and Council Member Gunn
 - 9. Discussion regarding how to keep meetings to less than 2.5 hours
- VII. Closed Executive Session - Discussion of pending or reasonably imminent litigation, personnel matters, deployment of security personnel, devices or systems, and/or sale or acquisition of real property as needed
- VIII. Meeting Adjournment

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Mayor or City Recorder at 435-659-4739 at least 24 hours prior to the meeting.

HIDEOUT TOWN COUNCIL
10860 N. Hideout Trail
Hideout, UT 84036
Phone: 435-659-4739

stated 08/07/2024

File Attachments for Item:

1. June 13, 2024 Town Council Special Public Hearing Minutes DRAFT

Minutes
Town of Hideout
Special Public Hearing
June 13, 2024

The Town Council of Hideout, Wasatch County, Utah met in Special Public Hearing on June 13, 2024 at 6:00 pm electronically via Zoom and in the City Council Chambers located at 10860 N. Hideout Trail, Hideout, Utah.

Special Public Hearing

I. Call to Order and Pledge of Allegiance

Mayor Rubin called the meeting to order at 6:01 pm and explained the meeting was a hybrid meeting held both in person at Hideout Town Hall and electronically via Zoom.

II. Roll Call

Present: Mayor Phil Rubin

Attending Remotely: Council Member Chris Baier
Council Member Jonathan Gunn
Council Member Carol Haselton
Council Member Bob Nadelberg
Council Member Ralph Severini

Staff Present: Recorder for Hideout Alicia Fairbourne

Staff Attending Remotely: Town Administrator Jan McCosh
Assistant Town Attorney Cameron Platt
Town Planner Thomas Eddington
Financial Consultant Katie Shepley
Administrative Assistant Carol Kusterle

Public Present: None.

Public Attending Remotely: Wasatch Fire District Assistant Chief Clint Neerings, Wasatch Fire District Battalion Chief/Fire Warden Troy Morgan, Damian Taitano, Scott DuBois, Chase Winder, Larry Eisenfeld, and others who may have logged in using a partial name or using only a phone number.

III. Agenda Items

1. Public hearing and comments regarding a cost-of-living adjustment increase for executive municipal officers related to Ordinance 2024-O-XX

Mayor Rubin explained that the purpose of the meeting was to gather comments on the proposed cost of living adjustment (COLA) increase for executive municipal officers, as mandated by a new state law, SB 91. The law required municipalities to hold a public hearing before adopting compensation increases for executive officers.

Mayor Rubin outlined that the proposed 4% COLA increase would apply to the City Administrator and the Director of Public Works, effective July 1, with the new fiscal year. Council Member Baier inquired about the number of executive municipal officer positions in the Town, which Mayor Rubin confirmed as two.

There being no further questions from Council, Mayor Rubin opened the floor to receive public comment at 6:07 pm. There were no comments received. Mayor Rubin then closed the floor at 6:08 pm.

IV. Meeting Adjournment

Mayor Rubin concluded the hearing and asked for a motion to adjourn the meeting to transition to the regular council meeting.

Motion: Council Member Nadelberg moved to adjourn the Special Public Hearing meeting. Council Member Haselton made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

The meeting adjourned at 6:09 pm.

Alicia Fairbourne, Recorder for Hideout

File Attachments for Item:

2. June 13, 2024 Town Council Meeting Minutes DRAFT

Minutes
Town of Hideout
Town Council Regular Meeting and Public Hearings
June 13, 2024

The Town Council of Hideout, Wasatch County, Utah met in Regular Meeting and Public Hearings on June 13, 2024 at 6:00 pm electronically via Zoom and in the City Council Chambers located at 10860 N. Hideout Trail, Hideout, Utah.

Regular Meeting and Public Hearings

I. Call to Order and Pledge of Allegiance

Mayor Rubin called the meeting to order at 6:11 pm and explained the meeting was a hybrid meeting held both in person and electronically via Zoom.

II. Roll Call

Present: Mayor Phil Rubin

Attending Remotely: Council Member Chris Baier
Council Member Jonathan Gunn
Council Member Carol Haselton
Council Member Bob Nadelberg
Council Member Ralph Severini

Staff Present: Recorder for Hideout Alicia Fairbourne

Staff Attending Remotely: Town Administrator Jan McCosh
Assistant Town Attorney Cameron Platt
Town Planner Thomas Eddington
Financial Consultant Katie Shepley
Administrative Assistant Carol Kusterle

Public Present: None.

Public Attending Remotely: Wasatch Fire District Assistant Chief Clint Neerings, Wasatch Fire District Battalion Chief/Fire Warden Troy Morgan, Damian Taitano, Scott DuBois, Chase Winder, Larry Eisenfeld, and others who may have logged in using a partial name or using only a phone number.

Mayor Rubin reordered the agenda to prioritize guest speakers, allowing them to present at the beginning of the meeting instead of following the originally posted schedule.

I. Agenda Items:

1. Presentation of wildfire outlook report

Wasatch Fire District Battalion Chief/Fire Warden Troy Morgan discussed the wildfire outlook report for 2024, highlighting the impact of recent good winters that have alleviated drought conditions but also increased vegetation growth, raising wildfire risks. He predicted potential for larger fires in late August or early September if monsoonal moisture was insufficient. Assistant Chief Clint Neerings then discussed the need for continued fireworks restrictions within Town limits due to wildfire concerns, particularly in high-risk areas near Jordanelle Reservoir. Council expressed support for maintaining current restrictions and discussed coordinating enforcement efforts with the Wasatch County Sheriff's Office and Hideout Public Works staff. Council Member Baier confirmed previous discussions with the Sheriff about increased patrols during holidays, and Mayor Rubin committed to ensuring law enforcement was present. The Council agreed to move forward with approving the necessary resolution for fireworks restrictions during the July holidays. Council Member Haselton emphasized the need for patrol specifically in the Ross Creek parking lot area to prevent the discharge of fireworks. Chief Neerings acknowledged the support from Council and noted the fireworks resolution was needed if there were costs associated from damage caused by illegal fireworks. Council expressed appreciation for the Fire District's efforts.

2. Discussion and possible adoption of Resolution 2024-R-08 regarding the restriction of fireworks for the 2024 season

Mayor Rubin presented the proposed Resolution 2024-R-08, which aimed to restrict the discharge of Class C fireworks in all areas of Hideout, citing historical hazard conditions over the past five years due to extreme flammability in mountainous, brush-covered, forest-covered, and dry grass-covered areas. Mayor Rubin requested a motion for its adoption.

Motion: Council Member Gunn moved to approve Resolution 2024-R-08 restricting the discharge of Class C fireworks during the 2024 holiday season. Council Member Baier made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

III. Approval of Council Minutes

1. April 11, 2024 Town Council Meeting Minutes DRAFT

Council Member Haselton noted two typo corrections needed on pages 2 and 10.

Motion: Council Member Severini moved to approve the April 11, 2024 Town Council Meeting Minutes with the two noted corrections. Council Member Baier made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, and Council Member Severini. Abstaining from Voting: Council Member Nadelberg. There were none opposed. The motion carried.

IV. Follow up of Items from Approved Minutes

Council Member Severini highlighted the need for regular reports from the Town's internet providers, and suggested biannual updates to monitor service reliability.

Mayor Rubin provided updates on speed control measures, including the installation of speed signs on Longview Drive and Shoreline Drive, a new street light at the entrance, and additional warning signs around the roundabout. He also mentioned that solar flashing lights had been added to several "go slow" signs.

Council Member Severini inquired about resident feedback on these measures, with Mayor Rubin noting the lack of new complaints as a positive sign. Council Member Gunn and Council Member Baier shared positive feedback from residents regarding the new speed signs.

Council Member Severini also asked about code enforcement progress, with Mayor Rubin reporting that efforts were ongoing, particularly in the problematic area of Soaring Hawk, and that increased fines were encouraging compliance.

Finally, Council Member Severini asked for an update on the Request for Proposal (RFP) regarding the public relations process, which Mayor Rubin said would be covered in the next year's budget discussion, noting that some funds had been allocated for this purpose in the preliminary budget for Fiscal Year (FY) 2024-2025.

Council Member Haselton raised a concern regarding Comcast's promise to provide a map of planned line and post installations, which was expected at the May meeting but had not been received. Mayor Rubin confirmed that Comcast had not responded or provided the requested information. He mentioned that Town Attorney Polly McLean had attempted to follow up with Comcast, but there had been no reply, suggesting that Comcast might have either abandoned the project or not yet addressed it.

Mayor Rubin also mentioned that Rocky Mountain Power would be conducting pole upgrades and burying some lines as part of their fire control plans. He noted that this work was permitted and would improve the visual impact in certain areas.

V. Public Hearing Items:

1. Discussion and possible approval of the amendments to the Town Budget for the Fiscal Year 2023-2024

Mayor Rubin initiated the discussion on the amendments to the Town Budget for the Fiscal Year 2023-2024, emphasizing the necessity of revising the budget to align it more accurately with the actual financial performance of the year. Financial Consultant Katie Shepley provided a detailed overview of the budget adjustments. She highlighted that the initial projected loss of \$389,000 was revised to a loss of \$118,000, with a favorable variance of \$270,000 expected. She noted that while total taxes were favorable, there was a significant shortfall in license and permits revenue due to fewer building permits and subdivision activities than anticipated. However, this was offset by reduced expenditures in professional services, mainly legal fees and engineering costs.

Ms. Shepley further explained the favorable variances in salaries due to delayed hiring and reallocation of public works personnel expenses. She addressed the Enterprise Fund, noting a \$79,000 favorable variance primarily due to higher standby water fees and lower sewer and water repair expenses.

Council Member Severini expressed concerns about the Transient Room Tax and suggested improving collection methods, possibly by studying how other municipalities manage it. Ms. Shepley acknowledged that there may be discrepancies in the collection of Transient Room Taxes

and mentioned efforts should be taken to enhance tracking and collection. Ms. McCosh offered to seek methods used by Park City and report back to Council.

Council Member Severini also inquired about the projected economic upturn and building permit revenues, which Ms. Shepley addressed by noting current building permit numbers and the potential impact of interest rates on future permits. Additionally, Council Member Severini asked about a significant increase in IT expenses. Ms. Shepley and Mayor Rubin explained that these expenses were related to a new software program for the Public Works staff and enhanced security measures to protect against cyber threats.

There being no further questions from Council, Mayor Rubin opened the floor for public input at 7:01 pm.

Damian Taitano inquired about the hiring of a new Town Engineer and the responsibilities of the position, expressing concern about communication and availability for discussions of building permits. Mayor Rubin confirmed that the job description was posted publicly and assured Mr. Taitano that the new Engineer would handle permitting for subdivisions and individual homes, thus improving communication. Mr. Taitano appreciated the clarification and the assurance that the role would be filled soon.

There being no further questions, Mayor Rubin closed the floor at 7:04 pm and asked for a motion to adopt the resolution.

Motion: Council Member Severini moved to adopt Resolution 2024-R-06 amending the Fiscal Year 2023-2024 Hideout Budget. Council Member Nadelberg made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

2. Discussion and possible approval of an amendment to lot R-3 of Hideout Canyon Phase 8 (parcel number 00-0020-8717) to relocate the twenty foot (20') wide limited common area for the driveway

Town Planner Thomas Eddington presented an overview of an amendment to lot R-3 of Hideout Canyon Phase 8, which involved relocating the 20-foot-wide limited common area for the driveway. He noted the project originally came before the Planning Commission in November 2021 but was reheard and approved more recently in May 2024. He explained that the intersection near Reflection Lane was built over a lot instead of within the public right-of-way, leading to the need for this amendment. The amendment's goal was to move the driveway to a more typical side location rather than the center of the lot.

Mr. Eddington highlighted several conditions for the amendment, which included review and approval by the Homeowners Association (HOA) Design Review Committee, ensuring the slope did not exceed 10% unless approved by the Town Engineer, and confirming no utilities were impacted. Additionally, conditions requested by the Community Preservation Association were incorporated into the resolution.

Council Member Severini clarified that HOA approval would still be required post-Council approval. Mayor Rubin confirmed that the HOA had been contacted and was aware of the proposal.

Chase Winder, the applicant, explained the amendment was intended to improve safety for his children by keeping the driveway further from the intersection of the adjacent lot. Being a current

Hideout Planning Commission member, he noted he had recused himself from the Planning Commission's decision on this matter but requested the Council's support for the amendment.

There were no questions or comments from Council. Mayor Rubin opened the floor for public input at 7:13 pm, but no comments were made. The public input was then closed at 7:14 pm, and a motion was requested to approve the resolution for the subdivision amendment as described.

Motion: Council Member Haselton moved to approve Resolution 2024-R-07, amending Lot R-3 in the Hideout Canyon Subdivision Phase 8 to relocate the twenty-foot-wide driveway. Council Member Gunn made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

Following the approval of the amendment to relocate the driveway in Hideout Canyon Phase 8, Council Member Baier sought clarification regarding the status of Reflection Lane, which had not been built according to the approved plat. Reflection Lane was built directly across from lot R-3 and now bisected lot 6, deviating from the platted right-of-way.

Mayor Rubin explained that the roadway was constructed using lot 6 as a tie point and mentioned that several changes, including the conversion of a hammerhead to a circle and vice versa, needed to be reflected in revised drawings. The development team was expected to submit the corrected plats. Mr. Eddington added that a recorded easement currently allowed access through lot 6, but final corrections were pending.

Council Member Baier expressed concern about the potential impact on homeowners due to the misalignment of Reflection Lane. Mayor Rubin assured that only properties adjacent to lot 6 were affected, and those not connecting to lot 6 could proceed with approval.

Scott DuBois, legal counsel representing Mustang Development, interjected, emphasizing the need to focus on the agenda item of the driveway relocation. He noted that Reflection Lane's construction details were not directly relevant to the current discussion. Mr. DuBois clarified that Mustang Development did not own lot 6 and highlighted the existence of a recorded easement.

Council Member Baier acknowledged Mr. DuBois' points but stressed the importance of addressing broader planning concerns presented in the staff report. Hideout Assistant Attorney Cameron Platt supported Council Member Baier's stance, asserting the Council's right to discuss any pertinent issues during the meeting. Mr. DuBois explained it was not his intent to guide the Council on what they could or could not discuss and concluded by expressing appreciation for the opportunity to comment.

3. Discussion and possible approval for amendments to Hideout Municipal Code Chapter 10.08, including, but not limited to, placement of hot tubs as in 10.08.08.15

Mr. Eddington outlined the proposed revisions to clarify the zoning ordinance adopted in February 2024. The amendments aimed to address the issue of hot tubs being located in front yards, particularly on decks, which the current language did not adequately cover.

Mr. Eddington proposed that hot tubs should be allowed on upper-story decks or balconies integral to the building's architecture, provided they meet structural standards. He also suggested a minimum five-foot setback from all side and rear yards for hot tubs, swim spas, and pools, allowing for more flexibility due to the small size of some rear yards in the community.

1 Mayor Rubin inquired if the ordinance should explicitly state that decks must be designed to
2 support the load of hot tubs, to which Mr. Eddington replied that such requirements were already
3 covered by International Building Code (IBC) standards. However, to ensure clarity, it was agreed
4 that the ordinance would include explicit language about structural standards for decks supporting
5 hot tubs.

6 Council Member Severini suggested modifying the setback language to reflect a percentage of
7 the required setback, proposing that hot tubs should not exceed more than 50% of the side or rear
8 yard setback. Mr. Eddington agreed to incorporate this suggestion, ensuring a minimum of five
9 feet or 50% of the setback, whichever was greater.

10 Council Member Gunn emphasized the importance of allowing hot tubs on second-story
11 balconies, noting several existing examples in the Deer Springs community and the potential for
12 future installations. The Council agreed that reasonable regulation should not limit homeowners'
13 enjoyment of their properties.

14 Discussion ensued, and the revised ordinance language was agreed upon, including the new
15 setback guidelines and structural requirements for decks. Mayor Rubin confirmed that Mr.
16 Eddington would finalize the notes and submit the revised language to the City Recorder.

17 Mayor Rubin then opened the floor for public comment at 7:34 pm.

18 *Damian Taitano* proposed that the Council consider requiring a permit for placing a spa on
19 second-floor decks. He highlighted the significant weight of water in spas and the potential risk
20 if decks were not properly engineered to support them. Mayor Rubin asked Mr. Platt for input on
21 whether other jurisdictions have similar permit requirements. Mr. Platt acknowledged that while
22 he had not encountered this specific issue before, Mr. Taitano's point was valid, and procedural
23 verification would only occur after installation or failure.

24 Mr. Eddington agreed to research this further, noting that some neighboring communities might
25 require such permits due to the structural implications. Mayor Rubin suggested that Mr.
26 Eddington take this up with the Planning Commission and return with recommendations. Mayor
27 Rubin concluded that this potential permit requirement should not delay adopting the current
28 ordinance amendments, which could be modified later if necessary. The Council agreed to
29 proceed with the adoption and revisit the permit issue based on Mr. Eddington's findings.

30 *Larry Eisenfeld* raised a concern about setbacks for properties where the lot line ended at the back
31 of the home, particularly for duplexes or townhouses with common areas. Mayor Rubin and Mr.
32 Eddington agreed that placing a hot tub in a common area would require HOA approval. Mr.
33 Eisenfeld pointed out that in his case, the common area included the setback, which complicated
34 adherence to the five-foot setback rule from his lot line. Mayor Rubin acknowledged the
35 complexity and suggested not rushing to amend the language.

36 Mr. Eddington agreed that more time was needed to research and propose appropriate language.
37 Mayor Rubin recommended deferring the discussion and approval of the amendments to a later
38 date, specifically to the next month's meeting, to ensure the ordinance would adequately address
39 the varying property types and their setbacks. The Council agreed to defer the decision and revisit
40 it with a more thorough understanding of the specific lot lines and setbacks.

41 There being no further public comments, Mayor Rubin closed public input at 7:43 pm and asked
42 for a motion to continue the item.

Motion: Council Member Nadelberg moved to continue the discussion and public hearing to a date certain of July 11, 2024 at 6:00 pm. Council Member Gunn made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

Council Member Haselton raised a question about existing hot tubs that were right up to the lot line. Mayor Rubin and Mr. Eddington confirmed that the current code would grandfather in existing hot tubs that met the previous regulations, even if they did not meet the new proposed setbacks. Mr. Eddington mentioned the possibility of adding a sunset clause if the Council wanted to limit how long existing non-compliant hot tubs could remain.

VI. Public Input - Floor open for any attendee to speak on items not listed on the agenda

At 7:45 pm, Mayor Rubin opened the floor for any members of the public wishing to speak on items not listed on the agenda.

Council Member Chris Baier raised a concern about an increasing marmot problem, mentioning the personal expense of trapping them. Council Member Baier highlighted the difficulty in dealing with marmots burrowing in rock walls near homes and questioned the municipality's role in managing this nuisance. Mr. Platt responded that while the municipality typically handled issues related to deer, regulating marmots would be more complex and usually the responsibility fell between property owners. Mayor Rubin agreed to investigate if neighboring areas or the county had measures for such issues and acknowledged the broader challenges of living on the wildland-urban interface. Council Member Baier noted dealing with other pests but emphasized the pressing nature of the marmot issue. Mayor Rubin asked Mr. Platt to explore potential solutions, acknowledging the validity of the concern.

There being no further comments, Mayor Rubin closed public input at 7:53 pm. and continued back to the regularly scheduled agenda.

Agenda Items cont.

3. Announcement of the Hideout Summer Concert and Silent Auction to benefit Station 56

Mayor Rubin announced the Hideout Summer Concert and Silent Auction to benefit the temporary Hideout Fire Station 56. Town Administrator Jan McCosh detailed the event, set for June 21, with food trucks and a silent auction organized by the Community Engagement Committee. The concert was expected to accommodate around 300 people, though only 40 tickets had been sold so far. Mayor Rubin encouraged more ticket sales and emphasized the importance of community support.

Council Member Gunn mentioned that Engine 56 and its crew were planning to attend, offering tours of the fire engine. Administrative Assistant Carol Kusterle updated that a second email blast was sent to property owners and efforts were underway to inform surrounding HOAs. She asked Council Member Haselton for contacts in the Park City newcomers' group to help disseminate information. Council Member Haselton agreed to provide these contacts.

Council Member Baier inquired about details of the silent auction. Council Member Gunn explained that Community Engagement Committee members Valeree Quebedeaux and Sheri Jacobs were organizing it, with more information expected after a meeting on Monday. Council Member Baier highlighted the importance of promoting the auction to encourage participation

1 and fundraising. Mayor Rubin acknowledged the importance of having attractive auction items
2 and ensuring community engagement.

3 **4. Discussion and possible approval of Ordinance # 2024-O-06 regarding executive municipal**
4 **officer salary increases**

5 Mayor Rubin introduced the discussion and possible approval of Ordinance #2024-O-06
6 regarding executive municipal officer salary increases, which was discussed during a separate
7 public hearing prior to this meeting. The ordinance proposed a four percent (4%) cost of living
8 increase for the City Administrator and the Director of Public Works. Mayor Rubin reiterated that
9 this topic had been previously discussed and that the proposed increase was already accounted
10 for in the budget. Mayor Rubin then sought a motion to approve the ordinance.

11 ***Motion: Council Member Nadelberg moved to approve Ordinance 2024-O-06 setting the***
12 ***compensation of statutory officers. Council Member Severini made the second. Voting Yes:***
13 ***Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member***
14 ***Nadelberg, and Council Member Severini. There were none opposed. The motion carried.***

15 **5. Discussion and consideration of adopting Ordinance 2024-O-XX amending sections of the**
16 **Hideout code updating sections in Chapter 1.16 Purchasing**

17 Mayor Rubin introduced the proposal of the changes to Hideout Municipal Code Chapter 1.16
18 Purchasing. He noted the ordinance had been tabled in previous meetings and asked Mr. Platt to
19 provide an overview.

20 Mr. Platt explained that the proposed ordinance sought to update purchasing thresholds due to
21 inflation and the lapse of time since the last update. The changes included increasing the amounts
22 that required different levels of approval, estimates, or closed bids. Recommendations were
23 included in the staff report, and the Council's input was sought to finalize the amounts.

24 Mayor Rubin highlighted specific proposed changes, such as raising the Town Clerk/Recorder's
25 purchasing limit to \$5,000, increasing the Town Engineer's limit to \$25,000, the Mayor's to
26 \$50,000, and requiring Town Council approval for anything above \$50,000. These adjustments
27 aimed to streamline operations and reduce the need for frequent approvals for routine expenses.

28 Council Member Baier expressed concerns about the high limits, suggesting that \$50,000 seemed
29 excessive for a small municipality. She advocated for possibly lowering the threshold to \$25,000,
30 arguing that special meetings could be convened for urgent, high-cost purchases. Mayor Rubin
31 clarified that emergency purchases for health and safety could be authorized by the Mayor, citing
32 a past example involving snow removal equipment.

33 Further discussion ensued among Council Members, with Council Member Severini and others
34 questioning the adequacy of current oversight mechanisms and the potential impact of the
35 proposed changes. They emphasized the need for proper checks and balances to prevent budget
36 overruns. Council Member Gunn proposed additional safeguards, such as requiring a not-to-
37 exceed price for contracts above a certain amount and giving the Town Administrator contract
38 oversight authority for substantial contracts.

39 Mr. Platt reassured Council that all purchases would still be within the approved budget, and
40 detailed expenditures would continue to be reviewed monthly. He clarified that the ordinance

focused on equipment and software purchases rather than service contracts, which were negotiated separately and disclosed publicly.

Council Member Severini echoed the sentiments of previous speakers, agreeing with the points raised by Council Members Gunn and Baier regarding the financial details. Council Member Severini expressed a need for more comprehensive data on the impact of the proposed changes, particularly in terms of the number and nature of purchases affected. He indicated that without this data, he was hesitant to fully support the proposal. He pointed out the differing financial thresholds for various municipal budgets and noted the importance of maintaining diligent oversight of Town expenditures.

Council Member Severini also raised concerns about the definitions and implications of purchasing from a single source in "good faith" and what that entailed at a Town level. He questioned the latitude and guardrails around this definition and other purchasing practices such as public auctions. While generally supportive of expanding purchase authority to expedite processes, he emphasized the need for judicious oversight and adherence to legal frameworks, including RFP contract negotiations. He concluded by seeking assurance from Mr. Platt that the proposed changes would not circumvent existing contract procedures.

The Council Members agreed on the need to balance operational efficiency with fiscal oversight. Council Member Severini expressed a desire for more quantitative data to assess the impact of the proposed changes.

Mr. Platt suggested creating a table that listed the various spending levels and the number of purchases made by the Town at each level, providing insight into the staff's spending needs.

Council Member Gunn further suggested a revision to Section 1.16.070 Prohibited Acts and Activities, to replace the term "substantial interest" with "any interest" to ensure full transparency. He emphasized that any interest in a purchase should be disclosed upfront, rather than determining what constituted a substantial interest. Mr. Platt agreed and suggested that the state ethics and conflict of interest language could be adopted to cover this. Mayor Rubin concurred, noting that the Town had an ethics policy in place requiring self-disclosure of conflicts. Mayor Rubin requested Mr. Platt to make a note of this proposed change to avoid conflicts between ordinances.

Ultimately, the consensus was to refine the ordinance language and gather additional data before making a final decision, ensuring that the proposed updates would streamline operations while maintaining robust fiscal oversight.

6. Presentation of Fraud Risk

Ms. McCosh presented the annual fraud risk assessment required each year by the state. She reported that the Town was currently at a low risk for fraud, thanks to various effective measures and mitigating controls, including efforts from Ms. Shepley and training conducted by Mr. Platt with the staff.

Mayor Rubin added that the main gaps in the assessment were due to the absence of internal auditors and an audit committee, as the Town's size did not justify such resources. The Town relied on an external licensed auditor for state audits and third-party support for certified financial services. The former treasurer was a Certified Public Accountant (CPA), but the Town currently lacks that designation in-house, contributing to the Town's rating of low risk instead of very low risk.

Ms. McCosh mentioned that the Town was continually seeking improvements, including possibly hiring a treasurer with a CPA designation to gain additional points in the assessment.

Mayor Rubin concluded by noting the progress made in reducing fraud risk over the years and thanked the staff for their efforts. The presentation was for informational purposes, with no immediate action required from the council unless they had further suggestions.

7. Discussion of the Hideout Coalition

Ms. McCosh provided an update on efforts to enhance communication with the affordable housing community in Hideout. She had reached out to various members in Wasatch County, leading to the formation of the Hideout Coalition. The first meeting, described as a "storming and forming" session, included nine participants who discussed ways to promote health and well-being for all residents in the Hideout community. Trudy Barrett from Wasatch Behavioral Health would lead the coalition. The group met for the first time last month and was scheduled to meet again next week. The goal was to integrate the communities and increase involvement from the Deer Mountain Affordable community.

Mayor Rubin acknowledged the previous discussions about improving engagement with the affordable housing community and commended Ms. McCosh for her efforts. He expressed anticipation for the outcomes of the coalition's work. No questions were raised for Ms. McCosh following the update.

8. Authorization for the Mayor to enter into a contract with Hansen, Allen, and Luce (HAL) Engineering for engineering services to the Town

Mayor Rubin introduced the agenda item to authorize a contract with Hansen, Allen, and Luce (HAL) Engineering for providing engineering services to the Town. He explained that this followed previous discussions and aligned with the need to diversify engineering service providers based on specific skill sets. Although the Town had initially contracted with other firms, HAL was identified later and deemed a good fit due to their impressive capabilities and favorable rates.

Mayor Rubin highlighted that while the Town has had a longstanding relationship with Ardurra, transitioning to HAL Engineering would maintain the same level of skill and knowledge or better, at a lower cost. The existing contract language, reviewed by both parties' legal teams, mirrors that of previous contracts with other service providers. He assured Council that HAL would avoid redundant billing by only involving the necessary personnel for each project.

Council Member Gunn expressed concerns about ensuring transparency and detailed billing, asking for specific descriptions of services provided, by whom, and on what dates. Mayor Rubin acknowledged the validity of this request, confirming that detailed records have always been maintained and can be accessed upon request. However, he agreed to incorporate this requirement explicitly into the contract to ensure clarity.

Mr. Platt added that HAL's response to the Town's request for qualifications already included commitments to detailed hourly and daily billing, which were part of the contract's exhibits. Council Member Severini concurred with Council Member Gunn's concerns, asking for clarity on how billing increments were recorded. Mayor Rubin and Mr. Platt agreed to add language to the contract to include detailed billing.

Council Member Severini raised additional questions regarding the transition from the current engineering service provider to HAL Engineering, focusing on the costs and processes associated with the transition. Mayor Rubin explained that there would be a two-week overlap with the current provider, involving about thirty hours of work to ensure a smooth handover, managed within existing Town overhead costs. Additional work, estimated at four to eight hours, might be required to address any gaps that arise during the transition.

Council Member Severini then inquired about the adequacy of insurance coverage specified in the contract, expressing concerns about social inflation driving up claim costs. He suggested the current coverage limits might be insufficient and recommended assessing the adequacy of the coverage in light of rising costs and risks. Mr. Platt explained that the specified amounts were based on previous contracts and that there was a state minimum, though he was unsure of the exact figure. He assured Council that the contractors' indemnity clause would protect the Town from liabilities due to the contractors' actions, but acknowledged the need to evaluate if the current limits provided sufficient protection.

Mayor Rubin noted that while the Town was covered by state insurance, additional coverage might be necessary for specific areas. He proposed addressing this issue separately from the current contract approval process. Council Member Severini agreed but emphasized the importance of ensuring adequate coverage.

After discussing the concerns, including the detailed billing requirements and the insurance coverage, Mayor Rubin requested a motion to authorize the contract with HAL Engineering, with the inclusion of the amendment for detailed billing as discussed.

Motion: Council Member Nadelberg moved to authorize the Mayor to execute the contract with HAL Engineering for engineering services for the Town, with the inclusion of the amendment for detailed billing as discussed. Council Member Severini made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

9. Consideration and possible approval of a statement by the Town Council regarding density under the Hideout Master Development Agreement

Mayor Rubin explained the need for the Town Council to formally approve a statement regarding density under the Hideout Master Development Agreement (MDA). He provided background on the issue, noting that the Town had previously submitted a letter, authored by the Town Attorney, clarifying their interpretation of the MDA's density provisions. However, in a recent legal case, a judge indicated that because the letter did not come from the Mayor or reflect the Town Council's official position, it lacked the necessary weight.

To rectify this, Mayor Rubin proposed that the Town Council publicly ratify the letter to solidify their stance as a formal position of the Town. He clarified that this action was to ensure the court acknowledged the letter as representing the Town's official interpretation. Mayor Rubin emphasized that no changes had been made to the content of the letter since its original submission in August 2021; the current action was solely to ratify it in a public meeting.

Mr. Platt confirmed the Mayor's explanation, stating that the Council's ratification would make the letter an official public record and reflect the Town Council's position rather than just an attorney's opinion.

Mayor Rubin requested a motion to ratify the language in the letter, specifically to formally ratify the letter dated August 4, 2021, from Attorney Polly McLean, and disavow the analysis of the staff reports regarding Shoreline Phase III. *(Clerk's note: The letter referenced is included in the meeting materials.)*

Motion: Council Member Gunn moved to formally ratify the letter dated August 4, 2021 from Town Attorney Polly McLean, and disavow the analysis in Town Planner Thomas Eddington's staff reports regarding Shoreline Phase III. Council Member Haselton made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

10. Fire Station 56 update

Council Member Gunn provided an update on Fire Station 56, emphasizing its significance due to current fire and emergency medical services (EMS) coming from across the Jordanelle. The project, initiated nine months ago by Mayor Rubin and Chief Eric Hales, had faced challenges but had successfully established a temporary station at the intersection of Deep Water and Recreation Drive in Hideout. This station would serve both Hideout and the greater SR-248 corridor.

The station would be staffed by advanced Emergency Medical Technicians (EMTs) trained as firefighters and equipped with Engine 56, an attack fire engine with comprehensive emergency medical, firefighting, and extrication equipment. The new station was expected to reduce response times by eight to twelve minutes, a critical improvement for fire and EMS outcomes. Additionally, being within five road miles of a fully operational fire station was likely to lower the Town's risk class for insurance purposes.

Despite the lack of budgeted funds, Mayor Rubin proceeded with the project, with the Town covering site exploration, selection, and engineering costs, while the fire department provided equipment, structures, and staffing. To recoup these funds, a fundraising effort was launched with a goal of \$200,000. So far, approximately \$95,000 had been raised, including a \$10,000 pledge from Rocky Mountain Power and an additional \$50,000 contribution.

Fundraising efforts continued with events such as a Town concert on June 21, where Engine 56 would be present (barring any emergencies), and donors could receive a Wasatch County Fire Department supporter T-shirt for specific dollar amount contributions which were yet to be determined. Further fundraising plans included outreach to local HOAs and businesses, a Talisker HOA event on July 6, and a chili cook-off in the fall. All donations were tax-deductible, and contributions could be made via the Town's website.

Mayor Rubin and Council Member Gunn expressed confidence in reaching their fundraising goal and gratitude for the community's support, noting the significant impact the new station would have on public safety by reducing response times.

VII. Committee Updates

1. Planning Commission - Planning Commissioner Chase Winder

Planning Commissioner Chase Winder provided several updates from the Planning Commission. Tim Schoen would present an updated concept plan for Hideout Pointe, now renamed Wild Horse,

1 featuring a mixed-use development between Klaim and the Woolf property. This development
2 would include commercial areas along SR-248 and single-family residences on the hillside, with
3 considerations for accessibility in coordination with the Wasatch Fire Department due to its
4 proximity to the future permanent fire station.

5 The Planning Commission would also review updated code language regarding recreational
6 vehicles (RVs), although it was not yet ready for presentation. Additionally, Ty Frisbee's concept
7 for Hideout Point (without an E), a boat storage area near the Ross Creek entrance, may be
8 discussed if it was ready for review.

9 The next Planning Commission meeting was scheduled for June 18 at 6:00 pm. Mayor Rubin
10 expressed appreciation for the collaborative efforts, particularly Ty Frisbee's work aligning his
11 project with the Ross Creek entrance project. The commercial and restaurant potential of the
12 property across SR-248 by Klaim was highlighted as a positive development for the community.

13 **2. Economic Development Committee - *Council Member Severini***

14 Council Member Severini provided an update on the Economic Development Committee's
15 activities. The Salzman property discussions were ongoing, with a new agreement for regular bi-
16 weekly meetings to address updates, critical issues, obstacles, and vision. These discussions were
17 expected to be productive due to the cooperative attitude of the involved parties.

18 The Committee was also focusing on the Ross Creek area and has received new information from
19 Steve Coleman and Henry Sigg regarding the Coleman project on the other side of the Jordanelle
20 reservoir. This project included changes such as the addition of "man caves," and a pro forma
21 spreadsheet which had been provided to the Committee was currently under analysis by Rob Sant.

22 Additionally, Ms. McCosh distributed a positive report on the Wasatch Back's health and growth
23 from Zions Bank's Robert Spendlove, which would be incorporated into presentation materials
24 for Ross Creek. Efforts were also being made to explore the potential benefits of Bureau of
25 Reclamation (BOR) land adjoining Town property at Ross Creek. This included five parcels
26 owned by the Town and additional acres owned by the federal government, which could enhance
27 the project if integrated effectively.

28 Council Member Severini mentioned receiving input from previous proposals on the Salzman
29 property and emphasized the ongoing nature of Committee meetings. Mayor Rubin thanked
30 Council Member Severini and the team for their dedication and efforts to advance community-
31 beneficial projects.

32 **3. Design Review Committee - *Thomas Eddington***

33 Mr. Eddington provided a brief update on the Design Review Committee's activities. The
34 Committee was currently coordinating with developer Patrick Todd on potential changes to the
35 landscaping standards for Deer Springs and Lakeview. These updates were expected to be
36 addressed soon. Additionally, some minor changes to a few designs were being considered, with
37 the next tranche of designs anticipated to come through in about six weeks. Overall, the
38 Committee's work was progressing well and remained on schedule.

39 **4. Parks, Open Space and Trails (POST) Committee - *Council Member Baier***

40 Council Member Baier provided an update on the Parks, Open Space, and Trails (POST)
41 Committee. The Jordanelle State Park project, sponsored by Hideout, received a Utah Outdoor

Recreation grant award. The next POST committee meeting was scheduled for Tuesday, June 18th, at 4:00 pm. The agenda included working with Jason Whitaker, the Park Manager at Jordanelle State Park, to outline the project timeline, record-keeping requirements, and grant compliance.

Council Member Baier also thanked Hideout Deputy Recorder Kathleen Hopkins for writing the grant application for the Wasatch County Trails, Arts, and Parks (TAP) grant, which was currently under consideration. Additionally, there would be trail maintenance during the summer, and volunteers from the community would be needed.

5. Transportation Committee - Council Member Haselton

There were no updates from the Transportation Committee.

VIII. Closed Executive Session - Discussion of pending or reasonably imminent litigation, personnel matters, deployment of security personnel, devices or systems, and/or sale or acquisition of real property as needed

There being no further public business, Mayor Rubin requested a motion from the Council to adjourn the public meeting and move into a closed Executive Session to discuss pending or reasonably imminent litigation, personnel matters, deployment of security personnel, devices or systems, and/or the sale or acquisition of real property as needed.

Motion: Council Member Nadelberg moved to close the public meeting and reconvene in a closed Executive Session. Council Member Gunn made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

The public meeting adjourned at 9:34 pm and reconvened in Executive Session at 9:42 pm.

Executive Session:

Present: Mayor Phil Rubin

Attending Remotely: Council Member Chris Baier
Council Member Jonathan Gunn
Council Member Carol Haselton
Council Member Bob Nadelberg
Council Member Ralph Severini

Staff Attending Remotely: Assistant Town Attorney Cameron Platt

IX. Meeting Adjournment

Motion: Council Member Gunn moved to adjourn the Executive Session and the meeting. Council Member Baier made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, Council Member Nadelberg, and Council Member Severini. There were none opposed. The motion carried.

1 The meeting adjourned at 10:26 pm.

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Alicia Fairbourne, Recorder for Hideout

DRAFT

File Attachments for Item:

3. June 28, 2024 Town Council Special Meeting Minutes DRAFT

Minutes
Town of Hideout
Town Council Special Meeting
June 28, 2024

The Town Council of Hideout, Wasatch County, Utah met in a Special Meeting on June 28, 2024 at 3:00 pm electronically via Zoom and in the City Council Chambers located at 10860 N. Hideout Trail, Hideout, Utah.

Special Meeting

I. Call to Order

Mayor Rubin called the meeting to order at 3:02 pm and explained the meeting was a hybrid meeting held both in person and electronically via Zoom.

II. Roll Call

Attending Remotely: Mayor Phil Rubin
Council Member Chris Baier
Council Member Jonathan Gunn
Council Member Carol Haselton
Council Member Bob Nadelberg

Excused: Council Member Ralph Severini

Staff Present: Recorder for Hideout Alicia Fairbourne
Town Administrator Jan McCosh

Staff Attending Remotely: Town Attorney Polly McLean
Financial Consultant Katie Shepley

Public Present: None.

Public Attending Remotely: None.

III. Agenda Items

1. Discussion and possible approval of an amendment to the tentative budget for the Fiscal Year ending June 30, 2025

Mayor Rubin provided context for the purpose of the Special Meeting and explained the necessity for the tentative budget amendment due to a recent Supreme Court ruling in Hideout's favor on the Richardson Flat Annexation. The council needed to include a placeholder amount in the budget to facilitate planning and professional consultations for the parcel's development.

Financial Consultant Katie Shepley presented the budget changes, noting an increase from the previously approved figures. The primary adjustment was an additional \$90,000 to cover strategic development, communications, annexation strategy, and public relations. This brought the overall expected loss for Fiscal Year (FY) 25 to approximately \$290,000.

Mayor Rubin clarified that the new tax rate would rise by roughly 50% but emphasized that this meeting's approval was for a placeholder figure, subject to detailed review during the Truth in Taxation Meeting to be held on August 8, 2024. Council Member Baier inquired about the rationale behind the \$90,000 increase, to which Mayor Rubin and Ms. Shepley explained it was an estimated amount based on prior experience and anticipated professional service hours.

Council Member Baier expressed concerns about ensuring value for money and the efficacy of the partners engaged. Mayor Rubin assured that any contract over \$15,000 would require council approval as per Hideout Town Code.

There was an emphasis on the collaborative planning approach, with Mayor Rubin mentioning planned visits to other developments and engagement with Wasatch County and Park City. The Council agreed on the importance of strategic, quality spending.

There being no further discussion, Mayor Rubin requested a motion to approve the modifications of the FY25 Tentative Budget.

Motion: Council Member Nadelberg moved to amend the previously adopted FY25 Tentative Budget. Council Member Haselton made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, and Council Member Nadelberg. Absent from Voting: Council Member Severini. There were none opposed. The motion carried.

IV. Meeting Adjournment

There being no further business, Mayor Rubin asked for a motion to adjourn the meeting.

Motion: Council Member Gunn moved to adjourn the Special Meeting. Council Member Nadelberg made the second. Voting Yes: Council Member Baier, Council Member Gunn, Council Member Haselton, and Council Member Nadelberg. Absent from voting: Council Member Severini. There were none opposed. The motion carried.

The meeting adjourned at 3:31 pm.

Alicia Fairbourne, Recorder for Hideout

File Attachments for Item:

1. Consideration and possible approval of Ordinance 2024-O-XX amending Hideout Municipal Code sections 10.08.18, 10.08.26 and 10.10.06 regarding retaining walls and undergrounding utilities

TOWN OF HIDEOUT

ORDINANCE 2024-O-08

AN ORDINANCE AMENDING HIDEOUT MUNICIPAL CODE SECTIONS
10.08.26 AND 10.10.06 REGARDING UNDERGROUNDING UTILITIES

WHEREAS, The Town of Hideout Council finds and declares that one of its most valuable assets and a critical attraction for future development are its one of a kind, extremely valuable views.

WHEREAS, Preservation of such views, to the greatest extent possible, are of critical importance to the existing residents as well as the future development of the Town.

WHEREAS, Impairment of the existing views by any above ground utility structures or lines is to be avoided whenever possible.

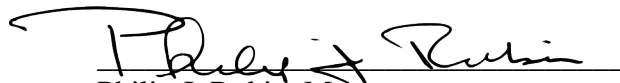
Now, Therefore, be it Ordained by the Council of the Town of Hideout, State of Utah:

Section I: Amendment. Sections 10.08.26 and 10.10.06 are hereby amended as redlined (Exhibit A).

Section II: Effective Date: This ordinance shall become effective upon publication as required by law.

Passed and Adopted by the Town Council of Hideout, Utah, this 8th day of August, in the year 2024.

TOWN OF HIDEOUT


Philip J. Rubin, Mayor

ATTEST:

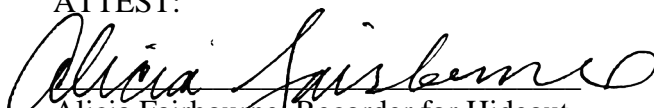

Alicia Fairbourne, Recorder for Hideout



EXHIBIT A**10.08.26 UTILITY ~~DISTRIBUTION~~ SYSTEMS AND CONNECTIONS**

1. All utilities, public or privately owned, shall be installed underground wherever underground location does not violate safety standards of the particular utility and where such underground location does not impose any significant potential additional maintenance burden on the Town of Hideout personnel.
2. Utilities include, but are not limited to, electricity, natural gas, telephone service, high speed internet service, video, water service, sewer service, storm drains, etc.
3. For utilities and utility sleeves within the proposed road surface improvements; installation shall be completed prior to road surfacing. For utilities outside of proposed road surface improvements; placement of curb and gutter prior to the installation of some utilities may be required to serve as a physical reference but in no case shall placement of sidewalk be initiated prior to the completion of all utilities.
4. It ~~shall be is~~ the Developer's responsibility to coordinate the installation schedule(s) with all the-utility companies. The standards and specifications for the installation of these utilities shall conform to all rules and regulations adopted by the respective companies and the Town.
5. Underground service connections for water and sewer shall be installed to the road Property line of each platted lot at the expense of the Applicant, as shall casings or conduits for all other underground utilities as determined by the Town Engineer.
6. All public utilities shall be constructed within the ten (10) foot public utility Easements. Multiple use on given Easements is required whenever possible~~encouraged~~. The final recorded plat shall will note all Easements.
7. Water:

A. As a condition for single home or Subdivision approval, the builder or Applicant shall install or cause to be installed the following improvements:

1. A water main in front of each parcel in size, location and with appropriate valves as outlined in this Title.
- ~~2.~~ Fire hydrants at intervals of not greater than 500 feet with each parcel not more than 250 feet from the nearest hydrant. In the event it is necessary to extend a water main so that the same fronts each parcel or to access fire hydrants within 250 feet of each parcel, then the cost of the water mains and hydrants shall be borne by the Owner who effectuates the Subdivision of his/her property.

B. Conveyance.

- ~~1.~~ 1. As a condition of Subdivision recordation under this Chapter, the Applicant shall convey to the Town of Hideout water rights that entitle the Owner to an annual quantity and rate of flow which is sufficient in amount to meet the water use requirements of the occupants of the Subdivision.

~~2.~~ 2. The volume of water required shall be calculated from the latest JSSD water use study.

8. Sewer: As a condition for single home or Subdivision approval, the builder or Applicant shall install or cause to be installed a sewer main in front of each parcel in size, location and with appropriate manholes, as outlined in this Title.

10.10.06 REQUIRED IMPROVEMENTS

The following improvements shall be constructed at the expense of the Applicant, in accordance with the provisions of this Title and the Zoning Ordinance. A performance bond as described in Section 11.06.14 Fees (and specifically detailed in the Town's Fee Schedule adopted by Resolution) shall be secured to ensure installation of required improvements. The improvements shall include:

1. Roads and road requirements:
 1. The grading and graveling of all roads and the installation of all required culverts in accordance with this Title;
 2. The hard surfacing of all roads in accordance with Town Standards;
 3. Sidewalks, curbs, planter strips and gutters in accordance with Section 10.08.16.
2. Drainage and onsite stormwater management infrastructure in accordance with Section 10.08.20.
3. Water, Sewer, Solid Waste:
 1. A potable water supply in amounts and manner as required under Section 10.06.22 of this Ordinance in accordance with the State Board of Health Standards;
 2. The installation of water and sewer mains and water and sewer laterals to each lot Property line shall be required in accordance with Town Standards;
 3. The installation of fire hydrants in accordance with Town Standards;
 4. Solid waste disposal facilities shall be provided in accordance with Town Standards.
4. Electricity, natural gas, telephone service, high speed internet service (50/50 Mbps or greater), video, water, sewer and storm drains, shall be installed in accordance with Section 10.08.26 and all other Town Standards. These utilities shall be located underground except when the Applicant demonstrates by clear and convincing evidence that underground lines and structures are not technically possible using commercially available technology. feasible. Junction boxes which are less than four (4) feet in height and which are essential to the provision of utility service are exempt from the undergrounding requirement so long as they are wholly located within a utility easement.
5. Open Space, Public Trails, and Public Space in accordance with Section 10.08.32 and Section 10.08.34.
6. Landscaping and irrigation systems in accordance with Section 10.08.36.

7. Survey Monuments. The installation of survey monuments in accordance with Town standards and shall be installed on road right-of-way lines, at road intersections, angle points of curve and block corners. They shall be spaced so as to be within sight of each other, the sight lines being contained wholly within the road limits. All monuments shall be properly set in the ground and approved by a Registered Land Surveyor.
8. Road lighting shall be installed as per Town Standards.
9. In order to preserve and maintain views within the Town, all utilities, lines, supports, and all related structures shall be installed underground. Any utility provider seeking to install new, additional, supplemental or replacement structures or systems above ground pursuant to Section 10.10.06(4) shall, upon request of the Town, attend a meeting as part of the permitting process to discuss and explore ways of preserving the then existing views or, when not technically possible, ways to minimize the impacts to then existing views within the Town. A utility provider shall comply with the Town's requests for above ground adjustments to utility structure location(s) when technically feasible, so long as such requests are based upon: (i) preservation of then existing views; or (ii) public safety.
10. Upon request, a utility provider seeking to install new, additional, or replacement structures or lines shall promptly provide, as part of any permitting process: (i) accurate drawings depicting the exact locations and approximate dimensions of all proposed above ground lines and structures; and (ii) stake out specific locations as requested by the Town. Failure to timely comply with such requests shall be grounds to deny a permit application.

File Attachments for Item:

2. Discussion and possible approval of a Franchise Agreement between Comcast and the Town of Hideout

FRANCHISE AGREEMENT
BETWEEN
THE CITY OF HIDEOUT
AND
COMCAST OF WASATCH, INC.

Table of Contents

FRANCHISE AGREEMENT.....	4
SECTION 1 - Definition of Terms	4
SECTION 2 - Grant of Authority	5
2.2. Term of Franchise.....	6
2.3. Renewal.....	6
2.4. Reservation of Authority.....	6
SECTION 3 – Construction and Maintenance of the Cable System	6
3.1. Permits and General Obligations.....	7
3.2. Conditions of Street Occupancy.....	7
3.2.1. New Grades or Lines.....	7
3.2.2. Relocation at request of Third Party.....	7
3.2.3. Restoration of Public Ways.....	7
3.2.4. Safety Requirements.....	8
3.2.5. Trimming of Trees and Shrubbery.....	8
3.2.6. Aerial and Underground Construction.....	8
3.2.7. Undergrounding and Beautification Projects.....	Error! Bookmark not defined.
SECTION 4 - Service Obligations.....	9
4.1. General Service Obligation.....	9
4.2. Programming.....	9
4.3. No Discrimination.....	9
4.4. New Developments.....	9
SECTION 5 - Fees and Charges to Customers.....	10
SECTION 6 - Customer Service Standards; Customer Bills and Privacy Protection	10
6.1. Customer Service Standards.....	10
6.2. Customer Bills.....	10
6.3. Privacy Protection.....	10
SECTION 7 - Oversight and Regulation by Franchising Authority	10
7.1. Franchise Fees.....	10
7.2. Franchise Fees Subject to Audit.....	11
7.3. Oversight of Franchise.....	11
7.4. Technical Standards.....	12
7.5. Maintenance of Books, Records, and Files.....	12
7.5.1. Books and Records.....	12
7.5.2. Proprietary Information.....	12
SECTION 8 – Transfer of Cable System or Franchise or Control of Grantee.....	13
SECTION 9 - Insurance and Indemnity	13
9.1. Insurance.....	13
9.2. Indemnification.....	13
SECTION 10 - System Description and Service	14
10.1. System Capacity.....	14
SECTION 11 - Enforcement and Termination of Franchise	14
11.1. Notice of Violation or Default.....	14
11.2. Grantee’s Right to Cure or Respond.....	14
11.3. Public Hearings.....	14
11.4. Enforcement.....	15
11.5. Technical Violation.....	15
SECTION 12 – Competitive Equity.....	16
12.1. Purposes.....	16
12.2. New Video Service Provider.....	16
12.3. Subsequent Change in Law.....	17

12.4	Effect on This Agreement.....	17
SECTION 13 - Miscellaneous Provisions	17
13.1.	Force Majeure.....	18
13.3.	Notice.	18
13.3.	Entire Agreement.....	19
13.4.	Severability.....	19
13.5.	Governing Law.....	19
13.6.	Modification.	19
13.7.	No Third-Party Beneficiaries.....	19
13.8.	No Waiver of Rights.....	20

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between Hideout City (hereinafter, “City”) Comcast of Wasatch, Inc. (hereinafter, “Grantee”).

The City, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

1.1. “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.2. “Customer” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee’s express permission.

1.3. “Effective Date” means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Term” section herein.

1.4. “FCC” means the Federal Communications Commission, or successor governmental entity thereto.

1.5. “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.6. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

1.7. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.8. “Franchising Authority” means the City or the lawful successor, transferee, designee, or assignee thereof.

1.9. “Grantee” shall mean Comcast of Wasatch, Inc.

1.10. “Gross Revenue” means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles (GAAP). Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

1.11. “Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

1.12. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

SECTION 2 - Grant of Authority

2.1. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way underground wires, cables,

conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.1.1. Subject to federal and state preemption, the provisions of this Franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this Franchise may not be unilaterally altered by the Franchising Authority through subsequent amendment to any ordinance, rule, regulation, or other enactment of the Franchising Authority, except in the lawful exercise of the Franchising Authority's police power.

2.1.2. Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the Franchising Authority that conflicts with its contractual rights under this Franchise, either now or in the future.

2.2. Term of Franchise.

The term of the Franchise granted hereunder shall be Ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal.

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Franchise Authority are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Franchise Authority shall continue to comply with all obligations and duties under the Franchise.

2.4. Reservation of Authority.

Nothing in this Franchise Agreement shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Permits and General Obligations.

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located underground and so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines.

If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify Grantee of such funding and make available such funds to the Grantee.

3.2.2. Relocation at request of Third Party.

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways.

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall promptly at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

3.2.4. Safety Requirements.

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery.

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its underground Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.2.6. Underground Construction

- (i) When required by general ordinances, resolutions, regulations or rules of the Grantor or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances, so long as such are less than fifty-four inches (54") in height, except if nationally accepted industry standards for ground-mounted appurtenances of its type require it to be taller, and are located entirely in the Public Way.
- (ii) It shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, , laying, maintaining, and repairing,its underground lines and equipment.
- (iii) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person.

3.3. Extensions of the Cable System

Nothing in this Agreement requires Grantee to build to all areas of the Franchising Authority. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately

defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

Grantee has shared with the Grantor its Cable System deployment plans which include the estimated projected dates when deployment of the Cable System will be completed and activated in various parts of the Town, which have been found to be acceptable to the Grantor. Grantee commits to using its commercially reasonable efforts to construct its Cable System within the Grantor in accordance with those plans and will meet with the Grantor, at a minimum annually, to update the Grantor on the current status of construction and anticipated timeline to completion. Nothing in this Franchise, however, requires Grantee to build-out and serve all areas of the Grantor if, in Grantee's good faith estimation, build-out and service activation cannot be completed in a commercially reasonable fashion.

SECTION 4 - Service Obligations

4.1. General Service Obligation.

Nothing in this Agreement requires Grantee to build to all areas of the Franchising Authority. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its underground network, as well as the windows during which residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

4.2. Programming.

The Grantee shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination.

The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments.

The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees, to the extent of its authority under Town codes, ordinances, and Master Development Agreements, to require the developer, as a condition of issuing the permit,

to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

SECTION 6 - Customer Service Standards; Customer Bills and Privacy Protection

6.1. Customer Service Standards.

The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills.

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection.

The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7 - Oversight and Regulation by Franchising Authority

7.1. Franchise Fees.

The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any

other video service provider providing service in the Franchise Area. The payment of franchise fees shall be made on an annual basis and shall be due forty-five (45) days after the close of each calendar year. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

7.3. Oversight of Franchise.

In accordance with applicable law, the Franchising Authority shall have the right to, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards.

The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records.

Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of three (3) years.

7.5.2. Proprietary Information.

Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. Subject to Utah Code 63G-1 *et. Seq.*, as amended from time to time, the Franchising Authority agrees to treat any confidential information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the

Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

SECTION 8 – Transfer of Cable System or Franchise or Control of Grantee

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

SECTION 9 - Insurance and Indemnity

9.1. Insurance.

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person, and Two Million Dollars (\$2,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement

9.2. Indemnification.

The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority or the County for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority or County.

SECTION 10 - System Description and Service

10.1. System Capacity.

During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming with satisfactory reception available to its customers in the Franchise Area.

SECTION 11 - Enforcement and Termination of Franchise

11.1. Notice of Violation or Default.

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2. Grantee's Right to Cure or Respond.

The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

11.3. Public Hearings.

In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to

investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.4. Enforcement.

Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

11.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.

11.5. Technical Violation.

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical"

breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.5.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.5.2. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 12 – Competitive Equity

12.1. Purposes.

The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to Franchise Authority residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to Franchise Authority residents; promote local communications infrastructure investments and economic opportunities in the Franchise Authority; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

12.2. New Video Service Provider.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchise Authority, or (ii) otherwise begins to provide video services to subscribers in the Franchise Authority (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Authority under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

12.2.2. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Authority.

12.3. Subsequent Change in Law.

If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the Franchise Authority, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Authority, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the Franchise Authority on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the Franchise Authority. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4 Effect on This Agreement.

Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Authority under Sections 12.2 or 12.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

12.5 The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 13 - Miscellaneous Provisions

13.1. Force Majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

13.2 Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeiture or revocation of the Agreement for violations of the Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Grantor and/or Subscribers.

13.3. Notice.

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

To the Grantee:

Comcast of Wasatch, Inc.
 Attn: Government Affairs
 96020 South 300 West
 Sandy UT 84070

with a copy to:

Comcast Cable
Attn.: Government Affairs Department
1701 John F. Kennedy Blvd.
Philadelphia, PA 19103

13.3. Entire Agreement.

This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law.

This Franchise Agreement shall be deemed to be executed in the State of Utah and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Utah, as applicable to contracts entered into and performed entirely within the State.

13.6. Modification.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

13.7. No Third-Party Beneficiaries.

Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8. No Waiver of Rights.

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For Franchising Authority:

By: _____

Name: _____

Title: _____

Date: _____

For Comcast _____:

By: _____

Name: _____

Title: _____

Date: _____

File Attachments for Item:

3. Consideration and possible approval of Ordinance 2024-O-XX amending sections of the Hideout Code updating sections in Chapter 1.16 Purchasing

Exhibit A

1.16 PURCHASING**1.16.010 DEFINITIONS - PURCHASING**

Unless the context requires otherwise, the terms as used in this chapter, or in the rules and regulations adopted pursuant to this chapter, shall have the following meaning:

ADEQUATE APPROPRIATION BALANCES: Sufficient fund balance which must exist in the line item appropriation of the account number against which the purchase order is charged

BIDDING: Procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipments and contractual services.

CONTRACTUAL SERVICES: Forecasts of future requirements of supplies, equipment of contractual services submitted by town departments upon request of the mayor or his designee.

LOCAL BIDDER: A firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by or pays sales to, the town.

PROFESSIONAL SERVICES : Professional and other skilled services such as auditing, architecture, engineering, surveying, appraisals, legal service, or counseling, sought or obtained from sources other than regular city employees.

PUBLIC PROPERTY: Any item of real or personal property owned by the town.

RESPONSIBLE BID: An offer, submitted by a responsible bidder, to furnish supplies, equipment or contractual services in conformity with the specifications, delivery terms, conditions and other requirements included in the invitation for bids.

RESPONSIBLE BIDDER: A bidder who submits a responsible bid; a bidder who has furnished, when requested, information and data to prove that his financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of supplies, equipment or contractual services on which he bids; and a bidder who has not violated or attempted to violate any provision of this chapter.

SUPPLIES, MATERIALS: Any and all articles or things which shall be furnished to or used by any town department.

TOWN PURCHASE ORDERS: Official documents used in committing town funds toward the purchase of supplies, equipment and contractual services.

TOWN REQUISITIONS: Standard forms used by departments providing detailed information as to quantity, description, estimated price, recommended supplier and signature authorization for requested purchases.

1.16.020 FINANCE OFFICER

The mayor is hereby appointed the finance officer of the town, and is authorized to exercise the powers conferred upon such finance officer as specified in Utah Code Annotated, as amended, as follows:

1. Authority: The mayor is hereby authorized to:
 1. Approve any payroll checks prepared for an authorized town employee hired in accordance with personnel policies established by town ordinance or resolution. The amount paid to any such authorized employee shall also be in agreement to be specific salary assigned to such employee pursuant to a salary schedule adopted by the governing body or a salary amount assigned by ordinance of the town council.
 2. Give final approval to all claims submitted for the payment of routine expenditures, such as utility bills, payroll related expenses, supplies and materials, which were purchased according to authorized purchasing procedures established by ordinance or resolution.
 3. Give final approval to all claims submitted for capital purchases which were made pursuant to established purchasing procedures, referenced in the budget document and approved by an appropriate resolution adopted for the current fiscal year budget.
2. Restrictions: The above approval authority delegated to the mayor is hereby subject to the following restrictions:
 1. No claim may be approved by the mayor which is not within the duly and legally adopted budget.
 2. No claim may be approved which was not made in accordance with personnel and purchasing procedures established by ordinance or resolution.
3. Verified Claims: The above authorization shall not prevent the governing body from approving all or part of a list of verified claims, including a specific claim in an amount in excess of the stated maximum, where certified by the finance officer.
4. Pre-audit Required: The town clerk shall pre-audit all claims pursuant to state statute requirements and shall not disburse any payments without appropriate approval. Procedures shall be established whereby documented approval is obtained as authorized by this chapter.

1.16.030 REQUISITIONS AND ESTIMATES

All persons responsible for a department in the town shall file with the town clerk, detailed requisitions or estimates of their requirements in supplies and contractual services in such a manner, at such times and for such future periods as the mayor and/or town council shall prescribe.

1.16.035 PROHIBITION AGAINST SPLITTING OR SUBDIVIDING

No contract or purchase shall be split or subdivided so as to avoid the requirements of this chapter.

1.16.037 NOT TO EXCEED AMOUNT

All contracts shall include a not to exceed amount.

1.16.040 CONTRACT, PURCHASE AND SERVICE APPROVAL REQUIREMENTS

1. ~~Contract, Ppurchase or service up to one thousand five hundred dollars (\$1,500.00) five thousand dollars (\$5,000) may shall~~ be authorized and must have the approval of the town clerk.
- 1-2. Contract, purchase or service up to five thousand dollars (\$5,000) shall be authorized and must have the approval of the public works department head.
- 2-3. ~~Contract, purchase or service Purchase of up to five thousand dollars (\$5,000.00) twenty thousand dollars (\$20,000) may shall~~ be authorized and must have the approval of the ~~town engineer or town administrator.~~
- 3-4. ~~Contract, purchase or service Purchase up to fifteen thousand dollars (\$15,000.00) thirty thousand dollars (\$30,000) may shall~~ be authorized and must have the approval of the mayor.
- 4-5. ~~Contract, purchase or service Purchase over fifteen thousand dollars (\$15,000.00) thirty thousand dollars (\$30,000) may shall~~ be authorized and must have the approval of the town council. Purchases allocated as part of the budget have received Council approval through the budget process.

1.16.045 CHANGE ORDERS.

- A. Change orders may be approved by the person in the amounts indicated above, provided the total contract price, including the change order, is within the original budget amount.
- B. If the Change Order increases the amount so that another level of approval is required, that approval shall be sought.
- C. The Mayor or Designee shall provide a full and complete accounting and description to the Council for any change order or series of change orders with respect to a project that are over \$20,000 , or for competitive bids, 20% of the original amount. If a competitive bid change order, exceeds \$30,000, Council must approve the change order.

1.16.050 COMPETITIVE (SEALED) BID OR QUOTATION REQUIREMENTS

A. Specified

Purchase of up to \$1000.00 <u>\$5,000</u>	No competitive price quotations are required.
Purchase from \$1000.00 to \$10,000.00 <u>\$5,000 to \$30,000</u>	Informal price quotations shall be obtained prior to purchase. It shall be the responsibility of each department to obtain said quotations. Quotations shall be recorded on an "Informal competitive price quotation record". At least <u>three (3)</u> quotations should be solicited if possible.

Purchases over \$10000.00 \$30,000	Formal sealed bids must be obtained prior to purchase. Requests for formal bids shall be submitted to the town clerk. The request must receive town council approval prior to the town clerk sending out notice for "formal invitation to bid" . Sealed bids shall be submitted as designed in the notice with the statement "bid for (item)" on the envelope. Bids shall be opened in public at the time and place stated in the public notice. A tabulation of all bids received shall be open for public inspection during the regular business hours for a period of not less than 30 days after the bid opening.
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B. Rejection of Bids: In its discretion, the town council may reject, without cause, any/all bids presented, and re-advertise for bids pursuant to the procedure hereinafter prescribed.

C. Award of Contracts: Except as otherwise provided herein, contracts shall be awarded by the town council to the lowest responsible bidder, except that in the event the Town Council, as part of its review and approval of the town budget, has approved a specific line item appropriation for the supplies or services, the contract may be awarded by the Town Administrator, regardless of amount, as long as the approved line item appropriation is not exceeded. In such event, the Town Administrator shall follow applicable bidding requirements before award of the bid.

~~C.~~D. In determining "lowest responsible bidder", in addition to price, the town council shall consider:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
6. The sufficiency of the financial resources and the ability of the contract to provide the service;
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

~~D.~~E. Award To Other Than Lowest Bidder: When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the town clerk as directed by the mayor and filed with the other papers relating to the transaction.

~~E.F.~~ Tie Bids: If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, the town council shall re-advertise for bids unless the matter is otherwise resolved without controversy.

~~F.G.~~ Performance Bonds: Before entering a contract, the town council shall have the authority to require a performance bond in such amount as it shall find necessary to protect the best interests of the town. The form and amount of said bond shall be described in the notice inviting bids.

1.16.055 BUILDING IMPROVEMENT OR PUBLIC WORKS PROJECTS AND DESIGN-BUILD SERVICES:

A. Notwithstanding the requirements stated above, if the estimated cost of a building improvement, public works project, or road project exceeds the bid limit (all as defined in UTAH CODE ANN. § 11-39-101, et seq. and UTAH CODE ANN. § 72-6-108 and 109), the City shall request bids as required in UTAH CODE ANN. § 11-39-101, et seq

B. BID LIMIT: The estimated dollar cost of a building improvement or public works project which, if exceeded, requires bids to be requested for the project. The bid limit is as follows:

1. For a building improvement:

a. For the year 2003, forty thousand dollars (\$40,000.00); and

b. For each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of three percent (3%) or the actual percent change in the consumer price index during the previous calendar year; and

2. For a public works project:

a. For the year 2003, one hundred twenty five thousand dollars (\$125,000.00); and

b. For each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of three percent (3%) or the actual percent change in the consumer price index during the previous calendar year.

3. For Class C roads,

a. for the year 2024, \$350,000; and

b. for each year after 2024, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the actual percent change in the National Highway Construction Cost Index during the previous calendar year.

C. The Town hereby adopts by this reference Utah Code Ann. §11-39-103 and § 63G-6a-1205(4)(i), and authorizes the Mayor or Designee to utilize the construction delivery methods known as design build services.

1.16.060 EXEMPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

1. **Specialized Contracts** which are not adapted to award by competitive bidding or proposals, such as:

a) contracts for additions to, repairs and maintenance of equipment owned by the Town, which may be more efficiently done by a certain person or firm;

b) contracts for a particular brand of equipment or product which is uniquely suited to the town's needs by reason of training of its personnel or compatibility with existing equipment or to assure standardization or a continuation of supplies or services, or

~~1. c) contracts for the purchase of used equipment or items that are unique as to quality, condition and price. Generally: Contracts which by their nature are not adapted to award by competitive bidding, such as contracts for additions to and repairs and maintenance of equipment owned by the town, which may be more efficiently added to, repaired or maintained by a certain person or firm, contract for equipment which, by reason or training of the personnel or an inventory of replacement parts maintained by the town, is compatible with the existing equipment parts maintained by the town, shall not be subject to the competitive bidding requirements of this chapter.~~

2. Sole Source/Purchases made from a single-source provider. The Town Administrator or their designee may procure from a sole source when after conducting a good faith review of available sources, determines that no other sources are reasonably available, or that competition would be unlikely to produce other acceptable offers. The Town Administrator or designee shall put that determination in writing for the file.

~~3.~~

~~2.4. Auction, Closeout, Bankruptcy Sales:~~ If the department head determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or similar sale, and ~~that it if a majority of the town council at a regular or special meeting concurs in such determination and makes the finding that a purchase at any such auction or sale will be made at a cost below the market cost in the community, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this chapter.~~

5. Public Agency Procurement. Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing, or any other public agencies of the state, shall not require bids or quotes of any type

~~3. Emergency Purchases:~~

6. Emergency Purchases: The Town Administrator, the Mayor or designee may make emergency procurements when there exists an imminent threat to public health, safety and welfare or circumstances which place the Town or its officers and agents in a position of serious legal liability; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file. The Council shall be notified of any emergency contract which would have normally required their approval at the next regularly scheduled council meeting. Emergency procurements shall be limited to those supplies, services, or construction items necessary to meet the emergency.

- ~~1.—In the case of actual emergency, the head of any department may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the department which may virtually affect the life, health or convenience of any employee or citizen of the town.~~
- ~~2.—The head of the department shall send to the mayor a full written report of the circumstances of the emergency. The report shall be filed with the town council as provided above.~~
4. **1.16.065 PROCUREMENT OF PROFESSIONAL SERVICES AND REQUEST FOR PROPOSALS:** The procurement of professional services shall be based upon qualifications ~~and shall be secured on a competitive basis to the maximum practical extent except as noted below:~~

Amount Of Contract	Request For Proposals
Up to \$ 30,000 10,000.00 per fiscal year	No RFP <u>is</u> required; competitive quotes recommended
Over \$ 30,000 10,000.00 in one fiscal year	Formal request for proposals <u>required</u>

~~The town council shall approve the award of contracts for professional services exceeding fifteen thousand dollars (\$15,000.00) in any single fiscal year.~~ Awards shall be made to the individual or firm whose proposal is determined to be the most advantageous to the town, taking into consideration price and the evaluation factors set forth in the request for proposals. Awards shall be authorized under the same requirements as 1.16.040 PURCHASE AND SERVICE APPROVAL REQUIREMENTS above.

1.16.070 PROHIBITED ACTS AND ACTIVITIES

1. Conflicts Of Interest: Elected officials, officers and employees that own a substantial interest in a business which does or anticipates doing business with the town must disclose such interest prior to discussion by the governing body.
2. Collusion Among Bidders: Any agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition, by agreement to bid a fixed price, or otherwise, shall render the bid of such bidders void.
3. Advance Disclosures: Any disclosures in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the town council or a town employee, shall render void the advertisement or request for bids.
4. Gratuities: The acceptance of any gratuity in the form of cash, merchandise or any other thing of value by an official or employee of the town from any vendor, contractor or prospective vendor or contractor, shall be cause for removal or other disciplinary action.

~~5.—Competitive Bid Required for Building Improvements:~~

1. ~~Bid Requirements: All purchases and contracts, whether by sealed bid, quotation or negotiation, shall be made on a competitive basis to the maximum practical extent, except as noted below:~~

Amount Of Purchase	Bid Required
Up to \$1,000.00	No bid required-competitive quotes recommended
\$1,001.00 to \$40,000.00	No bid required-competitive quotes recommended
Over \$40,000.00	Formal bid required

2. ~~Amounts In Excess Of Forty Thousand Dollars:~~

- ~~1. If the improvement is a building improvement and the estimated cost of the improvement is in excess of forty thousand dollars (\$40,000.00), the town shall, if it determines to do the work, only do so by contract let to the lowest responsible bidder after publication of notice at least twice in a newspaper of general circulation printed and published in the town at least five (5) days prior to the opening of bids.~~
 - ~~2. The term "lowest responsible bidder" means any prime contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a construction project, who is the lowest bidder, who has furnished a bid bond or equivalent in money as a condition to the award of a prime contract and who furnishes a payment and performance bond as required by law.~~
 - ~~3. When the cost of a contemplated improvement exceeds the bid requirement sum, the job cannot be divided into smaller jobs to avoid having to bid the job.~~
 - ~~4. The town shall send out all bids based on the information provided by staff and shall keep a list of the date the bids were mailed and a list of the vendors to whom the bids were mailed. The town shall also receive all bids and keep a list of the date and time they were received. Whenever practical, the opening of the bids shall be made in the presence of the staff and the town clerk.~~
3. ~~Amounts Up To Forty Thousand Dollars But In Excess Of One Thousand Dollars: If the improvement is a building improvement and the estimated cost of the improvement is forty thousand dollars (\$40,000.00) or less, but in excess of one thousand dollars (\$1,000.00), the town may make the improvement without calling for bid, except as otherwise provided within this chapter.~~

~~4.—Purchases Up To One Thousand Dollars: Competitive Bid Not Required: These purchases shall be obtained by using purchase orders issued by the staff to obtain supplies and services, which have been approved as part of the budget.~~

~~1.—Written competitive bids are not required, but staff are encouraged to obtain competitive quotations.~~

~~2.—The employee receiving the supplies shall sign the delivery ticket to designate that he/she obtained the supplies or services in good condition.~~

~~6.—Competitive Bid Required for Public Works Projects:~~

~~1.—Requirements: All public works projects, whether by sealed bid, quotation or negotiation, shall be made on a competitive basis to the maximum practical extent except as noted below:~~

Amount Of Purchase	Bid Requirement
Up to \$1,000.00	No bid required – competitive quotes required
\$1,001.00 to \$125,000.00	Informal bids required (2 if possible)
Over \$125,000.00	Formal bid required

~~2.—Amounts In Excess Of One Hundred Twenty Five Thousand Dollars:~~

~~1.—If the improvement is a public works project and the estimated cost of the improvement or maintenance of existing facilities is in excess of one hundred twenty five thousand dollars (\$125,000.00), the town shall, if it determines to do the work, only do so by contract let to the lowest responsible bidder after publication of notice at least twice in a newspaper of general circulation printed and published in the town at least five (5) days prior to the opening of bids. The cost shall be estimated by the town engineer.~~

~~2.—The term "lowest responsible bidder" means any prime contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a construction project, who is the low bidder, who has furnished a bid bond or equivalent in money as a condition to the award of a prime contract and who furnishes a payment and performance bond as required by law.~~

~~3.—When the cost of a contemplated improvement exceeds the bid requirement sum, the job cannot be divided into smaller jobs to avoid having to bid the job.~~

~~4.—The town shall send out all bids based on the information provided by the staff and shall keep a list of the date the bids were mailed and a list of the vendors to whom the bids were mailed. The town shall also receive all bids and keep a list~~

~~of the date and time they were received. Whenever practical, the opening of the bids shall be made in the presence of the staff and the town clerk.~~

- ~~3.—Amounts Up To One Hundred Twenty Five Thousand Dollars, But In Excess Of One Thousand Dollars: If the improvement is a public works project and the estimated cost of the project is one hundred twenty five thousand dollars (\$125,000.00) or less, but in excess of one thousand dollars (\$1,000.00), the town may make the improvement without calling for bid, except as otherwise provided within this chapter.~~
- ~~4.—Purchases Up To One Thousand Dollars; Competitive Bid Not Required: These purchases shall be obtained by using purchase orders issued by the department head to obtain supplies and services, which have been approved as part of the budget.~~
 - ~~1.—Written competitive bids are not required, but the staff are encouraged to obtain competitive quotations.~~
 - ~~2.—The employee receiving the supplies shall sign the delivery ticket to designate that he/she obtained the supplies or services in good condition.~~

TOWN OF HIDEOUT
ORDINANCE #2024-O-09

AN ORDINANCE AMENDING SECTIONS OF THE HIDEOUT CODE UPDATING
SECTIONS IN CHAPTER 1.16 PURCHASING

WHEREAS, Town Council wishes to update its code related to its purchasing chapter;

WHEREAS, the Council desires to maintain the most efficient process possible for procurement of services, supplies and equipment while balancing oversight by the administrator, the mayor or the council; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens to update the policy regarding procurement quotation requirements, competitive bid requirements, and removing council approval for requests for proposals and competitive bid openings;

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens to update the policy regarding procurement of services, supplies and equipment.

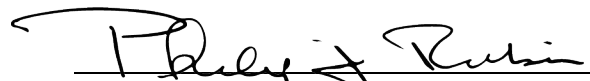
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF HIDEOUT, UTAH, THAT:

SECTION I: Amendment. Chapter 1.16 Purchasing is hereby amended as redlined in Exhibit A.

SECTION II: Effective Date. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED by the Town Council of Hideout, Utah, this 8th day of August in the year 2024.

TOWN OF HIDEOUT


Phil Rubin, Mayor

ATTEST:

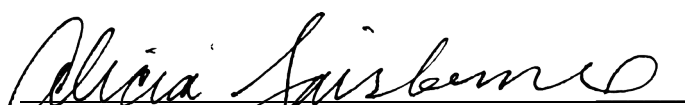

Alicia Fairbourne, Recorder for the Town of Hideout



Exhibit A

1.16 PURCHASING**1.16.010 DEFINITIONS - PURCHASING**

Unless the context requires otherwise, the terms as used in this chapter, or in the rules and regulations adopted pursuant to this chapter, shall have the following meaning:

ADEQUATE APPROPRIATION BALANCES: Sufficient fund balance which must exist in the line item appropriation of the account number against which the purchase order is charged

BIDDING: Procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipments and contractual services.

CONTRACTUAL SERVICES: Forecasts of future requirements of supplies, equipment of contractual services submitted by town departments upon request of the mayor or his designee.

LOCAL BIDDER: A firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by or pays sales to, the town.

PROFESSIONAL SERVICES : Professional and other skilled services such as auditing, architecture, engineering, surveying, appraisals, legal service, or counseling, sought or obtained from sources other than regular city employees.

PUBLIC PROPERTY: Any item of real or personal property owned by the town.

RESPONSIBLE BID: An offer, submitted by a responsible bidder, to furnish supplies, equipment or contractual services in conformity with the specifications, delivery terms, conditions and other requirements included in the invitation for bids.

RESPONSIBLE BIDDER: A bidder who submits a responsible bid; a bidder who has furnished, when requested, information and data to prove that his financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of supplies, equipment or contractual services on which he bids; and a bidder who has not violated or attempted to violate any provision of this chapter.

SUPPLIES, MATERIALS: Any and all articles or things which shall be furnished to or used by any town department.

TOWN PURCHASE ORDERS: Official documents used in committing town funds toward the purchase of supplies, equipment and contractual services.

TOWN REQUISITIONS: Standard forms used by departments providing detailed information as to quantity, description, estimated price, recommended supplier and signature authorization for requested purchases.

1.16.020 FINANCE OFFICER

The mayor is hereby appointed the finance officer of the town, and is authorized to exercise the powers conferred upon such finance officer as specified in Utah Code Annotated, as amended, as follows:

1. Authority: The mayor is hereby authorized to:
 1. Approve any payroll checks prepared for an authorized town employee hired in accordance with personnel policies established by town ordinance or resolution. The amount paid to any such authorized employee shall also be in agreement to be specific salary assigned to such employee pursuant to a salary schedule adopted by the governing body or a salary amount assigned by ordinance of the town council.
 2. Give final approval to all claims submitted for the payment of routine expenditures, such as utility bills, payroll related expenses, supplies and materials, which were purchased according to authorized purchasing procedures established by ordinance or resolution.
 3. Give final approval to all claims submitted for capital purchases which were made pursuant to established purchasing procedures, referenced in the budget document and approved by an appropriate resolution adopted for the current fiscal year budget.
2. Restrictions: The above approval authority delegated to the mayor is hereby subject to the following restrictions:
 1. No claim may be approved by the mayor which is not within the duly and legally adopted budget.
 2. No claim may be approved which was not made in accordance with personnel and purchasing procedures established by ordinance or resolution.
3. Verified Claims: The above authorization shall not prevent the governing body from approving all or part of a list of verified claims, including a specific claim in an amount in excess of the stated maximum, where certified by the finance officer.
4. Pre-audit Required: The town clerk shall pre-audit all claims pursuant to state statute requirements and shall not disburse any payments without appropriate approval. Procedures shall be established whereby documented approval is obtained as authorized by this chapter.

1.16.030 REQUISITIONS AND ESTIMATES

All persons responsible for a department in the town shall file with the town clerk, detailed requisitions or estimates of their requirements in supplies and contractual services in such a manner, at such times and for such future periods as the mayor and/or town council shall prescribe.

1.16.035 PROHIBITION AGAINST SPLITTING OR SUBDIVIDING

No contract or purchase shall be split or subdivided so as to avoid the requirements of this chapter.

1.16.037 NOT TO EXCEED AMOUNT

All contracts shall include a not to exceed amount.

1.16.040 CONTRACT, PURCHASE AND SERVICE APPROVAL REQUIREMENTS

1. Contract, Ppurchase or service up to ~~one thousand five hundred dollars (\$1,500.00)~~ five thousand dollars (\$5,000) may shall be authorized and must have the approval of the town clerk.
- 1.2. Contract, purchase or service up to five thousand dollars (\$5,000) shall be authorized and must have the approval of the public works department head.
- 2.3. Contract, purchase or service Purchase of up to ~~five thousand dollars (\$5,000.00)~~ twenty thousand dollars (\$20,000) may shall be authorized and must have the approval of the ~~town engineer or~~ town administrator.
- 3.4. Contract, purchase or servicePurchase up to ~~fifteen thousand dollars (\$15,000.00)~~ thirty-thousand dollars (\$30,000) may shall be authorized and must have the approval of the mayor.
- 4.5. Contract, purchase or service Purchase over ~~fifteen thousand dollars (\$15,000.00)~~ thirty-thousand dollars (\$30,000) may shall be authorized and must have the approval of the town council. Purchases allocated as part of the budget have received Council approval through the budget process.

1.16.045 CHANGE ORDERS.

- A. Change orders may be approved by the person in the amounts indicated above, provided the total contract price, including the change order, is within the original budget amount.
- B. If the Change Order increases the amount so that another level of approval is required, that approval shall be sought.
- C. The Mayor or Designee shall provide a full and complete accounting and description to the Council for any change order or series of change orders with respect to a project that are over \$20,000 , or for competitive bids, 20% of the original amount. If a competitive bid change order, exceeds \$30,000, Council must approve the change order.

1.16.050 COMPETITIVE (SEALED) BID OR QUOTATION REQUIREMENTS

A. Specified

Purchase of up to \$1000.00 <u>\$5,000</u>	No competitive price quotations are required.
Purchase from \$1000.00 to \$10,000.00 <u>\$5,000 to \$30,000</u>	Informal price quotations shall be obtained prior to purchase. It shall be the responsibility of each department to obtain said quotations. Quotations shall be recorded on an "Informal competitive price quotation record". At least <u>three (3)</u> quotations should be solicited if possible.

Purchases over \$10000.00 <u>\$30,000</u>	Formal sealed bids must be obtained prior to purchase. Requests for formal bids shall be submitted to the town clerk. The request must receive town council approval prior to the town clerk sending out notice for "formal invitation to bid" . Sealed bids shall be submitted as designed in the notice with the statement "bid for (item)" on the envelope. Bids shall be opened in public at the time and place stated in the public notice. A tabulation of all bids received shall be open for public inspection during the regular business hours for a period of not less than 30 days after the bid opening.
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B. Rejection of Bids: In its discretion, the town council may reject, without cause, any/all bids presented, and re-advertise for bids pursuant to the procedure hereinafter prescribed.

C. Award of Contracts: Except as otherwise provided herein, contracts shall be awarded by the town council to the lowest responsible bidder, except that in the event the Town Council, as part of its review and approval of the town budget, has approved a specific line item appropriation for the supplies or services, the contract may be awarded by the Town Administrator, regardless of amount, as long as the approved line item appropriation is not exceeded. In such event, the Town Administrator shall follow applicable bidding requirements before award of the bid.

D. In determining "lowest responsible bidder", in addition to price, the town council shall consider:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
6. The sufficiency of the financial resources and the ability of the contract to provide the service;
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

D.E. Award To Other Than Lowest Bidder: When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the town clerk as directed by the mayor and filed with the other papers relating to the transaction.

E.F. Tie Bids: If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, the town council shall re-advertise for bids unless the matter is otherwise resolved without controversy.

F.G. Performance Bonds: Before entering a contract, the town council shall have the authority to require a performance bond in such amount as it shall find necessary to protect the best interests of the town. The form and amount of said bond shall be described in the notice inviting bids.

1.16.055 BUILDING IMPROVEMENT OR PUBLIC WORKS PROJECTS AND DESIGN-BUILD SERVICES:

A. Notwithstanding the requirements stated above, if the estimated cost of a building improvement, public works project, or road project exceeds the bid limit (all as defined in UTAH CODE ANN. § 11-39-101, et seq. and UTAH CODE ANN. § 72-6-108 and 109), the City shall request bids as required in UTAH CODE ANN. § 11-39-101, et seq

B. BID LIMIT: The estimated dollar cost of a building improvement or public works project which, if exceeded, requires bids to be requested for the project. The bid limit is as follows:

1. For a building improvement:

a. For the year 2003, forty thousand dollars (\$40,000.00); and

b. For each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of three percent (3%) or the actual percent change in the consumer price index during the previous calendar year; and

2. For a public works project:

a. For the year 2003, one hundred twenty five thousand dollars (\$125,000.00); and

b. For each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of three percent (3%) or the actual percent change in the consumer price index during the previous calendar year.

3. For Class C roads,

a. for the year 2024, \$350,000; and

b. for each year after 2024, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the actual percent change in the National Highway Construction Cost Index during the previous calendar year.

C. The Town hereby adopts by this reference Utah Code Ann. §11-39-103 and § 63G-6a-1205(4)(i), and authorizes the Mayor or Designee to utilize the construction delivery methods known as design build services.

1.16.060 EXEMPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

1. **Specialized Contracts** which are not adapted to award by competitive bidding or proposals, such as:

a) contracts for additions to, repairs and maintenance of equipment owned by the Town, which may be more efficiently done by a certain person or firm;

b) contracts for a particular brand of equipment or product which is uniquely suited to the town's needs by reason of training of its personnel or compatibility with existing equipment or to assure standardization or a continuation of supplies or services, or

~~1. c) contracts for the purchase of used equipment or items that are unique as to quality, condition and price. Generally: Contracts which by their nature are not adapted to award by competitive bidding, such as contracts for additions to and repairs and maintenance of equipment owned by the town, which may be more efficiently added to, repaired or maintained by a certain person or firm, contract for equipment which, by reason or training of the personnel or an inventory of replacement parts maintained by the town, is compatible with the existing equipment parts maintained by the town, shall not be subject to the competitive bidding requirements of this chapter.~~

2. Sole Source/Purchases made from a single-source provider. The Town Administrator or their designee may procure from a sole source when after conducting a good faith review of available sources, determines that no other sources are reasonably available, or that competition would be unlikely to produce other acceptable offers. The Town Administrator or designee shall put that determination in writing for the file.

~~3.~~

2.4. Auction, Closeout, Bankruptcy Sales: If the department head determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or similar sale, and that it if a majority of the town council at a regular or special meeting concurs in such determination and makes the finding that a purchase at any such auction or sale will be made at a cost below the market cost in the community, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this chapter.

5. Public Agency Procurement. Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing, or any other public agencies of the state, shall not require bids or quotes of any type

~~3. Emergency Purchases:~~

6. Emergency Purchases: The Town Administrator, the Mayor or designee may make emergency procurements when there exists an imminent threat to public health, safety and welfare or circumstances which place the Town or its officers and agents in a position of serious legal liability; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file. The Council shall be notified of any emergency contract which would have normally required their approval at the next regularly scheduled council meeting. Emergency procurements shall be limited to those supplies, services, or construction items necessary to meet the emergency.

- ~~1.—In the case of actual emergency, the head of any department may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the department which may virtually affect the life, health or convenience of any employee or citizen of the town.~~
- ~~2.—The head of the department shall send to the mayor a full written report of the circumstances of the emergency. The report shall be filed with the town council as provided above.~~
4. **1.16.065 PROCUREMENT OF PROFESSIONAL SERVICES AND REQUEST FOR PROPOSALS:** The procurement of professional services shall be based upon qualifications ~~and shall be secured on a competitive basis to the maximum practical extent except as noted below:~~

Amount Of Contract	Request For Proposals
Up to \$ 30,000 10,000.00 per fiscal year	No RFP <u>is</u> required; competitive quotes recommended
Over \$ 30,000 10,000.00 in one fiscal year	Formal request for proposals <u>required</u>

~~The town council shall approve the award of contracts for professional services exceeding fifteen thousand dollars (\$15,000.00) in any single fiscal year.~~ Awards shall be made to the individual or firm whose proposal is determined to be the most advantageous to the town, taking into consideration price and the evaluation factors set forth in the request for proposals. Awards shall be authorized under the same requirements as 1.16.040 PURCHASE AND SERVICE APPROVAL REQUIREMENTS above.

1.16.070 PROHIBITED ACTS AND ACTIVITIES

1. Conflicts Of Interest: Elected officials, officers and employees that own a substantial interest in a business which does or anticipates doing business with the town must disclose such interest prior to discussion by the governing body.
2. Collusion Among Bidders: Any agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition, by agreement to bid a fixed price, or otherwise, shall render the bid of such bidders void.
3. Advance Disclosures: Any disclosures in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the town council or a town employee, shall render void the advertisement or request for bids.
4. Gratuities: The acceptance of any gratuity in the form of cash, merchandise or any other thing of value by an official or employee of the town from any vendor, contractor or prospective vendor or contractor, shall be cause for removal or other disciplinary action.

~~5.—Competitive Bid Required for Building Improvements:~~

1. ~~Bid Requirements: All purchases and contracts, whether by sealed bid, quotation or negotiation, shall be made on a competitive basis to the maximum practical extent, except as noted below:~~

Amount Of Purchase	Bid Required
Up to \$1,000.00	No bid required-competitive quotes recommended
\$1,001.00 to \$40,000.00	No bid required-competitive quotes recommended
Over \$40,000.00	Formal bid required

2. ~~Amounts In Excess Of Forty Thousand Dollars:~~

- ~~1. If the improvement is a building improvement and the estimated cost of the improvement is in excess of forty thousand dollars (\$40,000.00), the town shall, if it determines to do the work, only do so by contract let to the lowest responsible bidder after publication of notice at least twice in a newspaper of general circulation printed and published in the town at least five (5) days prior to the opening of bids.~~
 - ~~2. The term "lowest responsible bidder" means any prime contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a construction project, who is the lowest bidder, who has furnished a bid bond or equivalent in money as a condition to the award of a prime contract and who furnishes a payment and performance bond as required by law.~~
 - ~~3. When the cost of a contemplated improvement exceeds the bid requirement sum, the job cannot be divided into smaller jobs to avoid having to bid the job.~~
 - ~~4. The town shall send out all bids based on the information provided by staff and shall keep a list of the date the bids were mailed and a list of the vendors to whom the bids were mailed. The town shall also receive all bids and keep a list of the date and time they were received. Whenever practical, the opening of the bids shall be made in the presence of the staff and the town clerk.~~
3. ~~Amounts Up To Forty Thousand Dollars But In Excess Of One Thousand Dollars: If the improvement is a building improvement and the estimated cost of the improvement is forty thousand dollars (\$40,000.00) or less, but in excess of one thousand dollars (\$1,000.00), the town may make the improvement without calling for bid, except as otherwise provided within this chapter.~~

~~4.—Purchases Up To One Thousand Dollars: Competitive Bid Not Required: These purchases shall be obtained by using purchase orders issued by the staff to obtain supplies and services, which have been approved as part of the budget.~~

~~1.—Written competitive bids are not required, but staff are encouraged to obtain competitive quotations.~~

~~2.—The employee receiving the supplies shall sign the delivery ticket to designate that he/she obtained the supplies or services in good condition.~~

~~6.—Competitive Bid Required for Public Works Projects:~~

~~1.—Requirements: All public works projects, whether by sealed bid, quotation or negotiation, shall be made on a competitive basis to the maximum practical extent except as noted below:~~

Amount Of Purchase	Bid Requirement
Up to \$1,000.00	No bid required – competitive quotes required
\$1,001.00 to \$125,000.00	Informal bids required (2 if possible)
Over \$125,000.00	Formal bid required

~~2.—Amounts In Excess Of One Hundred Twenty Five Thousand Dollars:~~

~~1.—If the improvement is a public works project and the estimated cost of the improvement or maintenance of existing facilities is in excess of one hundred twenty five thousand dollars (\$125,000.00), the town shall, if it determines to do the work, only do so by contract let to the lowest responsible bidder after publication of notice at least twice in a newspaper of general circulation printed and published in the town at least five (5) days prior to the opening of bids. The cost shall be estimated by the town engineer.~~

~~2.—The term "lowest responsible bidder" means any prime contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a construction project, who is the low bidder, who has furnished a bid bond or equivalent in money as a condition to the award of a prime contract and who furnishes a payment and performance bond as required by law.~~

~~3.—When the cost of a contemplated improvement exceeds the bid requirement sum, the job cannot be divided into smaller jobs to avoid having to bid the job.~~

~~4.—The town shall send out all bids based on the information provided by the staff and shall keep a list of the date the bids were mailed and a list of the vendors to whom the bids were mailed. The town shall also receive all bids and keep a list~~

~~of the date and time they were received. Whenever practical, the opening of the bids shall be made in the presence of the staff and the town clerk.~~

- ~~3.—Amounts Up To One Hundred Twenty Five Thousand Dollars, But In Excess Of One Thousand Dollars: If the improvement is a public works project and the estimated cost of the project is one hundred twenty five thousand dollars (\$125,000.00) or less, but in excess of one thousand dollars (\$1,000.00), the town may make the improvement without calling for bid, except as otherwise provided within this chapter.~~
- ~~4.—Purchases Up To One Thousand Dollars; Competitive Bid Not Required: These purchases shall be obtained by using purchase orders issued by the department head to obtain supplies and services, which have been approved as part of the budget.~~
 - ~~1.—Written competitive bids are not required, but the staff are encouraged to obtain competitive quotations.~~
 - ~~2.—The employee receiving the supplies shall sign the delivery ticket to designate that he/she obtained the supplies or services in good condition.~~

File Attachments for Item:

4. Discussion, consideration and possible approval of a contract award for 2024 street maintenance bid

2024 Street Maintenance

Owner: Town of Hideout
 Engineer: Hansen, Allen & Luce, Inc.
 Bid Opening Date: 7/29/2024
 Project No.: 534.07.100



Bid Schedule				Asphalt Preservation		Bonneville Asphalt & Repair LLC		CKC Operations (Disqualified)		Sumsion Construction, LC		Average	
Item No.	Description	Estimated Quantity	Unit	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount	Bid Unit Price	Bid Amount
1	Mobilization	1	LS	\$ 4,130.00	\$ 4,130.00	\$ 2,000.00	\$ 2,000.00	\$ 8,000.00	\$ 8,000.00	\$ 10,000.00	\$ 10,000.00	\$ 6,032.50	\$ 6,032.50
2	Traffic Planning and Control	1	LS	\$ 3,225.00	\$ 3,225.00	\$ 5,000.00	\$ 5,000.00	\$ 7,000.00	\$ 7,000.00	\$ 15,500.00	\$ 15,500.00	\$ 7,681.25	\$ 7,681.25
3	Pothole Repairs per ST-14	5800	SF	\$ 7.70	\$ 44,660.00	\$ 7.00	\$ 40,600.00	\$ 5.86	\$ 33,988.00	\$ 20.00	\$ 116,000.00	\$ 10.14	\$ 58,812.00
4	Subgrade Restoration	2000	SF	\$ 20.80	\$ 41,600.00	\$ 5.00	\$ 10,000.00	Failed to Bid	Failed to Bid	\$ 15.00	\$ 30,000.00	\$ 13.60	\$ 27,200.00
5	Crack Sealing per APWA Plan 256	23300	LF	\$ 0.50	\$ 11,650.00	\$ 1.00	\$ 23,300.00	\$ 0.45	\$ 10,485.00	\$ 0.65	\$ 15,145.00	\$ 0.65	\$ 15,145.00
6	4-inch Double Yellow Traffic Stripping	17200	LF	\$ 0.62	\$ 10,664.00	\$ 0.89	\$ 15,308.00	\$ 0.19	\$ 3,268.00	\$ 0.85	\$ 14,620.00	\$ 0.64	\$ 10,965.00
Total of All Unit Price Bid Items					\$ 115,929.00	\$ 96,208.00			\$ 62,741.00		\$ 201,265.00		\$ 137,800.67



SECTION 01 11 00
NOTICE OF AWARD

Date of Issuance:

Owner: Town of Hideout
 Engineer: Hansen, Allen & Luce Engineers Engineer's Project No.: 534.07.100
 Project: 2024 Street Maintenance
 Bidder: Bonneville Asphalt & Repair LLC
 Bidder's Mailing: PO Box 186 Orem, UT 84059
 Bidder's Address: 1380 West 200 South, Lindon, UT 84042

You are notified that OWNER has accepted your Bid dated 7/26/2024 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

City Wide Road Improvements project which includes furnishing and placing emulsified asphalt, aggregate cover, and bituminous flush coat materials, and completing temporary pavement markings on roads through Hideout City as presented in the Drawings.

The Contract Price of the awarded Contract is based on the Bid Unit Prices provided on the submitted bid. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

One unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☐ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner one counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): None

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

Within 10 days after you comply with the above conditions, OWNER will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **Town of Hideout**

By (signature): _____

Name (printed): _____

Title: _____

Copy: Engineer

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TOWN OF HIDEOUT

2024 STREET MAINTENANCE

PROJECT MANUAL

July 2024

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TOWN OF HIDEOUT

2024 STREET MAINTENANCE

JULY - 2024

PROJECT MANUAL



Gordon L. Miner, P.E.

HANSEN, ALLEN, & LUCE, INC.
Consultants/Engineers
859 West South Jordan Parkway – Ste 200
South Jordan, Utah 84095
(801) 566-5599

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SECTION 00 01 10
TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE(S)</u>
00 01 01 Inside Cover	00 01 01 - 1 to 1
00 01 10 Table of Contents	00 01 10 - 1 to 2
 PART 1 - BIDDING REQUIREMENTS	
00 11 13 Advertisement for Bids.....	00 11 13 - 1 to 2
00 21 13 Instructions to Bidders	00 21 13 - 1 to 10
00 41 00 Bid Form.....	00 41 00 - 1 to 4
00 43 13 Bid Bond.....	00 43 13 - 1 to 2
 PART 2 - CONTRACT FORMS	
00 51 00 Notice of Award	00 51 00 - 1 to 1
00 52 00 Agreement.....	00 52 00 - 1 to 7
00 55 00 Notice to Proceed	00 55 00 - 1 to 1
00 61 00 Performance Bond.....	00 61 00 - 1 to 4
00 61 50 Payment Bond	00 61 50 - 1 to 4
00 62 50 Certification of Substantial Completion	00 62 50 - 1 to 1
 PART 3 - CONTRACT CONDITIONS	
00 72 00 General Conditions Cover.....	00 72 00 - 1 to 2
00 72 00 General Conditions Table of Contents	00 72 00 - i to iv
00 72 00 General Conditions	00 72 00 - 1 to 72
00 94 10 Change Order.....	00 94 10 - 1 to 2
 PART 4 - TECHNICAL SPECIFICATIONS	
DIVISION 1 - GENERAL REQUIREMENTS	
01 11 00 Summary of Work	01 11 00 - 1 to 1
01 22 00 Measurement and Payment.....	01 22 00 - 1 to 3
01 30 00 Administrative Requirements	01 30 00 - 1 to 3
01 33 00 Submittal Procedures	01 33 00 - 1 to 6
01 42 19 Reference Standards.....	01 42 19 - 1 to 2
01 45 00 Quality Control and Materials Testing	01 45 00 - 1 to 4
01 45 23 Testing Agency Services	01 45 23 - 1 to 3
01 50 00 Temporary Construction Utilities and Environmental Controls	01 50 00 - 1 to 6
01 50 30 Protection of Existing Facilities	01 50 30 - 1 to 6
01 55 26 Traffic Control	01 55 26 - 1 to 2
01 56 00 Dust Control	01 56 00 - 1 to 2
01 60 00 Product Requirements	01 60 00 - 1 to 3
01 71 13 Mobilization.....	01 71 13 - 1 to 2
01 78 50 Project Closeout	01 78 50 - 1 to 9

DIVISIONS 2 through 31 (Not Used)

DIVISION 32 - EXTERIOR IMPROVEMENTS

32 17 23 Pavement Marking..... 32 17 23 - 1 to 5

DIVISION 33 through 50 (Not Used)

PART 5 – DRAWINGS

Map of Improvement Locations
ST-14 Bituminous Concrete Patch
APWA Plan 265 – Crack Sealing

PART 1

BIDDING REQUIREMENTS

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SECTION 00 11 13
ADVERTISEMENT FOR BIDS

General Notice

Town of Hideout (OWNER) is requesting Bids for the construction of the following Project:

2024 Street Maintenance

Bids for the construction of the Project will be received at the Hideout Town Hall located at 10860 N Hideout Trail, Hideout, UT 84036, until **29, July 2024 at 2:00 pm** local time. At that time the Bids received will be publicly opened and read.

The Project includes the following Work:

Roadway maintenance and repair throughout Hideout Utah including pothole repair, crack sealing, and installation of double yellow traffic striping.

Obtaining the Bidding Documents

Information and Bidding Documents for the Project can be found at the following designated website:

Utah Public Procurement Place (UP3)

Bidding Documents may be downloaded from the designated website. Prospective Bidders are urged to register with the designated website as a plan holder, even if Bidding Documents are obtained from a plan room or source other than the designated website in either electronic or paper format. The designated website will be updated periodically with addenda, lists of registered plan holders, reports, and other information relevant to submitting a Bid for the Project. All official notifications, addenda, and other Bidding Documents will be offered only through the designated website. Neither OWNER nor ENGINEER will be responsible for Bidding Documents, including addenda, if any, obtained from sources other than the designated website.

Pre-bid Conference

A pre-bid conference will not be held.

Instructions to Bidders.

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to Section 00 21 13 - Instructions to Bidders that are included in the Bidding Documents.

This Advertisement is issued by:

OWNER: **Town of Hideout**
By: **Dan Allen**
Title: **Director of Public Works**
Date: **July 11, 2024**

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SECTION 00 21 13
INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT

ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.

ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.
- 2.03 Bidder may register as a plan holder and obtain complete sets of Bidding Documents, in the number and format stated in the Advertisement or invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by OWNER.
- 2.04 *Electronic Documents*
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.
1. Bidding Documents will be provided in PDF (Portable Document Format) (.pdf). It is the intent of ENGINEER and OWNER that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because OWNER and ENGINEER cannot totally control the transmission and receipt of Electronic Documents nor the CONTRACTOR's means of reproduction of such documents, OWNER and ENGINEER cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.06.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further,

assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within five days of OWNER's request, Bidder must submit the following information:
- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
 - B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.
 - C. Bidder's state or other CONTRACTOR license number, if applicable.
 - D. Subcontractor and Supplier qualification information.
 - E. Other required information regarding qualifications.
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of OWNER to seek additional pertinent information regarding Bidder's qualifications.

ARTICLE 4—PRE-BID CONFERENCE

- 4.01 A pre-bid conference will not be conducted for this Project.

ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

5.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by OWNER for the use of the CONTRACTOR. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by CONTRACTOR.

5.02 *Existing Site Conditions*

- A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*
 - 1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
 - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
 - b. Those drawings known to OWNER 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.

- c. Reports and drawings known to OWNER relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
 - d. Technical Data contained in such reports and drawings.
2. OWNER will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
 3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

B. *Underground Facilities*

1. No information or data is indicated in the Bidding Documents with respect to existing Underground Facilities at, or contiguous to, the Site.

5.03 *Other Site-related Documents*

- A. No other Site-related documents are available.

5.04 *Site Visit and Testing by Bidders*

- A. Bidder is required to visit the Site and conduct a thorough visual examination of the Site and adjacent areas. During the visit the Bidder must not disturb any ongoing operations at the Site.
- B. Bidders visiting the Site are required to arrange their own transportation to the Site.
- C. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- D. On request, and to the extent OWNER has control over the Site, and schedule permitting, OWNER will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. OWNER will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on OWNER's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.
- E. Bidder must comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by OWNER or by property OWNERS or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- F. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

5.05 *OWNER's Safety Program*

- A. Site visits and work at the Site may be governed by an OWNER safety program. If an OWNER safety program exists, it will be noted in the Supplementary Conditions.

5.06 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which OWNER is aware (if any) that is to be performed at the Site by OWNER or others (such as utilities and other prime CONTRACTORS) and relates to the Work contemplated by these Bidding Documents. If OWNER is party to a written contract for such other work, then on request, OWNER will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Express Representations and Certifications in Bid Form, Agreement*

- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications, and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Bidder (as CONTRACTOR) will make similar express representations and certifications when it executes the Agreement.

ARTICLE 7—INTERPRETATIONS AND ADDENDA

- 7.01 OWNER on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to ENGINEER in writing. Contact information and submittal procedures for such questions are as follows:
 - A. **Gordon Minor - gminer@halengineers.com**
- 7.03 Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than seven days prior to the date for opening of Bids may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

ARTICLE 8—BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to OWNER in an amount of **five** percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of

Paragraph 6.01 of the General Conditions. Such Bid bond will be issued in the form included in the Bidding Documents.

- 8.02 The Bid security of the apparent Successful Bidder will be retained until OWNER awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within 15 days after the Notice of Award, OWNER may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of OWNER's damages in the case of a damages-form bond. Such forfeiture will be OWNER's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of 7 days after the Effective Date of the Contract or 31 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that OWNER believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

ARTICLE 9—CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.
- 9.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 10—SUBSTITUTE AND “OR EQUAL” ITEMS

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows CONTRACTOR to request that ENGINEER authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by ENGINEER until after the Effective Date of the Contract.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the CONTRACTOR will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the

possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 11.01 The apparent Successful Bidder, and any other Bidder so requested, must submit to OWNER a list of all Subcontractors or Suppliers proposed for portions of the Work within five days after Bid opening.
- 11.02 If requested by OWNER, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and OWNER may consider such price adjustment in evaluating Bids and making the Contract award.
- 11.03 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor or Supplier, so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

ARTICLE 12—PREPARATION OF BID

- 12.01 The Bid Form is included with the Bidding Documents.
 - A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. OWNER reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 12.03 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.

- 12.04 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.05 A Bid by an individual must show the Bidder's name and official address.
- 12.06 A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.07 All names must be printed in ink below the signatures.
- 12.08 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.09 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 12.10 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 12.11 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state CONTRACTOR license number, if any, must also be shown on the Bid Form.

ARTICLE 13—BASIS OF BID

13.01 *Unit Price*

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity", which OWNER or its representative has set forth in the Bid Form, for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by OWNER for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 14—SUBMITTAL OF BID

- 14.01 The Bidding Documents include one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and

submitted with the Bid security and the other documents required to be submitted under the terms of Article 2 of the Bid Form.

- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked package with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, the name and address of Bidder, and must be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the Advertisement.
- 14.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.

ARTICLE 16—OPENING OF BIDS

- 16.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 17.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT

- 18.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 18.02 OWNER will reject the Bid of any Bidder that OWNER finds, after reasonable inquiry and evaluation, to not be responsible.
- 18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for

purposes of the Bid, whether in the Bid itself or in a separate communication to OWNER or ENGINEER, then OWNER will reject the Bid as nonresponsive.

18.04 If OWNER awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.

18.05 *Evaluation of Bids*

A. In evaluating Bids, OWNER will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

18.06 In evaluating whether a Bidder is responsible, OWNER will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

18.07 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 19—BONDS AND INSURANCE

19.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by required bonds and insurance documentation.

19.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

ARTICLE 20—SIGNING OF AGREEMENT

20.01 When OWNER issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to OWNER. Within 10 days thereafter, OWNER will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 21—CONTRACTS TO BE ASSIGNED (NOT USED)

- END OF SECTION -

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SECTION 00 41 00
BID FORM

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—OWNER AND BIDDER

This Bid is submitted to: Mr. Dan Allen
Director of Public Works
10860 N Hideout Trail
Hideout, UT 84036

- 1.01 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 (Section 00 43 13);
 - B. List of Proposed Subcontractors and Suppliers;
 - C. Evidence of authority to do business in the state of the Project;
 - D. CONTRACTOR's license number as evidence of Bidder's State Contractor's License;
 - E. Required Bidder Qualification Statement with supporting data (Section 00 45 13);

ARTICLE 3—BASIS OF BID

3.01 *Unit Price Bids*

- A. Bidder will perform the following Work at the indicated unit prices:

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
1	Mobilization	LS	1	\$ 2,000	\$ 2,000
2	Traffic Planning Control	LS	1	\$ 5,000	\$ 5,000
3	Pothole Repairs per Plan ST-14	SF	5,800	\$ 7.00	\$ 40,600
4	Subgrade Restoration	SF	2,000	\$ 5.00	\$ 10,000
5	Crack Sealing per APWA Plan 256	LF	23,300	\$ 1.00	\$ 23,300
6	4-inch Double Yellow Traffic Stripping	LF	17,200	\$.89	\$ 15,308
Total of All Unit Price Bid Items					\$ 96,208

\$ Ninety Six Thousand, Two Hundred Eight and $\frac{8}{100}$
cm. Kelly - 7-26-24

B. Bidder acknowledges that:

1. 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
2. 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.

ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates indicated in the Agreement.
- 4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 5—BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA

5.01 *Bid Acceptance Period*

- A. This Bid will remain subject to acceptance for 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.

5.02 *Instructions to Bidders*

- A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

- A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
# 1	7-23-2024 - mcleray 7-23-24

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

6.01 *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.

4. 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.
5. 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.
6. 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.
7. 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.
8. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. 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.

6.02 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 6.02.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:

Bonneville Asphalt & Repair LLC
(typed or printed name of organization)

By:

Marie LeRoy

(individual's signature)

Name:

Marie LeRoy

(typed or printed)

Title:

Admin. Assist.

(typed or printed)

Date:

7-26-2024

(typed or printed)

LLC - S corp.

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

Attest:

Gloria Hardy

(individual's signature)

Name:

Gloria Hardy

(typed or printed)

Title:

Admin. Assist.

(typed or printed)

Date:

7-26-2024

(typed or printed)

Address for giving notices:

bonnevilleasphalt@gmail.com

Bidder's Contact:

Name:

Marie LeRoy

(typed or printed)

Title:

Admin. Assist.

(typed or printed)

Phone:

801-225-3544

Email:

bonnevilleasphalt@gmail.com

Address:

Po Box 186

Orem Utah 84059

Bidder's CONTRACTOR License No.: (if applicable) 5414370-5501

- END OF SECTION -

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BID BOND (PENAL SUM FORM)

Bidder Name: Bonneville Asphalt & Repair, LLC Address (principal place of business): P.O. Box 186 Orem, UT 84059	Surety Name: Old Republic Surety Company Address (principal place of business): PO Box 1635 Milwaukee, WI 53201-1635
Owner Name: Town of Hideout Address (principal place of business): 10860 North Hideout Trail Hideout, UT 84036	Bid Project (name and location): 2024 Street Maintenance - Town of Hideout Bid Due Date: 7/29/2024
Bond 16331 Penal Sum: Five Percent (5%) of Total Amount Bid Date of Bond: 7/29/2024	
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 Bonneville Asphalt & Repair, LLC <small>(Full formal name of Bidder)</small>	Surety Old Republic Surety Company <small>(Full formal name of Surety) (Corporate seal)</small>
By: <u><i>Marie LeRoy</i></u> <small>(Signature)</small>	By: <u><i>Alan W. Lord</i></u> <small>(Signature) (Attach Power of Attorney)</small>
Name: <u><i>marie leRoy</i></u> <small>(Printed or typed)</small>	Name: <u>Alan W. Lord</u> <small>(Printed or typed)</small>
Title: <u><i>Admin. Assist</i></u>	Title: <u>Attorney-In-Fact</u>
Attest: <u><i>Gloria Hardy</i></u> <small>(Signature)</small>	Attest: <u><i>Jessica Pearson</i></u> <small>(Signature)</small>
Name: <u><i>Gloria Hardy</i></u> <small>(Printed or typed)</small>	Name: <u>Jessica Pearson</u> <small>(Printed or typed)</small>
Title: <u><i>Admin. Assist</i></u>	Title: <u>Witness</u>
<small>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.</small>	



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 will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs 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 will 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 does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will 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 will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must 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 Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will 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 will 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 governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**OLD REPUBLIC SURETY COMPANY****POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

Sam W. Clark, Stirling S. Broadhead, Douglas S. Roskelley, Doris Martin, S. Christopher Clark,

Alan W. Lord, Michael Murphy, Hilary J. Baillargeon of Salt Lake City, UT
its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, **(other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds)**, as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 20th day of December, 2019.

OLD REPUBLIC SURETY COMPANY

Karen J. Haffner
Assistant Secretary



Alan Pavlic
President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 20th day of December, 2019, personally came before me, Alan Pavlic
and Karen J. Haffner, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



Kathryn R. Pearson
Notary Public

My Commission Expires: September 28, 2022

(Expiration of notary's commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

48 5036



Signed and sealed at the City of Brookfield, WI this 29th day of July, 2024.

Karen J. Haffner
Assistant Secretary

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PART 2

CONTRACT FORMS

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SECTION 01 11 00
NOTICE OF AWARD

Date of Issuance:

Owner: Town of Hideout

Engineer: Hansen, Allen & Luce Engineers Engineer's Project No.: 534.07.100

Project: 2024 Street Maintenance

Bidder: Bonneville Asphalt & Repair LLC

Bidder's Mailing: PO Box 186 Orem, UT 84059

Bidder's Address: 1380 West 200 South, Lindon, UT 84042

You are notified that OWNER has accepted your Bid dated 7/26/2024 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

City Wide Road Improvements project which includes furnishing and placing emulsified asphalt, aggregate cover, and bituminous flush coat materials, and completing temporary pavement markings on roads through Hideout City as presented in the Drawings.

The Contract Price of the awarded Contract is **\$96,208.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

One unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☐ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner one counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): None

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

Within 10 days after you comply with the above conditions, OWNER will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **Town of Hideout**

By (signature): _____

Name (printed): _____

Title: _____

Copy: Engineer

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SECTION 00 01 10 **AGREEMENT**

This Agreement is by and between **Town of Hideout** ("OWNER") and **Bonneville Asphalt & Repair LLC** ("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:

Furnishing and placing emulsified asphalt, aggregate cover, and bituminous flush coat materials, and completing temporary pavement markings on roads through Hideout Utah as presented in the Drawings.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **2024 Street Maintenance**

ARTICLE 3—ENGINEER

- 3.01 OWNER has retained **Hansen, Allen & Luce, Inc.** ("ENGINEER") to act as OWNER's representative, assume all duties and responsibilities of ENGINEER, and have the rights and authority assigned to ENGINEER in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by "ENGINEER" and that same entity prepared the design.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is 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: Dates*

A. The Work will be substantially complete on or before **October 1, 2024**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **October 15, 2024**.

- 4.05 *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 within the Contract Times, as duly modified. 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 **two hundred dollars (\$200)** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 **two hundred dollars (\$200)** 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.

4.06 *Special Damages*

- A. CONTRACTOR shall reimburse OWNER (1) for any fines or penalties imposed on OWNER as a direct result of the CONTRACTOR's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by OWNER for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After CONTRACTOR achieves Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CONTRACTOR shall reimburse OWNER for the actual costs reasonably incurred by OWNER for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established 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 the basis of CONTRACTOR's Applications for Payment on or about the **1st** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as OWNER may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **90** percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, then as long as the character and progress of the Work remain satisfactory to OWNER and ENGINEER, there will be no additional retainage; and
 - b. **90** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to **100** percent of the Work completed, less such amounts set off by OWNER pursuant to Paragraph 15.01.E of the General Conditions, and less **200** 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 all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the table of contents of the project manual.
 - 6. Drawings (not attached but incorporated by reference) consisting of **5** sheets with each sheet bearing the following general title: **HIDEOUT 2024 CITY WIDE ROAD IMPROVEMENT**.
 - 7. Addenda number **1**.
 - 8. 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.
 - e. Warranty Bond, if any.
- 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 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.
5. 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.
6. 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.
7. 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.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. 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 in the Supplementary Conditions.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

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

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

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

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License
No.:

(where applicable)

State:

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**SECTION 00 55 00
NOTICE TO PROCEED**

Owner: Town of Hideout

Engineer: Hansen, Allen & Luce Engineers Engineer's Project No.: 534.07.100

Contractor: _____ Contractor's Project No.: _____

Project: 2024 Street Maintenance

Contract Name: _____

Effective Date of Contract: _____

OWNER hereby notifies CONTRACTOR that the Contract Times under the above Contract will commence to run on _____ pursuant to Paragraph 4.01 of the General Conditions.

On that date, CONTRACTOR shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The date by which Substantial Completion must be achieved is **October 1, 2024**, and the date by which readiness for final payment must be achieved is **October 15, 2024**.

Owner: **Town of Hideout**

By (signature): _____

Name _____

(printed): _____

Title: _____

Date Issued: _____

Copy: Engineer

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**SECTION 00 61 00
PERFORMANCE BOND**

Contractor Name: Address (<i>principal place of business</i>):	Surety Name: Address (<i>principal place of business</i>):
Owner Name: Town of Hideout Mailing address (<i>principal place of business</i>): <div style="text-align: center;">10860 N Hideout Trail Hideout, UT 84036</div>	Contract Description (<i>name and location</i>): 2024 Street Maintenance Contract Price: Effective Date of Contract:
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: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
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>	

07/2024

34.07.100

2018 EJCDC® C 610

PERFORMANCE BOND

PAGE 00 61 00 - 1

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: None

SECTION 00 61 50
PAYMENT BOND

Contractor Name: _____ Address (<i>principal place of business</i>): _____ 	Surety Name: _____ Address (<i>principal place of business</i>): _____
Owner Name: Town of Hideout Mailing address (<i>principal place of business</i>): <div style="text-align: center;">10860 N Hideout Trail Hideout, UT 84036</div>	Contract Description: 2024 Street Maintenance Contract Price: _____ Effective Date of Contract: _____
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 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment 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: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
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 to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. 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.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims 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. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. 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 here from 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.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *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.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. 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.
18. Modifications to this Bond are as follows: None

SECTION 00 62 50
CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: Town of Hideout
 Engineer: Hansen, Allen & Luce Engineers Engineer's Project No.: 534.07.100
 Contractor: Contractor's Project No.:
 Project: 2024 Street Maintenance
 Contract Name:

This ☐ Preliminary ☐ Final Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

Date of Substantial Completion: **October 1, 2024**

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of OWNER and CONTRACTOR; see Paragraph 15.03.D of the General Conditions.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon OWNER's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to OWNER's Responsibilities: ☐ None ☐ As follows:

Amendments to CONTRACTOR's Responsibilities: ☐ None ☐ As follows:

The following documents are attached to and made a part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Engineer

By (signature):

Name (printed):

Title:

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PART 3

CONTRACT CONDITIONS

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SECTION 00 72 00
GENERAL CONDITIONS

The General Conditions to be used for the Project are the Standard General Conditions of the Construction Contract prepared by Engineers Joint Contract Documents Council (No. EJCDC C-700, 2018 Edition) as included in this Section.

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology	1
1.01 Defined Terms	1
1.02 Terminology	6
Article 2—Preliminary Matters	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	8
2.04 Preconstruction Conference; Designation of Authorized Representatives	8
2.05 Acceptance of Schedules	8
2.06 Electronic Transmittals	9
Article 3—Contract Documents: Intent, Requirements, Reuse	9
3.01 Intent	9
3.02 Reference Standards	10
3.03 Reporting and Resolving Discrepancies	10
3.04 Requirements of the Contract Documents	11
3.05 Reuse of Documents	11
Article 4—Commencement and Progress of the Work	12
4.01 Commencement of Contract Times; Notice to Proceed	12
4.02 Starting the Work	12
4.03 Reference Points	12
4.04 Progress Schedule	12
4.05 Delays in CONTRACTOR's Progress	12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions	14
5.01 Availability of Lands	14
5.02 Use of Site and Other Areas	14
5.03 Subsurface and Physical Conditions	15
5.04 Differing Subsurface or Physical Conditions	16
5.05 Underground Facilities	18
5.06 Hazardous Environmental Conditions at Site	19

Article 6—Bonds and Insurance	22
6.01 Performance, Payment, and Other Bonds	22
6.02 Insurance—General Provisions	23
6.03 CONTRACTOR’s Insurance	24
6.04 Builder’s Risk and Other Property Insurance	25
6.05 Property Losses; Subrogation	26
6.06 Receipt and Application of Property Insurance Proceeds	27
Article 7—CONTRACTOR’s Responsibilities	27
7.01 CONTRACTOR’s Means and Methods of Construction	27
7.02 Supervision and Superintendence	28
7.03 Labor; Working Hours	28
7.04 Services, Materials, and Equipment	28
7.05 “Or Equals”	29
7.06 Substitutes	30
7.07 Concerning Subcontractors and Suppliers	31
7.08 Patent Fees and Royalties	33
7.09 Permits	33
7.10 Taxes	33
7.11 Laws and Regulations	33
7.12 Record Documents	34
7.13 Safety and Protection	34
7.14 Hazard Communication Programs	35
7.15 Emergencies	35
7.16 Submittals	36
7.17 CONTRACTOR’s General Warranty and Guarantee	38
7.18 Indemnification	39
7.19 Delegation of Professional Design Services	40
Article 8—Other Work at the Site	41
8.01 Other Work	41
8.02 Coordination	42
8.03 Legal Relationships	42
Article 9—OWNER’s Responsibilities	43
9.01 Communications to CONTRACTOR	43
9.02 Replacement of ENGINEER	43
9.03 Furnish Data	43

9.04	Pay When Due.....	43
9.05	Lands and Easements; Reports, Tests, and Drawings	43
9.06	Insurance.....	44
9.07	Change Orders	44
9.08	Inspections, Tests, and Approvals	44
9.09	Limitations on OWNER's Responsibilities	44
9.10	Undisclosed Hazardous Environmental Condition.....	44
9.11	Evidence of Financial Arrangements.....	44
9.12	Safety Programs	44
Article 10	—ENGINEER's Status During Construction	44
10.01	OWNER's Representative	44
10.02	Visits to Site	45
10.03	Resident Project Representative	45
10.04	ENGINEER's Authority	45
10.05	Determinations for Unit Price Work.....	45
10.06	Decisions on Requirements of Contract Documents and Acceptability of Work	46
10.07	Limitations on ENGINEER's Authority and Responsibilities	46
10.08	Compliance with Safety Program	46
Article 11	—Changes to the Contract.....	46
11.01	Amending and Supplementing the Contract	46
11.02	Change Orders.....	47
11.03	Work Change Directives.....	47
11.04	Field Orders	48
11.05	OWNER-Authorized Changes in the Work	48
11.06	Unauthorized Changes in the Work	48
11.07	Change of Contract Price	48
11.08	Change of Contract Times.....	50
11.09	Change Proposals.....	50
11.10	Notification to Surety	51
Article 12	—Claims	51
12.01	Claims	51
Article 13	—Cost of the Work; Allowances; Unit Price Work.....	52
13.01	Cost of the Work.....	52
13.02	Allowances	56
13.03	Unit Price Work	56

Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work.....	57
14.01 Access to Work	57
14.02 Tests, Inspections, and Approvals	57
14.03 Defective Work	58
14.04 Acceptance of Defective Work.....	59
14.05 Uncovering Work.....	59
14.06 OWNER May Stop the Work	60
14.07 OWNER May Correct Defective Work	60
Article 15—Payments to CONTRACTOR; Set-Offs; Completion; Correction Period.....	61
15.01 Progress Payments	61
15.02 CONTRACTOR's Warranty of Title.....	64
15.03 Substantial Completion.....	64
15.04 Partial Use or Occupancy	65
15.05 Final Inspection	66
15.06 Final Payment	66
15.07 Waiver of Claims	67
15.08 Correction Period	67
Article 16—Suspension of Work and Termination	68
16.01 OWNER May Suspend Work.....	68
16.02 OWNER May Terminate for Cause.....	69
16.03 OWNER May Terminate for Convenience	70
16.04 CONTRACTOR May Stop Work or Terminate	70
Article 17—Final Resolution of Disputes	71
17.01 Methods and Procedures	71
Article 18—Miscellaneous	71
18.01 Giving Notice	71
18.02 Computation of Times	71
18.03 Cumulative Remedies	71
18.04 Limitation of Damages.....	72
18.05 No Waiver	72
18.06 Survival of Obligations.....	72
18.07 Controlling Law.....	72
18.08 Assignment of Contract	72
18.09 Successors and Assigns	72
18.10 Headings	72

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

- I. 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.

SECTION 00 94 10
CHANGE ORDER NO.: _____

Owner: Town of Hideout
Engineer: Hansen, Allen & Luce Engineers Engineer's Project No.: 534.07.100
Contractor: Contractor's Project No.:
Project: 2024 Street Maintenance
Contract Name:
Date Issued: Effective Date of Change Order:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments:

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
Increase / Decrease from previously approved Change Orders No. 1 to No. ____ \$ _____	Increase / Decrease from previously approved Change Orders No.1 to No. ____ Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
Increase / Decrease this Change Order: \$ _____	Increase / Decrease this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

Recommended by Engineer (if required)

Authorized by Owner

By: _____

Title: _____

Date: _____

Authorized by Owner

Approved by Funding Agency (if applicable)

By: _____

Title: _____

Date: _____

PART 4

TECHNICAL SPECIFICATIONS

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SECTION 01 11 00
SUMMARY OF WORK

PART 1 GENERAL

1.1 GENERAL

- A. The Work to be performed under this Project shall consist of furnishing all labor, materials, and equipment necessary or required to complete the work in all respects as shown on the Contract Drawings and as herein specified. All work, materials, and services not expressly shown or called for in the Contract Documents which may be necessary to complete the construction of the Work in good faith shall be performed, furnished, and installed by CONTRACTOR as though originally so specified or shown, at no increase in cost to OWNER.

1.2 WORK COVERED BY CONTRACT DOCUMENTS

- A. The work comprises roadway maintenance and repair, including pothole repair with bituminous concrete, crack sealing in the roadway, adding a slurry seal coating, and installing 4-inch double yellow traffic striping.
- B. The work is located throughout the Town of Hideout.

1.3 CONTRACT METHOD

- A. The Work hereunder will be constructed under a single unit price contract.

1.4 CONTRACTOR USE OF PROJECT SITE

- A. CONTRACTOR's use of the Project Site shall be limited to its construction operations, including on-site storage of materials and on-site fabrication facilities.

1.5 PROJECT SECURITY

- A. CONTRACTOR shall make all necessary provisions to protect the Project and CONTRACTOR's facilities from fire, theft, and vandalism, and the public from unnecessary exposure to injury.

1.6 CHANGES IN THE WORK

- A. It is mutually understood that it is inherent in public works construction that some changes in the plans and Specifications may be necessary during construction to adjust them to unforeseen field conditions, and that it is of the essence of the Contract to recognize a normal and expected margin of change. ENGINEER shall have the right to make such changes, from time to time, in the plans, in the character of the Work, and in the scope of the Project as may be necessary or desirable to ensure the completion of the Work in the most satisfactory manner without invalidating the Contract.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

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**SECTION 01 22 00
MEASUREMENT AND PAYMENT**

PART 1 GENERAL

1.1 General

- A. All work completed under this contract shall be in accordance with the Contract Drawings and Specifications and will be measured by ENGINEER/OWNER. The quantities appearing on the Bid Schedule are approximate only and are prepared for the comparison of bids. Payment to CONTRACTOR on bid items with unit prices other than "Lump Sum" will be made for actual quantities of work performed and accepted, or material furnished in accordance with the Contract. The scheduled quantities of work to be done and materials to be furnished may be increased or decreased in accordance with the General Conditions.
- B. The term "Lump Sum" when used as an item of payment will mean complete payment for the work described in the contract. When a complete structure, portion of work, or unit is specified "Lump Sum" as the unit of measurement, the unit will include fittings, accessories, and all work necessary to complete the work as shown on the Drawings and as specified.
- C. When the accepted quantities of work vary from the quantities in the Bid Schedule, CONTRACTOR shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit prices for the work done. OWNER reserves the right to add to or delete from quantities listed in the bid schedule in order to match the total bid with the budgeted money available.

1.2 BASE BID SCHEDULE

- A. BID ITEM NO. 1 – "MOBILIZATION"
 - 1. **GENERAL** This bid item is provided to cover CONTRACTOR's cost for general and miscellaneous responsibilities and operations not normally attributed to any other single bid item within this schedule. This shall include, but is not limited to, work described or enumerated in Section 01 71 13 - Mobilization.
 - 2. **METHOD OF MEASUREMENT** "Mobilization" shall not be measured, but shall be paid for on a lump sum basis for the completion of the work as required in Section 01 71 13 - Mobilization.
 - 3. **BASIS OF PAYMENT** Payment for "Mobilization" will be made at the contract lump sum bid price. Payments will be made in accordance with the following schedule:
 - a. When 10% of the original contract amount is earned, 25% of the amount bid for mobilization will be paid.
 - b. When 25% of the original contract amount is earned, an additional 25% for a total of 50% of the amount bid for mobilization will be paid.
 - c. When 50% of the original contract amount is earned, an additional 25% for a total of 75% of the amount bid for mobilization will be paid.

- d. When 75% of the original contract amount is earned, an additional 25% for a total of 100% of the amount bid for mobilization will be paid.

B. BID ITEM NO. 2 – “TRAFFIC PLANNING AND CONTROL”

1. **GENERAL** This bid item is provided to cover CONTRACTOR's cost for traffic planning and control, including but not limited to providing acceptable traffic plans to Town of Hideout. This bid item also includes providing material, personnel, and equipment necessary to fulfill the traffic plans and traffic control permit requirements.
- 2.
3. **METHOD OF MEASUREMENT** “Traffic Planning and Control” shall not be measured but shall be paid for on a lump sum basis for the completion of the work.
4. **BASIS OF PAYMENT** Payment for “Traffic Planning and Control” will be made at the contract lump sum bid price. Payments will be made in accordance with the following schedule:
 - a. When 10% of the original contract amount is earned, 25% of the amount bid for mobilization will be paid.
 - b. When 25% of the original contract amount is earned, an additional 25% for a total of 50% of the amount bid for mobilization will be paid.
 - c. When 50% of the original contract amount is earned, an additional 25% for a total of 75% of the amount bid for mobilization will be paid.
 - d. When 75% of the original contract amount is earned, an additional 25% for a total of 100% of the amount bid for mobilization will be paid.

C. BID ITEM NO. 3 – “POTHOLE REPAIRS PER PLAN ST-14”

1. **METHOD OF MEASUREMENT** Measurement shall be according to the square foot of roadway acceptably repaired per Plan ST-14.
2. **BASIS OF PAYMENT** Payment shall be made at the contract unit bid price per square foot of roadway repaired per Plan ST-14. Payment shall be considered complete compensation for all labor, equipment, and materials required to acceptably repair the roadway, including but not limited to excavation, removal, and replacement of the damaged bituminous concrete roadway and subgrade material up to 12 inches in depth. Restoration of subgrade material below 12 inches in depth shall be paid for under Bid Item No. 4.

D. BID ITEM NO. 4 – “SUBGRADE RESTORATION”

1. **METHOD OF MEASUREMENT** Measurement shall be according to the square foot of subgrade restored beyond 12 inches to 24 inches in depth.
2. **BASIS OF PAYMENT** Payment shall be made at the contract unit bid price per square foot of subgrade restored. Payment shall be considered complete compensation for all labor, equipment, and materials required to acceptably restore subgrade including but not limited to excavation and removal of material from 12 inches to 24 inches in depth and installation of 12 inches of A-1-a subgrade material.

E. BID ITEM NO. 5 – “CRACK SEALING”

1. **METHOD OF MEASUREMENT** Measurement shall be according to the lineal foot of crack acceptably sealed.
2. **BASIS OF PAYMENT** Payment shall be made at the contract unit bid price per lineal foot of roadway crack acceptably sealed as specified herein. Payment shall be considered complete compensation for all labor, equipment, and materials required to acceptably seal cracks in the roadway and the joint between the roadway and the concrete gutters.

F. BID ITEM NO. 6 – “4-INCH DOUBLE YELLOW TRAFFIC STRIPING”

1. **METHOD OF MEASUREMENT** This item shall be measured according to the lineal foot of traffic striping acceptably installed as specified herein.
2. **BASIS OF PAYMENT** Payment shall be made according to the lineal foot of 4-inch double yellow traffic striping acceptably installed. Payment shall be considered complete compensation for all labor, equipment, and materials, including but not limited to surface preparation, quality control, primer/adhesives/paint, glass beads, and all other incidentals and materials as herein described and as required to provide permanent pavement markings.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

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SECTION 01 30 00
ADMINISTRATIVE REQUIREMENTS

PART 1 GENERAL

1.1 COORDINATION AND PROJECT CONDITIONS

- A. Coordinate scheduling, Submittals, and Work of various sections of Project Manual to ensure efficient and orderly sequence of installation of interdependent construction elements.
- B. Coordinate completion and clean-up of Work of separate sections in preparation for Substantial Completion.
- C. After OWNER occupancy of premises, coordinate access to site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of OWNER's activities.
- D. UDOT, OWNER, and/or utility owners may be working within the project area while this contract is in progress. If so, CONTRACTOR shall schedule Work in conjunction with these other organizations to minimize mutual interference.
- E. Work in City Streets or Utah Department of Transportation (UDOT) right-of-way, CONTRACTOR shall notify UDOT 72 hours prior to work being performed therein. Work within the City Streets or UDOT right-of-way shall be in accordance with their required permit and their license agreement with OWNER. CONTRACTOR shall obtain and comply with all required permits.
- F. Coordination with Adjacent Property Owner
 - 1. Once each week, CONTRACTOR shall hand deliver or mail a written "**Construction Status Update Notice**" to all residents, businesses, schools and property owners adjacent to and affected by the Work. Notice shall be on CONTRACTOR's company letterhead paper and be secured to doorknob should occupants not be home. Obtain ENGINEER's review of notice prior to distribution. As a minimum the notice shall contain the following:
 - a. name and phone number of CONTRACTOR's representative for the project
 - b. work anticipated for the next 7 days including work locations and work by subcontractors and utility companies
 - c. rough estimate of construction schedule through end of project
 - d. anticipated driveway approach closures
 - e. anticipated water, sewer or power outages
 - f. anticipated vehicular traffic impacts, rerouting or lane closures
 - g. anticipated pedestrian impacts and sidewalk closures
 - h. changes to public transportation bus routes
 - i. any other construction or work items which will impact or restrict the normal use of streets and amenities
 - 2. Failure to comply with this contract provision is considered grounds for project suspension per Article 16.01 of the General Conditions (EJCDC 00 72 00).

1.2 FIELD ENGINEERING

- A. Construction staking and surveying shall be performed by a registered Land Surveyor in the State of Utah.
- B. CONTRACTOR shall provide all survey construction staking as necessary to complete the required work according to the Contract Documents.
- C. ENGINEER shall not be responsible for stakes, etc. removed through negligence of CONTRACTOR and in that event shall be compensated by CONTRACTOR for re-staking efforts.
- D. CONTRACTOR shall locate and protect survey control and reference points. Promptly notify ENGINEER of discrepancies discovered.
- E. Control datum for survey is that shown on Contract Drawings.
- F. Protect survey control points prior to starting site work; preserve permanent reference points during construction.
- G. Promptly report to ENGINEER loss or destruction of reference point or relocation required because of changes in grades or other reasons.
- H. CONTRACTOR shall be responsible to coordinate with all property owners to determine the location of existing sewer and water service laterals. CONTRACTOR shall be responsible to coordinate with all property owners during installation or relocation of existing service laterals.
- I. All service laterals shall be verified and indicated on the Record Drawings supplied by CONTRACTOR to ENGINEER.

1.3 PRECONSTRUCTION MEETING

- A. Prior to the commencement of work at the site, a preconstruction conference will be held at a mutually agreed time and place which shall be attended by CONTRACTOR's Project Manager, its superintendent, and its subcontractors as appropriate. Other attendees will be:
 - 1. ENGINEER and the Resident Project Representative (RPR)
 - 2. Representatives of OWNER
 - 3. Governmental representatives as appropriate
 - 4. Others as requested by CONTRACTOR, OWNER, or ENGINEER.
- B. Unless previously submitted to ENGINEER, CONTRACTOR shall bring to the conference one copy of each of the following:
 - 1. Progress schedule
 - 2. Procurement schedule of major equipment and materials and items requiring long lead time
 - 3. Shop Drawings/Sample/Substitute or "Or Equal" submittal schedule.

- C. The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda may include the following:
1. CONTRACTOR's tentative schedules
 2. Transmittal, review, and distribution of CONTRACTOR's submittals
 3. Processing applications for payment
 4. Maintaining record documents
 5. Critical work sequencing
 6. Field decisions and Change Orders
 7. Use of project site, office and storage areas, security, housekeeping, and OWNER's needs
 8. Major equipment deliveries and priorities
 9. CONTRACTOR's assignments for safety and first aid
- D. OWNER will preside at the preconstruction conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.
- E. CONTRACTOR should plan on the conference taking no less than 4 hours.

1.4 PROGRESS MEETINGS

- A. CONTRACTOR shall schedule and hold regular on-site progress meetings at least bi-weekly and at other times as required by ENGINEER or as required by progress of the work. CONTRACTOR, ENGINEER, and all subcontractors active on the site shall be represented at each meeting. CONTRACTOR may at its discretion request attendance by representatives of its suppliers, manufacturers', and other subcontractors.
- B. OWNER shall preside at the meetings and provide for keeping and distribution of the minutes. The purpose of the meetings will be to review the progress of the work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop.
- C. At each construction progress meeting a progress report shall be presented by CONTRACTOR containing an updated Progress Schedule. Where the delayed completion date of a project phase is noted, CONTRACTOR shall describe the anticipated delays or problems and outline the action plan being taken to resolve the issues.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

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SECTION 01 33 00
SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1 GENERAL

- A. This Section outlines the general terms that CONTRACTOR must follow for preparing and providing Submittals to ENGINEER for review.
- B. CONTRACTOR shall anticipate resubmitting Submittals for major equipment or complex systems.
- C. If CONTRACTOR has questions about submittal requirements, CONTRACTOR is encouraged to communicate with ENGINEER to discuss requirements prior to submitting the Submittal.
- D. Substitutions shall be clearly identified on the Submittal transmittal form and shall include all the information required per Section 01 60 00 – Product Requirements.

1.2 DEFINITIONS

- A. Shop Drawings: Drawings, diagrams, schedules, and other data specially prepared for the Work by CONTRACTOR to illustrate some portion of the Work.
- B. Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by CONTRACTOR to illustrate materials or equipment for some portion of the Work. Product data is typically collected from catalogs, technical data sheets, or other materials supplied by manufacturers and are not specifically prepared for the project. Product data shall be marked up and/or highlighted to show the model, style, or options of a product to be incorporated in the Work.
- C. Samples: Physical examples that illustrate materials, equipment, workmanship, or colors, and establish standards by which the Work will be judged.
- D. Submittal Dispositions shall be defined as follows:
 - 1. No Exception Taken: ENGINEER and/or OWNER has reviewed the Submittal with skill, care, and judgement consistent with the applicable standard of care and, in accordance with the General Conditions, has determined the submittal appears to be consistent with the contract documents and the design professional's design intent for the completed project.
 - 2. Make Corrections Noted: ENGINEER and/or OWNER has reviewed the Submittal and approval is conditioned on CONTRACTOR, subcontractor, or supplier complying fully with ENGINEER's written comments on the Submittal. Failure of the CONTRACTOR, subcontractor, or supplier to comply fully with the written comments nullifies the approval.
 - 3. Revise and Resubmit: ENGINEER and/or OWNER has reviewed the Submittal and believes the Submittal, as furnished, cannot be approved without revisions and resubmittal. "Revise and Resubmit" does not constitute an approval.

4. Rejected: ENGINEER and/or OWNER has reviewed the Submittal and determined that it cannot be approved because it is incomplete, does not meet the product requirements or specifications, or does not meet the Submittal Procedure requirements as noted below.
5. For Information Only: Submittal is for record only and was not reviewed by ENGINEER and/or OWNER.

1.3 SUBMITTAL PROCEDURES

- A. Wherever Submittals are required by the Contract Documents, transmit 5 copies of each Submittal or a single electronic PDF file to ENGINEER with a Submittal transmittal form which is acceptable to ENGINEER.
- B. Sequentially number transmittal forms. Mark revised Submittals with original number and sequential alphabetic or numeric suffix, i.e., Submittal 1, Submittal 1.A, Submittal 1.1, etc.
- C. Identify Project, Contractor, subcontractor and/or supplier, pertinent drawing and detail number, and Specification section number, appropriate to Submittal.
- D. Each Submittal shall contain material pertaining to no more than one equipment or material item.
- E. Each Submittal shall have the Specification section and applicable paragraph number clearly identified on the front of the Submittal transmittal form. A copy of the Specification section and applicable paragraph shall be included with the Submittal and items included shall be clearly mark as either in compliance or not in compliance. For items not in compliance a description shall be provided explaining the reason for non-compliance.
- F. CONTRACTOR shall review Submittals prior to submission to ENGINEER. Apply Contractor's stamp, signed and dated, certifying that review, approval, verification of products required, field dimensions, adjacent construction Work, and coordination of information is in accordance with requirements of the Work and Contract Documents. Identify any deviations from the Contract Documents on the Submittal transmittal form.
- G. Schedule Submittals to expedite Project and deliver to ENGINEER at their business address. Coordinate submission of related items.
- H. Submittals shall be submitted sufficiently in advance to allow ENGINEER not less than ten regular working days for examining the drawings. These drawings shall be accurate, distinct, and complete and shall contain all required information, including satisfactory identification of items and unit assemblies in relation to the Contract Drawings and/or specifications.
- I. Identify variations from Contract Documents and product or system limitations which may adversely affect successful performance of completed Work.
- J. If a Submittal is returned to CONTRACTOR marked "NO EXCEPTIONS TAKEN", or similar notification, formal revision and resubmission will not be required.

- K. If a Submittal is returned marked "MAKE CORRECTIONS NOTED", or similar notification, CONTRACTOR shall make the corrections on the Submittal, however, formal revision and resubmission will not be required.
- L. Resubmittals
 - 1. If a Submittal is returned marked "REVISE AND RESUBMIT", or similar notification, CONTRACTOR shall revise the Submittal and resubmit the required number of copies.
 - 2. Identify changes made since the previous submission.
- M. Rejected Submittals
 - 1. If a Submittal is returned marked "REJECTED", or similar notification, it shall mean either that the proposed material or product does not satisfy the specification, the Submittal is so incomplete that it cannot be reviewed or is a substitution request not submitted in accordance with Section 01 60 00 – Product Requirements.
 - 2. CONTRACTOR shall prepare a new Submittal or submit a substitution request according to Section 01 60 00 – Product Requirements and shall submit the required number of copies.
- N. Distribute copies of reviewed Submittals as appropriate. Instruct parties to promptly report inability to comply with requirements.
- O. Submittals not requested will not be recognized or processed.
- P. Unless noted otherwise, corrections indicated on Submittals shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as changes to the Contract requirements.
- Q. Fabrication or purchase of an item may only commence after ENGINEER has reviewed the pertinent Submittals and returned copies to CONTRACTOR marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".
- R. ENGINEER's review of CONTRACTOR Submittals shall not relieve CONTRACTOR of the entire responsibility for the corrections of details and dimensions. CONTRACTOR shall assume all responsibility and risk for any misfits due to any errors in CONTRACTOR Submittals. CONTRACTOR shall be responsible for dimensions and quantities, coordinating with all trades, the design of adequate connections and details, and satisfactory and safe performance of the work.

1.4 CONSTRUCTION PROGRESS SCHEDULES

- A. Submit initial schedules within 15 days after date of Owner-Contractor Agreement. After review comments on the initial schedule are received from ENGINEER and OWNER, CONTRACTOR shall resubmit required revised data within ten days.
- B. Submit revised Progress Schedules with each Application for Payment.
- C. Distribute copies of reviewed schedules to Project site file, subcontractors, suppliers, and other concerned parties. Instruct recipients to promptly report, in writing, problems anticipated by projections indicated in schedules.

- D. Submit computer generated horizontal bar chart with separate line for each major portion of Work or operation, identifying first workday of each week.
- E. Show complete sequence of construction by activity, identifying Work of separate stages and other logically grouped activities. Indicate early and late start, early and late finish, float dates, and duration.
- F. Indicate estimated percentage of completion for each item of Work at each submission.
- G. Submit separate schedule of submittal dates for shop drawings, product data, and samples.

1.5 PRODUCT DATA

- A. Product Data: Submit to ENGINEER for review for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents.
- B. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- C. After review, produce copies and distribute in accordance with SUBMITTAL PROCEDURES article and for record documents described in Section 01 78 50 - Project Closeout.

1.6 SHOP DRAWINGS

- A. Shop Drawings: Submit to ENGINEER for review for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents.
- B. Fabrication of an item may be commenced only after ENGINEER has reviewed the pertinent submittals and returned copies to CONTRACTOR marked either "NO EXCEPTIONS TAKEN", or "MAKE CORRECTIONS NOTED". Corrections indicated on submittals shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra work.
- C. When required by individual specification sections, provide shop drawings signed and sealed by professional engineer responsible for designing components shown on shop drawings.
 - 1. Include signed and sealed calculations to support design.
 - 2. Submit drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
 - 3. Make revisions and provide additional information when required by authorities having jurisdiction.
- D. After review, produce copies and distribute in accordance with SUBMITTAL PROCEDURES article and for record documents described in Section 01 78 50 - Project Closeout.

1.7 SAMPLES

- A. Whenever indicated in the Specifications or requested by ENGINEER, CONTRACTOR shall submit at least 1 sample of each item or material to ENGINEER for acceptance at no additional cost to OWNER.
- B. Samples, as required herein, shall be submitted for acceptance prior to ordering such material for delivery to the jobsite, and shall be submitted in an orderly sequence so that dependent materials or equipment can be assembled and reviewed without causing delay in the Work.
- C. Unless otherwise specified, all colors and textures of specified items will be selected by ENGINEER from the manufacturer's standard colors and standard materials, products, or equipment lines.

1.8 CERTIFICATES

- A. When specified in individual Specification sections, submit certification by manufacturer, installation/application subcontractor, or CONTRACTOR to ENGINEER, in quantities specified for Product Data.
- B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
- C. Certificates may be recent or previous test results on material or Product but must be acceptable to ENGINEER.

1.9 NSF CERTIFICATION

- A. Where NSF/ANSI 61 and/or NSF/ANSI 600 approval is required, submit ANSI/NSF 61/600 certification letter from the testing agency, i.e., NSF International (NSF), ALS - Truesdail Laboratories, UL Solutions, Water Quality Association (WQA), etc., for each item indicating the product fabrication location and application limits such as plant location, size of tank or diameter of piping, or other limitations.

1.10 MANUFACTURER'S INSTRUCTIONS

- A. When specified in individual Specification sections, submit printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, to ENGINEER for delivery to OWNER in quantities specified for Product Data.
- B. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.

1.11 MANUFACTURER'S FIELD REPORTS

- A. When required in individual sections, have Manufacturer or Supplier provide qualified representative to observe field conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, test, adjust, and balance of equipment as applicable and to make written report of observations and recommendations to ENGINEER.

1.12 OPERATIONS AND MAINTENANCE MANUAL SUBMITTAL

- A. CONTRACTOR shall furnish to ENGINEER five (5) identical sets of Operations and Maintenance Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard size, 3-ring, loose-leaf, vinyl, hard-cover binder suitable for bookshelf storage. Binder ring size shall not exceed 2.5 inches. A Table of Contents shall be provided which indicates all equipment and suppliers in the Operations and Maintenance Manuals.
- B. CONTRACTOR shall also furnish ENGINEER one copy of the Operations and Maintenance Manuals in PDF electronic format.
- C. CONTRACTOR shall include in the Operations and Maintenance manuals full details for care and maintenance for all visible surfaces as well as the following for each item of mechanical, electrical, and instrumentation equipment (except for equipment furnished by OWNER):
 - 1. Complete operating instructions, including location of controls, special tools or other equipment required, related instrumentation, and other equipment needed for operation.
 - 2. Preventative maintenance procedures and schedules
 - 3. A description of proper maintenance activities
 - 4. Complete parts lists, by generic title, identification number, and catalog number, complete with exploded views of each assembly.
 - 5. Disassembly and reassembly instruction
 - 6. Name and location of nearest supplier and spare parts warehouse
 - 7. Name and location of manufacturer
 - 8. Recommended troubleshooting and start-up procedures
 - 9. Prints of the record drawings, including diagrams and schematics, as required under the electrical and instrumentation portions of these specifications.
- D. All Operations and Maintenance manuals shall be submitted in final form to ENGINEER not later than the 75 percent of construction completion date. All discrepancies found by ENGINEER in the Operations and Maintenance manuals shall be corrected by CONTRACTOR prior to final acceptance of the project.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

SECTION 01 42 19 REFERENCE STANDARDS

PART 1 GENERAL

1.1 QUALITY ASSURANCE

- A. **TITLES OF SECTIONS AND PARAGRAPHS.** Captions accompanying Specifications sections and paragraphs are for convenience of reference only, and do not form a part of the Specification.
- B. **APPLICABLE PUBLICATIONS.** Whenever in these Specifications references are made to published specifications, codes, standards, or other requirements, it shall be understood that wherever no date is specified, only the latest specifications, standards or requirements of the respective issuing agencies which have been published as of the date that the work is advertised for bids, shall apply; except to the extent that said standards or requirements may be in conflict with applicable laws, ordinances, or governing codes. No requirements set forth herein or shown on the drawings shall be waived because of any provision of, or omission from, said standards or requirements.
- C. **SPECIALISTS, ASSIGNMENTS.** In certain instances, specifications test requires (or implies) that specific work is to be assigned to specialists or expert entities, who must be engaged for the performance of that work. Such assignments shall be recognized as special requirements and shall not be interpreted so as to conflict with the enforcement of building codes and similar regulations governing the work; also they are not intended to interfere with local union jurisdiction settlements and similar conventions. Such assignments are intended to establish which party or entity involved in a specific unit of work is recognized as "expert" for the indicated construction processes or operations. Nevertheless, the final responsibility for fulfillment of the entire set of contract requirements remains with CONTRACTOR.

1.2 REFERENCE SPECIFICATIONS, CODES, AND STANDARDS

- A. Without limiting the generality of other requirements of the Specifications, all Work specified herein shall conform to or exceed the requirements of all applicable codes and the applicable requirements of the following documents to the extent that the provisions of such documents are not in conflict with the requirements of these Specifications nor the applicable codes.
- B. Reference herein to "Building Code" or "Uniform Building Code" shall mean the International Building Code of the International Code Council. The latest edition of the code as approved and used by the local agency as of the date of award, as adopted by the agency having jurisdiction, shall apply to the Work herein, including all addenda, modifications, amendments, or other lawful changes thereto.
- C. In case of conflict between codes, reference standards, drawings and the other Contract Document, the most stringent requirements shall govern. All conflicts shall be brought to the attention of ENGINEER for clarification and directions prior to ordering or providing any materials or labor. CONTRACTOR shall bid the most stringent requirements.
- D. **APPLICABLE STANDARD SPECIFICATIONS.** CONTRACTOR shall construct the Work specified herein in accordance with the requirements of the Contract Documents

and the referenced portions of those referenced codes, standards, and Specifications listed herein; except, that wherever references to "Standard Specifications" are made, the provisions therein for measurement and payment shall not apply.

- E. References in the Contract Documents to "Standard Specifications" shall mean the Contract Documents including all current supplements, addenda, and revisions thereof.
- F. References herein to "OSHA Regulations for Construction" shall mean Title 29, Part 1926, Construction Safety and Health Regulations, Code of Federal Regulations (OSHA), including all changes and amendments thereto.
- G. References herein to "OSHA Standards" shall mean Title 29, Part 1910, Occupational Safety and Health Standards, Code of Federal Regulations (OSHA), including changes and amendments thereto.
- H. UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY. Wells, tanks, pumping stations and culinary water pipelines shall conform to the requirements of Utah Administrative Code Rule R 309. Water and sewer pipeline installation shall conform to the requirements of Utah Administrative Code Rule R 317-3-2.9 "Protection of Water Supplies" for horizontal and vertical separation.
- I. UTAH DEPARTMENT OF TRANSPORTATION (UDOT) REQUIREMENTS. CONTRACTOR's work on UDOT property or right-of-way shall conform to UDOT's latest edition of Standard Specifications For Road and Bridge Construction.
- J. U.S. ARMY CORPS OF ENGINEERS (COE) REQUIREMENTS. CONTRACTOR's work shall conform to COE Specifications in accordance with Section 404 of the Clean Water Act for excavation in wetlands.
- K. Reference herein to APWA shall mean the latest edition of the "Manual of Standard Specifications" and "Manual of Standard Plans" as prepared by the American Public Works Association and the Associated General Contractors of America.
- L. All provisions of the Manual of Standard Specifications, Latest Edition and Manual of Standard Plans, Latest Edition both published by the Utah Chapter of the American Public Works Association are hereby made a part of the Contract Documents by reference. The publications may be purchased separately from the Utah Technology Transfer Center, Utah State University, 4111 Old Main Hill, Logan, UT 84322-4111. Any conflicts, between the technical specifications, drawings, and other provisions or documents contained in the Contract Form or Contract Documents versus provisions contained in the Manual of Standard Specifications, Latest Edition and Manual of Standard Plans, Latest Edition published by the Utah Chapter of the American Public Works Association, shall be resolved in favor of the technical specifications, drawing, and provisions contained in the Contract form or Contract Documents.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

SECTION 01 45 00
QUALITY CONTROL AND MATERIALS TESTING

PART 1 GENERAL

1.1 SUMMARY

- A. This Section outlines responsibilities for controlling the quality of materials, products, and workmanship.

1.2 MATERIALS

- A. All materials incorporated in the project shall be new and shall fully comply with the Specifications. Unless otherwise clearly provided in the Specifications, all workmanship, equipment, materials, and articles incorporated in the Work covered by the Contract are to be of the best available grade of their respective kinds. Whenever, in the specifications, any material, article, device, product, fixture, form, type of construction, or process indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or process desired and shall be deemed to be followed by the words "or approved equal" and CONTRACTOR may in such case, upon receiving ENGINEER's approval, purchase and use any item, type, or process which shall be substantially equal in every respect to that indicated or specified.
- B. Materials and equipment may be used in the Work based upon receipt of a Supplier's certificate of compliance. Certificate must be in possession of CONTRACTOR and reviewed by ENGINEER prior to use.
- C. Quality Assurance Testing by OWNER and/or ENGINEER shall not relieve CONTRACTOR of responsibility to furnish materials and work in full compliance with Contract Documents.

1.3 MANUFACTURER'S INSTRUCTIONS

- A. Should instructions conflict with Contract Documents, request clarification before proceeding.
- B. When required in individual sections, submit manufacturer's instructions in the quantity required for product data, delivery, handling, storage, assembly, installation, start-up, adjusting, balancing, and finishing, as appropriate.

1.4 WORKMANSHIP

- A. Maintain performance control and supervision over Subcontractors, Suppliers, manufacturers, products, services, workmanship, and site conditions, to produce work in accordance with Contract Documents.
- B. Comply with industry standards except when more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.

07/2024
534.07.100

QUALITY CONTROL AND MATERIALS TESTING
PAGE 01 45 00- 1

- C. Provide suitable qualified personnel to produce specified quality.
- D. Ensure finishes match approved samples.

1.5 TOLERANCES

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerance to accumulate.
- B. Comply with manufacturers' tolerances. When manufacturers' tolerances conflict with Contract Documents, request clarification from ENGINEER before proceeding.
- C. Adjust products to appropriate dimensions; position before securing products in place.

1.6 TESTING AND INSPECTION SERVICES

- A. The testing agency and testing for quality control and material testing shall be furnished by CONTRACTOR as part of the project. Results of testing shall be reported to CONTRACTOR and ENGINEER on site. Reports of the testing shall be transmitted directly to ENGINEER.
- B. Materials to be supplied under this contract will be tested and/or inspected either at their place of origin or at the site of the work by the testing agency. CONTRACTOR shall give ENGINEER written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin so ENGINEER may witness testing by the testing agency. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude retesting or reinspection at the site of the work.
- C. CONTRACTOR shall furnish such samples of materials as are requested by the ENGINEER, without charge. No material shall be used until reports from the testing agency have been reviewed and accepted by ENGINEER. See Section 01 33 00 - Submittal Procedures.

1.7 UNSATISFACTORY CONDITIONS

- A. Examine areas and conditions under which materials and products are to be installed. Do not proceed with work until unsatisfactory conditions have been corrected in a manner acceptable to the Installer.

1.8 AUTHORITY AND DUTIES OF PROJECT REPRESENTATIVE

- A. Refer to Section 00 80 00 "Supplementary Conditions" sub-section SC 10.03 "Resident Project Representative"

1.9 QUALITY CONTROL TESTING

- A. ENGINEER's failure to detect any defective Work or materials does not prevent later rejection when such defect is discovered nor does it obligate ENGINEER for acceptance.

07/2024
534.07.100

QUALITY CONTROL AND MATERIALS TESTING
PAGE 01 45 00- 2

- B. CONTRACTOR shall provide 24-hours minimum notice to ENGINEER for all testing required by these specifications so ENGINEER may coordinate or be present during testing.

1.10 TESTING ACCEPTANCE AND FREQUENCY

- A. Minimum Quality Control Testing Frequency: As defined in Table 01 45 00-1, CONTRACTOR shall be responsible to ensure that all testing is performed at the frequencies shown. CONTRACTOR shall uncover any work at no cost to OWNER to allow the testing agency to perform required testing at the frequency shown.
- B. Acceptance of Defective Work: As defined in Article 14.04 of the General Conditions.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION

3.1 EXAMINATION

- A. Verify existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify existing substrate is capable of structural support or attachment of new Work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.
- D. Verify utility services are available, of correct characteristics, and in correct locations.

3.2 PREPARATION

- A. Clean substrate surfaces prior to applying the next material or substance.
- B. Seal cracks or openings of substrate prior to applying the next material or substance.
- C. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying new material or substance in contact or bond.

TABLE 01 45 00-1: QUALITY CONTROL TESTING FREQUENCY

SYSTEM or MATERIAL	TESTS	MINIMUM REQUIRED FREQUENCY
SUBGRADE AND BACKFILL MATERIALS		
Section 32 11 23 Road Base - Untreated Base Course	Field Density	<u>Base course subgrade</u> : 1 test per 2,000 square feet of area. <u>Base course</u> : 1 test per 2,000 square feet of area.
	Laboratory	<u>Base course</u> : 1 test for each material type which includes proctor, classification, and gradation.
ASPHALT		
Section 32 12 16 Hot-Mix Asphalt Concrete Paving	Mix Design	<u>Marshall Test Method</u> : 1 test initially per each type of material and each change in target, and for each day of production thereafter. <u>Specific Gravity</u> : 1 per each Marshall Test <u>Extraction</u> : 1 test per each Marshall Test
	Field Density	<u>Bituminous surfaces</u> : 1 test per 2,000 square feet placed or part thereof.
	Asphalt Thickness and Core Density	<u>Bituminous surfaces</u> : 1 test sample every 300 linear feet of completed roadway.
NOTES:		
<ol style="list-style-type: none"> Additional tests shall be conducted when variations occur due to CONTRACTOR's operations, weather conditions, site conditions, etc. Classification, moisture content, Atterberg limits and specific gravity tests shall be conducted for each compaction test, if applicable. Tests can substitute for same tests required under "Aggregates" (from bins or source), although gradations will be required when blending aggregates. Aggregate moisture tests are to be conducted in conjunction with concrete strength tests for water/cement calculations. Strength tests shall be the average of the strengths of at least two (2) 6-inch diameter by 12-inch high cylinders. If 4-inch diameter cylinders are used, collect an additional cylinder (6 total) and the strength test shall be the average of the strengths of at least three (3) 4-inch by 8-inch high cylinders. 		

- END OF SECTION -

SECTION 01 45 23
TESTING AGENCY SERVICES

PART 1 GENERAL

1.1 SUMMARY

- A. CONTRACTOR shall be responsible for providing Construction Quality Control Testing of all soils, concrete, etc. as required by the various sections of these Specifications. This section includes the following:
1. Use of independent testing agency
 2. Control testing report submittal requirements
 3. Responsibilities of testing agency

1.2 RELATED WORK

- A. Related Work specified in other Sections includes, but is not limited to:
1. Section 01 33 00 Submittal Procedures

1.3 REFERENCES

- A. Work covered by this Specification shall meet or exceed the provisions of the latest editions of the following Codes and Standards in effect at the time of award of the Contract. The publication is referred to in the text by basic designation only.
- B. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)
1. ASTM D 3740 Standard Practice for Minimum Requirements for Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.
 2. ASTM D 4561 Standard Practice for Quality Control Systems for Organizations Producing and Applying Bituminous Paving Materials
 3. ASTM E 329 Standard Specification for Agencies Engaged in Construction Inspection, Testing, or Special Inspection.

1.4 DEFINITIONS

- A. Independent Testing Agency: A testing agency NOT owned by CONTRACTOR, and an agency that does not have any preferential affiliation or association with CONTRACTOR, or any of CONTRACTOR's Subcontractors and Suppliers other than entering into a contract with CONTRACTOR to perform the duties defined in these Specifications.
- B. Professional Engineer: An engineer who complies with Utah licensing law and is acceptable to the authority having jurisdiction.

1.5 QUALITY ASSURANCE

- A. CONTRACTOR shall employ and pay for services of an independent testing agency which complies with ASTM D 3740, ASTM D 4561, and ASTM E 329 to test materials for contract compliance.

1.6 CONTRACTOR SUBMITTALS

- A. Provide submittals in accordance with Section 01 33 00 – Submittal Procedures
- B. If CONTRACTOR is employing and paying for an independent testing agency, prior to start of Work, submit testing agency's name, address, telephone number and the following:
 - 1. Concrete Technician: Approved by ENGINEER or ACI certified.
 - 2. Person charged with engineering managerial responsibility
 - 3. Professional engineer on staff to review services
 - 4. Level of certification of technicians

1.7 TESTING AGENCY SUBMITTALS

- A. Field Test Report: Submit report no later than the end of the current day.
- B. Laboratory Test Report: Submit original report within 48 hours after test results are determined.
- C. Final Summary Report: Submit prior to final payment
- D. On all reports include:
 - 1. Project title, number and date of the report
 - 2. Date, time and location of test
 - 3. Name and address of material Supplier
 - 4. Identification of product being tested and type of test performed
 - 5. Identify whether test is initial test or retest
 - 6. Results of testing and interpretation of results
 - 7. Name of technician who performed the testing

1.8 RESPONSIBILITIES OF TESTING AGENCY

- A. Calibrate testing equipment at least annually with devices with an accuracy traceable to either National Bureau of Standards or acceptable values of natural physical constraints.
- B. Provide sufficient personnel at site and cooperate with CONTRACTOR, ENGINEER and OWNER's Representative in performance of testing service.
- C. Secure samples using procedures specified in the applicable testing code.
- D. Perform testing of products in accordance with applicable sections of the Contract Documents.
- E. Immediately report any compliance or noncompliance of materials and mixes to CONTRACTOR, ENGINEER, and OWNER's Representative.
- F. When an out-of-tolerance condition exists, perform additional inspections and testing until the specified tolerance is attained, and identify retesting on test reports.

1.9 LIMITS ON TESTING AGENCY AUTHORITY

- A. Agency may not release, revoke, alter, or enlarge on requirements of Contract Documents.
- B. Agency may not suspend Work.
- C. Agency has no authority to accept Work for OWNER.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

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SECTION 01 50 00**TEMPORARY CONSTRUCTION UTILITIES AND ENVIRONMENTAL CONTROLS****PART 1 GENERAL****1.1 DESCRIPTION**

- A. This section covers temporary utilities, including electricity, lighting, telephone service, water, and sanitary facilities; temporary controls, including barriers, protection of work, and water control; and construction facilities, including parking, progress cleaning, and temporary buildings.

1.2 TEMPORARY UTILITIES

- A. Temporary Electricity: CONTRACTOR shall provide, maintain, and pay for all power required by CONTRACTOR, including electrical service to CONTRACTOR's and OWNER/ENGINEER's field offices.
- B. Temporary Lighting: CONTRACTOR shall provide all temporary lighting required for execution of his work and for employee and public safety. As a minimum, lighting levels during working hours shall meet the requirements of OSHA Subsection 1926.56 illumination.
- C. Temporary Heating and Cooling
 - 1. Provide heating and cooling devices as needed to maintain specified conditions for construction operations.
- D. Temporary Ventilation
 - 1. Ventilate enclosed areas to achieve curing of materials, to dissipate humidity, and to prevent accumulation of dust, fumes, vapors, or gases.
- E. Temporary Water Service
 - 1. CONTRACTOR shall provide for all his workers on the project, adequate and reasonably convenient uncontaminated drinking water supply. All facilities shall comply with the regulations of the local and State Departments of Health.
 - 2. CONTRACTOR shall be responsible to arrange for water, both potable and non-potable water.
 - 3. When water is taken from a city water system or any other potable water supply source for construction purposes, suitable precautions shall be taken to prevent cross connections and contamination of the water supply.
- F. Temporary Sanitary Facilities: CONTRACTOR shall provide and maintain sanitary facilities for his employees and his subcontractors' employees that will comply with the regulations of the local and State Departments of Health.

1.3 TEMPORARY CONTROLS

- A. Barriers: Provide barriers as necessary to prevent unauthorized entry to construction areas and to protect existing facilities and adjacent properties from damage from

TEMPORARY CONSTRUCTION UTILITIES

AND ENVIRONMENTAL CONTROLS

PAGE 01 50 00 – 1

07/2024

534.07.100

construction operations. Protect non-owned vehicular traffic, stored materials, site, and structures from damage.

B. Project Security

1. CONTRACTOR shall make all necessary provisions to protect the project and CONTRACTOR's facilities from fire, theft, and vandalism, and the public from unnecessary exposure to injury.
2. Entry Control:
 - a. Restrict entrance of persons and vehicles into Project site.
 - b. Allow entrance only to authorized persons.

C. Dust Control: Execute Work by methods to minimize raising dust from construction operations. Provide positive means to prevent air-borne dust from dispersing into the atmosphere. Give all unpaved streets, roads, detours, or haul roads used in the construction area an approved dust-preventive treatment or periodically water to prevent dust. Applicable environmental regulations for dust prevention shall be strictly enforced.

D. Pest Control: Provide methods, means, and facilities to prevent rodents, pests, and insects from damaging the Work.

E. Pollution Control: Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations. All chemicals used during construction or furnished for project operation whether defoliant, soil sterilant, herbicide, pesticide, disinfectant, polymer, reactant or of other classification, shall show approval of the U.S. Department of Agriculture. Use of all such chemicals and disposal of residues shall be in strict accordance with the printed instruction of the manufacturer.

F. Protection of Work: CONTRACTOR shall protect installed work and provide special protection where specified in individual specifications sections. CONTRACTOR shall provide temporary and removable protection for installed products and shall control activity in immediate work area to minimize damage.

G. Open Burning: No open burning of waste materials will be allowed.

H. Explosives and Blasting: The use of explosives on the work will not be permitted.

I. Noise Abatement: In inhabited areas, particularly residential, operations shall be performed in a manner to minimize unnecessary noise generation.

J. STORM AND GROUND WATER

1. CONTRACTOR shall provide and maintain at all times during construction, ample means and devices with which to promptly remove and properly dispose of all water entering the excavation or other parts of the work, whether the water be from surface or underground water sources.
2. In excavation, fill, and grading operations, care shall be taken to disturb the pre-existing drainage pattern as little as possible. Care shall be taken not to direct drainage water into private property or into streets or drainage ways inadequate for the increased flow.

TEMPORARY CONSTRUCTION UTILITIES
AND ENVIRONMENTAL CONTROLS
PAGE 01 50 00 – 2

07/2024
534.07.100

3. CONTRACTOR shall maintain effective means to minimize the quantity of sediments leaving the work area either by storm water or CONTRACTOR's own dewatering operations. CONTRACTOR shall be responsible for obtaining required permits and complying with all City, State, and Federal storm water management regulations and requirements, including preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) for Construction Activities. If required, CONTRACTOR shall submit a copy of the Notice of Intent and the SWPPP to the OWNER for review and approval.

1.4 CONSTRUCTION FACILITIES

A. VEHICULAR ACCESS

1. Construct temporary access roads from public thoroughfares to serve construction area, of width and load bearing capacity to accommodate unimpeded traffic for construction purposes.
2. Extend and relocate vehicular access as Work progress requires, provide detours as necessary for unimpeded traffic flow.
3. Location of temporary access roads and detours shall be approved by ENGINEER.
4. Provide unimpeded access for emergency vehicles.
5. Provide and maintain access to fire hydrants and control valves free of obstructions.
6. Provide means of removing mud from vehicle wheels before entering streets.
7. When possible, use existing on-site roads for construction traffic.

- B. Parking: CONTRACTOR shall provide temporary parking areas to accommodate construction personnel. Parking shall be in an area approved by ENGINEER.

C. Progress Cleaning

1. CONTRACTOR shall maintain areas free of waste materials, debris, and rubbish. Maintain the site in a clean and orderly condition. Upon completion of work, repair all damage caused by equipment and leave the project site free of rubbish or excess materials of any kind.
2. Thoroughly clean all spilled dirt, gravel, or other foreign materials caused by the construction operations from all streets and roads at the conclusion of each day's operation.
3. It shall be the responsibility of CONTRACTOR to promptly clean up and remove any oil and/or fuel spills caused by CONTRACTOR or his Sub-contractors during the project. Contaminated soil shall be properly disposed of by CONTRACTOR in accordance with all applicable laws. CONTRACTOR shall be responsible for any damages to OWNER resulting from CONTRACTOR's negligence in promptly cleaning up said spills.

1.5 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Prior to Final Application for Payment, CONTRACTOR shall remove temporary above grade or buried utilities, equipment, facilities, and materials; clean and repair damage caused by installation or use of temporary work; and restore existing facilities used during construction to original condition.

TEMPRORARY CONSTRUCTION UTILITIES
AND ENVIRONMENTAL CONTROLS
PAGE 01 50 00 – 3

07/2024
534.07.100

1.6 CULTURAL RESOURCES

- A. CONTRACTOR's attention is directed to the National Historic Preservation Act of 1966 (16 U.S.C. 470) and 36 CFR 800 which provides for the preservation of potential historical architectural, archeological, or cultural resources (hereinafter called "cultural resources").
- B. CONTRACTOR shall conform to the applicable requirements of the National Historic Preservation Act of 1966 as it relates to the preservation of cultural resources.
- C. If a suspected or unsuspected historical, archaeological, or paleontological item, feature, or site or other cultural resource is encountered during subsurface excavations at the site of construction, the following procedures shall be instituted:
 - 1. Construction operations shall be immediately stopped in the vicinity of the discovery and ENGINEER and OWNER shall be notified of the nature and exact location of the finding. CONTRACTOR shall not damage the discovered objects and shall provide written confirmation of the discovery to ENGINEER within two (2) calendar days.
 - 2. OWNER and ENGINEER will then immediately notify the State Historical Preservation Office (SHPO) and the Utah Geological Survey (UGS).
 - 3. SHPO and UGS will investigate the finding and determine if the resource requires protection and the disposition of the said resource.
- D. If SHPO and UGS determine that the potential find is a bona fide cultural resource, CONTRACTOR shall suspend work at the location of the find under the provisions for changes contained in Articles 11, 12, and 13 of Section 00 72 00 – General Conditions.

PART 2 PRODUCTS

2.1 TEMPORARY EROSION CONTROL MATERIALS

- A. EROSION CONTROL BLANKETS
 - 1. Erosion control blankets shall meet the requirements of the Erosion Control Technology Council (ECTC) and the FHWA Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-03 Section 713.17 as a Type 3.B Extended Term Double Net Erosion Control Blanket. The erosion control blanket shall be fabricated from UV-stabilized polypropylene and a straw/coconut blend. The blanket shall be **Model SC150 by Tensar North American Green, Excel CS-3 by Western Excelsior**, or approved equal. The functional longevity shall be 24 months minimum.

B. SILT FENCE

1. Use woven fabric meeting the following properties.

Table 01 50 00-1 - Silt Fence Geotextile			
Property	ASTM	MARV's	
		Standard	High Performance
Grab Tensile Strength, lbs.	D 4632	90 ^(a)	120 ^(a)
Grab Elongation, %	D 4632	< 40	< 40
Flux, gal/min/ft ²	D 4491	15	90
Apparent Opening Size, (AOS-US sieve)	D 4751	> 20	> 30
Ultraviolet Degradation, %	D 4355	70	90
Notes: (a) Percent of tensile strength retained determined after weathering per ASTM D 4355 for 500-hours			

2. High performance fence to have tape yarns in one principal direction only.
3. Add stabilizers or inhibitors to make the filaments resistant to sunlight or heat deterioration.
4. Finish edges to prevent outer yarn from pulling away from the fabric.
5. Sheets of fabric may be sewn or bonded together. Provide minimum width recommended by manufacturer.
6. No deviation from any requirement in Table 2 due to the presence of seams.
7. Manufactured with pockets for posts, hems with cord, or with posts pre-attached using staples or button head nails.

C. POSTS

1. Minimum length: 4-feet.
2. Steel: Round, U shaped, T shaped, or C shaped with a minimum weight of 1.3-pounds per foot and have projections for fastening wire.
3. Wood as follows:
 - a. Soft wood posts at least 3-inches in diameter, or nominal 2 x 4-inches and straight to provide a fence without noticeable misalignment.
 - b. Hard wood post with a minimum cross-sectional area of 2.25 square-inches.
4. Fasteners for Wooden Posts:
 - a. Wire staples No. 17 gage minimum with a crown at least 3/4-inches wide and legs at least 1/2-inch long.
 - b. Nails 14 gage minimum, 1-inch long with 3/4-inch button.

PART 3 EXECUTION

3.1 SILT FENCE

- A. Beginning work means acceptance of existing conditions.
- B. Maintain the silt fence until revegetation is complete (defined as when cover reaches a density of at least 70% of pre-disturbance levels).
- C. Clear area of any debris and obstructions that may damage geotextile.
- D. Place post in all low points.
- E. Install posts a maximum of 8-feet apart with at least 18-inches in the ground. If not possible to achieve depth, secure posts to prevent overturning.
- F. Attach filter fabric by wire, cord, pockets, staples, nails, or other effective means.
 - 1. When using a wire support fence, provide at least 6 horizontal wires with a minimum of 12 gage wire. Space vertical wires 6-inches maximum. Secure geotextile to the up-slope side of the post. Extend wire into the trench a minimum of 2-inches and extend a maximum of 36-inches above the ground surface.
- G. Install fabric so 6 to 8-inches of fabric remain at the bottom to be buried. Splice together only at support posts with at least a minimum overlap of 18-inches. Extend buried portion 6-inches deep and the rest upstream of the fabric fence.
- H. Sediment Removal: Remove sediment before deposit reaches 1/2 of the height of the silt fence or raise the height of silt fence. After removal of sediment, dress landscape.
- I. Schedule of Locations: Typical locations include the toe of fill slopes, the downhill side of fill slopes, the downhill side of large cut areas, and natural drainage areas. Limit geotextile materials to handle an area equivalent to 1,000 square feet per 10-feet of fence. Use caution should the site slope be steeper than 1:1 (horizontal to vertical), and water flow rates exceed 1 cubic foot per second per 10-feet of fence face.

- END OF SECTION -

SECTION 01 50 30
PROTECTION OF EXISTING FACILITIES

PART 1 GENERAL

1.1 DESCRIPTION

- A. Any existing facilities, disturbed which are located in or adjacent to the line of work such as curbs, gutters, drive approaches, sidewalks, driveways, fences, underground pipes, conduits, or utilities, shall be cleaned up and restored in kind by CONTRACTOR and in accordance with the Specifications contained herein governing the various types of services involved.
- B. CONTRACTOR shall not perform work that would affect any oil, gas, sewer, or water pipeline; any telephone, fiber optic, television cable, or electric transmission line; any fence; or any structure, until authorization has been obtained from owner of the improvement. Provide owner of the improvement due notice of the beginning of the work, and remove, shore, support, or otherwise protect such improvement or replace the same.

1.2 RELATED WORK

- A. Related Work specified in other Sections includes, but is not limited to:

Section 01 78 50 Project Closeout

1.3 RESTORATION OF FENCES

- A. Where it is necessary to remove any fence to facilitate CONTRACTOR's operation, CONTRACTOR shall obtain prior agreement with the owner of the fence for removal of the fence and shall be responsible for any damage due to negligence of CONTRACTOR. As soon as practical, the fence shall be restored substantially to the same or improved condition as it was prior to the commencement of the work. Where livestock is present CONTRACTOR shall provide temporary fencing to keep livestock away from the construction area.

1.4 UNDERGROUND SERVICE ALERT

- A. Prior to any excavation in the vicinity of any existing underground facilities, including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all buried electric power, communications, or television cables; all traffic signal and street lighting facilities; and all roadway and state highway rights-of-way, CONTRACTOR shall notify the regional notification center (Blue Stakes of Utah) at 1-800-662-4111 or 811 or submit an on-line request at www.bluestakes.org at least 2 days, but no more than 7 days, prior to such excavation.

1.5 INTERFERING STRUCTURES AND UTILITIES

- A. CONTRACTOR shall exercise all possible caution to prevent damage to existing structures and utilities, whether above ground or underground. Prior to submittal of Shop Drawings, and prior to commencing any excavations for new pipelines or structures, conduct investigations, including exploratory excavations and borings, to

determine the location and type of underground utilities and services connections that could result in damage to such utilities. It shall be the responsibility of CONTRACTOR to locate and expose all existing underground and overhead structures and utilities in such a manner as to prevent damage to same. CONTRACTOR shall notify all utility offices concerned at least 48 hours in advance of construction operations in which a utility agency's facilities may be involved. This shall include, but not be limited to, irrigation water, culinary water, telephone, television cables, fiber optic communication, gas, and electric. CONTRACTOR shall be responsible for any and all changes to, reconnections to public utility facilities encountered or interrupted during prosecution of the work, and all costs relating hereto shall be at CONTRACTOR's expense. CONTRACTOR shall contract with and pay Public Utility Agencies for work required in connection with all utility interferences and handle all necessary notifications, scheduling, coordination, and details. The cost of public utility interferences shall be included in CONTRACTOR's lump sum or unit price bid covering the major contract facility to which interference or changes are attributable.

- B. All exploratory excavations shall be performed as soon as practicable after Notice to Proceed and, in any event, a sufficient time in advance of the construction to avoid possible delays to CONTRACTOR's progress. Prepare a report identifying each utility by its size, elevation, station, and material of construction. Immediately notify ENGINEER and the utility in writing as to any utility discovered in a different position than as marked in the field or shown on the Drawings, or any utility which is not marked in the field or not shown on the Drawings.
- C. The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility. Conform to local agency requirements for backfill and pavement repair after performing exploratory excavations.
- D. Any damage to private property, either inside or outside the limits of the easements provided by OWNER, shall be the responsibility of CONTRACTOR. Any roads, structures, or utilities damaged by the work shall be repaired or replaced in a condition equal to or better than the condition prior to the damage. Such repair or replacement shall be accomplished at CONTRACTOR's expense without additional compensation from OWNER.
- E. CONTRACTOR shall remove and replace small miscellaneous structures such as fences and culverts which are damaged by the construction activity at his own expense without additional compensation from OWNER. CONTRACTOR shall replace these structures in a condition as good as or better than their original condition.
- F. At points where CONTRACTOR's operations are adjacent to or across properties of railway, telegraph, telephone, irrigation canal, power, gas, water, or adjacent to other property (damage to which might result in considerable expense, loss, and inconvenience), no work shall be started until all arrangements necessary for the protection thereof have been made.
- G. The locations of the major existing culinary water lines, gas pipes, underground electric, cable television, and telephone lines that are shown on the plans were taken from city maps, and maps supplied by the utility owner. No excavations were made to verify the locations shown for underground utilities, unless specifically stated on the Contract Drawings. It should be expected that some location discrepancies will occur. Neither OWNER nor its officers or agents shall be responsible for damages to CONTRACTOR

as a result of the locations of the utilities being other than those shown on the plans or for the existence of utilities not shown on the plans.

- H. CONTRACTOR shall be solely and directly responsible to owners and operators of such properties for any damage, injury, expense, loss or inconvenience, delay, suits, actions, or claims of any character brought because of an injury or damage which may result from the carrying out of the work to be done under the contract.
- I. All utilities including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all buried electric power, communications, or television cables; all traffic signal and street lighting facilities encountered along the line of the work shall remain continuously in service during all operations under the Contract, unless other arrangements satisfactory to ENGINEER are made with owner of said utility.
- J. In the event of interruption to either domestic or irrigation water, or to other utility services as a result of accidental breakage, or as a result of being exposed or unsupported, CONTRACTOR shall promptly notify the proper authority. CONTRACTOR shall cooperate with the authority in restoration of service as soon as possible and shall not allow interruption of any water or utility service outside working hours unless prior approval is received.
- K. In case it shall be necessary to move the property of any public utility or franchise holder, such utility company or franchise holder will, upon request of CONTRACTOR, be notified by OWNER to move such property within a specified reasonable time. When utility lines that are to be moved are encountered within the area of operations, CONTRACTOR shall notify ENGINEER a sufficient time in advance for the necessary measures to be taken to prevent interruption of service.
- L. Where the proper completion of the WORK requires the temporary or permanent removal and/or relocation of an existing Utility or other improvement which is indicated, CONTRACTOR shall remove and, without unnecessary delay, temporarily replace or relocate such Utility or improvement in a manner satisfactory to ENGINEER and OWNER of the facility. In all cases of such temporary removal or relocation, restoration to the former location shall be accomplished by CONTRACTOR in a manner that will restore or replace the Utility or improvement as nearly as possible to its former locations and to as good or better condition than found prior to removal.

1.6 RIGHTS-OF-WAY

- A. CONTRACTOR shall be required to confine construction operations within the dedicated rights-of-way for public thorough fares, or within areas for which construction easements have been obtained, unless they have made special arrangements with the affected property owners in advance. CONTRACTOR shall be required to protect stored materials, cultivated trees and crops, and other items adjacent to the proposed construction site.
- B. CONTRACTOR shall submit for approval by ENGINEER the type and size of equipment used, and the methods for work performed on the rights-of-way across private properties, to avoid or minimize injury to trees, shrubs, gardens, lawns, fences, driveways, retaining walls, or other improvements within the rights-of-way.

- C. The construction easement widths and access to private properties are as shown on the Drawings and as described in the easement documents; however, CONTRACTOR is to minimize impacts to surface improvements within the right-of-way. CONTRACTOR shall obtain a signed release from the property owner, approving restoration of work in the construction easements across or bordering private properties. See Project Closeout Section 01 78 50, 1.4.D.
- D. Property owners affected by the construction shall be notified by CONTRACTOR at least 48 hours in advance of the time the construction begins. During all construction operations, CONTRACTOR shall construct and maintain such facilities as may be required to provide access by all property owners to their property. No person shall be cut off from access to his property for a period exceeding 8 hours unless CONTRACTOR has made special arrangements with the affected persons. CONTRACTOR shall, daily or more frequently, if necessary, grade all disturbed areas to be smooth for motor vehicle traffic.

1.7 PROTECTION OF SURVEY, STREET OR ROADWAY MARKERS

- A. CONTRACTOR shall not destroy, remove, or otherwise disturb any existing survey markers or other existing street or roadway markers without proper authorization. No pavement breaking or excavation shall be started until all survey or other permanent marker points that will be disturbed by the construction operations have been properly referenced. Survey markers or points disturbed by CONTRACTOR shall be accurately restored after street or roadway resurfacing has been completed.

1.8 TREES OR SHRUBS WITHIN PROJECT LIMITS

- A. Except where trees or shrubs are indicated to be removed, CONTRACTOR shall exercise all necessary precautions so as not to damage or destroy any trees or shrubs, including those lying within street rights-of-way and project limits, and shall not trim or remove any trees unless such trees have been approved for trimming or removal by the jurisdictional agency or OWNER. Existing trees and shrubs which are damaged during construction shall be trimmed or replaced by CONTRACTOR or a certified tree company under permit from the jurisdictional agency and/or OWNER. Tree trimming and replacement shall be accomplished in accordance with the following paragraphs.
 1. The symmetry of the tree shall be preserved; no stubs or splits or torn branches left; clean cuts shall be made close to the trunk or large branch. Spikes shall not be used for climbing live trees. Cuts over 1-1/2 inches in diameter shall be coated with a tree paint product that is waterproof, adhesive, and elastic, and free from kerosene's, coal tar, creosote, or other material injurious to the life of the tree.
 2. CONTRACTOR shall immediately notify the jurisdictional agency and/or OWNER if any tree or shrub is damaged by CONTRACTOR's operations. If, in the opinion of said agency or OWNER, the damage is such that replacement is necessary, CONTRACTOR shall replace the tree or shrub at its own expense. The tree or shrub shall be of a like size and variety as the one damaged, or, if of a smaller size, CONTRACTOR shall pay to OWNER of said tree a compensatory payment acceptable to the tree or shrub owner, subject to the approval of the jurisdictional agency or OWNER. The size of the tree or shrub shall be not less than 1-inch diameter nor less than 6 feet in height.

1.9 RESTORATION OF PAVEMENT

- A. Pavement work shall meet the specifications for installation as noted in APWA Section 33 12 16.
- B. All paved areas damaged during construction shall be replaced with similar materials of equal thickness to match the existing adjacent undisturbed areas, except where specific resurfacing requirements have been called for in the Contract or in the requirements of the agency issuing the permit. The pavement restoration requirement to match existing sections shall apply to all components of existing sections, including sub-base, base, and pavement. Pavements which are subject to partial removal shall be neatly sawcut in straight lines.
- C. Wherever required by the local agency having jurisdiction, CONTRACTOR shall place temporary surfacing promptly after backfilling and shall maintain such surfacing for the period of time fixed by said authorities before proceeding with the final restoration of improvements.

1.10 CONCRETE WORK

- A. Concrete work shall meet the specifications for installation as noted in APWA Section 32 16 13 Driveway, Sidewalk, Curb and Gutter.
- B. All flat work in streets tying into existing flatwork shall be doweled into the existing concrete. Dowels to be spaced at 12" O.C. and be No. 5 rebar x 14" for slabs up to 8 inches in thickness and No. 8 rebar x 18" for slabs over 8 inches.

1.11 LAWNS

- A. Lawns that are damaged or destroyed during performance of the work shall be repaired or replaced with turf sod according to APWA Section 32 92 00 - Turf and Grass.

1.12 FENCES

- A. Fences that are damaged or destroyed during performance of the work shall be repaired or replaced back to the original condition or better to the satisfaction of the landowner and OWNER.

1.13 LANDSCAPING

- A. All landscaping on private property that is damaged or destroyed during performance of the work shall be repaired or replaced back to the original condition or better to the satisfaction of the landowner and OWNER.

1.14 OTHER SURFACE IMPROVEMENTS

- A. All other surface improvements not explicitly mentioned herein that are damaged or destroyed during performance of the work shall be repaired or replaced back to original condition or better.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

SECTION 01 55 26
TRAFFIC CONTROL

PART 1 GENERAL

1.1 DESCRIPTION

- A. CONTRACTOR shall comply with all rules and regulations of the City, County, and State authorities regarding the closing of public streets or highways. If conditions justify, ENGINEER may authorize CONTRACTOR to conduct his work in specific areas and to specific tasks to avoid sporadic and unorganized work efforts.
- B. All work performed on or within the right-of-way of state roads shall have traffic control devices in place before work begins that meet the requirements of Utah Department of Transportation's "Specifications for Excavation on State Highways".
- C. No road shall be closed by CONTRACTOR to the public except by express permission of ENGINEER and after obtaining the required permits. Where it is necessary to close a county or city road to thru traffic, the road shall be closed to thru traffic only - not local traffic. The road shall be closed for one block only, not over 700 feet. The road shall be barricaded at each point of public access with barricades meeting the Utah Department of Transportation's specifications.
- D. Traffic must be kept open on those roads and streets where no detour is possible. CONTRACTOR shall, at all times, conduct his work so as to ensure the least possible obstruction to traffic and normal commercial pursuits. All obstructions within traveled roadways shall be protected by approved signs, barricades, and lights where necessary for the safety of the traveling public. The convenience of the general public and residents, and the protection of persons and property are of prime importance and shall be provided for by CONTRACTOR in an adequate and satisfactory manner.
- E. Excavations on project sites from which the public is excluded shall be marked or guarded in a manner appropriate for the hazard.

1.2 TRAFFIC CONTROL

- A. For the protection of traffic in public or private streets and ways, CONTRACTOR shall provide, place, and maintain all necessary barricades, traffic cones, warning signs, lights, and other safety devices in accordance with the requirements of the "Manual on Uniform Traffic Control Devices for Streets and Highways, Part VI - Temporary Traffic Control," published by U.S. Department of Transportation, Federal Highway Administration. CONTRACTOR shall take all necessary precautions for the protection of the work and the safety of the public. All barricades and obstructions shall be illuminated at night, and all lights shall be kept burning from sunset until sunrise. CONTRACTOR shall station such guards or flaggers and shall conform to such special safety regulations relating to traffic control as may be required by the public authorities within their respective jurisdictions. All signs, signals, and barricades shall conform to the requirements of Subpart G, Part 1926, of the OSHA Safety and Health Standards for Construction.

- B. If at any time the conditions indicate that CONTRACTOR's protective facilities and service are inadequate to assure the safety of the public or CONTRACTOR's workers, CONTRACTOR shall provide additional facilities or services as may be necessary to assure protection at no additional cost to OWNER.
- C. Where required, CONTRACTOR shall obtain a traffic control permit from the governing agency prior to beginning work, and shall comply with all requirements of the permit.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

SECTION 00 56 00
DUST CONTROL

PART 1 GENERAL

1.1 SCOPE OF WORK

- A. Furnish all labor, materials, and equipment as required to provide dust control for the project.
- B. All materials and services shall comply with the requirements of the State of Utah, Department of Environmental Quality, Division of Air Quality and the City's Municipal Code.

PART 2 PRODUCTS

2.1 MATERIALS

- A. Water: CONTRACTOR shall be responsible to arrange and pay for water for dust control.
- B. Calcium chloride shall be added to the water used to provide dust control, if required by the City or agency having jurisdiction.

PART 3 EXECUTION

3.1 DUST CONTROL

- A. CONTRACTOR shall comply with the requirements of the State of Utah Department of Environmental Quality, Air Quality Regulations (including R301-205 Emission Standards: Fugitive Emissions and Fugitive Dust, and R307-309 Fugitive Emissions and Fugitive Dust, of the Utah Air Conservation Rules (UACR). CONTRACTOR shall submit a Fugitive Dust Control Plan to the Utah Division of Air Quality, which meets the requirements of R307-309-4. CONTRACTOR shall obtain a permit from the Division of Air Quality.
- B. CONTRACTOR shall execute Work by methods to minimize raising dust from construction operations. Provide positive means to prevent air-borne dust from dispersing into the atmosphere. Give all unpaved streets, roads, detours, or haul roads used in the construction area an approved dust-preventive treatment or periodically water to prevent dust. Applicable environmental regulations for dust prevention shall be strictly enforced.

3.2 WATER PLACEMENT FOR DUST CONTROL

- A. CONTRACTOR is responsible for placement of sufficient water to control dust on the project. Dust control is defined by the permit requirements of the State of Utah, Division of Environmental Quality, Division of Air Quality. Permit shall be obtained by CONTRACTOR.

3.3 WATER AND CALCIUM CHLORIDE MIXTURE FOR DUST CONTROL

- A. CONTRACTOR may also use a water and calcium chloride solution to abate the dust for the project. The mixture of calcium chloride per 10,000-gallon truck shall be 10 pounds. The calcium chloride shall be added to the water truck container as the water is being put into the water truck in order to provide sufficient mixing.
- B. In the absence of providing the water and calcium chloride mixture, CONTRACTOR shall meet the requirements of Subsection 3.2 of this document, or shall use other approved methods by OWNER that will allow CONTRACTOR to meet permit requirements.

- END OF SECTION -

SECTION 01 60 00
PRODUCT REQUIREMENTS

PART 1 GENERAL

1.1 PRODUCTS

- A. Furnish products of qualified manufacturers suitable for intended use. Furnish products of each type by single manufacturer unless specified otherwise.
- B. Do not use materials and equipment removed from existing premises, except as specifically permitted by Contract Documents.
- C. Furnish interchangeable components from same manufacturer for components being replaced.

1.2 PRODUCT DELIVERY REQUIREMENTS

- A. Transport and handle products in accordance with manufacturer's instructions.
- B. Promptly inspect shipments to ensure products comply with requirements, quantities are correct, and products are undamaged.
- C. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage.

1.3 PRODUCT STORAGE AND HANDLING REQUIREMENTS

- A. Store and protect products in accordance with manufacturers' instructions.
- B. Store with seals and labels intact and legible.
- C. Store sensitive products in weather tight, climate controlled, enclosures in an environment favorable to product.
- D. For exterior storage of fabricated products, place on sloped supports above ground.
- E. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.
- F. Store loose granular materials on solid flat surfaces in well-drained area. Prevent mixing with foreign matter.
- G. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.
- H. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

1.4 PRODUCT OPTIONS

- A. Products Specified by Reference Standards or by Description Only: Any product meeting those standards or description.

- B. Products Specified by Naming One or More Manufacturers: Products of one of manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with Provision for Substitutions: Submit request for substitution for any manufacturer not named in accordance with the following article.

1.5 PRODUCT SUBSTITUTION PROCEDURES

- A. ENGINEER will consider requests for Substitutions only after Notice of Award.
- B. Substitutions may be considered when a product becomes unavailable through no fault of CONTRACTOR.
- C. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.
- D. A request constitutes a representation that CONTRACTOR:
 - 1. Has investigated proposed product and determined that it meets or exceeds quality level of specified product.
 - 2. Will provide same warranty for Substitution as for specified product.
 - 3. Will coordinate installation and make changes to other Work which may be required for the Work to be complete with no additional cost to OWNER.
 - 4. Waives claims for additional costs or time extension which may subsequently become apparent.
 - 5. Will reimburse OWNER for review or redesign services associated with re-approval by authorities having jurisdiction.
- E. Substitutions will not be considered when they are indicated or implied on Shop Drawing or Product Data submittals, without separate written request, or when acceptance will require revision to Contract Documents.
- F. Substitution Submittal Procedure:
 - 1. Submit four copies of request for Substitution for consideration to ENGINEER.
 - 2. Submit Shop Drawings, Product Data, and certified test results attesting to proposed product equivalence. Burden of proof is on proposer.
 - 3. ENGINEER may require CONTRACTOR to provide additional data about the proposed substitution.
 - 4. ENGINEER will be the sole judge as to the type, function, and quality of any such substitution and ENGINEER's decision shall be final.
 - 5. ENGINEER will notify CONTRACTOR in writing of decision to accept or reject request.
 - 6. Acceptance by ENGINEER of a substitution proposed by CONTRACTOR shall not relieve CONTRACTOR of the responsibility for full compliance with the Contract Documents and for the adequacy of the substitution.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

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SECTION 01 71 13
MOBILIZATION

PART 1 GENERAL

1.1 DESCRIPTION

- A. This Section is provided to cover CONTRACTOR's cost of general and miscellaneous responsibilities and operations not normally attributed to, or included in, any other single bid item. This shall include, but not necessarily be limited to, work described or enumerated in this section under the following subsections.

1.2 MOVING TO AND FROM THE JOB SITE

- A. This shall include CONTRACTOR's preliminary arrangement for starting and stopping construction operations, work schedules, and transportation of equipment and personnel to and from the project.

1.3 CLEAN-UP

- A. The cost of all clean-up work as specified and not covered under other items shall be included in the Bid. Values shall be included in the Bid Schedule, lump-sum price, for "Mobilization".

1.4 TEMPORARY UTILITIES

- A. The cost of water, power, etc. required by CONTRACTOR in performing the Work specified in the Contract shall be included in the Bid. Values shall be included in the Bid Schedule, lump-sum price, for "Mobilization".

1.5 PERFORMANCE BOND, PAYMENT BOND, AND INSURANCE

- A. The cost of the Performance Bond, Payment Bond, and any required insurance and/or other miscellaneous cost associated with this Project shall be included with the Bid. Values shall be included in the Bid Schedule, lump-sum price, for "Mobilization".

1.6 PERMITS

- A. CONTRACTOR shall provide all necessary permits for completion of the Work. Values shall be included in the Bid Schedule, lump-sum price, for "Mobilization".

1.7 PRE-CONSTRUCTION VIDEO RECORDS

- A. CONTRACTOR is required to produce a preconstruction video recording of areas where Work is to be performed. The video record shall be of professional quality and the coverage shall be such, as to allow accurate determination of location, size, and conditions, etc. of existing features and improvements within the rights-of-way. CONTRACTOR shall provide OWNER with a copy of the rights-of-way video in electronic format on a digital video disc (DVD) or solid-state drive (USB or Thumb Drive) before construction begins.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

- END OF SECTION -

SECTION 01 78 50
PROJECT CLOSEOUT

PART 1 GENERAL

1.1 FINAL CLEANUP

- A. CONTRACTOR shall promptly remove from the vicinity of the completed Work all rubbish, unused materials, concrete forms, construction equipment, and temporary structures and facilities used during construction. Final acceptance of the Work by OWNER will be withheld until CONTRACTOR has satisfactorily complied with the foregoing requirements for final cleanup of the Project Site.

1.2 TOUCH-UP AND REPAIR

- A. CONTRACTOR shall touch up or repair all finished surfaces on structures, equipment, fixtures, etc., that have been damaged prior to final acceptance. Surface on which such touch-up or repair cannot be successfully accomplished shall be completely refinished or in the case of hardware and similar small items, the item shall be replaced.

1.3 CLOSEOUT TIMETABLE

- A. CONTRACTOR shall establish dates for equipment testing, acceptance periods, and on-site instructional periods (as required under the Contract). Such dates shall be established not less than one week prior to beginning any of the foregoing items, to allow OWNER, ENGINEER, and their authorized representatives sufficient time to schedule attendance at such activities.

1.4 MAINTENANCE AND GUARANTEE

- A. CONTRACTOR shall comply with the maintenance and guarantee requirements contained in Article 7.17 of the General Conditions, Section 00 72 00.
- B. Replacement of earth fill or backfill, where it has settled below the required finish elevations, shall be considered as part of such required repair work, and any repair or resurfacing which becomes necessary by reason of such required repair work shall be completed by CONTRACTOR at no cost to OWNER.
- C. CONTRACTOR shall make all repairs and replacements promptly upon receipt of written order from OWNER. If CONTRACTOR fails to make such repairs or replacement promptly, OWNER reserves the right to do the work and CONTRACTOR and his surety shall be liable to OWNER for the cost thereof.
- D. CONTRACTOR shall obtain a signed release from the property owner approving restoration of work in the construction easements across or bordering private property.

1.5 BOND

- A. CONTRACTOR shall provide a bond to guarantee performance of the provisions contained in Paragraph "Maintenance and Guarantee" above, and Article 6 of the General Conditions, Section 00 72 00.

1.6 FINAL ACCEPTANCE

- A. Final acceptance and final payment shall not be made until all provisions of the General Conditions Section 00 72 00 Article 15.06 have been satisfied.

1.7 PROJECT RECORD DOCUMENTS

- A. Maintain on site one set of the following record documents; record actual revisions to the Work:
 - 1. Drawings.
 - 2. Specifications.
 - 3. Addenda.
 - 4. Change Orders and other modifications to the Contract.
 - 5. Reviewed Shop Drawings, Product Data, and Samples.
 - 6. Manufacturer's instruction for assembly, installation, and adjusting.
- B. Ensure entries are complete and accurate, enabling future reference by OWNER.
- C. Store record documents separate from documents used for construction.
- D. Record information concurrent with construction progress, not less than weekly.
- E. Specifications: Legibly mark and record at each product section description of actual products installed, including the following:
 - 1. Manufacturer's name and product model and number.
 - 2. Product substitutions or alternates utilized.
 - 3. Changes made by Addenda and modifications.
- F. Record Drawings: Legibly mark each item to record actual construction including:
 - 1. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 - 2. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
 - 3. Field changes of dimension and detail
 - 4. Details not on original Contract drawings
- G. Submit documents to ENGINEER with claim for final Application for Payment.

1.8 CONTRACT CLOSEOUT

- A. As a condition precedent to final acceptance of the project, CONTRACTOR shall complete the following forms and submit the original and two copies of each form to the Project Representative.
 - 1. Contractor's Certificate of Substantial Completion
 - 2. Contractor's Certificate of Final Completion
 - 3. Contractor's Final Waiver of Lien
 - 4. Consent of Surety for Final Payment
 - 5. Affidavit of Payment
 - 6. Affidavit of Release of Liens by the Contractor

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

CONTRACTOR'S CERTIFICATE OF SUBSTANTIAL COMPLETION

OWNER

TO: Town of Hideout
10860 N Hideout Trail
Hideout, UT 84036

PROJECT: 2024 Street Maintenance

ATTENTION: _____

FROM: _____

Firm or Corporation

This is to certify that I, _____ am an authorized official of _____
_____ working in the capacity of _____
_____ and have been properly authorized by said form or corporation to sign the following
statements pertaining to the subject contract.

I know of my own personal knowledge, and do hereby certify, that the work of the Contract described above has been substantially performed, and materials used and installed to date in accordance with, and in conformity to, the Contract drawings and specifications. A list of all incomplete work is attached.

The Contractor hereby releases the Owner and its agents from all claims and liability to the Contractor for anything done or finished for or relating to the Work, as specified in the Project Manual, except demands against the Owner for the remainder of progress payments retained to date, and unresolved written claims prior to this date.

The Contract Work is now substantially complete, ready for its intended use, and ready for your inspection. You are requested to issue a Certificate of Substantial Completion.

Signature: _____

Date: _____

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PROJECT CLOSEOUT
PAGE 01 78 50 - 4

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION

OWNER

TO: Town of Hideout
 10860 N Hideout Trail
 Hideout, UT 84036

PROJECT: 2024 Street Maintenance

ATTENTION: _____

FROM: _____
 Firm or Corporation

This is to certify that I, _____ am an authorized official of _____
 _____ working in the capacity of _____
 _____ and have been properly authorized by said form or corporation to sign the following
 statements pertaining to the subject contract.

I know of my own personal knowledge, and do hereby certify, that the work of the Contract described above has been substantially performed, and materials used and installed to date in accordance with, and in conformity to, the Contract drawings and specifications.

The Contractor hereby releases the Owner and its agents from all claims and liability to the Contractor for anything done or finished for or relating to the Work. The Contract Work is now complete in all parts and requirements, ready for its intended use, excepting the attached list of minor deficiencies and the reason for each being incomplete to date, for which exemption from final payment requirements is requested (if no exemptions requested, write "none") _____. The Work is now ready for your final inspection. The following items are required from the Contractor prior to application for final payment and are submitted herewith, if any:

I understand that neither the issuance, by the Owner, or a Certificate of Final Completion, nor the acceptance thereof by the Owner, shall operate as a bar claim against the Contractor under the terms of the guarantee provisions of the Contract Documents.

Signature: _____

Date: _____

07/2024
 534.07.100

PROJECT CLOSEOUT
 PAGE 01 78 50 - 5

CONTRACTORS FINAL WAIVER OF LIEN

TO ALL WHOM IT MAY CONCERN:

WHEREAS, the undersigned has furnished labor and materials for (A) _____
 in the City of _____, County of _____, State of Utah, of which City of
 _____ is the Owner.

NOW THEREFOR, this _____ day of _____, 20_____, for and in consideration of the sum of (B) _____ dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release any lien* right to, or claim of lien with respect to and on said above described premises, and the improvements thereon, and on the monies or other consideration due or to become due from the Owner, on account of labor, services, materials, fixtures, apparatus or machinery heretofore or which may hereafter be furnished by the undersigned to or for the above described premises by virtue of said contract.

(C) _____ (SEAL)
 (Name of sole ownership, corporation or partnership)

(C) _____ (SEAL)
 (Signature of Authorized Representative)

Title: _____

INSTRUCTION FOR FINAL WAIVER:

- A. Project name.
- B. Final Contract amount received (total amount of Contract as adjusted).
- C. If the waiver is for a corporation, corporate name should be used, corporate seal affixed, and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself/herself as partner.

* The word Lien as used herein shall include Stop Orders, Stop Notices, or Freeze Orders on monies or other consideration of the Owner which are due or are to become due on the Contract referenced above.

CONSENT OF SURETY FOR FINAL PAYMENTProject Name: 2024 Street Maintenance

Location: _____

Type of Contract: _____

Amount of Contract: _____

In accordance with the provisions of the above named contract between the Owner and the Contractor, the following named surety:

on the Payment Bond of the following named Contractor:

hereby approves of final payment to the Contractor, and further agrees that said final payment to the Contractor shall not relieve the Surety Company named herein of any of its obligations to the following named Owner (as set forth in said Surety Company's bond):

Town of Hideout
 10860 N Hideout Trail
 Hideout, UT 84036

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand and seal this __
 day of _____, 20____.

 (Name of Surety Company)

 (Signature of Authorized Representative)

Title: _____

AFFIDAVIT OF PAYMENT

TO ALL WHOM IT MAY CONCERN:

WHEREAS, the undersigned has been employed by Town of Hideout to furnish labor and materials under a contract dated _____ for the project named _____ in the City of _____ County of _____, State of Utah.

NOW THEREFORE, this _____ day of _____, 20____, the undersigned, as the Contractor for the above named Contract pursuant to the conditions of the Contract, hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or its property might in any way be held responsible.

EXCEPTIONS: None

{AFFIX CORPORATE}
{SEAL HERE}

Contractor (Name of sole ownership,
Corporation or partnership)

(Signature of Authorized Representative)

Title: _____

AFFIDAVIT OF RELEASE OF LIENS BY THE CONTRACTOR

TO ALL WHOM IT MAY CONCERN:

WHEREAS, the undersigned has been employed by Town of Hideout to furnish labor and materials under a contract dated _____ for the project named _____ in the City of _____ County of _____ State of Utah.

NOW THEREFOR, this _____ day of _____, 20_____, the undersigned, as the Contractor for the above named Contract pursuant to the conditions of the Contract, hereby certifies that to the best of his/her knowledge, information and belief, except as listed below, the Releases or Waivers of Lien* attached hereto include the Contractor, all subcontractors, all suppliers of material and equipment, and all performers of work, labor or services, who have or may have liens against any property of the Owner and on the monies or other consideration due to becomes due from the Owner arising in any manner in connection with the performance of the Contract referenced above.

EXCEPTIONS: (If none, write "none". If required by the Owner, the Contractor furnish bond satisfactory to the Owner for each exception).

ATTACHMENTS:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Release or Waiver of Liens from subcontractors and material suppliers.

{AFFIX CORPORATE}
{SEAL HERE}

Contractor (Name of sole ownership,
Corporation or partnership)

(Signature of Authorized Representative)

Title: _____

* The word Lien as used herein shall include Stop Orders, Stop Notices, or Freeze Orders on monies or other consideration of the Owner which are due or are to become due on the Contract referenced above.

- END OF SECTION -

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SECTION 32 17 23
PAVEMENT MARKING

PART 1 GENERAL

1.1 DESCRIPTION:

- A. Provide pavement marking as indicated in the Contract Drawings and in compliance with Contract Documents.

1.2 RELATED WORK

- A. Related Work specified in other Sections includes, but is not limited to:
1. Section 01 33 00 Submittal Procedures

1.3 REFERENCES

- A. The Work covered by this Specification shall meet or exceed the provisions of the latest editions of the following Codes and Standards in effect at the time of award of the Contract. The publication is referred to in the text by basic designation only.
- B. NAVAL PUBLICATIONS AND FORM CENTER (NPFC):
1. TT-P-1952F Paint, Traffic and Airfield Marking, Waterborne
 2. FS 595B Colors Used in Government Procurement
- C. AMERICAN STANDARDS FOR TESTING OF MATERIALS (ASTM):
1. ASTM D 562 Standard Test Method for Consistency of Paints
 2. ASTM D 1644 Standard Test Methods for Nonvolatile Content of Varnishes
 3. ASTM D 2805 Standard Test Method for Hiding Power of Paints by Reflectometry
 4. ASTM D 3723 Standard Test Method for Measuring Neutron Fluence and Average Energy from 3H(d,n) 4He Neutron Generators by Radioactivation Techniques
 5. ASTM D 3960 Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings
 6. ASTM D 5381 Standard Guide for X-Ray Fluorescence (XRF) Spectroscopy of Pigments and Extenders
 7. ASTM E 1347 Standard Test Method for Color and Color-Difference Measurement by Tristimulus Colorimetry

1.4 SUBMITTALS

- A. Provide submittals in accordance with Section 01 33 00 – Submittal Procedures.
- B. CONTRACTOR shall supply shop drawings for approval on all paint materials at least 30 days prior to installation. Submittals shall include the following data sheets:
1. For each paint used herein, furnish a Paint System Data Sheet (PSDS), Technical Data Sheets, and paint colors available.

1.5 DELIVERY STORAGE AND HANDLING:

- A. Furnish paint in sealed containers that legibly indicate at time of use designated name, formula or specification number, batch number, color, date of manufacturer, manufacturer's name, formulation number, and directions.
- B. Store paints in a suitable protected area that is heated or cooled as required to maintain temperatures within the range recommended by the manufacturer.

1.6 QUALITY ASSURANCE

- A. All inspection for quality assurance shall ultimately be the responsibility of CONTRACTOR. OWNER retains the right to observe, accept, or reject the work based on the results of CONTRACTOR's inspection or observations by ENGINEER, at OWNER's discretion, in accordance with the Specifications.
- B. Repair and recoat all runs, overspray, roughness, or any other signs of improper application in accordance with paint manufacturer's instructions and as reviewed by ENGINEER.
- C. Observations by OWNER or ENGINEER, or the waiver of inspection of any portion of the work, shall not be construed to relieve CONTRACTOR of his responsibility to perform the work in accordance with these Specifications.

PART 2 PRODUCTS

2.1 GENERAL

- A. CONTRACTOR shall use suitable coating materials as recommended by the manufacturer. Materials shall comply with Volatile Organic Compound (VOC) limits applicable at the Site.
- B. Where manufacturers and product numbers are listed, it is to show the type and quality of coatings that are required. If a named product does not comply with VOC limits in effect at the time of Bid opening, that product will not be accepted, and CONTRACTOR shall propose a substitute product of equal quality that does comply. Proposed substitute materials will be considered as indicated in Section 01 60 00 – Product Requirements. Paint materials shall be materials that have a record of satisfactory performance in pavement marking applications.

2.2 PAINT

- A. FS TT-P-1952F, Type II.
- B. Paint shall be homogeneous, easily stirred to smooth consistency, and show no hard settlement or other objectionable characteristics during storage period of 6 months.
- C. The paint shall meet the requirements for Acrylic Water Based Paint as specified in Table 32 17 23-1 below.

Table 32 17 23-1					
Property	White	Yellow	Blue	Red	Test
Pigment – Percent by weight, minimum	60 - 62	60 - 62	60 - 62	60 - 62	ASTM D 3723
Total Solids – Percent by weight, minimum	77 +/-2	77 +/-2	77 +/-2	77 +/-2	ASTM D 1644
Nonvolatile Vehicle – Percent by weight vehicle, minimum	42 +/-2	42 +/-2	42 +/-2	42 +/-2	ASTM D 3723 ASTM D 1644
Viscosity, KU at 77 degrees F	80-110	80-110	80-100	80-110	ASTM D 562
Volatile Organic Content (VOC) – g/L, maximum	<100	<100	<100	<100	ASTM D 3960
Color Definition	#37925	#33538	#35180	#31136	FS 595B
Directional Reflectance, minimum	85 percent	NA	NA	NA	ASTM E 1347
Dry Opacity – minimum (5 mils wet)	0.92	0.92	0.92	0.92	ASTM D 2805

- D. Traffic Pickup Time: Paint may not smear or track 10 minutes after application using standard application equipment, at the mil thickness required, and with an ambient shaded temperature of at least 50 degrees F.
- E. Additional Requirements
1. Free of lead, chromium, and other related heavy metals. Refer to ASTM D 5381.
 2. Refer to ASTM D 5381 for tests used to verify paint samples meet ASTM requirements.
- F. Manufacturers or approved equal:
1. Allstates Coatings Co.
 2. Swarco Colorado Paint Company II, LLC
 3. SealMaster

PART 3 EXECUTION

3.1 APPLICATION EQUIPMENT

- A. Machines, tools, and equipment used in performance of work shall be capable of applying stripe widths indicated, at paint coverage rate specified, and of even uniform thickness with clear-cut edges.
- B. Paint Applicator:
1. Traffic Line Paint Applicator:
 - a. Self-propelled or mobile-drawn pneumatic spraying machine with suitable arrangements of atomizing nozzles and controls to obtain specified results.
 - b. Speed during application of not less than 5 mph.

- c. Spray mechanism tanks with air-driven mechanical agitators.
 - d. Equip with quick-action valves conveniently located and include necessary pressure regulator and gauges in full view and reach of operator.
 - e. Provide paint strainers in supply lines to ensure freedom from residue and foreign matter that may cause malfunction of spray guns.
2. Provide pneumatic spray guns for application of paint for letters, handicapped symbols, and hand application of paint in areas where mobile paint applicator cannot be used.

C. Provide stencils for handicapped symbols and letters.

D. Sandblasting Equipment:

- 1. Includes air compressor, hoses, and nozzles of size and capacity as required for cleaning surfaces to be painted.
- 2. The compressor shall be capable of furnishing not less than 150 cfm of air at pressure of not less than 90 psi at nozzle for each nozzle used.

3.2 PREPARATION

- A. Cure pavement surfaces for a period of not less than 30 days before application of marking materials.
- B. Clean surfaces to be marked before application of paint.
- C. Remove dust, dirt, and other granular surface deposits by sweeping, blowing with compressed air, rinsing with water or combination of these methods as required.
- D. Remove rubber deposits and other coatings adhering to pavement with scrapers, wire brushed, sandblasting, approved chemicals, or mechanical abrasion.

3.3 APPLICATION

- A. Apply paint pneumatically.
- B. Apply evenly to clean, dry surfaces of pavement at rate producing initial (wet) thickness of 15 mils, and only when air and pavement temperatures are above 50 degrees F and less than 90 degrees F. Do not apply when the relative humidity exceeds 85 percent or when the temperature falls below the dew point. Maintain paint temperature within these same limits.
- C. Provide guidelines and templates as necessary to control paint application. Special precautions shall be taken in marking letters and handicapped symbols. Edges of markings shall be sharply outlined.
- D. Maximum drying time requirements of paint will be enforced to prevent undue softening of bitumen and pickup, displacement, or discoloration by tires of traffic. If there is deficiency in drying of markings, discontinue painting operations until cause of slow drying is determined and corrected.
- E. Protect markings from traffic until dry to prevent tracking.

3.4 CLEANING

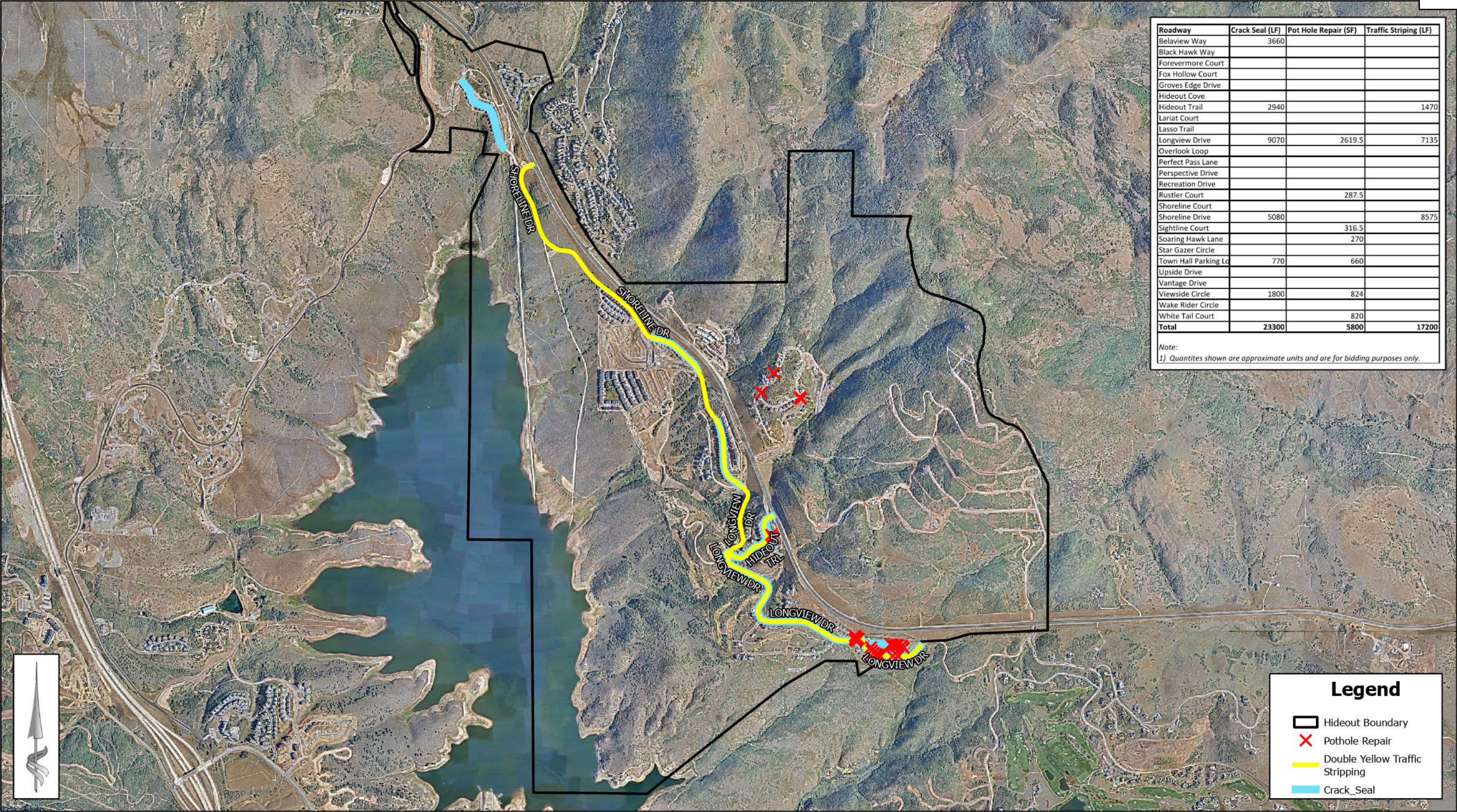
- A. At completion of work, remove rubbish, debris, equipment, and excess material from site. Clean adjoining surfaces soiled by and during this work.

- END OF SECTION -

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PART 5 DRAWINGS

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Roadway	Crack Seal (LF)	Pot Hole Repair (SF)	Traffic Striping (LF)
Belaview Way	3660		
Black Hawk Way			
Forevermore Court			
Fox Hollow Court			
Groves Edge Drive			
Hideout Cove			
Hideout Trail	2940		1470
Lariat Court			
Lasso Trail			
Longview Drive	9070	2619.5	7135
Overlook Loop			
Perfect Pass Lane			
Perspective Drive			
Recreation Drive			
Rustler Court		287.5	
Shoreline Court			
Shoreline Drive	5080		8575
Sightline Court		316.5	
Soaring Hawk Lane		270	
Star Gazer Circle			
Town Hall Parking Lo	770	660	
Upside Drive			
Vantage Drive			
Viewside Circle	1800	824	
Wake Rider Circle			
White Tail Court		820	
Total	23300	5800	17200

Note:
1) Quantities shown are approximate units and are for bidding purposes only.

Legend

Hideout Boundary

X

Pothole Repair

Double Yellow Traffic Striping

Crack_Seal



Roadway	Crack Seal (LF)	Pot Hole Repair (SF)	Traffic Striping (LF)
Belaview Way	3660		
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Legend

Hideout Boundary

Pothole Repair

Double Yellow Traffic Stripping

Crack_Seal



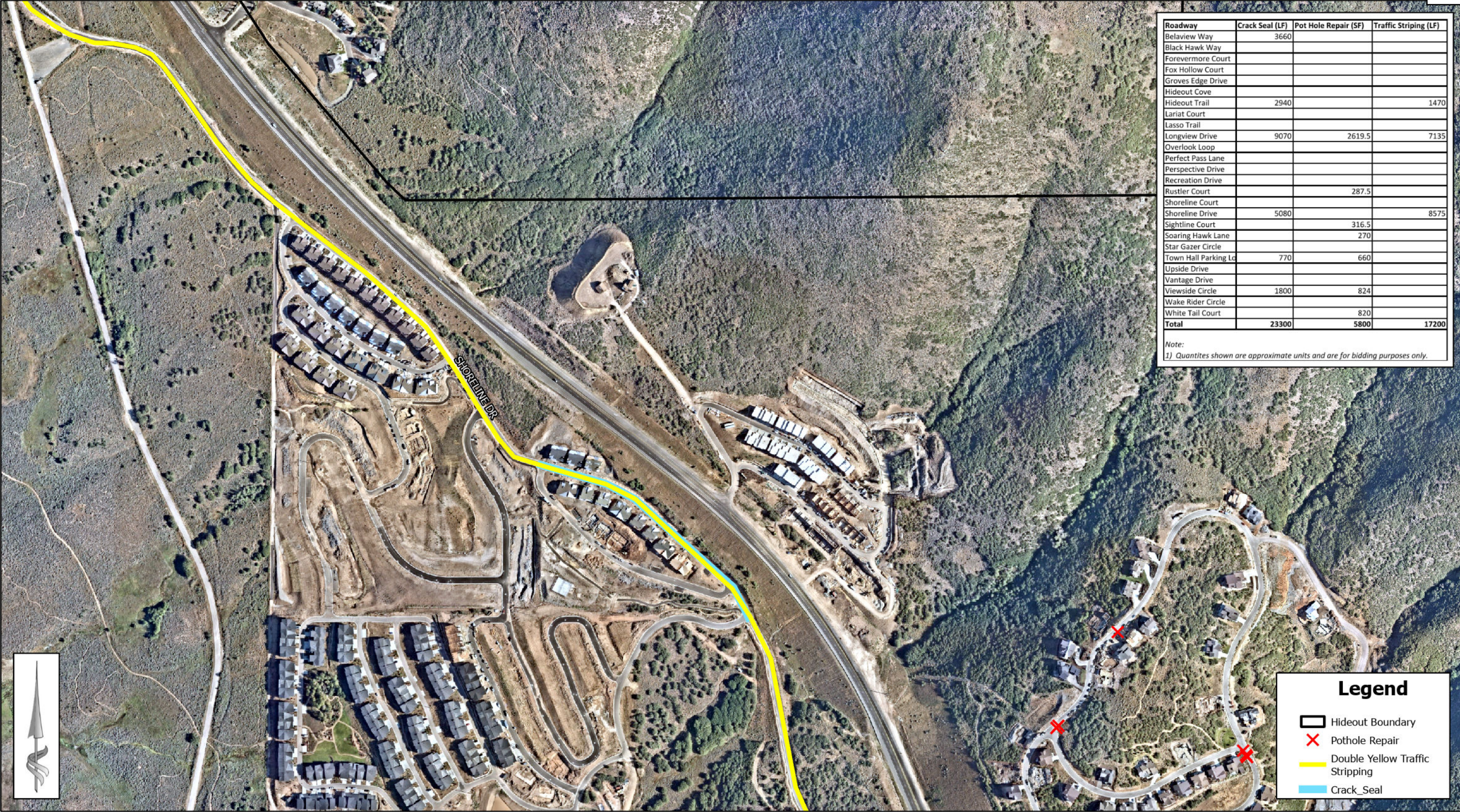
HIDEOUT 2024 CITY WIDE ROAD IMPROVEMENT

JULY 2024



PLAN VIEW

SHEET: 2



Roadway	Crack Seal (LF)	Pot Hole Repair (SF)	Traffic Striping (LF)
Belaview Way	3660		
Black Hawk Way			
Forevermore Court			
Fox Hollow Court			
Groves Edge Drive			
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Hideout Boundary

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Pothole Repair

Double Yellow Traffic Stripping

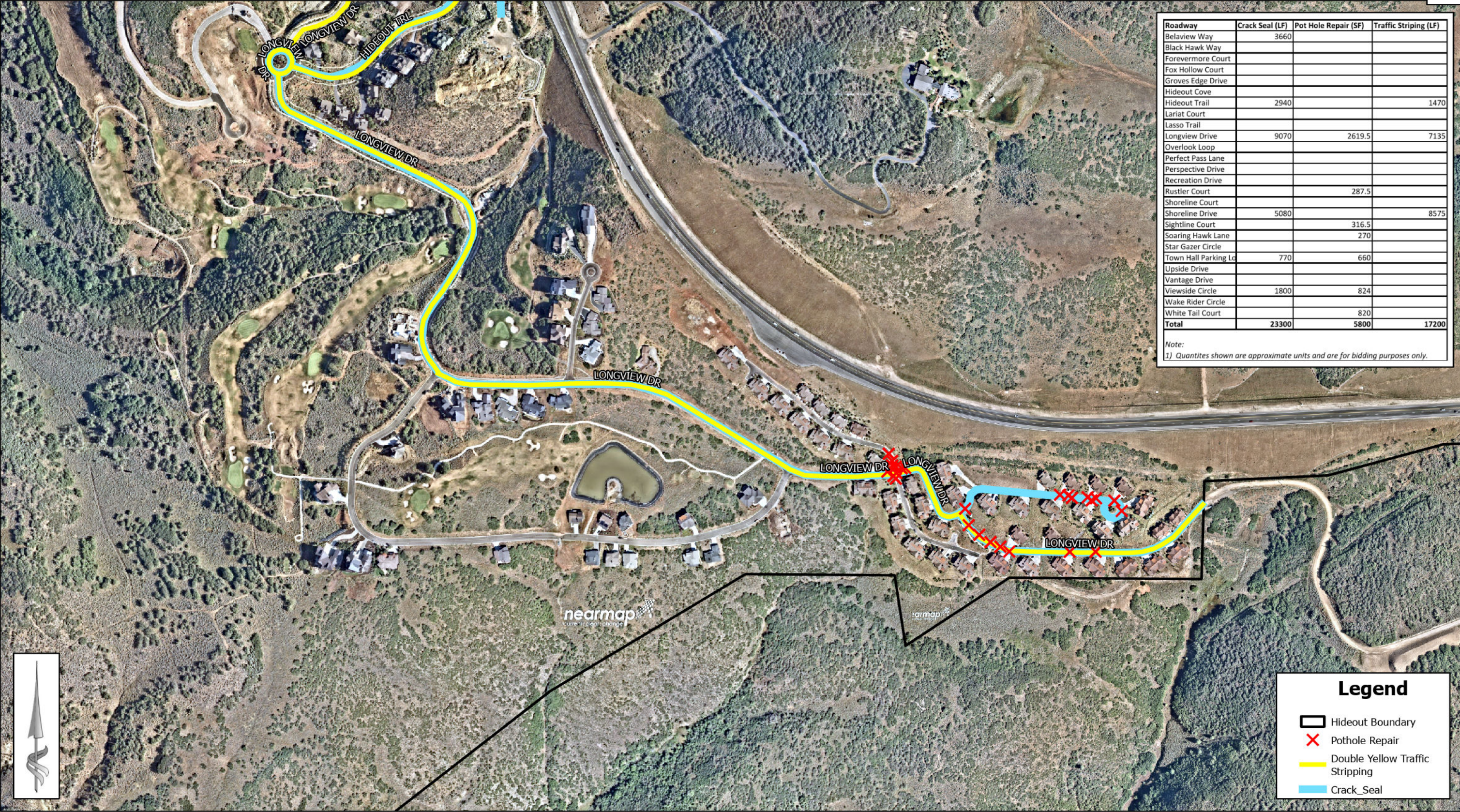
Crack_Seal

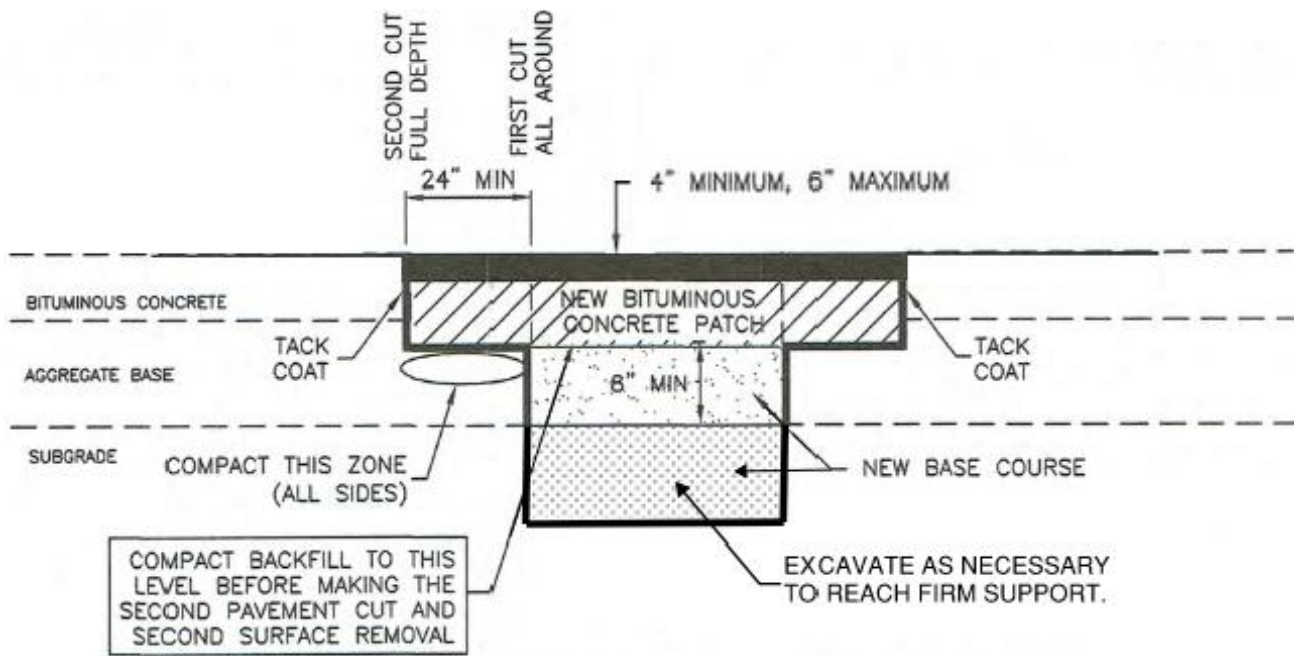


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White Tail Court		820	
Total	23300	5800	17200

Note:
1) Quantities shown are approximate units and are for bidding purposes only.







* INSTALLATION SHALL BE PURSUANT TO APWA SPECIFICATION 33 05 25 PAVEMENT RESTORATION.

NOT TO SCALE



DRAWN 07/09/24		
REVISIONS		
#	BY	DATE

SECTION 00 01 10 **AGREEMENT**

This Agreement is by and between **Town of Hideout** ("OWNER") and **Bonneville Asphalt & Repair LLC** ("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:

Furnishing and placing emulsified asphalt, aggregate cover, and bituminous flush coat materials, and completing temporary pavement markings on roads through Hideout Utah as presented in the Drawings.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **2024 Street Maintenance**

ARTICLE 3—ENGINEER

- 3.01 OWNER has retained **Hansen, Allen & Luce, Inc.** ("ENGINEER") to act as OWNER's representative, assume all duties and responsibilities of ENGINEER, and have the rights and authority assigned to ENGINEER in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by "ENGINEER" and that same entity prepared the design.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is 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: Dates*

A. The Work will be substantially complete on or before **October 1, 2024**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **October 15, 2024**.

- 4.05 *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 within the Contract Times, as duly modified. 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 **two hundred dollars (\$200)** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 **two hundred dollars (\$200)** 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.

4.06 *Special Damages*

- A. CONTRACTOR shall reimburse OWNER (1) for any fines or penalties imposed on OWNER as a direct result of the CONTRACTOR's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by OWNER for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After CONTRACTOR achieves Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CONTRACTOR shall reimburse OWNER for the actual costs reasonably incurred by OWNER for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established 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 the basis of CONTRACTOR's Applications for Payment on or about the **1st** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as OWNER may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **90** percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, then as long as the character and progress of the Work remain satisfactory to OWNER and ENGINEER, there will be no additional retainage; and
 - b. **90** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to **100** percent of the Work completed, less such amounts set off by OWNER pursuant to Paragraph 15.01.E of the General Conditions, and less **200** 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 all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the table of contents of the project manual.
 - 6. Drawings (not attached but incorporated by reference) consisting of **5** sheets with each sheet bearing the following general title: **HIDEOUT 2024 CITY WIDE ROAD IMPROVEMENT**.
 - 7. Addenda number **1**.
 - 8. 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.
 - e. Warranty Bond, if any.
- 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 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.
5. 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.
6. 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.
7. 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.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. 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 in the Supplementary Conditions.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

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

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

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

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License
No.:

(where applicable)

State:

File Attachments for Item:

5. Discussion and consideration of adopting Resolution 2024-R-XX amending the Hideout Fee Schedule

TOWN OF HIDEOUT FEE & RATE RESOLUTION #2024-R-XX

(Repealing and Replacing Resolution #2024-R-01 dated January 15, 2024)

A RESOLUTION REPEALING AND REPLACING THE HIDEOUT FEE SCHEDULE TO SPECIFY THE IMPACTS TO THE TOWN INFRASTRUCTURE SYSTEM FOR THE GOLDEN EAGLE SUBDIVISION, AND MAKE TECHNICAL CORRECTIONS

WHEREAS, the Hideout Town Council (“Council”) has the authority to set fees and fines for activities and operations within the Town; and

WHEREAS, the Council finds it necessary to amend the Fee and Rate Schedule to specify the impacts to the town infrastructure system specifically in the Golden Eagle Subdivision; and

WHEREAS, a technical correction needed to be made to Section 1.1, Excavation Fees.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of Hideout Town, State of Utah, as follows:

The Fee Schedule(s) as adopted by any previous Resolutions or Ordinances and that are updated or contained in this Resolution are hereby repealed and in its place this Resolution is adopted establishing the fees for various Town services, permits and processes as attached in Exhibit A. All other parts, sections, regulations or fees of any Resolutions or Ordinances other than those modified or included in this Resolution shall remain in full force and effect.

Effective Date: Effective upon passage.

Passed and adopted by the Town Council of Hideout, Utah this 8th day of August, 2024.

HIDEOUT

Philip Rubin, Mayor

ATTEST: _____
Alicia Fairbourne, Recorder for Hideout

TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~0108/1508~~ Item # 5. 2024

Section 1.1
Building Permit Application Fees

Residential

Building Permit Fees (Based on Total Construction Value using 150% of IBC table 1) <i>The values per square foot are reflective of the current Building Valuation Data.</i>	.75 of 1% of Total Construction Value
Plan Review Fee	65% of Building Permit Fee
Fire Sprinkler Review/Inspection Fee (where applicable)	\$407.00
Reinspection Fee	\$407.00
Construction Sign Fee	\$220.00
Sewer Connection Fee	\$440.00
<u>Sewer Connection Fee in Golden Eagle Subdivision for costs for the impacts to the town system</u>	<u>\$440.00</u>
Grubbing and Grading Fee	\$275.00
Excavation Fee	\$550.00 <ul style="list-style-type: none"> - \$1 for each additional square foot of excavation - \$550.00 minimum fee per excavation w/asphalt cut (up to 25 square feet) - \$3.50 for each additional square foot of asphalt cut - Noxious Weeds on Active Construction Site - \$137.50 minimum fee up to ½ acre plus \$137.50 for each additional ½ acre
JSSD Sewer Impact Fee: Parcel 1 (West side of SR 248)	See JSSD
Parcel 2 (East side of SR 248)	See JSSD
JSSD Water Impact Fee (Parcel 1 - West side of SR 248)	See JSSD
State Surcharge	1% of Building Fee
Roadway Construction Fee	\$550
Town Impact Fee (by subdivision)	See Section 10
Water Connection Fee	See Section 6.2

Commercial

Building Permit Fees	.83 of 1% of Total Construction Value
Plan Review Fee	65% of Building Permit Fee
Fire Sprinkler Review/Inspection Fee (where applicable)	\$407.00
Reinspection Fee	\$407.00
Construction Sign Fee	\$220.00
Sewer Connection Fee	\$440.00
Grubbing and Grading Fee	\$275.00
Excavation	\$440.00
Water Re-Connection Fee (plus cost of meter)	\$165.00
Utility Property Owner Change Fee (plus cost of meter)	\$22.00
JSSD Sewer Impact Fee: Parcel 1 (West side of SR 248)	See JSSD
Parcel 2 (East side of SR 248)	See JSSD
JSSD Water Impact Fee (Parcel 1 - West side of SR 248)	See JSSD
State Surcharge	1% of Building Fee
Roadway Construction Fee	\$500
Water Connection Fee	See Section 6.2

Remodel Building Permit Fees

Application Fee	\$220.00
Building Fees (Based on Total Construction Value using 150% of IBC table 1) <i>The values per square foot are reflective of the current Building Valuation</i>	.75 of 1% of Total Construction Value

TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~01/08/1508~~ Item # 5. 2024

Plan Review Fee	65% of Building Permit Fee
Reinspection Fee	\$407.00
State Surcharge	1% of Town Engineer estimated fees for plan review and Inspections

**Electrical and Mechanical
Permit Fees**

Application Fee	\$50.00
See Fee Table below	
Reinspection Fee	\$407.00
State Surcharge	1% of Valuation Fee

Total Valuation Fee	
\$1.00 to \$1,300.00	\$50.00
\$1,301.00 to \$2000.00	\$50.00 for the first \$1,300.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.75 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.0 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including
\$1,000,000.00 \$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00,

**Section 1.2
Planning Fees**

1.2.1 Development Fees

Concept Review	Application Fee: \$1,100 Escrow Fee: \$5,000 (with a minimum required balance of \$2,500) Meetings: One (1) Planning Commission Meeting
Preliminary Subdivision (Residential) - Minor (5 Lots or Fewer)	Application Fee: \$4125 + \$110/acre <i>*Preliminary Review not required if Applicant wishes to proceed directly to Final Review</i> Escrow Fee: \$12,500 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Preliminary Subdivision (Residential) - Major (6 Lots or More)	Application Fee: \$6,050 + \$110/acre Escrow Fee: \$17,500 (with a minimum required balance of \$7,500) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Preliminary Subdivision (Commercial/Other)	Application Fee: \$3,025 + \$825/acre Escrow Fee: \$12,500 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings

TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~01/08/1508~~ 2024 Item # 5.

Final Subdivision (Residential) - Minor (5 Lots or Fewer)	\$2,200 + \$110/acre if Preliminary Subdivision review complete; OR \$5,500 + \$110/acre if Preliminary Review not completed Escrow Fee: \$12,500 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Final Subdivision (Residential) - Major (6 Lots or More)	Application Fee: \$5,500 + \$110/acre Escrow Fee: \$17,500 (with a minimum required balance of \$7,500) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Final Subdivision (Commercial/Other)	Application Fee: \$3,300 + \$825/acre Escrow Fee: \$12,500 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Plat Amendment and Lot Combination	Application Fee: \$1,375 Escrow Fee: \$5,000 (with a minimum required balance of \$2,500) Meetings: One (1) Planning Commission Meeting and One (1) Town Council Meeting
Revised Development Plans	Application Fee: \$1,650 Escrow Fee: \$5,000 (with a minimum required balance of \$2,500) Meetings: One (1) Planning Commission Meeting
Subdivision Construction Fee	5.5% of construction costs (must be paid prior to commencement of any construction activity)

1.2.2 Conditional Use Permit

Conditional Use Permit	Application Fee: \$1,650 Escrow Fee: \$5,000 (with a minimum required balance of \$2,500) Meetings: One (1) Planning Commission Meeting and One (1) Town Council Meeting
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1.2.3 Temporary Use Permit

Temporary Use Permit	Application Fee: \$825
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1.2.4 General Plan Amendment

Per Application	Application Fee: \$2,750 Escrow Fee: \$7,500 (with a minimum required balance of \$2,500) Meetings: Two (2) Planning Commission Meetings and One (1) Town Council Meeting
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1.2.5 Zone Change Application

Zone Change	Application Fee: \$3,300 + \$55/acre Escrow Fee: \$7,500 (with a minimum required balance of \$2,500) Meetings: Two (2) Planning Commission Meetings and One (1) Town Council Meeting
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TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~0108/1508~~ Item # 5. 2024

1.2.6 Annexations

Pre-Application	Application Fee: \$3,300 Escrow Fee: \$12,500 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Annexation Areas Exceeding 40 Acres (deposit submitted upon certification of completeness of pre-application and prior to filing annexation petition. When the deposit is depleted, the applicant shall submit another equivalent deposit for the continued review. All unused deposited funds will be reimbursed to the applicant upon completion of the annexation and agreements)	Application Fee: \$8,250 Escrow Fee: \$20,000 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Annexation Areas Less Than 40 Acres (deposit submitted upon certification of completeness of pre-application and prior to filing annexation petition. When the deposit is depleted, the applicant shall submit another equivalent deposit for the continued review. All unused deposited funds will be reimbursed to the applicant upon completion of the annexation and agreements)	Application Fee: \$5,500 Escrow Fee: \$12,500 (with a minimum required balance of \$5,000) Meetings: Two (2) Planning Commission Meetings and Two (2) Town Council Meetings
Annexation Fiscal Impact Analysis plus actual cost of Town-approved consultant fee if greater than initial fee	Fee: \$3,850
Modification to Annexation Agreement	Application Fee: \$2,200 Escrow Fee: \$10,000 (with a minimum required balance of \$2,500) Meetings: One (1) Planning Commission Meetings and Two (2) Town Council Meetings

1.2.7 Sign Review Fees

Master Sign Plan Review	Application Fee: \$550
Individual Signs or Sign Plans or Minor Amendment to Existing	Application Fee: \$385
Individual Signs when a Master Sign Plan has been Approved	Application Fee: \$275
Temporary Signs	Application Fee: \$165

1.2.8 Special Meetings

Special Meeting Fee	Fee: \$1,100 (in addition to all other applicable fees)
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1.2.9 General Land Use, Variance and Appeal Fees

Variance	Application Fee: \$1,650 Escrow Fee: \$5,000 (with a minimum required balance of \$2,500) Meetings: One (1) Meeting with the Administrative Law Judge (ALJ)
Appeal of Final Action	Application Fee: \$1,100 Escrow Fee: \$2,500 (with a minimum required balance of \$1,000) Meetings: One (1) Meeting with the Administrative Law Judge (ALJ), Town Council or Planning Commission
General Land Use Application	Application Fee: \$1,100 Escrow Fee: \$2,500 (with a minimum required balance of \$1,000) Meetings: One (1) Meeting with Town Council or Planning Commission

TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~01/08/1508~~ Item # 5. 2024

* Fees and Rates Schedule: Fees applied to the escrow amount shall be the cost of professional consultants to the Town for the project (including but not limited to Engineer, Planning and Legal services) . All review work by the Town's consultants will be halted when an escrow account falls below the minimum balance as defined for each specific review process until the escrow

** Each additional meeting (either Planning Commission or Town Council) will require an additional fee of \$1,250 and must be paid at least two weeks prior to the scheduled meeting.

*** These fees are in addition to any requested Special Meetings (which have a fee of \$1,250/meeting).

1.3 Subdivision Construction Review and Inspection Fees

Subdivision construction permit	\$5,500.00
Cash (or equal) Bond requirement	100% of approved engineers estimate plus 10% Contingency
Inspection and quality assurance reviews	5.5% of approved engineers estimate
Reinspection fee	\$407
Cash bonds can be reduced for work completed when requested by the developer with a maximum frequency of 1 reduction per quarter. 10% of the construction bond will be retained for 12 months AFTER FINAL ACCEPTANCE of the project as a warranty bond.	

1.4 Public Infrastructure District

PID Application Fee	\$550.00
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Section 2
Business License, Beer and Liquor License

License Application Fee	\$83.00
Home Occupation Business Administrative Fee	\$83.00
Annual License Administration Fee	\$83.00
On Premises Beer Retail License Application/Annual Fee	\$83.00
Restaurant Liquor License Application/Annual Fee	\$330.00
Limited Restaurant Liquor License Application/Annual Fee	\$330.00
On Premises Banquet License Application/Annual Fee	\$385.00
Private Club Liquor License Application/Annual Fee	\$385.00
Application and Annual Regulatory Business License Fee (Restaurants, Food Service, Taverns, Nightly Rental)	\$193.00
Sexually Oriented business License Application/Annual Fee	\$330.00

Section 3
Rental of Town Facilities

3.1 Town Hall Building

Hideout resident usage per day or any fractional part thereof	\$110.00
Non-resident usage	\$550.00
<i>Note: renter will be charged actual cost for cleaning after usage.</i>	

3.2 Fee Reduction or Waiver

Use of facilities for non-profit, public service clubs or organizations may have all or part of their associated rental fees waived by the Town.

TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~0108/1508~~ Item # 5. 2024

Section 4
GRAMA Fees (Government Records Access and Management Act)

4.1 Copies Made at Town Facility

8-1/2 x 11 copies	\$.33 per page (double-sided charged as two pages)
8-1/2 x 14 copies	\$.50 per page (double-sided charged as two pages)
Other media duplication	At cost
Professional time	At cost in accordance with Utah State Code

4.2 Copies in Excess of 50 Pages

The Town reserves the right to send the documents out to be copied and the requester shall pay the actual cost to copy the documents, including any fee charged for pickup and delivery of the documents.

4.3 Compiling Documents

Records Request	(Utah Code §63-2-203) An hourly charge may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request. No charge may be made for the first quarter hour of staff time.
In a form other than that maintained by the Town	\$55.00 per request or \$23.00 per employee hour required to compile the record, whichever is greater.

Section 5
Penalties and Fees for Non-Compliance with Town Ordinances and Code including Building Code and Water System and Sewer System Violations

5.1 Penalty Fees: Code Violations

Daily Fee for Each Cited Violation (Catch all)	\$500.00
Non-Moving Vehicle Violations	\$110.00
Parking Violations	\$500.00
Unauthorized Dumping or Littering	\$550.00
Building/Construction Without a Permit	\$550.00
Occupancy without a Certificate of Occupancy	\$550.00
Non-Conforming Landscaping	\$110.00
Unauthorized Connection to Town Water System	\$1,100.00
Fees will continue to accrue after a Notice of Violation is issued as a separate and distinct violation for every twenty-four (24) hours until the referenced violation is corrected. If fines remain unpaid, the Town may assess late fees, issue a stop work order, or revoke any applicable permit.	

Section 6
Water Fees

6.1 Developer Reservations

Stand-by Fee	\$262.00 per lot annually
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6.2 Water Connection Fees

*1" Water Meter, Installation, and Inspection Fee	\$1,021.00
1 ½" Water Meter, Installation, and Inspection Fee	\$1,521.00
2" Water Meter, Installation, and Inspection Fee	\$1,746.00
Water Re-Connection Fee (plus cost of meter)	\$165.00
Utility Property Owner Transfer Fee	\$22.00
*If a larger meter is needed due to change in plans after permitting, charge to the appropriate size will be required	

TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~0108/1508~~ 2024 Item # 5.

a. Monthly Water Metered Service
i. Residential

Base Rate	\$94.90 for the first 10,000 gallons
Next 10,000	\$11.44 per 1,000
Next 10,000	\$13.78 per 1,000
Next 20,000	\$15.22 per 1,000
Next 20,000	\$16.78 per 1,000
Next 20,000	\$ 18.46 per 1,000
Next 20,000	\$ 20.42 per 1,000
Over 110,000	\$22.50 per 1,000

ii. Multifamily

Base rate	\$182.00 for the first 10,000 gallons
Next 20,000	\$20.02 per 1,000
Next 20,000	\$22.10 per 1,000
Next 20,000	\$24.32 per 1,000
Next 20,000	\$26.78 per 1,000
Next 20,000	\$29.52 per 1,000
Next 30,000	\$32.50 per 1,000
Over 140,000	\$35.76 per 1,000

iii. Parks/Irrigation

First 10,000	\$94.90 for the first 10,000 gallons
Next 20,000	\$10.54 per 1,000
Next 20,000	\$11.70 per 1,000
Next 20,000	\$12.88 per 1,000
Next 20,000	\$14.18 per 1,000
Next 20,000	\$15.60 per 1,000
Next 30,000	\$17.16 per 1,000
Over 140,000	\$18.98 per 1,000

b. Hideout Irrigation

Outlaw Golf Course	JSSD annual bill plus 10% for administration and maintenance for the infrastructure
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c. Water Reconnection Fee

Due to non-payment or failure to maintain backflow, etc.	\$150.00
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d. Extension of Water Services Policy

Any project or applicant or developer, whether an individual unit or multiple unit or subdivision, that requires connection to the Town water system, shall be required to pay all the costs of any extensions or facilities necessary to achieve a connection that meets the Town Council's standards or specifications in force at the time. This may include not only the capital cost of the project, but any Town costs associated with plan approval, engineering and inspection work, exclusive to the extension.

After final inspection of the improvements or extension(s), the applicant or developer must provide title and easements to the systems, free and clear of any encumbrances to the Town, to operate as a public system by the Town. A one-year warranty will be required on the system from the date of acceptance.

e. Construction use of Water Before Meter Installation

Deposit for 1 - 1 ½" Meter	\$1,850.00 (\$350.00 is non-refundable)
Usage Fee/1000 gallons	\$7.30

f. JSSD Water Impact Fee

Water Impact Fee (Parcel 1 - West side of SR 248)	See JSSD
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TOWN OF HIDEOUT
FEES AND RATES SCHEDULE

Resolution 2024-R
Updated ~~01/08/1508~~ Item # 5. 2024

Section 7
Sewer Fees

7.1 JSSD Sewer Impact Fees

Bonded (Parcel 2 - East side of SR 248)	See JSSD
Unbonded (Parcel 1 - West side of SR 248)	See JSSD

7.2 Sewer Connection Fees

Connection and Inspection Fee	Included in Application Fee
Administrative Connection Fee	\$44.00

7.3 Monthly Sewer Fees

Per residential or commercial unit	\$31.46
<u>Residential units in Golden Eagle Subdivision for costs for the impacts to the town system</u>	<u>\$31.46</u>

7.4 Extension of Sewer Services Policy

Any project or applicant or developer, whether an individual unit or a multiple unit or subdivision, that requires connection to the Town sewer system, shall be required to pay all of the costs of any extensions or facilities necessary to achieve a connection that meets the Town Council's standards or specifications in force at the time. This may include not only the capital costs of the project, but any Town costs associated with plan approval, engineering and inspection work, exclusive to the extension.

After final inspection of the improvements or extension(s), the applicant or developer must provide title and easements to the systems, free and clear of any encumbrances to the Town, to be operated as a public system by the Town. A one-year warranty will be required on the system from the date of acceptance.

Section 8
Account Late Fees

Overdue Accounts	1.5% monthly interest charge
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Section 9
Storm Drain Fee

9.1 Monthly Storm Drain Fee

Per Billable Meter	\$6.60
<u>Per Billable Meter in Golden Eagle Subdivision for costs for the impacts to the town system</u>	<u>\$ 6.60</u>

Section 10
Town Impact Fees

Subdivision	Water	Roads	Storm Drain	Sewer	Total Impact Fee
ADA LLC	\$1,445	\$5,215	\$0	\$1,330	\$7,990
Apartments at Deer Mountain	\$0	\$5,215	\$0	\$0	\$5,215
Deer Springs	\$0	\$5,215	\$0	\$0	\$5,215
Deer Waters	\$0	\$5,215	\$0	\$0	\$5,215
Forevermore	\$1,445	\$5,215	\$6,665	\$1,330	\$14,655
Glistening Ridge	\$1,445	\$5,215	\$6,665	\$1,330	\$14,655
Golden Eagle	\$0	\$5,215	\$0	\$1,330	\$6,545

TOWN OF HIDEOUT

Resolution 2024-R

Item # 5.

FEES AND RATES SCHEDULE

Updated ~~01/08/1508~~ 2024

KLAIM	\$0	\$5,215	\$0	\$0	\$5,215
Lakeview (aka Van Den Akker)	\$0	\$5,215	\$0	\$0	\$5,215
New Town Center	\$1,445	\$5,215	\$4,315	\$1,330	\$12,305
Overlook Village	\$1,445	\$5,215	\$4,315	\$1,330	\$12,305
Perch (The Settlement)	\$1,445	\$5,215	\$4,315	\$1,330	\$12,305
Plumb/Sundown Ridge	\$1,445	\$5,215	\$4,315	\$1,330	\$12,305
Reflection Lane	\$0	\$5,215	\$4,315	\$1,330	\$10,860
Reflection Ridge	\$0	\$5,215	\$4,315	\$1,330	\$10,860
Ross Creek Entrance	\$0	\$5,215	\$0	\$0	\$5,215
Rustler	\$1,445	\$5,215	\$6,665	\$1,330	\$14,655
Salzman	\$1,445	\$5,215	\$0	\$1,330	\$7,990
Shoreline Phase I	\$1,445	\$5,215	\$0	\$1,330	\$7,990
Shoreline Phase II	\$1,445	\$5,215	\$0	\$1,330	\$7,990
Shoreline Remaining (tentative)	\$1,445	\$5,215	\$0	\$1,330	\$7,990
Silver Sky	\$1,445	\$5,215	\$4,315	\$1,355	\$12,330
Soaring Hawk	\$0	\$5,215	\$0	\$1,355	\$6,570
Sunrise	\$1,445	\$5,215	\$0	\$1,330	\$7,990
Venturi	\$1,445	\$5,215	\$4,315	\$1,330	\$12,305
Woolf	\$0	\$5,215	\$0	\$1,355	\$6,570

File Attachments for Item:

6. Discussion and possible approval of Ordinance 2024-O-XX amending Hideout Municipal Code Section 3.04.02 Appointment (ALJ); and Section 3.04.06 Powers and Duties (ALJ)

TOWN OF HIDEOUT

ORDINANCE 2024-O-10

AN ORDINANCE AMENDING HIDEOUT MUNICIPAL CODE SECTION 3.04.02 APPOINTMENT (ALJ); AND SECTION 3.04.06 POWERS AND DUTIES (ALJ)

WHEREAS, the Town of Hideout Code has established the administrative law judge (ALJ) as the appeal authority throughout the municipal code.

WHEREAS, the Council created the ALJ to replace the Board of Adjustment in Ordinance 2021-O-12 “AN ORDINANCE AMENDING HIDEOUT TOWN CODE CHAPTER 3.04 TO REPLACE THE BOARD OF ADJUSTMENT WITH AN ADMINISTRATIVE LAW JUDGE”.

WHEREAS, in order to clarify the ALJ authority and its powers and duties, the Council wishes to make it clear that the ALJ acts instead of a Board of Adjustment wherever Board of Adjustment is mentioned in the Municipal Code.

Now, Therefore, be it Ordained by the Council of the Town of Hideout, State of Utah:

Section I: Amendment. Sections 3.04.02 and 3.04.06 are hereby amended as redlined:

3.04.02 APPOINTMENT

1. In order to provide for just and fair treatment in the administration of Land Use, and for all administrative appeals in the Town and to ensure that substantial justice is done, the Town of Hideout shall appoint an Administrative Law Judge (ALJ) to exercise the powers and duties provided in this chapter.
2. Appointment:
 1. The Administrative Law Judge shall serve as the Town's Board of Appeals or Board of Adjustment.
 2. The Mayor shall appoint the Administrative Law Judge with the advice and consent of the Hideout Legislative Body for a term of three (3) years. The Mayor may appoint more than one Administrative Law Judge, but only one Administrative Law Judge shall consider and decide any matter properly presented for review.
 3. A person appointed to serve as an Administrative Law Judge shall either be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person shall be free from an bias or conflict of interest that might affect impartiality of decisions.
3. Removal:
 1. The Mayor may remove an Administrative Law Judge with the advice and consent of the Hideout Legislative Body.

3.04.06 POWERS AND DUTIES

The Administrative Law Judge shall hear and decide:

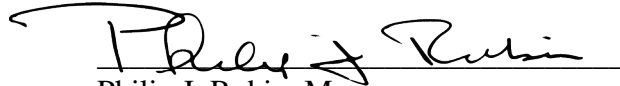
1. Appeals from zoning decisions applying the zoning ordinance;

2. Variances from the terms of the zoning ordinance.
3. Nonconforming Uses: The Administrative Law Judge may make determinations regarding the existence, expansion or modification of nonconforming uses.
4. Administrative Enforcement Appeals (Title 13)
5. Administrative Appeals
- ~~4.6.~~ Any actions by the Board of Adjustment in the Hideout Municipal Code. for an action by the Board of Adjustment shall be administered by the Administrative Law Judge.
- ~~5.7.~~ Any appeal authority which may be delegated by the Mayor.


Section II. Effective Date: This ordinance shall become effective upon publication as required by law.

Passed and Adopted by the Town Council of Hideout, Utah, this 8th day of August, in the year 2024.

TOWN OF HIDEOUT


Philip J. Rubin, Mayor

ATTEST:


Alicia Fairbourne, Recorder for Hideout

