



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO
Monday, October 16, 2023 at 7:00 PM

MISSION STATEMENT: Enhancing the quality of life of our residents, businesses, and visitors through community focused leadership.

AGENDA

CALL TO ORDER

Pledge of Allegiance

ROLL CALL

AGENDA APPROVAL

PUBLIC COMMENT

Members of the audience are invited to speak at the Council meeting. Public Comment is reserved for citizen comments on items not contained on the Public Hearing portion of the agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position.

CONSENT AGENDA

The Consent Agenda is a group of routine matters to be acted on with a single motion and vote. Council or staff may request an item be removed from the Consent Agenda and placed on the Regular Agenda for discussion.

- [1.](#) September 18, 2023 Meeting Minutes
- [2.](#) Ordinance 2023-254: An Ordinance Amending Section 2-11 of The Johnstown Municipal Code Concerning Councilmember Vacancies
- [3.](#) Resolution 2023-45 Acknowledging Receipt of the Fiscal Year 2024 Preliminary Budget
- [4.](#) Water Service Agreement - (Ledge Rock Center Commercial Irrigation)
- [5.](#) Water & Sewer Service Agreement - Ledge Rock Center Multifamily North Amendment I, with Ledge Rock Center, LLC
- [6.](#) First Amendment to the Subdivision Development and Improvement Agreement, East Ledge Rock Center, Filing No. 3
- [7.](#) TRR Community Center & Construction Time Extension Request
- [8.](#) 2024 Compensation Study
- [9.](#) September 2023 List of Bills
- [10.](#) September 2023 Financial Statements

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TOWN MANAGER REPORT

TOWN ATTORNEY REPORT

NEW BUSINESS

- [11.](#) An Agreement Between the Town of Johnstown and MWH Constructors for Early Construction and Equipment Procurement on the Water Treatment Plant Project
- [12.](#) Johnstown Veterans Memorial Landscaping Request

PUBLIC HEARING

- [13.](#) Ordinance No. 2023-255, an Ordinance Amending Article VII of Chapter 7 of the Johnstown Municipal Code Concerning the Sale or Disposition of Dogs or Cats from a Pet Shop and Concerning Nuisance, Noisy and Vicious Animals

COUNCIL REPORTS AND COMMENTS

MAYOR'S COMMENTS

MAYOR'S COMMENTS

- [14.](#) Informational Items

ADJOURN

AMERICANS WITH DISABILITIES ACT NOTICE

In accordance with the Americans with Disabilities Act and other applicable laws, persons who need accommodation in order to attend or participate in this meeting should contact Town Hall at 970-587-4664 no later than 48 hours before the meeting in order to request such assistance.

De conformidad con la Ley de Discapitados Estadounidenses y otras leyes vigentes, los individuos que necesitan adaptaciones funcionales para asistir o participar en esta reunión deberán comunicarse con la Municipalidad marcando el 970 587- 4664 a lo más tardar 48 horas antes de dicha reunión para solicitarla.



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO

Monday, September 18, 2023 at 7:00 PM

MINUTES

CALL TO ORDER

Mayor Mellon called the meeting to order and led the Pledge of Allegiance.

Pledge of Allegiance

ROLL CALL

Present:

Councilmember Berg
Councilmember Molinar
Councilmember Morris
Councilmember Paranto
Councilmember Young
Mayor Mellon

Absent:

Councilmember Dominguez

AGENDA APPROVAL

Mayor Mellon noted Item #12, the Public Hearing for Encore needed to be removed from the agenda.

Councilmember Berg moved to approve the agenda as amended

Councilmember Morris seconded and the motion passed.

PUBLIC COMMENT

Kermith Aden spoke to the pool feasibility study and inquired about funds for the and other data regarding a pool structure.

A comment from Dee Anne Menzies was read into the record regarding the council attendance policy.

A comment was read into the record from Kelly Cavender, regarding speed bumps.

Jim Hatfield asked for clarification on agenda Items 4 and 5. The Mayor noted the land would most likely be used for items regarding the cemetery.

CONSENT AGENDA

Councilmember Paranto moved to accept the consent agenda

Councilmember Berg seconded and the motion passed.

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1. September 6, 2023 Meeting Minutes
2. Fifth Amendment to Franchise Agreement between TDS and Town of Johnstown
3. August 2023 Financial Statements

TOWN MANAGER REPORT

Town Manager, Matt LeCerf, noted informational items in the packet. It was also noted a half share of Home Supply Ditch Company was for sale. Mr. LeCerf noted Jamie Barker's, Communications Manager, last day in Johnstown and expressed appreciation for work done in the Town.

TOWN ATTORNEY REPORT

There was no Town Attorney report.

NEW BUSINESS

4. Resolution 2023-41: Purchase and Sale Agreement Between the Town of Johnstown and Richard P. Crooks and Kathi A. Crooks for the Purchase of Real Property Located at 23165 Colorado Blvd. Johnstown, CO 80534

Mr. LeCerf presented the resolution for purchasing of a parcel of land, located on the area around the Johnstown Cemetery. The expected closing date would be September 24, 2023.

Councilmember Morris moved to approve Resolution 2023-41 authorizing the purchase of 23165 Colorado Blvd Johnstown, CO 80534 from Mr. Richard & Mrs. Kathi Crooks.

Councilmember Paranto seconded and the motion passed.

5. Resolution 2023-42: Purchase and Sale Agreement Between the Town of Johnstown and Centennial Ridge, LLC for the Purchase of Real Property Located at 23019 Colorado Blvd. Johnstown, CO 80534

Mr. LeCerf noted this parcel of land for the primary purpose would be to to acquire this land for the expansion of Highway 60 Colorado Blvd. The closing would be expected to take place on September 27, 2023.

Council asked if this would be a natural easement if the road was developed.

Mr. LeCerf noted there is a portion of the land that is within the 60-foot right-of-way established by the County. Mr. LeCerf noted the Town does not require dedication until an active project is developing, if the right of way was acquire, there would only be roughly 5,000 square feet left for the landowner, with no access to Colorado Blvd. or Highway 60- based on the distance from the intersection. Because of this, the Town felt it best to purchase the land as opposed to purchasing the right-of-way and leaving the landowner with property that would be difficult to find a use for.

Councilmember Berg moved to approve Resolution 2023-42 authorizing the purchase of Real Property Located at 23019 Colorado Blvd Johnstown, CO 80534 from Centennial Ridge, LLC.

Councilmember Young seconded and the motion passed.

6. Award for Johnstown Annual Pavement Maintenance Program, Phase II RFP

Jason Elkins, Public Works Director presented the Pavement Maintenance Program and discussed the locations of the roads included in the project. A seventh area on High Plains Blvd. has been included in this RFP and project. It was noted that a quote was being asked for regarding the library parking lot.

Councilmember Molinar moved to approve the Phase II Pavement Maintenance Program to include \$30,000 in contingency for both Phase I and Phase II pavement quantity adjustments in the field only and authorize the Town Manager to execute the contract.

Councilmember Morris seconded and the motion passed.

7. Colorado Boulevard & Roosevelt Parkway Intersection Alternatives Analysis Award

Mr. Elkins with the opening of Roosevelt Highschool traffic has increased. Town Council and staff have desired to take a proactive approach to seek out needs of current and future demands of this intersection. It was noted staff would be returning to Council with the finding of this analysis.

Councilmember Morris moved to to approve the Colorado Blvd & Roosevelt Pkwy Intersection Alternatives Analysis as presented and authorize the Town Manager to execute the contract.

Councilmember Berg seconded and the motion passed.

8. Resolution No. 2023-44: Supporting Loveland Fire Rescue Authority and Specifically Loveland Rural Fire Protection District's Ballot Issue on the November 7, 2023 Coordinated Ballot

Mayor Mellon noted a previous presentation from the Loveland Fire Rescue Fire Chief regarding the November 7, 2023 proposed ballot measure from the Loveland Rural Fire Protection District.

Councilmember Berg moved to approve Resolution 2023-44 as presented supporting the Loveland Rural Fire Protection District's ballot measure on November 7, 2023.

Councilmember Young seconded and the motion passed.

9. Discussion Item: Districts & Wards

Avi Rocklin, Town Attorney, presented this item as a follow-up to a previous Council Work Session, and asked for direction on how to procedure in establishing a procedure regarding the Town's Charter, noting the Town being divided into district and wards.

Council suggested two wards, three councilmembers to a ward after discussing the complexity of districts and wards. Discussion centered around the terms districts vs. wards.

Council inquired about establishing a citizen's commission to begin the process.

PUBLIC HEARING

10. Renewal Application for Sabica 3 Inc & 7-Eleven dba 7-Eleven Store 34316A

Mayor Mellon opened the public hearing.

Hannah Hill, Town Clerk, introduced this item to Council noting renewal processes.

Council noted the situation regarding the employee being cited, not the store itself.

Council asked what steps were taken after this problem, where the 7-Eleven Manager noted he did review the regulations with staff, re-trained and employees were sent to City of Fort Collins for their City offered liquor training. It was noted the store now must have a scanned IDs instead of just a visual inspection.

Council expressed appreciation to the sensitvelty to the issue and the steps taken.

Mayor Mellon asked for public comment for those in favor of or opposed to this hearing, to which there was none.

Mayor Mellon closed the public hearing.

Councilmember Morris moved to approve the renewal of a Fermented Malt Beverage & Wine Liquor License to 7-Eleven Store 34316A.

Councilmember Molinar seconded and the motion passed.

11. Resolution 2023-43 Approving the Preliminary Plat and Preliminary Development Plan for Revere North Subdivision (SUB)

Mayor Mellon opened the public hearing.

Tyler Smith, Planning Department, presented this item reviewing the location and the community amenities including trail networks. The subdivision would include 339 lots and one amenity lot.

Mr. Smith noted the application does meet all Town code, regulations and requirements.

Jim Hays, Vice President of Land Acquisition for Fourstar Real Estes Group presented to Council. The different zoning areas were reviewed, including the water, sewer and open spaces. Mr. Hays indicated the amenity area would be roughly 4.5 acres and designs are being reviewed currently. Mr. Hays noted the perimeter fence details for impacts to the property owners to the east, including a 6-foot privacy fence, a ten-foot ditch maintain path and trail, and then an open rail fence on the property lots have a 29-feet to the property line of the private owners.

Council asked for what meetings with neighbors took place and if those concerns had been addressed. Jeff Mark, Tericino Designs, noted 300-feet was the boundary line of owners who were notified. All issues from the neighbor meetings are believed to be addressed.

The applicant noted Planning and Zoning Commission had concerns with the traffic and drainage. Council asked for clarification on the drainage if it crosses into the Hillsborough Crossing Ditch. The engineer for the project noted there are existing crossings in the Hillsborough Crossing Ditch, however there are no improvements required in the Town's Master Plan at the crossings. Council stressed the need to get the water past Hillsborough for drainage, which the engineer noted the development is meeting the requirements of the Colorado Drainage Law.

Council inquired about the name of the roads, which the applicant noted would be named Beeplant. Street names were also asked about. The applicant noted the review process for road names, and this application pulled plants within this area for naming plans.

Council noted a desire of larger lots, and more variety for different elevations.

Mayor Mellon asked for public comment for those in favor of this item, to which there were none.

Mayor Mellon asked for public comment for those opposed to this item.

Wendy Chase spoke to the notices received for this development, life quality and the amount of traffic on the road.

Janice Herrera spoke to Johnstown Use and Development document, Chapter 17 where landscape and site design, which Council noted does not apply to this Code as the PUD was approved prior to the code being adopted. Ms. Herrera noted landscape options.

Sandra Stoner spoke to grassland drive entrance and concerns related to, as it's directly across from her driveway.

Mario Herrera spoke to the growth and changes in Town, and the term "minimum requirements" and asked for a detailed map on the parameters on the area close to his house.

The applicant noted a meeting in 2021, and several separate meetings were held outside of the public Town Halls. It was noted there is a 30-foot buffer and Council asked if there were more accommodations that could be done.

Council asked for clarification on aligning the access point with driveways, which the applicant noted safety and other access points already being defined. The applicant did note they would take the notes from the meeting back to the traffic engineer and see what accommodations could be made.

Council noted the preference to have a height restriction on the south side of the development; would like to have less density on the south side of the development; looking into a safe entry for driveways; agreement between developer and Harry Lateral Ditch company and a robust plan to be submitted with the final plat.

Mayor Mellon closed the public hearing.

Councilmember Morris moved to approve Resolution 2023-43 approving the Preliminary Subdivision Plat and Preliminary Development Plan for Revere North Subdivision with the following conditions to be added:

- 1. The height of the residential homes along the portions of Red Poppy Street, Bitterroot Street, Beeplant Street and Crown Sparrow Street that are adjacent to the real property owned by the Mario and Janice D. Herrera Revocable Trust ("Herrera Property") shall be minimized;*
- 2. The residential homes that are adjacent to the Herrera Property shall be less dense;*
- 3. The access on Grassland Drive shall be improved to minimize interference with the real properties located on the south side of Veterans Parkway;*
- 4. The applicant, or its successor, shall enter into an agreement with the Harry Lateral Ditch Company related to the crossing of the Harry Lateral Ditch; and*
- 5. There shall be a minimum of sixty (60) feet of open space between the real property owned by Laura W. Chase and the east side of the development.*

Councilmember Young seconded and the motion passed.

12. Resolution No. 2023-40 Approving the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7

This item was removed from the agenda.

13. Ordinance 2023-254: An Ordinance Amending Section 2-11 of The Johnstown Municipal Code Concerning Councilmember Vacancies

Mayor Mellon opened the public hearing.

Ms. Rocklin noted this code relates to Council vacancies, with the intent to supplement the attendance requirement in code. The change would note that three consecutive meetings are not allowed to be missed, with limited exceptions.

Council noted the desire to have this implemented immediately as an emergency ordinance, stressing the importance of attendance and participation.

Ms. Rocklin noted findings were needed in order for the ordinance to be an emergency ordinance

Mayor Mellon asked for public comment for those in favor of or opposed to this hearing,

Jim Hatfield spoke to the need of the ordinance.

Council noted the desire to strike the effective date of April 15, 2023 and make it effective upon adoption.

Mayor Mellon closed the public hearing.

Councilmember Young moved to approve Ordinance 2023-254 an Ordinance Amending Section 2-11 of the Johnstown Municipal Code concerning Councilmember Vacancies, on first reading with the change to the effective date per the charter.

Councilmember Morris seconded and the motion passed.

COUNCIL REPORTS AND COMMENTS

Councilmember Morris congratulated Councilmember Paranto on his upcoming wedding. It was also noted that a year ago, regarding the weeds north of Rolling Hills- asked to find out who to contact regarding weeds outside town limits.

Councilmember Young noted the grant work at the Parish House Museum is expected to see tree removal, and the week of October 16th will be excavation for work on the concrete wall.

Councilmember Molinar apologized to Town staff regarding public comments.

Councilmember Paranto noted upcoming wedding festivities,

MAYOR'S COMMENTS

Mayor Mellon noted the previous MPO meeting mentioned hefty fines when breaching the express lanes outside the entry/exit lanes that will be processed automatically.

Fall Fest and the unveiling of the 'J' was noted.

EXECUTIVE SESSION

14. An executive session to discuss the purchase of real property pursuant to C.R.S. Section 24-6-402(4)(a)

Councilmember Berg moved to recess into executive session to discuss the purchase of real property pursuant to C.R.S. Section 24-6-402(4)(a)

Councilmember Young seconded and the motion passed.

Council recessed into executive session at 10:04 pm and reconvened at 10:18 pm where the Mayor noted no decisions were made and no other business was discussed.

MAYOR'S COMMENTS

15. Informational Items

Informational items were included in the packet.

ADJOURN

Mayor Mellon adjourned the September 18, 2023 meeting at 10:19 p.m.

Troy D. Mellon, Mayor

Hannah Hill, Town Clerk



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: Ordinance 2023-254 an Ordinance Amending Section 2-11 of the Johnstown Municipal Code Concerning Councilmember Vacancies

ACTION PROPOSED: Consider Ordinance No. 2023-254

ATTACHMENTS: 1. Ordinance No. 2023-254

PRESENTED BY: Avi Rocklin, Town Attorney

AGENDA ITEM DESCRIPTION: Section 2.6 of the Home Rule Charter of the Town of Johnstown (“Charter”) provides that, among other instances, the office of the Mayor or a Councilmember “may become vacant under Section 2.3 E of this Charter regarding discipline for violations of Council requirements and procedures.” Section 2.3E of Charter, in turn, provides that: “Town Council may, by ordinance, enact requirements and procedures to govern the Council-related activities of Councilmembers and the Mayor while in office, which ordinance may prescribe disciplinary procedures and consequences for violations of such requirements and procedures.”

Consistent with the protocol established by many municipalities, the Town Council may consider enacting attendance requirements for the Mayor and Councilmembers. After discussion, receiving feedback, and general direction from the Town Council during a work session and a regular meeting, Town Staff is presenting an Ordinance that the offices would become vacant if the Mayor or Councilmember fails to attend three (3) consecutive regular meetings of the Town Council. The failure to attend the meetings, however, would be excused for the death of a family member, hospitalization of the Mayor or Councilmember, or involuntary military service.

To effectuate the foregoing, Section 2-11 of the Johnstown Municipal Code could be amended to address, in addition to vacancies resulting from residency requirements, vacancies arising from the failure to attend regular meetings of the Town Council

The first reading of this ordinance was presented to Town Council on September 18, 2023. Council amended the original ordinance to be effective upon adoption of final reading.

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LEGAL ADVICE:

The Town Attorney prepared Ordinance No. 2023-254

FINANCIAL ADVICE:

N/A

RECOMMENDED ACTION: Approve Ordinance No. 2023-254 on second reading.

Reviewed and Approved for Presentation,



Town Manager

TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2023-254

AN ORDINANCE AMENDING SECTION 2-11 OF THE JOHNSTOWN MUNICIPAL CODE CONCERNING COUNCILMEMBER VACANCIES

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Section 2.6 of the Home Rule Charter of the Town of Johnstown (“Charter”) provides that: “A Councilmember’s office, and the office of the Mayor, shall become vacant whenever he/she is recalled, dies, is declared legally incompetent, resigns, is removed from office, moves from or becomes a non-resident of the Town, ward or district, as the case may be with reference to Section 2.1.B. of this Charter. A Councilmember’s office, and the office of the Mayor, may become vacant under Section 2.3 E of this Charter regarding discipline for violations of Council requirements and procedures.”

WHEREAS, Section 2.3E of Charter, in turn, provides that: “Town Council may, by ordinance, enact requirements and procedures to govern the Council-related activities of Councilmembers and the Mayor while in office, which ordinance may prescribe disciplinary procedures and consequences for violations of such requirements and procedures.”

WHEREAS, pursuant to the foregoing provisions of the Charter, the Town Council desires to enact attendance requirements for the office of the Mayor and Councilmembers; and

WHEREAS, to effectuate the foregoing, the Town Council desires to amend and expand Section 2-11 of the Johnstown Municipal Code to address, in addition to vacancies resulting from residency requirements, vacancies arising from the failure to attend regular meetings of the Town Council; and

WHEREAS, the Town Council finds, determines and declares that this Ordinance is promulgated under the general police power of the Town and is in the best interests of the Town of Johnstown.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Section 2-11. Section 2-11 of the Johnstown Municipal Code shall be repealed in full and readopted to read as follows:

Sec. 2-11. Vacancies.

A vacancy shall exist if, during the term of office, the Mayor or a Councilmember dies, is judicially declared incompetent, resigns, moves from or becomes a non-resident of the Town or, if applicable, a ward or district, or fails to attend three (3) consecutive regular meetings of the Town Council. The failure to attend a Town Council meeting shall be excused for the death of a family member, hospitalization of the Mayor or Councilmember or involuntary military service.

Section 2. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and, to this end, the provisions and parts of this Ordinance are declared to be severable.

Section 3. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this 18th day of September, 2023.

TO WN OF JOHNSTOWN, COLORADO

ATTEST:

By: Hannah Hill
Hannah Hill, Town Clerk

By: Troy D. Mellon
Troy D. Mellon, Mayor

PASSED UPON FINAL APPROVAL, AS AMENDED, AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2023.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: Acknowledgement of Receipt of 2024 Budget

ATTACHMENTS: 1. Resolution 2023-45
2. FY 2024 Preliminary Budget

PRESENTED BY: Devon McCarty, Finance Director

AGENDA ITEM DESCRIPTION:

The Town of Johnstown Municipal Code, Section 4-2 states that “No later than October 15th of each year, the Town Manager, as designated by the Town Council and required by Colorado Law, shall submit to the Town Council the proposed annual budget for the ensuing fiscal year.” The attached Resolution 2023-45 acknowledges that the Council was in receipt of the preliminary 2024 Budget document prior to the required date as the document was/will be presented to the Council at two separate work sessions, held on September 25, 2023, and October 11, 2023.

The budget in its entirety has been included with this resolution and has been made available to the public for inspection at Town Hall and on the Town’s website.

LEGAL ADVICE:

The Town Attorney drafted the Resolution.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Resolution 2023-45 acknowledging receipt of the FY 2024 preliminary budget document.

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Reviewed and Approved for Presentation,



Town Manager

The Community That Cares

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TOWN OF JOHNSTOWN, COLORADO

RESOLUTION NO. 2023-45

**A RESOLUTION OF THE TOWN OF JOHNSTOWN, COLORADO,
ACKNOWLEDGING RECEIPT OF THE FY 2024 PRELIMINARY BUDGET**

WHEREAS, the preliminary budget for FY 2024 was provided to the Council for review on September 21, 2023; and,

WHEREAS, the governmental funds and fiduciary funds were presented to the Town Council on September 25, 2023, during a budget work session; and

WHEREAS, the enterprise funds were presented to the Town Council on October 11, 2023, during a budget work session.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Johnstown, Colorado that:

Section 1. The preliminary budget for 2024 was provided to the Town Council on September 21, 2023, with budget work sessions held on September 25, 2023, and October 11, 2023.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSES, AND ADOPTED THIS 16th DAY OF OCTOBER 2023.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

GENERAL FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Impact Outlay	Debt Service	Total
Council	63,900	365,000	9,000	485,700	923,600	1,000,000	-	-	1,923,600
Events	125,600	19,000	6,200	101,250	252,050	30,000	-	-	282,050
Town Manager	1,213,875	451,800	130,300	187,460	1,983,435	76,000	-	-	2,059,435
Town Clerk	386,150	100,150	44,200	11,800	542,300	-	-	-	542,300
Finance	388,020	298,000	19,900	5,200	711,120	-	-	-	711,120
Planning	634,250	21,200	32,600	8,000	696,050	-	-	-	696,050
Bldg Inspections	92,950	301,700	8,000	750	403,400	-	-	-	403,400
Engineering	1,090,205	19,340	68,950	15,000	1,193,495	100,000	-	-	1,293,495
Police	4,781,120	306,400	480,300	203,000	5,770,820	495,000	4,000,000	-	10,265,820
Public Works	533,850	148,250	87,200	26,300	795,600	-	-	-	795,600
Buildings	-	315,600	4,500	32,000	352,100	500,000	-	-	852,100
Reimbursements	-	350,000	-	-	350,000	-	-	-	350,000
Totals	\$9,309,920	\$2,696,440	\$891,150	\$1,076,460	\$13,973,970	\$2,201,000	\$4,000,000	\$0	\$20,174,970

Total Cash Available \$ 34,475,437

Ending Fund Balance \$ 14,300,467

% of Total Budget 46.15% 13.37% 4.42% 5.34% 69.26% 10.91% 19.83% 0.00% 100.00%

General Fund

Item #3.

GENERAL FUND REVENUES		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
Advalorem Taxes						
10.01.3110.00	Property Taxes - Weld	3,959,935	4,207,351	4,251,814	4,212,000	11,772,423
10.01.3112.00	Property Taxes - Larimer	4,258,210	4,681,853	4,778,720	4,711,000	6,229,987
	Subtotal	8,218,144	8,889,204	9,030,534	8,923,000	18,002,410
Sales Tax						
10.01.3120.00	Sales Tax - State	12,733,299	6,420,076	9,000,000	11,500,000	12,500,000
10.01.3122.00	Use Tax - Building	2,668,381	1,459,925	750,000	1,600,000	1,000,000
	Subtotal	15,401,681	7,880,000	9,750,000	13,100,000	13,500,000
Excise Tax						
10.01.3130.00	Lodging Tax	157,751	98,326	90,000	110,000	100,000
10.01.3150.00	Tobacco Tax	26,090	11,970	20,000	20,000	20,000
10.01.3160.00	Severance Tax	632,921	702,525	75,000	702,525	150,000
	Subtotal	816,763	812,820	185,000	832,525	270,000
Franchise Tax						
10.01.3180.00	Franchise Tax-Cable	28,014	15,533	32,000	28,000	25,000
10.01.3184.00	Franchise Tax - Electric & Gas	667,126	354,728	420,000	550,000	550,000
	Subtotal	695,140	370,261	452,000	578,000	575,000
Licenses, Permits, & Service Charges						
10.01.3210.00	Business Licenses	27,350	11,076	26,000	11,500	12,000
10.01.3215.00	Contractors Licenses	28,766	25,325	28,000	26,000	25,000
10.01.3220.00	Dog License/Fees	938	1,002	1,500	1,200	1,500
10.01.3230.00	Liquor License	7,431	3,524	4,000	4,000	4,500
10.01.3510.00	Abatement Fees	1,950	170	2,000	1,000	2,000
10.01.3515.00	Plastic Bag Fees	-	5,935	-	10,000	5,000
10.01.3520.00	Administrative Fees	3,438	1,533	2,500	2,200	2,000
10.01.3530.00	Building Permits	2,518,326	1,357,361	1,000,000	1,500,000	1,100,000
10.01.3565.00	Facility Rental Fees	4,710	5,995	2,500	6,500	3,500
10.01.3570.00	Fingerprinting Fees	330	-	330	-	-

General Fund

Item #3.

		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
GENERAL FUND REVENUES						
10.01.3750.00	Police Facilities Development Fees	713,515	491,761	280,610	515,000	324,725
10.01.3760.00	Public Facilities Impact Fees	1,450,905	1,026,082	609,660	1,100,000	713,075
10.01.3770.00	Cultural Impact Fees	-	-	-	-	257,663
	Subtotal	4,757,660	2,929,763	1,957,100	3,177,400	2,450,963
Fines, Forfeitures, & Pd Fees						
10.01.3310.00	Court Revenues	212,515	145,325	160,000	190,000	190,000
10.01.3320.00	Court Surcharge	30,423	23,600	15,500	25,000	25,000
10.01.3330.00	Restitution	275	-	-	-	-
	Subtotal	243,213	168,925	175,500	215,000	215,000
Other Revenues						
10.01.3960.00	Interest Income	442,268	1,514,199	15,000	1,800,000	500,000
10.01.3970.00	Misc Revenue	320,023	11,786	10,000	12,000	10,000
10.01.3985.00	Refund Of Expenditures	890,548	634,451	737,500	670,000	350,000
10.01.3990.00	Rent Income	7,312	9,903	6,600	10,000	-
10.01.3995.00	Unrealized Gain	143,579	-	-	-	-
	Subtotal	1,803,730	2,170,339	769,100	2,492,000	860,000
Revenue From Other Agencies						
10.01.3410.00	Grants - Federal	1,910,007	-	-	-	100,000
10.01.3420.00	Royalties	317,090	161,852	25,000	167,000	50,000
10.01.3440.00	State Grants	134,553	85,126	10,000	85,126	-
	Subtotal	2,361,649	246,978	35,000	252,126	150,000
Events & Community Activities						
10.01.3953.00	Donations/Community Activities	681,649	482	-	500	20,000
	Subtotal	681,649	482	-	500	20,000
Total Fund Revenues		34,979,629	23,468,772	22,354,234	29,570,551	36,043,373

General Fund

Item #3.

		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
GENERAL FUND REVENUES						
Intragovernmental Revenues						
10.01.3999.00	To Library	(1,202,027)	(934,078)	(1,243,246)	(1,245,432)	(2,491,362)
10.01.3999.00	To Sewer Fund	-	-	(50,000,000)	(50,000,000)	-
10.01.3999.00	To Water Fund	-	-	-	-	(50,700,000)
10.01.3999.00	To Parks	(1,112,000)	-	-	-	(1,000,000)
10.01.3999.00	To Rec Center	-	(77,262)	(77,262)	(377,262)	(503,000)
10.01.3999.00	To Streets	-	-	-	-	-
10.01.3999.00	To Tax Fund	(758,068)	(121,747)	(625,000)	(700,000)	(700,000)
10.01.3999.00	From Library	-	-	-	1,899	37,395
	Subtotal	(3,072,095)	(1,133,087)	(51,945,508)	(52,320,795)	(55,356,967)
TOTAL FUND REVENUES W/TRANSERS		31,907,534	22,335,685	(29,591,274)	(22,750,244)	(19,313,594)
UNRESTRICTED CASH BALANCE FORWARD						53,789,031
TOTAL ANTICIPATED FUNDS AVAILABLE						34,475,437

General Fund - Legislative

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.10.4001.00	Salaries	55,853	25,151	45,780	41,000	59,000
10.10.4010.00	Payroll Taxes	4,273	1,924	3,550	5,500	4,500
10.10.4025.00	Workers Compensation	308	72	460	460	400
	Total Personnel Services	60,435	27,147	49,790	46,960	63,900
	Contractual Services					
10.10.4100.00	Audit	9,000	9,000	18,000	15,000	40,000
10.10.4135.00	Other Contractual Services	15,094	6,236	40,000	37,000	40,000
10.10.4145.00	Printing & Advertising	5,896	7,465	19,000	9,500	7,000
10.10.4150.00	Professional Services	104,845	103,516	175,000	175,000	260,000
10.10.4180.00	Travel & Training	5,473	5,347	18,000	10,000	18,000
	Total Contractual Services	140,308	131,564	270,000	246,500	365,000
	Commodities					
10.10.4310.00	Computers & Software	2,166	1,342	3,000	3,300	5,000
10.10.4385.00	Supplies - General	3,102	2,469	2,500	3,500	1,500
10.10.4400.00	Supplies - Office	1,457	1,596	1,000	2,100	2,500
	Total Commodities	6,725	5,406	6,500	8,900	9,000
	Other Charges					
10.10.4530.00	Election Expenses	34,814	-	-	-	46,000
10.10.4540.00	Insurance	110,465	113,339	124,650	115,000	90,200
10.10.4560.00	Memberships & Subscriptions	27,320	23,200	65,500	65,500	77,000
10.10.4570.00	Miscellaneous	461,964	426,466	290,000	521,049	272,500
	Total Other Charges	634,564	563,005	480,150	701,549	485,700

General Fund - Legislative

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Capital - \$5,000/item min.					
10.10.4850.00	Land	-	-	-	667,000	-
10.10.4830.00	Equipment	127,414	-	25,000	25,000	-
10.10.4840.00	Other Improvements	2,190,524	5,000	-	5,000	1,000,000
	Total Capital	2,317,939	5,000	25,000	697,000	1,000,000
	Total Budget Request	3,159,970	732,122	831,440	1,700,909	1,923,600

General Fund - Town Manager Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	<u>Personnel Services</u>					
10.20.4001.00	Salaries	516,739	403,276	658,700	658,700	817,300
10.20.4002.00	Overtime	-	-	500	500	-
10.20.4010.00	Payroll Taxes	38,525	29,193	50,550	50,550	62,450
10.20.4020.00	Unemployment Taxes	-	-	7,000	7,000	7,000
10.20.4025.00	Workers Compensation	8,800	6,098	4,280	9,000	9,200
10.20.4030.00	Group Insurance	67,850	61,611	73,040	93,400	90,225
10.20.4035.00	Retirement Contribution	46,446	40,686	64,140	64,140	97,900
10.20.4040.00	Automobile Allowance	-	3,075	6,000	6,000	6,000
10.20.4045.00	Cell Phone Allowance	7,369	1,381	900	1,900	1,900
	Total Personnel Services	685,728	545,320	865,110	891,190	1,091,975
	<u>New Personnel</u>					
10.20.4001.00	Salaries	-	-	-	-	76,000
10.20.4010.00	Payroll Taxes	-	-	-	-	6,200
10.20.4020.00	Unemployment Taxes	-	-	-	-	700
10.20.4025.00	Workers Compensation	-	-	-	-	500
10.20.4030.00	Group Insurance	-	-	-	-	28,900
10.20.4035.00	Retirement Contribution	-	-	-	-	9,600
	Total New Personnel	-	-	-	-	121,900
	<u>Contractual Services</u>					
10.20.4120.00	Employee Education	1,000	-	-	-	-
10.20.4135.00	Other Contractual Services	33,302	65,076	45,900	70,500	146,000
10.20.4140.00	Postage	87	23	2,650	2,550	6,550
10.20.4145.00	Printing & Advertising	40,290	40,973	64,040	64,740	63,600
10.20.4150.00	Professional Services	26,353	180	130,500	130,300	165,000
10.20.4170.00	Telephone & Internet	2,989	1,692	12,320	10,040	15,800
10.20.4180.00	Travel & Training	22,717	13,303	44,885	30,750	54,850
	Total Contractual Services	126,739	121,247	300,295	308,880	451,800

General Fund - Town Manager Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
10.20.4310.00	Computers & Software	22,721	13,887	59,205	52,545	110,150
10.20.4330.00	Fuel & Lubricants	1,479	279	2,500	1,350	4,250
10.20.4385.00	Supplies - General	908	2,605	9,100	3,000	4,000
10.20.4400.00	Supplies - Office	9,299	6,856	4,900	9,850	11,900
	Total Commodities	34,406	23,627	75,705	66,745	130,300
	Other Charges					
10.20.4540.00	Insurance	3,419	17,419	4,900	17,420	9,000
10.20.4560.00	Memberships & Subscriptions	5,814	3,034	18,420	19,245	25,160
10.20.4570.00	Miscellaneous	23,857	55,659	123,000	85,700	153,300
	Total Other Charges	33,089	76,111	146,320	122,365	187,460
	Capital - \$5,000/item min.					
10.20.4830.00	Equipment	-	6,245	-	6,245	-
10.20.4840.00	Infrastructure	60,609	52	55,000	55,000	-
10.20.4860.00	Vehicles	-	-	-	-	76,000
	Total Capital	60,609	6,297	55,000	61,245	76,000
	Total Budget Request	940,571	772,603	1,442,430	1,450,425	2,059,435

General Fund - Town Clerk Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.30.4001.00	Salaries	255,790	129,298	209,400	209,400	264,400
10.30.4002.00	Overtime	-	-	500	500	500
10.30.4010.00	Payroll Taxes	18,794	9,166	16,000	16,000	20,200
10.30.4020.00	Unemployment Taxes	-	-	1,800	1,800	2,700
10.30.4025.00	Workers Compensation	3,632	1,545	3,900	3,900	4,500
10.30.4030.00	Group Insurance	47,953	27,143	43,400	43,400	56,700
10.30.4035.00	Retirement Contribution	22,155	12,448	25,100	25,100	31,600
	Total Personnel Services	348,324	179,601	300,100	300,100	380,600
	New Personnel					
10.30.4001.00	Salaries	-	-	-	-	5,000
10.30.4010.00	Payroll Taxes	-	-	-	-	400
10.30.4020.00	Unemployment Taxes	-	-	-	-	50
10.30.4025.00	Workers Compensation	-	-	-	-	100
	Total New Personnel	-	-	-	-	5,550
	Contractual Services					
10.30.4135.00	Other Contractual Services	8,935	11,653	18,000	18,000	9,000
10.30.4140.00	Postage	1,822	2,204	2,000	2,500	2,000
10.30.4145.00	Printing & Advertising	1,752	628	1,500	1,000	1,050
10.30.4150.00	Professional Services	81,428	37,324	69,000	71,000	80,000
10.30.4160.00	Rents	984	300	1,000	1,000	1,000
10.30.4170.00	Telephone & Internet	3,653	1,086	4,960	3,500	2,100
10.30.4180.00	Travel & Training	850	2,638	3,500	3,500	5,000
	Total Contractual Services	99,423	55,834	99,960	100,500	100,150
	Commodities					
10.30.4310.00	Computers & Software	9,051	23,881	33,850	30,896	41,000
10.30.4330.00	Fuel & Lubricants	297	59	500	150	200
10.30.4400.00	Supplies - Office	4,825	1,309	3,000	3,000	3,000
	Total Commodities	14,172	25,248	37,350	34,046	44,200

General Fund - Town Clerk Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Other Charges					
10.30.4540.00	Insurance	3,758	6,605	2,500	6,605	2,600
10.30.4560.00	Memberships & Subscriptions	273	417	1,500	650	700
10.30.4570.00	Miscellaneous	3,909	2,021	500	2,100	8,500
	Total Other Charges	7,939	9,043	4,500	9,355	11,800
	Total Budget Request	469,859	269,726	441,910	444,001	542,300

General Fund - Finance Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.40.4001.00	Salaries	106,934	92,927	150,200	150,200	191,400
10.40.4002.00	Overtime	-	11	500	500	200
10.40.4010.00	Payroll Taxes	7,866	6,629	11,500	11,500	14,700
10.40.4020.00	Unemployment Taxes	-	-	1,800	1,800	1,800
10.40.4025.00	Workers Compensation	1,570	1,464	2,560	2,560	3,400
10.40.4030.00	Group Insurance	18,709	19,841	28,500	28,500	35,550
10.40.4035.00	Retirement Contribution	11,409	9,791	18,100	18,100	23,000
10.20.4045.00	Cell Phone Allowance	169	194	-	300	300
	Total Personnel Services	146,657	130,858	213,160	213,460	270,350
	New Personnel					
10.40.4001.00	Salaries	-	-	-	-	71,750
10.40.4002.00	Overtime	-	-	-	-	1,000
10.40.4010.00	Payroll Taxes	-	-	-	-	5,600
10.40.4020.00	Unemployment Taxes	-	-	-	-	620
10.40.4025.00	Workers Compensation	-	-	-	-	1,000
10.40.4030.00	Group Insurance	-	-	-	-	28,900
10.40.4035.00	Retirement Contribution	-	-	-	-	8,800
	Total New Personnel	-	-	-	-	117,670

General Fund - Finance Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Contractual Services					
10.40.4135.00	Other Contractual Services	148,776	147,666	198,000	204,650	285,000
10.40.4140.00	Postage	-	63	450	200	200
10.40.4145.00	Printing & Advertising	-	-	3,000	500	2,500
10.40.4150.00	Professional Services	605	4	-	50	100
10.40.4170.00	Telephone & Internet	2,439	1,222	7,000	2,500	4,200
10.40.4180.00	Travel & Training	950	2,056	7,500	4,500	6,000
	Total Contractual Services	152,770	151,011	215,950	212,400	298,000
	Commodities					
10.40.4310.00	Computers & Software	31,543	3,494	11,760	9,867	16,400
10.40.4400.00	Supplies - Office	4,983	3,152	3,500	3,500	3,500
	Total Commodities	36,525	6,646	15,260	13,367	19,900
	Other Charges					
10.40.4540.00	Insurance	1,291	1,452	1,400	1,452	2,100
10.40.4560.00	Memberships & Subscriptions	150	-	600	600	600
10.40.4570.00	Miscellaneous	5,031	333	4,500	2,500	2,500
	Total Other Charges	6,472	1,784	6,500	4,552	5,200
	Total Budget Request	342,425	290,298	450,870	443,779	711,120

General Fund - Events Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	<u>New Personnel</u>					
10.XX.4001.00	Salaries	-	-	-	-	78,950
10.XX.4010.00	Payroll Taxes	-	-	-	-	6,150
10.XX.4020.00	Unemployment Taxes	-	-	-	-	700
10.XX.4025.00	Workers Compensation	-	-	-	-	1,000
10.XX.4030.00	Group Insurance	-	-	-	-	28,900
10.XX.4035.00	Retirement Contribution	-	-	-	-	9,600
10.XX.4045.00	Cell Phone Allowance	-	-	-	-	300
	Total New Personnel	-	-	-	-	125,600
	<u>Contractual Services</u>					
10.XX.4135.00	Other Contractual Services	-	-	-	-	11,250
10.XX.4140.00	Postage	-	-	-	-	50
10.XX.4145.00	Printing & Advertising	-	-	-	-	3,000
10.XX.4170.00	Telephone	-	-	-	-	700
10.XX.4180.00	Travel & Training	-	-	-	-	4,000
	Total Contractual Services	-	-	-	-	19,000
	<u>Commodities</u>					
10.XX.4310.00	Computers & Software	-	-	-	-	4,700
10.XX.4385.00	Supplies - General	-	-	-	-	1,000
XX.10.4400.00	Supplies - Office	-	-	-	-	500
	Total Commodities	-	-	-	-	6,200
	<u>Other Charges</u>					
10.XX.4540.00	Insurance	-	-	-	-	700
10.XX.4560.00	Memberships & Subscriptions	-	-	-	-	550
10.XX.4570.00	Miscellaneous	-	-	-	-	100,000
	Total Other Charges	-	-	-	-	101,250

General Fund - Events Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Capital - \$5,000/item min.					
10.XX.4860.00	Vehicles	-	-	-	-	30,000
	Total Capital	-	-	-	-	30,000
	Total Budget Request	-	-	-	-	282,050

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.50.4001.00	Salaries	229,464	157,884	345,600	345,600	382,900
10.50.4002.00	Overtime	-	-	-	-	500
10.50.4010.00	Payroll Taxes	16,596	11,054	26,300	26,300	29,300
10.50.4020.00	Unemployment Taxes	-	-	4,000	4,000	4,000
10.50.4025.00	Workers Compensation	4,018	2,476	6,730	6,730	6,500
10.50.4030.00	Group Insurance	52,018	34,014	84,200	84,200	58,900
10.50.4035.00	Retirement Contribution	22,813	15,415	41,650	41,650	46,300
	Total Personnel Services	324,909	220,844	508,480	508,480	528,400
	New Personnel					
10.50.4001.00	Salaries	-	-	-	-	62,200
10.50.4002.00	Overtime	-	-	-	-	1,000
10.50.4010.00	Payroll Taxes	-	-	-	-	4,650
10.50.4020.00	Unemployment Taxes	-	-	-	-	600
10.50.4025.00	Workers Compensation	-	-	-	-	1,250
10.50.4030.00	Group Insurance	-	-	-	-	28,900
10.50.4035.00	Retirement Contribution	-	-	-	-	7,250
	Total New Personnel	-	-	-	-	105,850
	Contractual Services					
10.50.4120.00	Employee Education	-	-	3,000	-	-
10.50.4135.00	Other Contractual Services	99,552	1,871	3,000	2,000	3,000
10.50.4140.00	Postage	453	-	800	-	-
10.50.4145.00	Printing & Advertising	195	51	1,000	500	5,000
10.50.4150.00	Professional Services	814	224	-	250	-
10.50.4170.00	Telephone & Internet	2,439	1,148	7,200	7,200	4,200
10.50.4180.00	Travel & Training	2,434	33	9,200	2,500	9,000
	Total Contractual Services	105,886	3,326	24,200	12,450	21,200

General Fund - Planning Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	<u>Commodities</u>					
10.50.4310.00	Computers & Software	12,891	16,639	20,580	20,580	29,600
10.50.4400.00	Supplies - Office	13,072	700	5,000	2,000	3,000
	Total Commodities	25,963	17,339	25,580	22,580	32,600
	<u>Other Charges</u>					
10.50.4540.00	Insurance	2,944	3,617	2,050	3,617	3,500
10.50.4560.00	Memberships & Subscriptions	763	459	2,500	2,000	2,500
10.50.4570.00	Miscellaneous	3,000	424	3,500	2,000	2,000
	Total Other Charges	6,708	4,499	8,050	7,617	8,000
	<u>Capital - \$5,000/item min.</u>					
10.50.4830.00	Equipment	7,740	-	-	-	-
	Total Capital	7,740	-	-	-	-
	Total Budget Request	471,205	246,008	566,310	551,127	696,050

General Fund - Planning Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Contractual Services					
10.51.4137.00	Contractual - Restricted Bill Back	780,994	453,922	700,000	650,000	350,000
	Total Contractual Services	780,994	453,922	700,000	650,000	350,000
	Total Budget Request	780,994	453,922	700,000	650,000	350,000

General Fund - Building Inspections Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.60.4001.00	Salaries	63,282	48,456	65,800	65,800	63,000
10.60.4010.00	Payroll Taxes	4,839	3,467	5,050	5,050	4,700
10.60.4020.00	Unemployment Taxes	-	-	650	650	650
10.60.4025.00	Workers Compensation	65	45	1,250	1,080	1,200
10.60.4030.00	Group Insurance	540	8,796	21,000	21,000	16,100
10.60.4035.00	Retirement Contribution	5,366	4,982	9,600	9,600	7,300
	Total Personnel Services	74,091	65,745	103,350	103,180	92,950
	Contractual Services					
10.60.4135.00	Other Contractual Services	199,219	150,542	300,000	300,000	300,000
10.60.4145.00	Printing & Advertising	-	-	200	-	-
10.60.4170.00	Telephone & Internet	540	309	1,700	1,700	700
10.60.4180.00	Travel & Training	-	-	1,800	1,000	1,000
	Total Contractual Services	199,759	150,850	303,700	302,700	301,700
	Commodities					
10.60.4310.00	Computers & Software	2,601	5,649	5,270	5,800	7,600
10.60.4400.00	Supplies - Office	472	125	700	250	400
10.60.4430.00	Supplies - Training	-	921	-	1,000	-
	Total Commodities	3,074	6,695	5,970	7,050	8,000
	Other Charges					
10.60.4540.00	Insurance	680	885	500	885	600
10.60.4560.00	Memberships & Subscriptions	170	-	300	-	150
	Total Other Charges	850	885	800	885	750
	Total Budget Request	277,773	224,175	413,820	413,815	403,400

General Fund - Police Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.70.4001.00	Salaries	2,559,577	1,678,736	2,798,300	2,788,300	3,280,400
10.70.4002.00	Overtime	59,112	54,877	73,000	73,000	65,000
10.70.4010.00	Payroll Taxes	194,080	127,712	214,800	204,800	256,320
10.70.4020.00	Unemployment Taxes	-	-	28,500	28,500	29,800
10.70.4025.00	Workers Compensation	82,077	47,715	160,000	142,000	152,000
10.70.4030.00	Group Insurance	379,958	235,458	472,500	472,500	488,400
10.70.4035.00	Retirement Contribution	272,304	189,845	340,800	340,800	395,300
	Total Personnel Services	3,547,108	2,334,343	4,087,900	4,049,900	4,667,220
	New Personnel					
10.70.4001.00	Salaries	-	-	-	-	65,000
10.70.4002.00	Overtime	-	-	-	-	2,000
10.70.4010.00	Payroll Taxes	-	-	-	-	5,200
10.70.4020.00	Unemployment Taxes	-	-	-	-	600
10.70.4025.00	Workers Compensation	-	-	-	-	4,000
10.70.4030.00	Group Insurance	-	-	-	-	28,900
10.70.4035.00	Retirement Contribution	-	-	-	-	8,200
	Total New Personnel	-	-	-	-	113,900
	Contractual Services					
10.70.4120.00	Employee Education	-	-	3,000	-	-
10.70.4122.00	Maintenance - Buildings	545	-	-	-	-
10.70.4125.00	Maintenance - Equipment	258	2,177	-	3,000	-
10.70.4130.00	Maintenance - Vehicles	29,588	28,479	27,000	30,000	30,000
10.70.4135.00	Other Contractual Services	105,627	177,440	191,640	190,000	167,100
10.70.4140.00	Postage	1,998	313	4,500	1,800	2,000
10.70.4145.00	Printing & Advertising	2,139	570	1,500	1,000	1,500
10.70.4150.00	Professional Services	6,921	10,379	28,500	20,000	29,000
10.70.4170.00	Telephone & Internet	37,859	29,202	45,000	39,000	44,300
10.70.4180.00	Travel & Training	17,464	17,455	42,000	25,000	32,500
	Total Contractual Services	202,399	266,014	343,140	309,800	306,400

General Fund - Police Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
10.70.4310.00	Computers & Software	13,310	109,553	111,170	190,000	195,750
10.70.4330.00	Fuel & Lubricants	52,259	48,874	72,000	72,000	107,600
10.70.4385.00	Supplies - General	113,168	78,187	174,300	170,000	138,300
10.70.4395.00	Supplies - Lab	10,552	6,269	6,000	6,500	7,000
10.70.4400.00	Supplies - Office	10,483	4,844	13,500	9,000	11,000
10.70.4460.00	Uniforms	10,845	6,837	29,000	20,000	20,650
	Total Commodities	210,617	254,564	405,970	467,500	480,300
	Other Charges					
10.70.4510.00	Contingencies	-	-	-	-	-
10.70.4520.00	Donations - Community Programs	5,235	1,051	4,500	4,000	4,500
10.70.4540.00	Insurance	101,831	110,815	106,100	110,815	198,000
10.70.4560.00	Memberships & Subscriptions	295	100	1,500	500	500
10.70.4570.00	Miscellaneous	7,640	-	-	-	-
	Total Other Charges	115,002	111,966	112,100	115,315	203,000
	Capital - \$5,000/item min.					
10.70.4830.00	Equipment	-	-	7,500	-	-
10.70.4860.00	Vehicles	134,348	233,047	300,000	300,000	495,000
	Total Capital	134,348	233,047	307,500	300,000	495,000
Impact						
	Contractual Services					
10.70.4135.00	Other Contractual Services	18,237	-	-	-	-
	Total Contractual Services	18,237	-	-	-	-
	Capital - \$5,000/item min.					
10.70.4860.00	Vehicles	54,940	300,000	300,000	300,000	-
10.70.4890.00	Other Improvements	22,234	88,463	450,000	450,000	4,000,000
	Total Capital	77,174	388,463	750,000	750,000	4,000,000
	Total Budget Request	4,304,884	3,588,396	6,006,610	5,992,515	10,265,820

General Fund - Engineering Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - July Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
.4001.00	Salaries	-	-	-	-	260,000
.4002.00	Overtime	-	-	-	-	1,000
.4010.00	Payroll Taxes	-	-	-	-	20,000
.4020.00	Unemployment Taxes	-	-	-	-	2,300
.4025.00	Workers Compensation	-	-	-	-	7,000
.4030.00	Group Insurance	-	-	-	-	32,900
.4035.00	Retirement Contribution	-	-	-	-	28,900
.4045.00	Cell Phone Allowance	-	-	-	-	300
	Total Personnel Services	-	-	-	-	352,400
	New Personnel					
.4001.00	Salaries	-	-	-	-	478,005
.4010.00	Payroll Taxes	-	-	-	-	36,600
.4020.00	Unemployment Taxes	-	-	-	-	4,500
.4025.00	Workers Compensation	-	-	-	-	17,000
.4030.00	Group Insurance	-	-	-	-	144,400
.4035.00	Retirement Contribution	-	-	-	-	57,300
	Total Personnel Services	-	-	-	-	737,805
	Contractual Services					
.4130.00	Maintenance - Vehicles	-	-	-	-	4,000
.4170.00	Telephone & Internet	-	-	-	-	5,340
.4180.00	Travel & Training	-	-	-	-	10,000
	Total Contractual Services	-	-	-	-	19,340

General Fund - Engineering Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - July Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
.4310.00	Computers & Software	-	-	-	-	35,200
.4330.00	Fuel & Lubricants	-	-	-	-	5,000
.4385.00	Supplies - General	-	-	-	-	1,000
.4390.00	Supplies - Janitorial	-	-	-	-	500
.4400.00	Supplies - Office	-	-	-	-	12,000
.4410.00	Supplies - Operational	-	-	-	-	10,000
.4440.00	Supplies - Fleet	-	-	-	-	3,000
.4460.00	Uniforms	-	-	-	-	2,250
	Total Commodities	-	-	-	-	68,950
	Other Charges					
.4540.00	Insurance	-	-	-	-	8,000
.4560.00	Memberships & Subscriptions	-	-	-	-	7,000
	Total Other Charges	-	-	-	-	15,000
	Capital - \$5,000/item min.					
.4860.00	Vehicles	-	-	-	-	100,000
	Total Capital	-	-	-	-	100,000
	Total Budget Request	-	-	-	-	1,293,495

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
10.80.4001.00	Salaries	382,971	285,777	449,600	464,300	365,700
10.80.4002.00	Overtime	1,309	1,569	500	3,000	2,000
10.80.4010.00	Payroll Taxes	28,373	22,052	37,800	34,650	27,900
10.80.4020.00	Unemployment Taxes	-	-	4,600	3,300	3,500
10.80.4025.00	Workers Compensation	8,196	6,592	18,800	10,500	12,000
10.80.4030.00	Group Insurance	58,743	53,948	72,800	82,500	37,400
10.80.4035.00	Retirement Contribution	30,177	31,255	57,800	48,950	43,900
10.20.4045.00	Cell Phone Allowance	475	338	-	600	600
	Total Personnel Services	510,244	401,530	641,900	647,800	493,000
	New Personnel					
10.80.4001.00	Salaries	-	-	-	-	24,500
10.80.4010.00	Payroll Taxes	-	-	-	-	1,900
10.80.4020.00	Unemployment Taxes	-	-	-	-	250
10.80.4025.00	Workers Compensation	-	-	-	-	1,500
10.80.4030.00	Group Insurance	-	-	-	-	9,700
10.80.4035.00	Retirement Contribution	-	-	-	-	3,000
	Total Personnel Services	-	-	-	-	40,850
	Contractual Services					
10.80.4125.00	Maintenance - Equipment	887	4	3,000	1,000	2,000
10.80.4130.00	Maintenance - Vehicles	-	50	-	750	1,250
10.80.4135.00	Other Contractual Services	3,562	1,522	1,500	3,700	3,800
10.80.4140.00	Postage	75	50	50	100	100
10.80.4145.00	Printing & Advertising	597	-	500	500	600
10.80.4150.00	Professional Services	755	-	-	-	102,500
10.80.4160.00	Rents	563	1,140	1,000	2,800	3,000
10.80.4170.00	Telephone & Internet	13,992	14,409	6,000	20,000	20,000
10.80.4180.00	Travel & Training	1,816	3,493	5,000	5,000	15,000
	Total Contractual Services	23,183	20,668	17,050	33,850	148,250

General Fund - Public Works Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
10.80.4310.00	Computers & Software	23,106	23,324	38,600	38,600	45,550
10.80.4330.00	Fuel & Lubricants	1,994	4,574	5,000	6,400	10,150
10.80.4385.00	Supplies - General	14,008	7,835	5,000	8,000	15,000
10.80.4400.00	Supplies - Office	12,619	5,165	1,000	5,500	10,000
10.80.4410.00	Supplies - Operational	270	1,770	5,000	1,800	2,000
10.80.4440.00	Supplies - Fleet	-	626	-	1,500	1,500
10.80.4460.00	Uniforms	-	547	1,000	1,000	3,000
	Total Commodities	51,997	43,841	55,600	62,800	87,200
	Other Charges					
10.80.4540.00	Insurance	6,687	13,903	15,800	13,903	16,300
10.80.4560.00	Memberships & Subscriptions	195	1,934	3,000	3,000	5,000
10.80.4570.00	Miscellaneous	306	9,322	3,000	9,400	5,000
	Total Other Charges	7,189	25,159	21,800	26,303	26,300
	Capital - \$5,000/item min.					
10.80.4830.00	Equipment	-	-	25,000	-	-
	Total Capital	-	-	25,000	-	-
	Total Budget Request	592,613	491,199	761,350	770,753	795,600

General Fund - Buildings Dept.

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	<u>Contractual Services</u>					
10.82.4122.00	Maintenance - Buildings	26,671	31,865	48,000	48,000	90,000
10.82.4125.00	Maintenance - Equipment	9,555	12,085	10,500	13,000	15,000
10.82.4127.00	Maintenance - Infrastructure	7,377	13,034	9,000	14,000	4,000
10.82.4135.00	Other Contractual Services	56,903	48,063	80,000	72,000	76,000
10.82.4150.00	Professional Services	426	1,250	4,000	4,000	4,200
10.82.4160.00	Rents	-	2,137	1,500	2,200	2,400
10.82.4190.00	Utilities	106,384	75,405	80,000	113,200	124,000
	Total Contractual Services	207,316	183,839	233,000	266,400	315,600
	<u>Commodities</u>					
10.82.4390.00	Supplies - Janitorial	1,318	296	4,000	500	1,500
10.82.4410.00	Supplies - Operational	5,022	707	3,000	1,200	3,000
	Total Commodities	6,340	1,003	7,000	1,700	4,500
	<u>Other Charges</u>					
10.82.4540.00	Insurance	20,526	25,208	23,100	25,208	32,000
	Total Other Charges	20,526	25,208	23,100	25,208	32,000
	<u>Capital - \$5,000/item min.</u>					
10.82.4810.00	Buildings	52,298	13,830	25,000	13,830	500,000
	Total Capital	52,298	13,830	25,000	13,830	500,000
	Total Budget Request	286,480	223,880	288,100	307,138	852,100

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

CONSERVATION TRUST FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Conservation Trust	0	0	0	0	0	350,000	---	350,000
Totals	\$0	\$0	\$0	\$0	0	\$350,000	\$0	\$350,000

Total Cash Available \$ 351,112

Ending Fund Balance \$ 1,112

% of Total Budget 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00%

Conservation Trust Fund

Item #3.

	<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
	<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
<u>CONSERVATION TRUST FUND REVENUES</u>		<u>Actuals</u>	<u>Budget</u>		
30.01.3450.00 Lottery Funds	110,880	66,424	82,000	110,000	100,000
30.01.3960.00 Interest Income	774	3,152	50	5,000	4,000
TOTAL FUND REVENUES	111,654	69,576	82,050	115,000	104,000
UNRESTRICTED CASH BALANCE FORWARD (BEG. FUND BAL.)					247,112
TOTAL ANTICIPATED FUNDS AVAILABLE	111,654	69,576	82,050	115,000	351,112

Conservation Trust Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Capital - \$5,000/item min.					
30.90.4840.00	Infrastructure	79,593	-	-	-	350,000
	Total Capital	79,593	-	-	-	350,000
	Total Budget Request	79,593	-	-	-	350,000

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

ARTS & CULTURE FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Arts & Culture Fund	-	-	-	-	-	-	-	-
Totals	\$0	\$0	\$0	\$0	0	\$0	\$0	\$0

Total Cash Available \$ 180,434

Ending Fund Balance \$ 180,434

% of Total Budget 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00%

Arts And Culture Fund

Item #3.

	<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
<u>ARTS & CULTURE FUND REVENUES</u>	<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
		<u>Actuals</u>	<u>Budget</u>		
32.01.3999.00 Transfer In from Library (Library Fac Fee)	-	-	-	7,596	172,838
TOTAL FUND REVENUES	-	-	-	7,596	172,838
UNRESTRICTED CASH BALANCE FORWARD (BEG. FUND BAL.)					7,596
TOTAL ANTICIPATED FUNDS AVAILABLE	-	-	-	7,596	180,434

Arts And Culture Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Capital - \$5,000/item min.					
32.90.4800.00	Art	-	-	-	-	-
	Total Capital	-	-	-	-	-
	Total Budget Request	-	-	-	-	-

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

PARKS AND OPEN SPACE FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Impact Outlay	Debt Service	Total
Parks Fund	762,500	646,250	140,600	72,100	1,621,450	156,000	1,935,000	-	3,712,450
Totals	\$ 762,500	\$ 646,250	\$ 140,600	\$ 72,100	\$ 1,621,450	\$ 156,000	\$ 1,935,000	\$ -	\$ 3,712,450

Total Cash Available \$ 8,106,517

Ending Fund Balance \$ 4,394,067

% of Total Budget	20.54%	17.41%	3.79%	1.94%	43.68%	4.20%	52.12%	0.00%	100.00%
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Parks And Open Space Fund

Item #3.

<u>PARKS AND OPEN SPACE FUND REVENUES</u>		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug Actuals</u>	<u>Adopted Budget</u>	<u>Estimated</u>	<u>Proposed</u>
34.01.3225.00	Fishing Licenses	380	700	500	750	500
34.01.3420.00	Grants	13,456	-	-	-	-
34.01.3470.00	Larimer County Open Space	481,882	219,355	243,650	390,000	400,000
34.01.3532.00	Park Fees - Building Permits	229,500	150,000	85,000	150,000	87,500
34.01.3550.00	Cemetery Care Fees	(700)	-	-	-	-
34.01.3567.00	Park Reservation Fees	1,970	1,970	400	2,000	1,600
34.01.3740.00	Park & OS - Impact Fees	829,975	649,518	456,980	660,000	535,850
34.01.3741.00	Park & OS - Developer Share	1,000	-	-	-	-
34.01.3940.00	Cemetery Lot Purchase	74,222	46,028	17,000	48,000	40,000
34.01.3953.00	Donation - General	925	-	-	-	-
34.01.3960.00	Interest Income	48,019	96,903	2,000	100,000	50,000
34.01.3985.00	Reimbursed Expenses	1,356	6,168	-	6,300	1,000
		<u>1,681,986</u>	<u>1,170,642</u>	<u>805,530</u>	<u>1,357,050</u>	<u>1,116,450</u>
34.01.3999.00	From Water Fund	20,000	20,000	20,000	20,000	70,000
34.01.3999.00	From Sewer Fund	20,000	20,000	20,000	20,000	60,000
34.01.3999.00	From Drainage	10,000	10,000	10,000	10,000	10,000
34.01.3999.00	From General Fund	1,112,000	-	-	-	1,000,000
Total Fund Revenues		<u>2,843,986</u>	<u>1,220,642</u>	<u>855,530</u>	<u>1,407,050</u>	<u>2,256,450</u>
Unrestricted Cash Balance Forward (Beg. Fund Bal.)						5,850,067
TOTAL ANTICIPATED FUNDS AVAILABLE						<u>8,106,517</u>

Parks And Open Space Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
34.90.4001.00	Salaries	210,526	204,380	341,500	341,500	388,400
34.90.4002.00	Overtime	9,952	16,097	6,000	16,500	13,000
34.90.4010.00	Payroll Taxes	16,342	15,801	26,200	26,200	30,800
34.90.4020.00	Unemployment Taxes	-	-	6,700	3,500	4,000
34.90.4025.00	Workers Compensation	9,380	5,900	17,500	14,900	15,000
34.90.4030.00	Group Insurance	36,581	37,855	70,850	64,900	56,900
34.90.4035.00	Retirement Contribution	20,432	19,905	42,000	37,000	43,600
	Total Personnel Services	303,213	299,936	510,750	504,500	551,700
	New Personnel Services					
34.90.4001.00	Salaries	-	-	-	-	128,600
34.90.4002.00	Overtime	-	-	-	-	4,000
34.90.4010.00	Payroll Taxes	-	-	-	-	9,900
34.90.4020.00	Unemployment Taxes	-	-	-	-	1,100
34.90.4025.00	Workers Compensation	-	-	-	-	3,500
34.90.4030.00	Group Insurance	-	-	-	-	48,200
34.90.4035.00	Retirement Contribution	-	-	-	-	15,500
	Total Personnel Services	-	-	-	-	210,800
	Contractual Services					
34.90.4122.00	Maintenance - Buildings	303	5,044	8,000	6,000	12,000
34.90.4125.00	Maintenance - Equipment	12,761	20,813	60,000	40,000	38,000
34.90.4127.00	Maintenance - Infrastructure	34,279	64,937	45,000	69,000	300,000
34.90.4130.00	Maintenance - Fleet	3,512	83	15,000	6,000	10,000
34.90.4135.00	Other Contractual Services	31,407	31,252	49,500	45,000	56,250
34.90.4150.00	Professional Services	54,155	27,655	65,000	50,000	60,000
34.90.4170.00	Telephone & Internet	1,823	2,605	2,600	6,500	5,000
34.90.4180.00	Travel & Training	1,723	-	4,000	4,000	5,000
34.90.4190.00	Utilities	56,670	4,506	160,000	130,000	160,000
	Total Contractual Services	196,634	156,895	409,100	356,500	646,250

Parks And Open Space Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
34.90.4300.00	Chemicals	22,659	16,040	27,000	25,000	20,000
34.90.4310.00	Computers & Software	500	868	14,040	15,000	11,600
34.90.4330.00	Fuel & Lubricants	10,347	8,624	15,000	13,000	18,000
34.90.4385.00	Supplies - General	2,306	1,004	3,000	3,000	5,000
34.90.4410.00	Supplies - Operational	35,173	27,493	25,000	50,000	70,000
34.90.4420.00	Supplies - Safety	196	789	1,500	1,500	2,000
34.90.4430.00	Supplies - Training	248	-	1,000	1,000	4,000
34.90.4440.00	Supplies - Fleet	1,032	2,462	-	5,800	6,000
34.90.4460.00	Uniforms	3,101	1,404	2,250	2,250	4,000
	Total Commodities	75,562	58,684	88,790	116,550	140,600
	Other Charges					
34.90.4540.00	Insurance	4,180	4,332	4,300	4,332	8,100
34.90.4570.00	Miscellaneous	10,000	-	12,000	12,000	64,000
	Total Other Charges	14,180	4,332	16,300	16,332	72,100
	Capital - \$5,000/item min.					
34.90.4830.00	Equipment	-	6,198	80,000	80,000	156,000
34.90.4840.00	Infrastructure	1,416,479	-	80,000	-	-
34.90.4860.00	Vehicles	48,712	45,680	45,000	45,680	-
	Total Capital	1,465,191	51,878	205,000	125,680	156,000
Impact						
	Capital - \$5,000/item min.					
34.90.4840.00	Infrastructure	65,166	681,697	2,700,000	2,430,000	1,935,000
	Total Capital	65,166	681,697	2,700,000	2,430,000	1,935,000
	Total Budget Request	2,119,946	1,253,422	3,929,940	3,549,562	3,712,450

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

STREET AND ALLEY FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Impact Outlay	Debt Service	Total
Streets Fund	1,092,400	3,977,000	405,850	26,000	5,501,250	6,184,000	-	-	11,685,250
Totals	\$ 1,092,400	\$ 3,977,000	\$ 405,850	\$ 26,000	\$ 5,501,250	\$ 6,184,000	\$ -	\$ -	\$ 11,685,250

Total Cash Available \$ 25,043,941

Ending Fund Balance \$ 13,358,690

% of Total Budget	9.35%	34.03%	3.47%	0.22%	47.08%	52.92%	0.00%	0.00%	100.00%
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Street And Alley Fund

Item #3.

<u>STREET AND ALLEY FUND REVENUES</u>		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug Actuals</u>	<u>Adopted Budget</u>	<u>Estimated</u>	<u>Proposed</u>
36.01.3120.00	Sales Taxes - General	2,109,331	1,063,473	1,500,000	1,900,000	2,050,000
36.01.3122.00	Use Taxes - Buildings	666,740	364,841	187,500	382,000	400,000
36.01.3124.00	Sales & Use Taxes - Vehicles	2,268,017	1,458,173	1,500,000	1,600,000	1,600,000
36.01.3140.00	Specific Ownership Taxes	536,268	303,737	380,000	420,000	425,000
36.01.3176.00	Highway Users Taxes	559,856	305,901	538,905	450,000	530,000
36.01.3265.00	Right of Way Permits	-	8,500	-	10,000	10,000
36.01.3420.00	Grants	66,666	418,834	1,175,000	1,095,000	-
36.01.3430.00	Road & Bridge - Weld	104,109	55,617	65,000	65,000	65,000
36.01.3435.00	Road & Bridge - Larimer	46,379	51,765	50,000	51,765	50,000
36.01.3580.00	Vehicle Registration Fees	66,410	36,009	65,000	65,000	65,000
36.01.3585.00	Street Maintenance Fee	2	-	-	-	-
36.01.3590.00	Trash Collection Fees	955,348	670,282	945,000	980,000	985,000
36.01.3790.00	Transportation Facility Development Fee - Impact	3,488,229	2,250,359	1,170,000	2,320,000	1,246,375
36.01.3792.00	Traffic Signal Impact Fee	2,410	-	4,000	-	-
36.01.3793.00	Traffic Signal - Dev Share	52,500	29,750	-	29,750	-
36.01.3794.00	Traffic Interchange Recovery	73,431	41,501	-	42,633	30,000
36.01.3960.00	Interest	118,087	238,486	10,200	275,000	100,000
36.01.3970.00	Miscellaneous	140	40	-	40	-
36.01.3985.00	Refund Of Expenditures	1,095	3,090	-	3,200	1,000
36.01.3995.00	Unrealized Gain On Investments	11,895	-	-	-	-
36.01.3999.00	Transfer In	-	1,450,000	1,450,000	1,450,000	-
	Subtotal	11,126,912	8,750,356	9,040,605	11,139,388	7,557,375
	Total Fund Revenues	11,126,912	8,750,356	9,040,605	11,139,388	7,557,375
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					17,486,566
	Total Anticipated Funds Available					25,043,941

Street And Alley Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
36.90.4001.00	Salaries	313,401	234,833	429,200	429,200	427,400
36.90.4002.00	Overtime	11,491	16,243	25,250	25,250	26,800
36.90.4010.00	Payroll Taxes	23,834	16,536	34,350	34,350	33,400
36.90.4020.00	Unemployment Taxes	-	-	7,650	7,650	3,600
36.90.4025.00	Workers Compensation	15,554	8,684	38,290	38,290	37,000
36.90.4030.00	Group Insurance	46,934	39,848	101,600	101,600	68,700
36.90.4035.00	Retirement Contribution	32,058	24,183	54,450	54,450	52,200
	Total Personnel Services	443,274	340,328	690,790	690,790	649,100
	New Personnel					
36.90.4001.00	Salaries	-	-	-	-	268,000
36.90.4002.00	Overtime	-	-	-	-	5,000
36.90.4010.00	Payroll Taxes	-	-	-	-	20,700
36.90.4020.00	Unemployment Taxes	-	-	-	-	2,400
36.90.4025.00	Workers Compensation	-	-	-	-	9,000
36.90.4030.00	Group Insurance	-	-	-	-	105,900
36.90.4035.00	Retirement Contribution	-	-	-	-	32,300
	Total New Personnel	-	-	-	-	443,300
	Contractual Services					
36.90.4125.00	Maintenance - Equipment	9,506	37,687	25,000	45,000	25,000
36.90.4127.00	Maintenance - Infrastructure	3,091,448	47,040	1,350,000	1,670,000	2,503,000
36.90.4130.00	Maintenance - Fleet	22,735	23,092	10,000	43,000	40,000
36.90.4135.00	Other Contractual Services	794,868	620,808	970,000	970,000	1,006,000
36.90.4140.00	Postage	-	-	1,000	-	1,000
36.90.4145.00	Printing & Advertising	1,709	-	3,000	-	3,000
36.90.4150.00	Professional Services	23,283	8,140	50,000	15,000	20,000
36.90.4160.00	Rents	4,774	5,137	5,500	10,000	8,000
36.90.4170.00	Telephone & Internet	3,304	4,485	3,600	6,600	6,000

Street And Alley Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
36.90.4180.00	Travel & Training	3,498	11,013	7,000	13,000	15,000
36.90.4190.00	Utilities	430,683	189,508	350,000	310,000	350,000
	Total Contractual Services	4,385,807	946,911	2,775,100	3,082,600	3,977,000
	Commodities					
36.90.4300.00	Chemicals	87,438	41,669	60,000	50,000	59,000
36.90.4310.00	Computers & Software	10,829	15,291	12,100	20,000	25,100
36.90.4330.00	Fuel & Lubricants	75,662	32,374	35,000	45,000	75,000
36.90.4385.00	Supplies - General	5,648	336	10,000	4,000	10,000
36.90.4400.00	Supplies - Office	-	-	400	400	-
36.90.4410.00	Supplies - Operational	31,611	82,408	45,000	190,000	185,000
36.90.4420.00	Supplies - Safety	7,427	26,461	15,000	28,000	23,000
36.90.4430.00	Supplies - Training	-	29	500	500	4,000
36.90.4440.00	Supplies - Fleet	47,459	15,689	25,000	21,000	18,000
36.90.4460.00	Uniforms	4,083	2,904	4,000	4,000	6,750
	Total Commodities	270,156	217,161	207,000	362,900	405,850
	Other Charges					
36.90.4540.00	Insurance	6,197	6,659	19,900	6,659	13,000
36.90.4560.00	Memberships & Subscriptions	422	-	1,000	-	8,000
36.90.4570.00	Miscellaneous	247	1,321	5,000	2,500	5,000
	Total Other Charges	6,866	7,980	25,900	9,159	26,000

Street And Alley Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Capital - \$5,000/item min.					
36.90.4830.00	Equipment	-	97,226	170,000	170,000	229,000
36.90.4840.00	Infrastructure	3,269,266	3,086,232	7,365,000	6,755,000	5,350,000
36.90.4860.00	Vehicles	161,464	43,333	313,000	446,000	605,000
36.90.4890.00	Other Improvements	15,055	-	-	-	-
	Total Capital	3,445,786	3,226,791	7,848,000	7,371,000	6,184,000
	Total Budget Request	8,551,888	4,739,171	11,546,790	11,516,449	11,685,250

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

CAPITAL PROJECTS FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Capital Projects	-	9,500	-	-	9,500	1,279,000	-	1,288,500
Totals	\$ -	\$ 9,500	\$ -	\$ -	\$ 9,500	\$ 1,279,000	\$ -	\$ 1,288,500
Total Cash Available								\$ 11,102,606
Ending Fund Balance								\$ 9,814,106
% of Total Budget	0.00%	0.74%	0.00%	0.00%	0.74%	99.26%	0.00%	100.00%

Capital Projects Fund

Item #3.

		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
<u>CAPITAL PROJECT FUND REVENUES</u>				<u>Budget</u>		
38.01.3122.01	Use Tax Revenues - Buildings	1,334,609	1,544,193	300,000	1,562,200	800,000
38.01.3960.00	Interest	165,029	358,286	2,200	383,100	100,000
38.01.3995.00	Unrealized Gain On Investments	69,280	-	-	-	-
38.01.3999.00	Transfers To Tax Fund	-	-	(50,000)	(50,000)	(50,000)
	Subtotal	<u>1,568,918</u>	<u>1,902,479</u>	<u>252,200</u>	<u>1,895,300</u>	<u>850,000</u>
	Total Fund Revenues	<u>1,568,918</u>	<u>1,902,479</u>	<u>252,200</u>	<u>1,895,300</u>	<u>850,000</u>
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					10,252,606
	TOTAL ANTICIPATED FUNDS AVAILABLE					<u>11,102,606</u>

Capital Projects Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Contractual Services					
38.90.4135.00	Other Contractual Services	7,800	5,100	11,500	11,500	9,500
	Total Contractual Services	7,800	5,100	11,500	11,500	9,500
	Capital - \$5,000/item min.					
38.90.4840.00	Infrastructure	5,324,980	1,724,332	2,500,000	2,500,000	1,279,000
	Total Capital	5,324,980	1,724,332	2,500,000	2,500,000	1,279,000
	Total Budget Request	5,332,780	1,729,432	2,511,500	2,511,500	1,288,500

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

TAX ALLOCATION EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Tax Allocation	-	-	-	700,000	700,000	-	-	700,000
Totals	\$ -	\$ -	\$ -	\$ 700,000	\$ 700,000	\$ -	\$ -	\$ 700,000
Total Cash Available								\$ 741,435
Ending Fund Balance								\$ 41,435
% of Total Budget	0.00%	0.00%	0.00%	100.00%	100.00%	0.00%	0.00%	100.00%

Tax Allocation Fund

Item #3.

		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
<u>TAX ALLOCATION FUND REVENUES</u>						
Transfers In:						
60.01.3120.00	Tax Sharing	-	-	675,000	700,000	700,000
60.01.3999.00	Transfers In	273,150	121,747	-	-	-
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Fund Revenues		273,150	121,747	675,000	700,000	700,000
Unrestricted Cash Balance Forward (Beg. Fund Bal.)						41,435
Total Anticipated Funds Available						<hr/>
						741,435

Tax Allocation Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Other Charges					
60.90.4570.00	Miscellaneous	758,068	121,747	675,000	700,000	700,000
	Total Other Charges	758,068	121,747	675,000	700,000	700,000
	Total Budget Request	758,068	121,747	675,000	700,000	700,000

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
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WATER FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
WF Operations	844,700	1,199,000	1,202,950	1,273,000	4,519,650	33,400,000	-	37,919,650
WF C&D	464,850	205,000	492,600	1,650	1,164,100	5,877,500		7,041,600
Totals	\$ 1,309,550	\$ 1,404,000	\$ 1,695,550	\$ 1,274,650	\$ 5,683,750	\$ 39,277,500	\$ -	\$ 44,961,250

Total Cash Available \$ 141,571,020

Ending Fund Balance \$ 96,609,770

% of Total Budget	2.91%	3.12%	3.77%	2.83%	12.64%	87.36%	0.00%	100.00%
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Water Fund

Item #3.

	<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
<u>WATER FUND REVENUES</u>	<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
70.01.3270.00 Watering Permit	100	150	-	150	-
70.01.3440.00 Grants	676,967	-	-	-	-
70.01.3810.00 Sales Of Potable Water	4,844,250	3,022,759	4,300,000	4,506,200	5,655,000
70.01.3815.00 Sales Of Nonpotable Water	54,335	19,650	20,000	20,000	20,000
70.01.3820.00 Water Tap Fee	3,596,898	2,090,905	1,357,605	2,130,000	1,397,933
70.01.3825.00 Raw Water Development Fee	3,428,766	1,813,171	1,147,945	1,842,376	1,100,925
70.01.3840.00 Hydrant/Bulk Water	502,616	73,533	235,000	100,000	260,000
70.01.3845.00 Water Lease	26,640	36,750	15,000	36,750	20,000
70.01.3850.00 Water Share Fees	183,065	1,647,250	15,000,000	1,647,250	1,600,000
70.01.3852.00 Water Meter Fee	246,776	158,885	86,500	161,360	91,000
70.01.3920.00 Capital/Developer Contributions	38,984,363	-	-	-	-
70.01.3960.00 Interest Income	255,364	509,233	20,000	550,000	250,000
70.01.3970.00 Miscellaneous	232,619	722,388	125,000	723,000	125,000
70.01.3980.00 Proceeds From Issuance Of Bonds	-	-	56,000,000	-	72,000,000
70.01.3985.00 Refund Of Expenditures	21,754	28,613	-	28,700	-
70.01.3995.00 Unrealized Gain On Investments	67,622	-	-	-	-
70.01.3999.01 Transfer In	-	-	-	-	50,700,000
70.01.3999.00 Transfer Out	-	(600,000)	(600,000)	(600,000)	-
Subtotal	53,122,134	9,523,288	77,707,050	11,145,786	133,219,858
Total Fund Revenues	53,122,134	9,523,288	77,707,050	11,145,786	133,219,858
Unrestricted Cash Balance Forward (Beg. Fund Bal.)					8,351,162
Less Contributed Capital					-
Total Anticipated Funds Available					\$ 141,571,020
Revenues Total					10,519,858

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Administrative Costs					
	Personnel Services					
70.12.4001.00	Salaries	95,790	54,098	95,800	95,800	109,900
70.12.4002.00	Overtime	559	23	500	500	500
70.12.4010.00	Payroll Taxes	6,627	3,922	7,100	7,100	8,400
70.12.4020.00	Unemployment Taxes	-	-	1,100	1,100	1,000
70.12.4025.00	Workers Compensation	954	606	1,250	1,250	2,500
70.12.4030.00	Group Insurance	18,248	6,999	19,400	19,400	10,600
70.12.4035.00	Retirement Contribution	9,993	5,404	10,900	10,900	13,000
	Total Personnel Services	132,171	71,052	136,050	136,050	145,900
	Contractual Services					
70.12.4110.00	Billing & Administrative	20,000	20,000	20,000	20,000	70,000
70.12.4135.00	Other Contractual Services	66,274	48,541	60,900	60,900	68,400
70.12.4140.00	Postage	8	-	750	250	800
70.12.4145.00	Printing & Advertising	13,393	3,313	15,600	15,600	17,000
70.12.4150.00	Professional Services	473	-	2,000	2,000	2,000
	Total Contractual Services	100,147	71,854	99,250	98,750	158,200
	Administrative Costs Total	232,318	142,905	235,300	234,800	304,100

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Operational Costs					
	Personnel Services					
70.90.4001.00	Salaries	459,724	245,872	330,200	330,200	482,500
70.90.4002.00	Overtime	25,294	16,148	23,250	23,250	25,800
70.90.4005.00	Compensated Absences	3,425	-	4,500	4,500	8,000
70.90.4010.00	Payroll Taxes	35,228	18,595	25,800	25,800	38,900
70.90.4020.00	Unemployment Taxes	-	-	6,900	6,900	4,400
70.90.4025.00	Workers Compensation	15,839	5,784	16,700	16,700	17,000
70.90.4030.00	Group Insurance	96,851	48,158	49,900	49,900	63,600
70.90.4035.00	Retirement Contribution	43,158	26,448	38,700	38,700	58,300
70.90.4045.00	Cell Phone Allowance	-	100	-	300	300
	Total Personnel Services	679,519	361,104	495,950	496,250	698,800
	Contractual Services					
70.90.4122.00	Maintenance - Buildings	1,558	518	5,000	3,000	4,000
70.90.4125.00	Maintenance - Equipment	184,845	48,526	150,000	100,000	107,000
70.90.4127.00	Maintenance - Infrastructure	129,621	304,628	25,000	405,000	50,000
70.90.4130.00	Maintenance - Vehicles	6,823	2,237	4,000	4,000	7,500
70.90.4135.00	Other Contractual Services	301,502	59,909	224,000	104,000	156,000
70.90.4140.00	Postage	4	-	3,500	-	3,500
70.90.4145.00	Printing and Advertising	-	-	2,000	-	2,000
70.90.4150.00	Professional Services	270,786	107,928	200,000	190,000	210,000
70.90.4170.00	Telephone & Internet	13,234	4,896	11,000	8,000	15,800
70.90.4180.00	Travel & Training	5,543	3,911	5,000	5,000	7,000
70.90.4190.00	Utilities	290,656	162,152	230,000	230,000	253,000
70.90.4195.00	Water Assessments	188,394	172,488	225,000	200,000	225,000
	Total Contractual Services	1,392,966	867,193	1,084,500	1,249,000	1,040,800

Water Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	<u>Commodities</u>					
70.90.4300.00	Chemicals	989,131	365,379	1,500,000	900,000	1,100,000
70.90.4310.00	Computers & Software	6,025	3,091	17,600	17,600	31,500
70.90.4330.00	Fuel & Lubricants	6,524	8,234	9,000	9,000	9,000
70.90.4340.00	Hydrants	44,550	-	-	-	-
70.90.4380.00	Supplies - Buildings	-	-	-	-	1,000
70.90.4385.00	Supplies - General	20,332	2,528	7,000	4,000	4,000
70.90.4390.00	Supplies - Janitorial	-	13	1,000	1,000	1,000
70.90.4395.00	Supplies - Lab	20,830	16,988	25,000	22,000	21,450
70.90.4410.00	Supplies - Operational	57,257	13,925	30,000	15,000	20,000
70.90.4420.00	Supplies - Safety	3,613	464	1,500	1,500	2,250
70.90.4430.00	Supplies - Training	542	2,626	2,500	2,750	1,500
70.90.4440.00	Supplies - Fleet	7,971	2,314	2,000	4,000	7,500
70.90.4460.00	Uniforms	3,807	2,200	3,500	2,500	3,750
70.90.4480.00	Water Meters	225,621	-	-	-	-
	Total Commodities	1,386,203	417,759	1,599,100	979,350	1,202,950
	<u>Other Charges</u>					
70.90.4515.00	Depreciation	518,024	362,768	970,000	544,200	994,200
70.90.4540.00	Insurance	55,013	63,930	57,300	63,930	77,300
70.90.4560.00	Memberships& Subscriptions	787	1,521	1,350	1,600	1,500
70.90.4570.00	Miscellaneous	52,530	3,117	200,000	50,000	200,000
	Total Other Charges	626,353	431,336	1,228,650	659,730	1,273,000
	<u>Capital - \$5,000/item min.</u>					
70-90-4810-00	Buildings	-	46,065	261,280	308,280	30,000,000
70.90.4840.00	Infrastructure	-	1,446,010	33,300,000	13,650,000	1,200,000
70.90.4860.00	Vehicles	-	25,734	-	26,000	-
70.90.4880.00	Water Shares	-	685,700	350,000	690,000	400,000
70.90.4995.00	Cost of Issuance	-	-	600,000	-	1,800,000
	Total Capital	-	2,203,510	34,511,280	14,674,280	33,400,000

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Water - C&D					
	Personnel Services					
70-92-4001-00	Salaries	-	117,857	311,600	311,600	272,500
70-92-4002-00	Overtime	-	10,864	10,500	14,000	16,500
70-92-4005-00	Compensated Absences	-	-	1,500	1,500	3,500
70-92-4010-00	Payroll Taxes	-	9,266	24,600	24,600	21,200
70-92-4020-00	Unemployment Taxes	-	-	3,500	3,500	2,500
70-92-4025-00	Workers Compensation	-	5,801	3,700	6,500	6,500
70-92-4030-00	Group Insurance	-	21,659	79,700	79,700	34,600
70-92-4035-00	Retirement Contribution	-	9,641	38,200	38,200	32,600
	Total Personnel Services	-	175,088	473,300	479,600	389,900
	New Personnel					
70-92-4001.00	Salaries	-	-	-	-	48,400
70-92-4002.00	Overtime	-	-	-	-	1,000
70-92-4010.00	Payroll Taxes	-	-	-	-	3,700
70-92-4020.00	Unemployment Taxes	-	-	-	-	500
70-92-4025.00	Workers Compensation	-	-	-	-	900
70-92-4030.00	Group Insurance	-	-	-	-	14,600
70-92-4035.00	Retirement Contribution	-	-	-	-	5,850
	Total Personnel Services	-	-	-	-	74,950
	Contractual Services					
70-92-4125-00	Maintenance - Equipment	-	38,382	40,000	41,000	85,000
70-92-4127-00	Maintenance - Infrastructure	-	52,774	100,000	75,000	100,000
70-92-4130-00	Maintenance - Vehicles	-	329	3,000	7,000	6,000
70-92-4135-00	Other Contractual Services	-	4,134	14,000	14,000	14,000
	Total Contractual Services	-	95,618	157,000	137,000	205,000

Water Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
70-92-4170-00	Telephone & Internet	-	1,916	9,500	4,000	4,800
70-92-4180-00	Travel & Training	-	2,677	4,500	4,500	7,500
70-92-4310-00	Computers And Software	-	10,963	21,000	37,000	52,000
70-92-4330-00	Fuel And Lubricants	-	-	5,000	5,000	9,000
70-92-4340-00	Hydrants	-	18,682	50,000	50,000	50,000
70-92-4385-00	Supplies - General	-	1,968	7,000	4,000	4,000
70-92-4395-00	Supplies - Lab	-	856	5,000	5,000	2,000
70-92-4410-00	Supplies - Operational	-	13,630	30,000	30,000	30,000
70-92-4420-00	Supplies - Safety	-	4,510	6,500	6,500	3,000
70-92-4430-00	Supplies - Training	-	3,459	2,500	3,550	1,300
70-92-4440-00	Supplies - Vehicles	-	640	2,000	2,000	6,000
70-92-4460-00	Uniforms	-	1,177	2,000	2,000	3,000
70-92-4480-00	Water Meters	-	160,910	150,000	300,000	320,000
	Total Commodities	-	221,388	295,000	453,550	492,600
	Other Charges					
70-92-4560-00	Memberships & Subscriptions	-	776	1,350	1,000	1,500
70-92-4570-00	Miscellaneous	-	5,749	500	5,800	150
	Total Other Charges	-	6,525	1,850	6,800	1,650
	Capital - \$5,000/Item Min.					
70-92-4830-00	Capital - Equipment	-	5,117	6,000	5,117	65,000
70-92-4840-00	Capital - Infrastructure	13,896,309	875,604	2,500,000	1,450,000	5,700,000
70-92-4860-00	Capital - Vehicles	77,380	-	-	-	112,500
70-92-4880-00	Capital - Water Shares	45,000	-	-	-	-
	Total Capital	14,018,689	880,720	2,506,000	1,455,117	5,877,500
	Total Budget Request	18,336,048	5,803,146	42,587,930	20,825,477	44,961,250

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

SEWER FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
SF Operations	847,200	1,033,050	338,750	1,202,800	3,421,800	28,585,000	2,767,650	34,774,450
SF C&D	278,850	287,650	54,050	1,490	622,040	13,137,500	-	13,759,540
Totals	\$ 1,126,050	\$ 1,320,700	\$ 392,800	\$ 1,204,290	\$ 4,043,840	\$ 41,722,500	\$ 2,767,650	\$ 48,533,990

Total Cash Available \$ 64,698,102

Ending Fund Balance \$ 16,164,112

% of Total Budget 2.32% 2.72% 0.81% 2.48% 8.33% 85.97% 5.70% 100.00%

Sewer Fund

Item #3.

<u>SEWER FUND REVENUES</u>		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug Actuals</u>	<u>Adopted Budget</u>	<u>Estimated</u>	<u>Proposed</u>
72.01.3775.00	Sewer - Regional Impact Fee	4,387,299	1,703,500	2,105,000	1,713,000	1,345,000
72.01.3870.00	Sewer Charges	3,015,211	2,232,138	3,181,500	3,348,000	3,795,000
72.01.3880.00	Sewer Tap Fees	4,093,372	1,774,245	1,113,560	1,850,000	2,793,775
72.01.3960.00	Interest	992,106	2,021,130	100,000	2,150,000	500,000
72.01.3970.00	Miscellaneous	50,470	41,785	18,900	45,000	25,000
72.01.3995.00	Unrealized Gain On Investments	45,145	-	-	-	-
72.01.3999.00	Transfers In	-	-	50,000,000	50,000,000	-
72.01.3999.00	Transfers Out	-	(600,000)	(600,000)	(600,000)	-
72-01-3985-00	Refund Of Expenditures	260,000	-	-	-	-
	Subtotal	12,843,603	7,172,798	55,918,960	58,506,000	8,458,775
	Total Fund Revenues	12,843,603	7,172,798	55,918,960	58,506,000	8,458,775
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					56,239,327
	Total Anticipated Funds Available					64,698,102

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
Administrative Costs						
Personnel Services						
72.12.4001.00	Salaries	96,093	54,098	95,800	95,800	109,900
72.12.4002.00	Overtime	559	23	500	500	500
72.12.4010.00	Payroll Taxes	6,643	3,922	7,100	7,100	8,400
72.12.4020.00	Unemployment Taxes	-	-	1,100	1,100	1,000
72.12.4025.00	Workers Compensation	929	606	1,250	1,250	2,500
72.12.4030.00	Group Insurance	18,247	6,998	19,400	19,400	10,600
72.12.4035.00	Retirement Contribution	9,993	5,404	10,900	10,900	13,000
	Total Personnel Services	132,464	71,051	136,050	136,050	145,900
Contractual Services						
72.12.4110.00	Billing & Administrative	20,000	20,000	20,000	20,000	60,000
72.12.4135.00	Other Contractual Services	46,749	38,666	55,700	60,900	68,400
72.12.4140.00	Postage	-	-	500	250	800
72.12.4145.00	Printing & Advertising	12,043	3,313	15,500	15,600	17,000
	Total Contractual Services	78,792	61,979	91,700	96,750	146,200
	Total Administrative Costs	211,255	133,030	227,750	232,800	292,100

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
Operational Costs						
Personnel Services						
72.90.4001.00	Salaries	282,324	213,919	243,000	243,000	463,200
72.90.4002.00	Overtime	15,577	13,515	23,250	23,250	24,300
72.90.4005.00	Compensated Absences	3,679	-	4,500	4,500	8,000
72.90.4010.00	Payroll Taxes	22,585	15,947	19,100	19,100	37,300
72.90.4020.00	Unemployment Taxes	-	-	5,200	5,200	4,300
72.90.4025.00	Workers Compensation	8,312	4,545	21,200	21,200	21,000
72.90.4030.00	Group Insurance	57,329	42,855	48,250	48,250	84,600
72.90.4035.00	Retirement Contribution	28,565	20,635	29,900	29,900	57,400
72.90.4045.00	Cell Phone Allowance	28,565	138		200	1,200
	Total Personnel Services	446,935	311,553	394,400	394,600	701,300
Contractual Services						
72.90.4122.00	Maintenance - Buildings	5,527	1,706	7,500	7,500	4,000
72.90.4125.00	Maintenance - Equipment	79,291	69,006	90,000	90,000	47,000
72.90.4127.00	Maintenance - Infrastructure	100,253	24,106	25,000	27,500	70,000
72.90.4130.00	Maintenance - Vehicles	6,044	1,888	3,000	3,000	6,500
72.90.4135.00	Other Contractual Services	232,589	161,705	379,000	257,478	202,450
72.90.4140.00	Postage	4	-	-	-	1,000
72.90.4145.00	Printing & Advertising	-	-	500	-	1,000
72.90.4150.00	Professional Services	21,283	1,457	20,000	5,000	10,000
72.90.4160.00	Rents	827	-	5,000	3,000	5,000
72.90.4170.00	Telephone & Internet	12,807	7,631	9,700	10,000	25,400
72.90.4180.00	Travel & Training	3,265	3,500	4,500	4,500	7,000
72.90.4190.00	Utilities	354,327	231,749	315,000	370,000	507,500
	Total Contractual Services	816,216	502,748	859,200	777,978	886,850
Commodities						
72.90.4300.00	Chemicals	184,435	130,002	200,000	160,000	260,000
72.90.4310.00	Computers & Software	4,847	3,518	18,610	18,000	20,000
72.90.4330.00	Fuel & Lubricants	6,514	8,234	9,000	9,000	10,000
72.90.4380.00	Supplies - Buildings	11	-	3,500	3,500	2,500
72.90.7385.00	Supplies - General	8,790	1,884	5,000	3,000	3,000

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
72.90.4390.00	Supplies - Janitorial	51	171	1,500	1,200	1,500
72.90.4395.00	Supplies - Lab	5,194	2,384	12,000	6,000	8,000
72.90.4400.00	Supplies - Office	-	168	250	250	1,500
72.90.4410.00	Supplies - Operational	27,173	12,680	15,000	15,000	15,000
72.90.4420.00	Supplies - Safety	4,045	804	1,500	1,500	5,000
72.90.4430.00	Supplies - Training	111	2,389	2,500	2,500	1,500
72.90.4440.00	Supplies - Fleet	7,765	3,731	1,000	4,250	7,000
72.90.4460.00	Uniforms	1,801	685	2,000	1,285	3,750
	Total Commodities	250,735	166,650	271,860	225,485	338,750
	Other Charges					
72.90.4515.00	Depreciation	235,093	348,840	1,200,000	525,300	1,125,300
72.90.4540.00	Insurance	57,408	61,371	55,000	61,371	76,000
72.90.4560.00	Memberships & Subscriptions	400	1,492	1,350	1,500	1,500
72.90.4570.00	Miscellaneous	11,990	200	-	200	-
	Total Other Charges	304,890	411,902	1,256,350	588,371	1,202,800
	Capital - \$5,000/item min.					
72.90.4810.00	Buildings	1,467,800	5,746,326	57,300,000	21,000,000	28,500,000
72.90.4820.00	Easements	(2,275)	-	-	-	-
72.90.4830.00	Equipment	-	12,757	15,000	15,000	40,000
72.90.4840.00	Infrastructure	27,150,781	4,504,801	-	4,505,000	-
72.90.4860.00	Vehicles	71,651	-	-	-	45,000
	Total Capital	28,687,957	10,263,883	57,315,000	25,520,000	28,585,000
	Debt Service					
72.90.4900.00	Principal	-	-	808,700	810,000	855,000
72.90.4950.00	Interest	1,953,150	976,575	1,955,300	1,955,300	1,912,650
	Total Debt Service	1,953,150	976,575	2,764,000	2,765,300	2,767,650

Sewer Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
Sewer - C&D						
Personnel Services						
72-92-4001-00	Salaries	-	65,263	111,400	111,400	144,700
72-92-4002-00	Overtime	-	3,891	10,500	10,500	6,500
72-92-4005-00	Compensated Absences	-	-	1,500	1,500	3,000
72-92-4010-00	Payroll Taxes	-	5,096	9,500	9,500	11,000
72-92-4020-00	Unemployment Taxes	-	-	3,500	3,500	2,100
72-92-4025-00	Workers Compensation	-	3,133	3,700	3,700	3,700
72-92-4030-00	Group Insurance	-	13,699	33,500	33,500	15,000
72-92-4035-00	Retirement Contribution	-	6,716	13,200	13,200	17,900
	Total Personnel Services	-	97,797	186,800	186,800	203,900
New Personnel						
72-92-4001.00	Salaries	-	-	-	-	48,400
72-92-4002.00	Overtime	-	-	-	-	1,000
72-92-4010.00	Payroll Taxes	-	-	-	-	3,700
72-92-4020.00	Unemployment Taxes	-	-	-	-	500
72-92-4025.00	Workers Compensation	-	-	-	-	900
72-92-4030.00	Group Insurance	-	-	-	-	14,600
72-92-4035.00	Retirement Contribution	-	-	-	-	5,850
	Total New Personnel	-	-	-	-	74,950
Contractual Services						
72-92-4125-00	Maintenance - Equipment	-	957	5,000	2,000	5,000
72-92-4127-00	Maintenance - Infrastructure	-	60,067	100,000	70,000	75,000
72-92-4130-00	Maintenance - Vehicles	-	329	3,000	5,000	4,750
72-92-4135-00	Other Contractual Services	-	49,915	127,000	107,000	181,000
72-92-4140-00	Postage	-	-	250	-	-
72-92-4145-00	Printing & Advertising	-	-	500	-	-
72-92-4150-00	Professional Services	-	142	20,000	20,000	10,000
72-92-4170-00	Telephone & Internet	-	1,134	3,750	3,750	4,400
72-92-4180-00	Travel & Training	-	3,653	4,500	4,500	7,500
	Total Contractual Services	-	116,197	264,000	212,250	287,650

Sewer Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Commodities					
72-92-4300-00	Chemicals	-	-	15,000	5,000	-
72-92-4310-00	Computers And Software	-	3,950	500	4,500	6,000
72-92-4330-00	Fuel & Lubricants	-	-	5,000	5,000	9,000
72-92-4385-00	Supplies - General	-	4,883	5,000	7,000	7,000
72-92-4410-00	Supplies - Operational	-	13,936	15,000	20,000	20,000
72-92-4420-00	Supplies - Safety	-	4,554	6,500	6,500	3,000
72-92-4430-00	Supplies - Training	-	2,853	2,500	3,000	1,300
72-92-4440-00	Supplies - Vehicles	-	867	2,000	2,000	4,750
72-92-4460-00	Uniforms	-	1,177	2,000	1,500	3,000
	Total Commodities	-	32,221	53,500	54,500	54,050
	Other Charges					
72-92-4560-00	Memberships & Subscriptions	-	758	1,350	1,350	1,490
72-92-4570-00	Miscellaneous	-	1,046	500	1,100	-
	Total Other Charges	-	1,804	1,850	2,450	1,490
	Capital - \$5,000/Item Min.					
72-92-4830-00	Equipment	-	5,151	6,000	5,500	25,000
72-92-4840-00	Infrastructure	-	3,858,527	21,060,000	14,000,000	13,000,000
72-92-4860-00	Vehicles	-	-	-	-	112,500
	Total Capital	-	3,863,677	21,066,000	14,005,500	13,137,500
	Total Budget Request	32,671,138	16,878,037	84,660,710	44,966,034	48,533,990

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

DRAINAGE FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Drainage Fund	369,900	899,990	43,600	64,000	1,377,490	1,038,400	-	2,415,890
Totals	\$ 369,900	\$ 899,990	\$ 43,600	\$ 64,000	\$ 1,377,490	\$ 1,038,400	\$ -	\$ 2,415,890
Total Cash Available								\$ 5,229,955
Ending Fund Balance								\$ 2,814,065
% of Total Budget	15.31%	37.25%	1.80%	2.65%	57.02%	42.98%	0.00%	100.00%

Drainage Fund

Item #3.

		<u>2022Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
<u>DRAINAGE FUND REVENUES</u>						
74.01.3720.00	Drainage Impact Fee	811,250	118,602	220,000	220,000	220,000
74.01.3860.00	Drainage Charges	501,456	350,387	500,000	520,000	525,000
74.01.3960.00	Interest	33,990	68,067	1,000	70,000	40,000
74.01.3970.00	Miscellaneous	-	-	-	-	457,560
74.01.3995.00	Unrealized Gain On Investments	10,783	-	-	-	-
74.01.3999.00	Transfers	-	(250,000)	(250,000)	(250,000)	-
	Subtotal	<u>1,357,479</u>	<u>287,055</u>	<u>471,000</u>	<u>560,000</u>	<u>1,242,560</u>
	Total Fund Revenues	<u>1,357,479</u>	<u>287,055</u>	<u>471,000</u>	<u>560,000</u>	<u>1,242,560</u>
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					3,987,395
	Total Anticipated Funds Available					<u>5,229,955</u>

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
Administrative Costs						
	Personnel Services					
74.12.4001.00	Salaries	68,629	42,509	73,050	73,050	87,600
74.12.4002.00	Overtime	316	15	500	500	500
74.12.4010.00	Payroll Taxes	4,677	3,071	5,630	5,630	6,700
74.12.4020.00	Unemployment Taxes	-	-	1,050	1,050	1,300
74.12.4025.00	Workers Compensation	736	506	870	870	1,000
74.12.4030.00	Group Insurance	13,270	6,143	14,020	14,020	9,400
74.12.4035.00	Retirement Contribution	7,066	4,350	7,790	7,790	10,400
	Total Personnel Services	94,694	56,595	102,910	102,910	116,900
	Contractual Services					
74.12.4110.00	Billing & Administrative	10,000	10,000	10,000	10,000	10,000
74.12.4135.00	Other Contractual Services	24,969	15,447	26,390	26,390	26,390
74.12.4140.00	Postage	-	-	500	500	500
74.12.4145.00	Printing & Advertising	8,043	2,209	10,600	10,600	10,600
	Total Contractual Services	43,012	27,655	47,490	47,490	47,490
	Total Administrative Costs	137,706	84,250	150,400	150,400	164,390
Operational Costs						
	Personnel Services					
74.90.4001.00	Salaries	73,691	50,925	95,600	95,600	120,400
74.90.4002.00	Overtime	2,814	3,612	10,250	10,250	8,900
74.90.4005.00	Compensated Absences	2,409	-	3,000	3,000	5,000
74.90.4010.00	Payroll Taxes	5,731	3,944	7,350	7,350	9,900
74.90.4020.00	Unemployment Taxes	-	-	3,200	3,200	3,000
74.90.4025.00	Workers Compensation	3,907	2,213	8,250	8,250	8,250
74.90.4030.00	Group Insurance	11,735	7,468	19,200	19,200	21,900
74.90.4035.00	Retirement Contribution	7,243	5,560	11,700	11,700	15,600
	Total Personnel Services	107,530	73,722	158,550	158,550	192,950

Drainage Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	<u>New Personnel</u>					
74.90.4001.00	Salaries	-	-	-	-	38,900
74.90.4002.00	Overtime	-	-	-	-	2,000
74.90.4010.00	Payroll Taxes	-	-	-	-	3,000
74.90.4020.00	Unemployment Taxes	-	-	-	-	350
74.90.4025.00	Workers Compensation	-	-	-	-	2,000
74.90.4030.00	Group Insurance	-	-	-	-	9,200
74.90.4035.00	Retirement Contribution	-	-	-	-	4,600
	Total New Personnel	-	-	-	-	60,050
	<u>Contractual Services</u>					
74.90.4125.00	Maintenance - Equipment	266	2,177	2,500	2,500	-
74.90.4127.00	Maintenance - Infrastructure	16,414	49,767	55,000	75,000	300,000
74.90.4130.00	Maintenance - Fleet	377	-	1,000	1,000	1,500
74.90.4135.00	Other Contractual Services	-	-	-	-	500,000
74.90.4150.00	Professional Services	25,040	1,405	25,000	25,000	47,000
74.90.4160.00	Rents	-	-	1,000	-	-
74.90.4170.00	Telephone & Internet	80	-	100	-	-
74.90.4180.00	Travel & Training	30	608	2,000	2,000	4,000
	Total Contractual Services	42,206	53,957	86,600	105,500	852,500
	<u>Commodities</u>					
74.90.4300.00	Chemicals	10,531	-	-	-	-
74.90.4310.00	Computers & Software	2,489	492	4,875	4,875	19,600
74.90.4330.00	Fuel & Lubricants	6,514	2,745	4,000	4,000	6,000
74.90.4385.00	Supplies - General	503	29	1,000	1,000	1,000
74.90.4400.00	Supplies - Office	98	-	-	-	-
74.90.4410.00	Supplies - Operational	1,077	-	3,000	3,000	3,000
74.90.4430.00	Supplies - Training	-	-	2,500	-	5,000
74.90.4440.00	Supplies - Fleet	1,152	-	5,000	5,000	5,000
74.90.4460.00	Uniforms	1,345	-	500	500	4,000
	Total Commodities	23,708	3,266	20,875	18,375	43,600

Drainage Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Other Charges					
74.90.4515.00	Depreciation	9,557	27,784	225,000	45,000	53,000
74.90.4540.00	Insurance	2,583	2,156	2,000	2,156	3,000
74.90.4560.00	Memberships & Subscriptions	-	-	-	-	3,000
74.90.4570.00	Miscellaneous	-	-	-	-	5,000
	Total Other Charges	12,140	29,940	227,000	47,156	64,000
	Capital - \$5,000/item min.					
74.90.4840.00	Infrastructure	230,927	-	-	70,000	1,038,400
	Total Capital	230,927	-	-	70,000	1,038,400
	Total Budget Request	554,217	245,135	643,425	549,981	2,415,890

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

CEMETERY PERPETUAL EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Cemetery Fund	-	-	-	-	-	-	-	-
Totals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Cash Available								\$ 203,258
Ending Fund Balance								\$ 203,258
% of Total Budget	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Cemetery Perpetual Fund

Item #3.

		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
<u>CEMETERY PERPETUAL FUND REVENUES</u>				<u>Budget</u>		
80.01.3940.00	Cemetery Lot Purchase	12,898	8,123	12,560	12,560	12,560
80.01.3960.00	Interest Income	1,974	3,990	60	5,850	3,600
	Subtotal	<u>14,872</u>	<u>12,112</u>	<u>12,620</u>	<u>18,410</u>	<u>16,160</u>
	Total Fund Revenues	<u>14,872</u>	<u>12,112</u>	<u>12,620</u>	<u>18,410</u>	<u>16,160</u>
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					187,098
	Total Anticipated Funds Available					<u>203,258</u>

Cemetery Perpetual Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Contractual Services					
80.90.4150.00	Professional Services	-	-	-	-	-
	Total Contractual Services	-	-	-	-	-
	Other Charges					
80.90.4570.00	Miscellaneous	-	-	-		
	Total Other Charges	-	-	-	-	-
	Transfers					
80.90.4999.00	Transfers Out	-	-	-	-	-
	Total Trasnfers Out	-	-	-	-	-
	Capital - \$5,000/item min.					
80.90.4840.00	Infrastructure	-	-	-	-	-
	Total Capital	-	-	-	-	-
	Total Budget Request	-	-	-	-	-

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

LIBRARY FUND EXPENSE SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Library Fund	-	-	-	-	-	-	-	-
Totals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Cash Available								\$ 13,573,582
Ending Fund Balance								\$ 13,573,582
% of Total Budget	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Library Fund

Item #3.

<u>LIBRARY FUND</u>		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
			<u>Actuals</u>	<u>Budget</u>		
92.01.3730.00	Library Facilities Fee	793,779	623,909	439,410	642,899	373,950
92.01.3953.00	Donation	173	2,025	3,500		
92.01.3960.00	Interest Income	116,540	183,046	75,000	140,000	140,000
92.01.3970.00	Miscellaneous	2,368	9,608	7,500		
92.01.3985.00	Weld Library Dist.	486,565	751,660	819,186		
92.01.3999.00	Transfers In - TOJ	1,202,027	616,826	1,243,246	1,245,432	2,491,362
92.01.3999.00	Transfers Out - TOJ	-	-	-	(9,495)	(186,975)
	Subtotal	2,601,453	2,187,074	2,587,842	2,028,331	3,005,312
	Total Fund Revenues	2,601,453	2,187,074	2,587,842	2,028,331	3,005,312
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					10,568,270
	Total Anticipated Funds Available					\$ 13,573,582

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Personnel Services					
92.90.4001.00	Salaries	370,448	274,254	677,000		
92.90.4002.00	Overtime	122	420			
92.90.4010.00	Payroll Taxes	27,292	20,093			
92.90.4020.00	Unemployment Taxes	-	-			
92.90.4025.00	Workers Compensation	379	256			
92.90.4030.00	Group Insurance	866	30,047			
92.90.4035.00	Retirement Contribution	6,939	16,789			
	Total Personnel Services	406,045	341,860	677,000	-	-
	Contractual Services					
92.90.4122.00	Maintenance - Buildings	204,128	130,318	680,000		
92.90.4145.00	Printing & Advertising	20,537	6,886	32,000		
92.90.4150.00	Professional Services	-	-	10,000		
92.90.4170.00	Telephone & Internet	4,970	3,340	10,000		
92.90.4180.00	Travel & Training	1,940	724	5,000		
92.90.4190.00	Utilities	37,153	22,511	40,000		
	Total Contractual Services	268,729	163,778	777,000	-	-
	Commodities					
92.90.4310.00	Computers & Software	257	-	5,000		
92.90.4385.00	Supplies - General	5,804	2,985	75,000		
92.90.4390.00	Supplies - Janitorial	819	582	3,000		
92.90.4400.00	Supplies - Office	-	-	12,000		
92.90.4410.00	Supplies - Operational	46,660	33,065	260,000		
	Total Commodities	53,540	36,632	355,000	-	-
	Other Charges					
92.90.4540.00	Insurance	-	-	5,000		
92.90.4560.00	Memberships & Subscriptions	357	84	2,500		
92.90.4570.00	Miscellaneous	51,740	(16,891)	4,500		
	Total Other Charges	52,097	(16,807)	12,000	-	-
	Capital - \$5,000/item min.					

Library Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
92.90.4810.00	Buildings	178,337		-	-	-
	Total Capital	178,337	-	-	-	-
	Total Budget Request	958,748	525,463	1,821,000	-	-

**TOWN OF JOHNSTOWN
ANNUAL BUDGET
FY 2024**

RECREATION CENTER FUND SUMMARY

	Personnel Services	Contract Services	Commodity	Other Charges	Total Operating Costs	Capital Outlay	Debt Service	Total
Rec Center Fund	-	503,000	-	-	503,000	-	-	503,000
Totals	\$ -	\$ 503,000	\$ -	\$ -	\$ 503,000	\$ -	\$ -	\$ 503,000
Total Cash Available								\$ 503,000
Ending Fund Balance								\$ -
% of Total Budget	0.00%	100.00%	0.00%	0.00%	100.00%	0.00%	0.00%	100.00%

Recreation Center Fund

Item #3.

<u>RECREATION CENTER FUND REVENUES</u>		<u>2022</u>	<u>2023</u>	<u>2023</u>	<u>2023</u>	<u>2024</u>
		<u>Actuals</u>	<u>Jan - Aug</u>	<u>Adopted</u>	<u>Estimated</u>	<u>Proposed</u>
			<u>Actuals</u>	<u>Budget</u>		
96.01.3420.00	State Grant	25,000	-	-	-	-
96.01.3999.00	Transfer In	-	77,262	77,262	377,262	503,000
	Subtotal	<u>25,000</u>	<u>77,262</u>	<u>77,262</u>	<u>377,262</u>	<u>503,000</u>
	Total Fund Revenues	<u>25,000</u>	<u>77,262</u>	<u>77,262</u>	<u>377,262</u>	<u>503,000</u>
	Unrestricted Cash Balance Forward (Beg. Fund Bal.)					-
	Total Anticipated Funds Available					<u>503,000</u>

Recreation Center Fund

Item #3.

<u>Acct. No.</u>	<u>Account Title</u>	<u>2022 Actuals</u>	<u>2023 Jan - Aug Actuals</u>	<u>2023 Adopted Budget</u>	<u>2023 Estimated</u>	<u>2024 Proposed</u>
	Contractual Services					
96.90.4135.00	Other Contractual Services	500,000	340,273	500,000	800,000	500,000
96.90.4140.00	Insurance	-	54,513	-	-	-
96.90.4570.00	Miscellaneous	25,000	-	-	-	3,000
		525,000	394,786	500,000	800,000	503,000
	Total Budget Request	525,000	394,786	500,000	800,000	503,000



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2022

SUBJECT: Water & Sewer Service Agreement – Ledge Rock Center Commercial Irrigation, with Ledge Rock Center Commercial Metropolitan District

ATTACHMENTS: 1. Water Service Agreement

PRESENTED BY: Lilly Cory, Planner I

ITEM DESCRIPTION:

The Developer, Ledge Rock Center, LLC, has received approvals for the Ledge Rock Center Outline Development Plan, and is in either development review or construction phase for several associated components of the project, which include approximately 850,000 SF of commercial uses at build out. For consideration is a Water Service Agreement between the Town and the Ledge Rock Center Commercial Metropolitan District for the common landscaping areas owned by the District.

Due to the status of this commercial/retail project as an economic development project for Johnstown, the Developer is requesting that the Town accept cash-in-lieu for the in-building water needs associated with Phase I of the project and create a Ledge Rock Center Irrigation Water Bank, setting aside up to 7.5 shares (60.0 annual AF) from the Town’s water portfolio surplus to be available for purchase. The purchase price for the water will be determined by the Town Manager at the time of sale based on current fair market value. The irrigation water for landscaped areas will be accommodated under this agreement with the Ledge Rock Center Commercial Metropolitan District, who will own the common areas and maintain the landscaping.

This Agreement will terminate as of December 31, 2025, unless extended prior to that date, and if any water still remaining is available for use. If the Agreement expires, the Town will retain the water for use at its discretion.

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

LEGAL ADVICE:

The agreement was prepared by the Town Attorney.

FINANCIAL ADVICE :

N/A

RECOMMENDED ACTION: Approve the Water Service Agreement for Ledge Rock Center Commercial Irrigation, with Ledge Rock Center Commercial Metropolitan District

Reviewed and Approved for Presentation,



Town Manager

**WATER SERVICE AGREEMENT
(Ledge Rock Center Commercial Irrigation)**

THIS WATER SERVICE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as “the Parties.”

RECITALS:

WHEREAS, the District and Ledge Rock Center, LLC, a Kansas limited liability company (“Developer”), are collectively the owners of land located in Northeast One-Quarter of Section 11, Township 4 North, Range 68 West of the Sixth Principal Meridian, County of Weld, State of Colorado, described more particularly on Exhibit A, attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, the Property is being developed as a destination retail shopping center containing approximately 385,000 square feet of new commercial and retail uses, to be known as Ledge Rock Center Commercial Phase I (“Project”); and

WHEREAS, the Developer owns the commercial pads and is developing the buildings associated with the Project that will be located on Property; and

WHEREAS, the District owns and will maintain the common areas located on the Property; and

WHEREAS, the District will also maintain the landscape areas associated with the street rights of way of Colorado Highway 60, High Plains Boulevard, Carson Drive, and Payton Drive; and

WHEREAS, to facilitate the development of the Project, the District has requested that the Town grant it the right to use water from the Town’s share of water supplies at the fair market value to serve the irrigation needs of the Project; and

WHEREAS, the Town has an available supply of water to serve the irrigation needs of the Project; and

WHEREAS, the Town obtained an analysis from Economic & Planning Systems, Inc., a California corporation, projecting that the Project will provide substantial economic benefits to the Town, including but not limited to, increased sales tax revenues and new employment opportunities; and

WHEREAS, Colorado municipalities are entitled to encourage new and expanded commercial and retail development through inducements and incentives; and

WHEREAS, based on the anticipated economic benefits, the additional employment opportunities and the extraordinary opportunity presented by the location of the Project in the Town, subject to the terms of this Agreement, the Town Council desires to accommodate the District's request to pay cash-in-lieu of the required water dedication and finds that this Agreement is in the best interests of the citizens of the Town; and

WHEREAS, on or about October 3, 2022, the Developer and the Town entered into that certain Water and Sewer Service Agreement (Ledge Rock Center Commercial Phase I), recorded in the office of the Weld County Clerk & Recorder at Reception No. 4859264, related to the in-building water needs associated with the Project; and

WHEREAS, the Parties anticipate that, when the Developer submits a development plan for each phase of the Project, the District will submit a water demand analysis to the Town related to the irrigation water needs of such phase of the Project; and

WHEREAS, the District and the Town desire to set forth their agreement concerning the use of the Town's water for the irrigation water needs of the Property and associated rights-of-way and a commitment by the Town for water service.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.

2. **Creation of a Water Bank.** To facilitate the development of the Project, the Town agrees to allow the District to use up to seven and one-half (7.5) shares of the Consolidated Home Supply Ditch and Reservoir Company (up to 60 acre-feet per year) from the shares owned by the Town for the irrigation water needs of the Project, pursuant to the terms of this Agreement. The water may not be used for any other purpose. Upon the execution of this Agreement, the water shares shall be set aside and placed into a water bank, to be known as the Ledge Rock Center Commercial Irrigation Water Bank. The Town's Water Engineer shall manage the Ledge Rock Center Commercial Irrigation Water Bank and maintain an accurate accounting of the water that is used and the water that is still available for use by the District.

The Ledge Rock Center Commercial Irrigation Water Bank will terminate on December 31, 2025. Water that has not been allocated to the use of the District pursuant to the terms of this Agreement by December 31, 2025, shall revert back to the Town, be available for any and all uses deemed appropriate by the Town and not be available for any use by the District absent a written amendment to this Agreement signed by the Parties.

Notwithstanding anything contained herein, the District shall not be obligated to purchase the right to use water from the Ledge Rock Center Commercial Irrigation Water Bank.

3. ***Water Demand and Approval of Water Use.*** When the District submits a development plan for a phase of the Project, the District shall submit a preliminary water demand analysis to the Town related to the irrigation water needs of such phase. The preliminary analysis shall provide an estimated average annual water demand for the irrigation needs of such phase of the Project. Upon approval of the preliminary analysis by the Town, the Town agrees to provide the District with written authorization to use water from the Ledge Rock Center Commercial Irrigation Water Bank, containing the applicable fees for such use, on the form attached as Exhibit B (“Water Use Authorization”). Each Water Use Authorization that is executed by the Town Manager shall be incorporated herein and become a part of this Agreement as if fully set forth herein.

4. ***Price for Use of Water.*** The District agrees to pay the fair market value for the use of the water as determined by the Town Manager. The District understands and agrees that the fair market value fluctuates and shall be established by the Town, at its sole discretion, when the District submits and the Town approves a preliminary water demand analysis for any portion of the Property.

5. ***Future review of water usage and dedication requirements.*** In accordance with the Johnstown Municipal Code, the Town reserves the right to review actual water usage within the Property, or any portion thereof, at any point in time after water usage has been established to confirm the adequacy of the water demand projections contained in the preliminary analyses. If the Town determines that the preliminary analyses, or any of them, underestimated the actual water demand for the irrigation water needs, the District shall be required to pay for the use of additional water from the Ledge Rock Center Commercial Irrigation Water Bank, if the Ledge Rock Center Commercial Irrigation Water Bank has not terminated and water is still available, or dedicate additional water to the Town.

6. ***Payment of Water Court Transfer Fees.*** Upon approval of a Water Use Authorization, the District shall pay to the Town the water court transfer fees required by the Johnstown Municipal Code. The Water Use Authorization shall contain the water court transfer fee. If the actual water demand increases, additional water court transfer fees shall be required.

7. ***Commitment to Provide Water.*** Subject to the District’s performance of all the covenants contained herein, the issuance of a Water Use Authorization, payment of all required fees and issuance of a certificate of occupancy, the Town commits to provide to the Property, or any portion thereof, the committed water supply.

8. ***Notice:*** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, sent by messenger service, or forwarded by electronic mail delivery, but only upon

confirmation of receipt of such electronic mail; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested. Such notices or communications will be given to the Parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
P.O. Box 609
Johnstown, CO 80534
mlecerf@johnstownco.gov

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue #330
Loveland, CO 80538
avi@rocklinlaw.com

and

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264
peterampe@hillandrobbs.com

If to the District:

Ledge Rock Center, LLC
c/o Michael Schlup
13725 Metcalf Ave. #337
Overland Park, KS 66223
mikeschlup@corbinpark.com

With a copy to:

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd Place
Spring Hill, KS 66083
allen.schlup@adschluplaw.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

9. **Default.** In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town’s ordinances.

10. **Successors and Assigns.** The benefits of this Agreement and the burdens hereunder shall inure to and be binding upon the successors and assigns of the District to the extent the successors and assigns occupy the Property.

11. **Amendment or Modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

12. **Attorney's Fees and Costs.** If any judicial proceedings may hereafter be brought to enforce or defend any of the provisions hereof, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

13. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

14. **Headings for Convenience Only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

15. **Non-severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

16. **Choice of Laws and Venue.** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in the County of Weld, State of Colorado.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

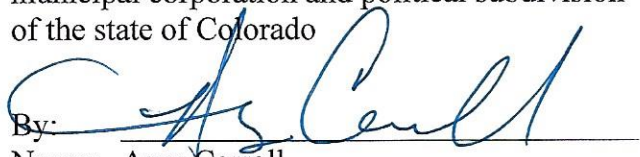
18. **No Presumption.** Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

19. **Findings.** The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the laws, regulations and policies of the Town.

[The remainder of the page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

By: 
Name: Amy Carroll
Its: President
Date: 9-22-23

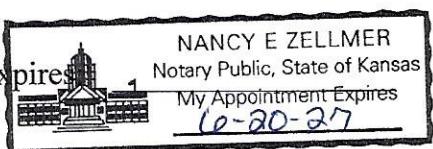
Attest:

Secretary

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this 20th day of September, 2023, by Amy Carroll and John Schlup, as President and Secretary of Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires  My Appointment Expires 10-20-27


Notary Public

ATTEST:

**TOWN OF JOHNSTOWN, COLORADO
a municipal corporation**

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

**EXHIBIT A
PROPERTY**

LEDGE ROCK CENTER COMMERCIAL PHASE 1

RETAIL EAST (40.78 AC.) – Exhibit A-1 Plat

Tract B and Lots 1, 2, 3, 4, and 5 of the East Ledge Rock Center Filing No. 2 Subdivision (Rec. 4853717), situate in the NE 1/4 of Section 11, Township 4 North, Range 68 West, of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, containing approximately 40.78 acres.

-and-

RETAIL WEST (7.83 AC.) – Exhibit A-2 Plat

Lots 2, 3, 4, and 5 of the West Ledge Rock Center Filing No. 1 Subdivision (Rec. 4838311), situate in the NE 1/4 of Section 11, Township 4 North, Range 68 West, of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, containing approximately 7.83 acres.

EXHIBIT B

**Ledge Rock Center Phase I Commercial Irrigation
WATER USE AUTHORIZATION
NO. ____**

THIS WATER USE AUTHORIZATION supplements and is incorporated into the WATER SERVICE AGREEMENT (“WSA”) made and entered into on _____, 20__, by and between LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation.

1. Water Demand. In compliance with the Johnstown Municipal Code, the District submitted a preliminary water demand analysis to the Town for the irrigation water needs of ___ (legal description and address)_____ (“Subject Property”). The preliminary analysis sets forth an estimated average annual water demand of _____ acre feet per year for irrigation of the Subject Property (___ SFE). Based on the approval of the Town’s water engineer, the preliminary analysis is hereby accepted by the Town as follows:

Development	Demand (AF/YR)	Consumption (AF/YR)
Irrigation		

The foregoing water demand will be satisfied by the use of ___ acre-feet of the Consolidated Home Supply Ditch and Reservoir Company from the Ledge Rock Center Commercial Irrigation Water Bank. Pursuant to Paragraph 5 of the WSA and the Johnstown Municipal Code, the water demand set forth herein is subject to subsequent adjustment based on the actual water usage.

2. Price for Use of Water. Pursuant to Paragraph 4 of the WSA, the price for the use of the ___ acre feet per year is ___ Dollars (\$____.00).

3. Water Court Transfer Fee. Pursuant to Paragraph 6 of the WSA and the Johnstown Municipal Code, the water court transfer fee for the Subject Property is ___ Dollars (\$____.00).

4. Surplus Credit. The Ledge Rock Center Commercial Irrigation Water Bank contains the following surplus water credit:

Water Use Credit:	_____ acre-feet
LESS Estimated demand:	_____ acre-feet
Net current surplus credit:	_____ acre-feet

Dated: _____, 20__.

By: _____
Matthew LeCerf, Town Manager

Accepted by Ledge Rock Center Commercial District
By: _____
_____, President



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: Water & Sewer Service Agreement – Ledge Rock Center Multifamily North Amendment 1, with Ledge Rock Center, LLC

ATTACHMENTS:

1. Water & Sewer Service Agreement – Ledge Rock Center Multifamily North Amendment 1
2. Water & Sewer Service Agreement – Ledge Rock Center Multifamily North

PRESENTED BY: Lilly Cory, Planner I

ITEM DESCRIPTION:

The Developer, Ledge Rock Center, LLC, has received approval for the Ledge Rock Center - Multifamily North development, which is comprised of two phases. Phases I & II of the project, collectively include six (6) multi-family buildings, containing a total of 504 residential units, a clubhouse, and xeric and irrigated landscape areas. For consideration is a First Amendment to the Water and Sewer Service Agreement (WSSA) between the Town and the Developer for the addition of a pool in Phase I of the project which consists of 1.59 acre-feet additional raw water dedication.

The First Amendment WSSA presented has been amended to allow the developer to dedicate additional water that is required with the addition of a pool:

- Phase I project original water demand of 78.13 AF
- Phase I amendment water demand of 1.59 AF
- Total amended water demand 79.92 AF

The Developer has previously dedicated 219 AF of water shares to the Town, held in the “Ledge Rock Center Water Bank.” A portion of this water bank has been allocated to various projects including commercial and single-family development projects. The dedication of this additional 1.59 acre-feet of water will leave a balance of the Ledge Rock Water Bank of 9.32 acre-feet. Water Court Transfer fees will be collected with the execution of the amended WSSA for Phase I.

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

Other such fees have been collected with the execution of Phase I & Phase II, with the inclusion of the cash-in-lieu fees for the West Johnstown Water Tank. In the absence of a development agreement for this project, which typically accompanies larger subdivision projects, this agreement also accounts for the total proportional share of the overall Multifamily North development.

LEGAL ADVICE:

The agreement was prepared by the Town Attorney.

FINANCIAL ADVICE :

N/A

RECOMMENDED ACTION:

Approve the Water & Sewer Service Agreement for Ledge Rock Center Multifamily North Phases I Amendment 1, with Ledge Rock Center, LLC.

Reviewed and Approved for Presentation,



Town Manager

**FIRST AMENDMENT TO WATER AND SEWER SERVICE AGREEMENT
(LEDGE ROCK CENTER MULTI-FAMILY NORTH PHASE I & II)**

THIS FIRST AMENDMENT TO WATER AND SEWER SERVICE AGREEMENT (“First Amendment”) is made and entered into this ___ day of _____ 2023, by and between **LEDGE ROCK CENTER, LLC**, a Kansas limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipality (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

RECITALS

WHEREAS, on or about February 22, 2023, the Parties entered into that certain Water and Sewer Service Agreement (Ledge Rock Center Multi-Family North Phase I & II) (“Agreement”); and

WHEREAS, the Agreement provides that, within ten days of the execution of the Agreement, Developer shall pay the Town cash-in-lieu for a proportional share of the planned West Johnstown Water Tank in the amount of Three Hundred Three Thousand, Six Hundred Ten Dollars (\$303,610.00) (“Water Tank Fee”); and

WHEREAS, the Developer requests that the Town accept the Water Tank Fee in two equal installments, one upon execution of the Agreement and one prior to the issuance of building permits for Phase II of the Development; and

WHEREAS, the Town desires to approve the Developer’s request; and

WHEREAS, capitalized terms used herein not otherwise defined shall have the meaning set forth in the Agreement; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this First Amendment to Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Amendment. Paragraph 7 of the Agreement is hereby deleted in its entirety and in its place inserted the following:

7. West Johnstown Water Tank. The Developer agrees to pay the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Water Tank at a calculated pro rata cost of \$970.00 per SFE, multiplied by the Development’s total demand of 313 SFEs, for a total of payment of Three Hundred Three Thousand, Six

Hundred Ten Dollars (\$303,610.00) (“Water Tank Fee”). On or before May 16, 2023, Developer shall pay fifty percent (50%) of the Water Tank Fee in the amount of One Hundred Fifty-One Thousand Eight Hundred Five Dollars (\$151,805.00). Prior to the release of building permits for Phase II of the Development, Developer shall pay the remaining fifty percent (50%) of the Water Tank Fee in the amount of One Hundred Fifty-One Thousand Eight Hundred Five Dollars (\$151,805.00).

3. Effect of Amendment. Except as expressly provided in this First Amendment, the Agreement has not been amended, supplemented or altered in any way by this First Amendment and the Agreement shall remain in full force and effect in accordance with its terms. If there is any inconsistency between the terms of the Agreement and the terms of this First Amendment, the provisions of this First Amendment will govern and control.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the set forth above.

LEDGE ROCK CENTER, LLC, a Kansas limited liability company

By: _____
Name: _____
Title: _____
Date: _____

STATE OF KANSAS)
) ss.
COUNTY OF _____)

The foregoing First Amendment to Water and Sewer Service Agreement (Ledge Rock Center Multi-Family North Phase I & II) was acknowledged before me this ____ day of _____, 2023, by _____, as _____ of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

THE TOWN OF JOHNSTOWN,
a home-rule municipality of the
State of Colorado

Date: _____

By: _____
Troy Mellon, Mayor

ATTEST:

Hannah Hill, Town Clerk

WATER AND SEWER SERVICE AGREEMENT
(LEDGE ROCK CENTER MULTI-FAMILY NORTH PHASE I & II)

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this 22 day of February 2023, by and between **LEDGE ROCK CENTER, LLC**, a Kansas limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in land known as Lots 6 and 7 of East Ledge Rock Center Subdivision Filing No. 2, located in the Northeast Quarter of the Northeast Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, more fully described on **Exhibit A** attached hereto and incorporated herein by reference (“Subject Property”); and

WHEREAS, Developer is developing the Subject Property as the “Ledge Rock Center Multifamily North” development, consisting of 504 single family attached units and an 8,660 ft² clubhouse with 8.16 acres of xeric and 0.47 acres of spray-irrigated landscape (“Development”); and

WHEREAS, Developer desires to construct the Development in two construction phases, Phase I of the Development and Phase II of the Development, and dedicate the required water prior to commencing construction of each phase; and

WHEREAS, Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), Developer submitted to the Town a preliminary water and sewer demand analysis for the Subject Property dated December 15, 2022. Said analysis is on file with the Town and, as modified by the Town’s Water Engineer by memoranda dated December 20, 2022, is hereby accepted by the Town. The analysis provides that the projected water and sewer demand for the Subject Property is as follows:

PHASE I Development	Demand (AF/YR)	Consumption (AF/YR)
Residential in-building (252 units + clubhouse)	74.05	3.70
Landscape irrigation	4.08	3.47
Total	78.13	7.17

PHASE II Development	Demand (AF/YR)	Consumption (AF/YR)
Residential in-building (252 units)	73.08	3.65
Landscape irrigation	5.25	4.46
Total	78.33	8.11

2. Water Rights Dedication and Credits. Developer dedicated twenty-six (26) shares of the Consolidated Home Supply Ditch & Reservoir Company (“Home Supply”) to the Town totaling 200 acre-feet, consisting of the following: 14 shares, represented by Certificate No. 7113 (112 acre-feet of raw water credit); 1 share, represented by Certificate No. 7114 (8 acre-feet of raw water credit); 5 shares, represented by Certificate No. 7115 (40 acre-feet of raw water credit based on a recorded dry-up covenant); 5 shares, represented by Certificate No. 7145 (32 acre-feet of raw water credit); and 1 share, represented by Certificate No. 7148 (8 acre-feet of raw water credit). Developer has also dedicated 1/3 share of Big Thompson Ditch and Manufacturing (“Big Thompson”) to the Town totaling 19 acre-feet. The Home Supply and Big Thompson water are collectively referred to herein as the “Water Shares.”

a. The dedication credit from the Water Shares totaled 219.00 acre-feet and was deposited into the Ledge Rock Center Water Bank (a water bank created by the Town’s Water Engineer to maintain an accounting of Developer’s raw water credits).

b. Developer allocated a portion of the raw water credit in the Ledge Rock Center Water Bank for other uses but retains a surplus dedication credit with the Town sufficient to supply the raw water demands of Phase I of the Development. Developer hereby desires to allocate, and the Town accepts such allocation of, raw water credit in the amount of 78.13 acre-feet for Phase I of the Development.

c. Prior to the release of building permits for Phase II of the Development, to satisfy the raw water demands of Phase II, Developer shall: (i) allocate raw water from the Ledge Rock Center Water Bank, if sufficient credit is available; (ii) dedicate additional raw water to the Town; or (iii) if acceptable to the Town, pay cash-in-lieu of water dedication at the rate set by the Town, at its discretion. Said allocation, dedication or payment shall be acceptable to the Town Manager and evidenced by execution of the Phase II Raw Water Authorization attached hereto and incorporated herein by reference as **Exhibit B**, which shall also include the required water court transfer fee for Phase II of the Development.

3. Surplus dedication credit. Subsequent to allocation of raw water credit from the Ledge Rock Center Water Bank for the Phase I of the Development, Developer shall have a surplus raw water credit with the Town. The raw water credit is calculated as follows:

Credit Balance:	112.81 acre-feet
Less estimated PHASE I demand:	<u>78.13 acre-feet</u>
Net surplus credit:	34.68 acre-feet

4. **Commitment to serve.** Subject to Developer’s performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 147.13 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and 9.33acre-feet per year for irrigation, as described above.

5. **Future review of water usage and dedication requirements.** In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Subject Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

6. **Payment of Water Court Transfer Fee.** Upon execution of this Agreement, Developer shall pay to the Town the water court transfer fee in amount of **Forty Thousand Two Hundred Dollars (\$40,200.00)** for the dedication of 78.13 acre-feet per year of estimated water demand and estimated consumptive use of 7.17 acre-feet per year, equivalent to 156 single family equivalent (“SFE”), for Phase I of the Development. The water court transfer fee for Phase II of the Development shall be set forth on, and payable at the time of execution of, the Phase II Raw Water Authorization.

7. **West Johnstown Water Tank.** Within ten (10) days of the execution of this Agreement, the Developer agrees to pay the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Water Tank at a calculated pro rata cost of \$970.00 per SFE, multiplied by the Development’s total demand of 313 SFEs, for a total of payment of Three Hundred Three Thousand, Six Hundred Ten Dollars (\$303,610.00).

8. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO DEVELOPER:

Ledge Rock Center, LLC
Attn: Michael Schlup
6909 W 135th Street Suite B13
Overland Park, KS 66223
mikeschlup@corbinpark.com

with a copy to:

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd PL

TO TOWN:

Town of Johnstown
Attn: Town Manager
450 S. Parish Avenue
P.O. Box 609
Johnstown, CO 80534
MLeCerf@JohnstownCO.gov

with a copy to:

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue, #330

Spring Hill, KS 66083
allen.schlup@adschluplaw.com

Loveland, CO 80538
avi@rocklinlaw.com

Peter Ampe, Esq.
Hill & Robbins, P.C.
3401 Quebec St., Suite 3400
Denver, CO 80207
peterampe@hillandrobbins.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

9. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

10. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

11. Amendment or modification. No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

12. Attorney's fees and costs. If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

13. Waiver. The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

14. Headings for convenience only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

15. Non severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

16. Choice of laws and venue. This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any legal action shall be in the County of Weld, State of Colorado.

17. Entire agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

18. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

19. Recordation. This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject Property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

(Signature pages to follow)

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

LEDGE ROCK CENTER, LLC

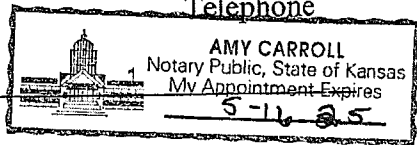
By: *Michel Schlup*
Name: Michel Schlup
Title: President

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

SUBSCRIBED AND SWORN to before me this 1 day of February, 2023 by Michel Schlup as the president of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.
Amy Carroll
Notary Public
137 NW 1501 Rd Urich, MO 64788
Address
913-633-3826
Telephone

My Commission Expires: _____



TOWN OF JOHNSTOWN, COLORADO,
a Colorado municipality

By: *Gary Lebsack*
Gary Lebsack, Mayor

ATTEST:

By: *Hannah Hill*
Hannah Hill, Town Clerk

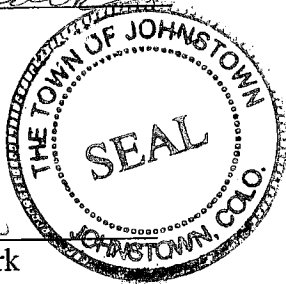


EXHIBIT A

PROPERTY DESCRIPTION

Lots 6 and 7 of the East Ledge Rock Center Filing No. 2 Subdivision (Rec. 4853717), situate in the NE 1/4 of Section 11, T4N, R68W, of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado.

EXHIBIT B
Phase II Raw Water Authorization

THIS PHASE II RAW WATER AUTHORIZATION supplements and is incorporated into the WATER AND SEWER SERVICE AGREEMENT (LEDGE ROCK CENTER MULTI-FAMILY NORTH PHASE I & II) (“WSSA”) made and entered into on _____, 20 __, by and between LEDGE ROCK CENTER, LLC, a Kansas limited liability company (“Developer”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation.

1. Water Demand for Phase II of the Development. The preliminary raw water demand for Phase II of the Development is as follows:

PHASE II Development	Demand (AF/YR)	Consumption (AF/YR)
Residential in-building (252 units)	73.08	3.65
Landscape irrigation	5.25	4.46
Total	78.33	8.11

The raw water demand for Phase II of the Development shall be satisfied by _____. [Note: If the Developer pays cash-in-lieu of raw water dedication, the price of the water shall be added to, and payable upon execution of, this Phase II Raw Water Authorization.]

2. Water Court Transfer Fee. Pursuant to Paragraph 6 of the WSSA and the Johnstown Municipal Code, the water court transfer fee for Phase II of the Development is \$__ dollars (\$____.00) and shall be paid upon execution of this Phase II Raw Water Authorization.

Dated: _____, 20__.

By: _____
Matthew LeCerf, Town Manager

Accepted by Ledge Rock Center, LLC

By: _____
_____, Authorized Member



TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: First Amendment to the Subdivision Development and Improvement Agreement, East Ledge Rock Center, Filing No. 3

ATTACHMENTS:

1. First Amendment to the Subdivision Development and Improvement Agreement, East Ledge Rock Center, Filing No. 3
2. Exhibit of Final Development Plan for East Ledge Rock, Filing No. 3

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is the First Amendment to the Subdivision Development and Improvement Agreement (SDIA) for East Ledge Rock Center, Filing No. 3. For reference, the initial SDIA was approved by Council on February 6, 2023, and subsequently recorded. The SDIA was specific to East Ledge Rock Center, Filing No. 3 as indicated in the attached Development Plan.

The Developer has requested that Exhibit B-3 of the SDIA for East Ledge Rock Center, Filing No. 3 be amended. The current language states that prior to Notice of Construction Acceptance, the Developer is obligated to pay to the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Tank (Water Tank Payment).

The Developer has requested the language be amended to state the Water Tank Payment be due and owing to the Town prior the issuance of each of the single-family building permits.

LEGAL ADVICE:

The Town Attorney has drafted the First Amendment to the Subdivision Development and Improvement Agreement for East Ledge Rock Center, Filing No. 3

FINANCIAL ADVICE:

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

N/A

RECOMMENDED ACTION: Approve the First Amendment to Subdivision Development and Improvement Agreement for East Ledge Rock Center, Filing No. 3

Reviewed and Approved for Presentation,



Town Manager

**FIRST AMENDMENT TO
SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(East Ledge Rock Center, Filing No. 3)**

This First Amendment to Subdivision Development and Improvement Agreement (“First Amendment”), made and entered into by and between the **Town of Johnstown, Colorado**, a Colorado home-rule municipality (the “Town”), and **Ledge Rock Center, LLC**, a Kansas limited liability company (“Developer”). The Town and Developer may be referred to collectively as the “Parties.”

RECITALS

WHEREAS, on or about January 20, 2023, the Parties entered into that certain Subdivision Development and Improvement Agreement for Town of Johnstown (East Ledge Rock Center, Filing No. 3), recorded at Reception Number 4883358 in the Office of the Weld County Clerk and Recorder, concerning, among other matters, construction of Subdivision Improvements in the Development (“Agreement”); and

WHEREAS, the Agreement contains **Exhibit B-3**, attached thereto and incorporated therein by reference, providing additional terms, conditions and provisions related to the Development; and

WHEREAS, **Exhibit B-3** provides, in part, that, prior to Notice of Construction Acceptance, Developer is obligated to pay to the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Water Tank (“Water Tank Payment”); and

WHEREAS, the Developer requests that the Water Tank Payment be due and owing to the Town prior the issuance of building permits rather than prior to receipt of Notice of Construction Acceptance; and

WHEREAS, the Town desires to accommodate the Developer’s request; and

WHEREAS, capitalized terms used herein not otherwise defined shall have the meaning set forth in the Agreement; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this First Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Exhibit B-3. **Exhibit B-3**, in the form attached to the Agreement, is hereby withdrawn and replaced in full with the form of **Exhibit B-3**, attached hereto and incorporated herein by reference.
3. Recording. This First Amendment shall be recorded in the Office of the Weld County Clerk and Recorder.
4. Effect of Amendment. Except as expressly provided in this First Amendment, the Agreement has not been amended, supplemented or altered in any way by this First Amendment and the Agreement shall remain in full force and effect in accordance with its terms. If there is any inconsistency between the terms of the Agreement and the terms of this First Amendment, the provisions of this First Amendment will govern and control.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this 9 day of October, 2023.

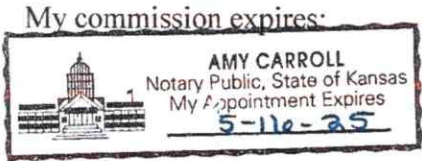
LEDGE ROCK CENTER, LLC

By: *Michel Schlup*
Name: Michel Schlup
Title: Managing Member

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

SUBSCRIBED AND SWORN to before me this 9 day of October, 2023, by Michel Schlup, as the managing member of Ledge Rock Center, LLC.

WITNESS my hand and official seal.



Amy Carroll
Notary Public

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Troy D. Mellon, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT B-3**ADDITIONAL TERMS, CONDITIONS OR PROVISIONS**

1. Prior to or at the time of the issuance of the first building permit for the Development or any portion thereof, Developer or the applicant, as the case may be, shall pay to the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Water Tank at a calculated pro rata cost of \$970.00 per single family equivalent (“SFE”), multiplied by the Development’s demand of 196 SFEs, for a total of \$190,120.

2. Developer shall not be entitled to obtain Notice of Construction Acceptance of the Public Improvements for this Development until such time as the Town provides Notice of Construction Acceptance of the Public Improvements for the East Ledge Rock Center Filing No. 2, the commercial portion of the Ledge Rock Center development, including, but not limited to, the extension of the sanitary sewer line to the Development, the expansion of Colorado State Highway 60 and the completion of the intersections at Colorado State Highway 60 and High Plains Boulevard and Payton Drive.

4883358 Pages: 29 of 53
 02/24/2023 11:44 AM R Fee:\$273.00
 Carly Koppen, Clerk and Recorder, Weld County, CO



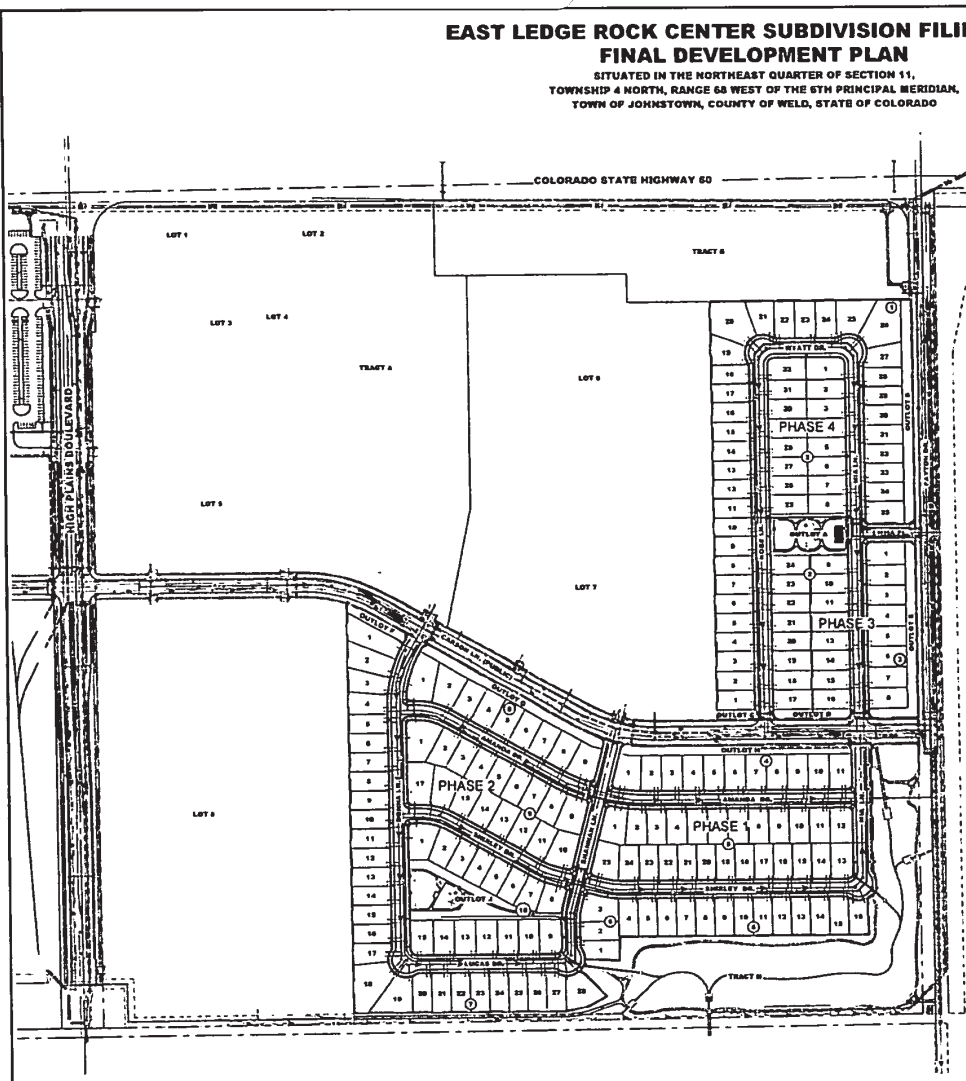
**EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 3
 FINAL DEVELOPMENT PLAN**
 SITUATED IN THE NORTHEAST QUARTER OF SECTION 11,
 TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
 TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO



REV. NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR FINAL CONSENT			

TERRA FORMA SOLUTIONS
LEDGE ROCK CENTER RESIDENTIAL
 PHASING PLAN
 JOHNSTOWN, CO

SCALE 1" = 200'
 DATE 02/24/23
 PH1



LEGEND & PHASING SCHEDULE

- PHASE LINE ---
- LOT'S NUMBER 1
- BLOCK NUMBER 2

PHASE 1 CONSISTS OF THE CONSTRUCTION OF MANNA DRIVE, WA LANE, SHIRLEY DRIVE, AND DANISH LANE WHICH WILL PROVIDE PHASE 1 WITH TWO POINTS OF ACCESS. ALSO CONSTRUCTED WILL BE THE LOOPED WATER SYSTEM, SANITARY SEWER, AND STORM SEWER INFRASTRUCTURE NEEDED TO SERVE BLOCK 1 LOTS 1-16, BLOCK 1 LOTS 17-24, AND BLOCK 1 LOTS 25-32. THE WATER SYSTEM WILL MAKE TWO CONNECTIONS TO THE EXISTING WATER IN CARSON LN WHILE THE SANITARY WILL BE CONNECTED TO THE EXISTING MAIN IN PATTON DR. STORM SEWER WILL TIE INTO AN EXISTING STUB COMING OFF OF CARSON LN AND WILL PROVIDE CONNECTIONS FOR PLOTS TO THE POND. WITH THE PROPOSED IMPROVEMENTS PHASE 1 CAN SERVE THE PREVIOUSLY STATED LOTS WHILE ALSO BUILDING THE BACKSIDE INFRASTRUCTURE FOR PHASE 2A.

PHASE 2 CONSISTS OF THE CONSTRUCTION OF DONNA LANE, LUCAS DRIVE, MANNA DRIVE, AND SHIRLEY DRIVE WHICH WILL PROVIDE PHASE 2 WITH FOUR POINTS OF ACCESS. ALSO CONSTRUCTED WILL BE THE LOOPED WATER SYSTEM, SANITARY SEWER, AND STORM SEWER INFRASTRUCTURE NEEDED TO SERVE BLOCK 2 LOTS 1-24, BLOCK 3 LOTS 1-16, AND BLOCK 3 LOTS 17-24. THE WATER SYSTEM WILL MAKE ONE CONNECTION TO THE EXISTING WATER IN CARSON LN AND WILL CONNECT TO THE STUB PROVIDED BY PHASE 1. SIMILARLY, THE SANITARY SEWER WILL CONNECT TO STUBS PROVIDED BY PHASE 1. RAINOFF WILL BE CONNECTED VIA CURB AND OUTLET TO INLET 8 AND STORM SEWER ALREADY CONSTRUCTED IN PHASE 1.

PHASE 3 CONSISTS OF THE CONSTRUCTION OF EMMA PLACE AND A PORTION OF WA LANE WHICH WILL PROVIDE PHASE 3 WITH TWO POINTS OF ACCESS. ALSO CONSTRUCTED WILL BE THE LOOPED WATER SYSTEM, SANITARY SEWER, AND STORM SEWER INFRASTRUCTURE NEEDED TO SERVE BLOCK 3 LOTS 1-4 AND BLOCK 3 LOTS 5-16. THE WATER SYSTEM WILL MAKE ONE CONNECTION TO PATTON DR AND ONE CONNECTION TO CARSON LN TO ACHEIVE LOOPED SYSTEM. THE SANITARY SEWER WILL CONNECT TO THE EXISTING MAIN IN CARSON LN AND WILL PROVIDE STUBS FOR PHASE 2. THE STORM SEWER WILL TIE INTO A STUB FROM CARSON LN THAT WILL TRANSPORT DRAINAGE SOUTH TO THE POND.

PHASE 4 CONSISTS OF THE CONSTRUCTION OF ADEE LANE, WYATT DRIVE AND THE REMAINING PORTION OF WA LANE TO PROVIDE PHASE 4 WITH TWO POINTS OF ACCESS. ALSO CONSTRUCTED WILL BE THE LOOPED WATER SYSTEM, SANITARY SEWER, AND STORM SEWER INFRASTRUCTURE NEEDED TO SERVE BLOCK 1 LOTS 1-16, BLOCK 2 LOTS 1-16, AND BLOCK 3 LOTS 17-24. THE WATER SYSTEM WILL MAKE ONE CONNECTION TO THE EXISTING MAIN IN CARSON LN AND ONE CONNECTION TO A STUB PROVIDED BY PHASE 3 TO COMPLETE A LOOPED SYSTEM. THE SANITARY SEWER WILL CONNECT TO AN EXISTING STUB PROVIDED IN PHASE 3 AND THE MAIN IN CARSON LN. THE STORM SEWER WILL TIE INTO A STUB FROM CARSON LN THAT WILL TRANSPORT DRAINAGE SOUTH TO THE POND.

CONSTRUCTION PHASING WILL BE DRIVEN BY CONSTRUCTION TRIM; #10 WILL DEPEND LARGELY ON ECONOMIC CONDITIONS DURING THE SALES OF HOMES. THE PHASING SCHEDULE DESCRIBED IN THE PHASING AND HERE IS A GENERAL OVERVIEW.





Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: TRR Community Center & Construction Time Extension Request

ACTION PROPOSED: Consider Time Extension Request

ATTACHMENTS: 1. Letters (2) from Oakwood Homes Development

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

The Town entered into a Subdivision Development Agreement (DA) with Clayton Properties Group II, LLC (Oakwood Homes) for Filing No. 12 in September 2021 and Filing No. 15 in April 18, 2022. The DA's included obligations for completion the Community Center on the east side of the subdivision and various road construction projects as detailed below.

Community Center Construction

The Community Center construction is to be completed not later than the issuance of 500 certificates of occupancy by the Town beyond those certificates of occupancy issued for Thompson River Ranch Filing Nos. 1, 3 and 4, or by June 30, 2023, whichever is earlier. Extensions related to this facility have been provided by the Town Council up to September 30, 2023. Currently the facility is near completion. In order to complete the construction of the pool and clubhouse, they are awaiting reinforcement of the gas line to the facility by Xcel Energy. The agreement does not stipulate any consequences for not completing the project by the aforementioned deadline. The applicant has requested approval of an extension to December 31, 2023 to complete the construction project in total. Staff is supportive of this request since the elements preventing completion are outside of the control of the applicant and are related to the efforts of a utility provider.

Paving of High Plains Boulevard (HPB)

Oakwood is also requesting an extension associated with the paving of High Plains Boulevard from the Big Thompson River to 20C as per the Development Agreement for Filing 15. The current expectation for completion was July 31, 2023. The extension request is due to other

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construction work underway on LCR 18 and where the Frontage Road and Ronald Reagan Boulevard intersect. These two construction projects make it difficult already to navigate the general area and the Town has prohibited the construction of the Oakwood project to proceed based on the compounding issue this will have on residents and visitors. Oakwood is requesting an extension to pave this road section until August 31, 2024. Staff is supportive of this extension. I have additionally communicated to Staff that no other construction projects are to be authorized that will prevent this project from being the singular priority in the area and no other roadwork or utility work that would prevent this project from being completed is permitted without my authorization.

Freedom Parkway & High Plains Blvd. Intersection Interim Improvements

Oakwood is also requesting an extension to the intersection improvements at Freedom Parkway (LCR 18) and High Plains Blvd. included in the B-3 of Filing 15 and due for completion by December 31, 2023. These improvements are tied to the development of Filing 15 which the site of this property has not started construction. The request is to provide an extension until September 30, 2024. Given that these improvements are tied to Filing 15 and no certificates of occupancy are expected until 2025, Staff recommends extending the deadline to December 31, 2024.

LEGAL ADVICE:

Not Applicable

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Authorize the extension of time as described below:

- *Community Center Construction* – December 31, 2023
- *Paving of High Plains Boulevard (HPB)* – August 31, 2024
- *Freedom Parkway & High Plains Blvd. Intersection Interim Improvements* – December 31, 2024

Reviewed and Approved for Presentation,



Town Manager

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OAKWOOD
HOMES

A Berkshire Hathaway Company

Chris Carlton
Clayton Properties Group II, Inc.
4908 Tower Road
Denver, CO 80249

Matt LeCerf
Town of Johnstown
450 S Parish Ave
Johnstown, CO 80534

October 4, 2023

Dear Mr. LeCerf,

I am reaching out to formally notify the Town of Johnstown that Oakwood Homes will not be completing **High Plains Boulevard - Paving Completion, per Exhibit B-3 Item 3 of the Thompson River Ranch Filing No. 12 Subdivision Development and Improvement Agreement** by July 31, 2023 as granted by the previous extension request on October 17, 2022.

Oakwood was denied the ability to proceed with improvements by the Town of Johnstown, due to the work on the 1-25 Frontage Rd and the road closure of CR 18. The closure of CR 18 is ongoing and with winter approaching we do not want to risk starting the pavement improvements and not being able to finish due to winter temperatures. Since work is currently not allowed on CR3 we are requesting that the paving improvements be extended to August 31, 2024.

In addition to not being able to complete High Plains Boulevard Paving, the **High Plains Boulevard – Freedom Parkway (Larimer County Road 18) Interim Intersection Improvements per Exhibit B-3 Item 5 of the Thompson River Ranch Filing No. 15 Subdivision Development and Improvement Agreement** will not be completed by December 31, 2023. Development of Filing 15 has been delayed until the summer of 2024 with no home closings until 2025. With the delay in development and home closings we have additional time to work with the Town to determine the final improvements to CR 18. Therefore, we request the intersection improvements be extended to a September 30, 2024 deadline.

Regards,

Chris Carlton



OAKWOOD
HOMES

A Berkshire Hathaway Company

Matt LeCerf
Town of Johnstown
450 S Parish Ave. PO Box 609
Johnstown, CO 80534

September 21, 2023

Dear Mr. LeCerf,

Pursuant to the Subdivision Development and Improvement Agreement for The Town of Johnstown Thompson River Ranch Filing No. 15, Exhibit B-3 – Additional Terms, Conditions or Provisions, we are requesting a time extension to complete the community building and swimming pool.

The community building and swimming pool were to be completed by June 30, 2023, or by the issuance of the 500th certificate of occupancy issued by the Town excluding Filings 1, 3 and 4. An extension was granted in May 2023 that required the facility to be completed by September 30, 2023. We are diligently working to complete the community building and swimming pool, but there are elements of the facility that will not be completed by the end of September. This delay has been caused by the required reinforcement of the natural gas service currently under construction by Xcel Energy. The natural gas service is needed to allow critical systems in the community building and pool to function. Therefore, we would like to ask for an extension to December 31, 2023.

Thank you for your consideration to this request.

Sincerely,

Greg Saia
Director of Entitlements and Acquisitions



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: Compensation Study Final Adoption

ATTACHMENTS: 1. Johnstown Compensation Study Final Report 9.25.23

PRESENTED BY: Laura Stephens, HR Director

AGENDA ITEM DESCRIPTION:

Staff is requesting final approval of the 2024 General Government Pay Structure and 2024 Police Step Plan as proposed in the attached Johnstown Compensation Study Final Report.

The purpose of conducting a compensation study is to gather statistically valid data from a defined market to provide a framework for setting internal rates that are sufficient to attract and retain employees.

The Town worked with an external consultant on this study for the purpose of obtaining an independent review and additional market insight. Several vendors were evaluated, and Laurie Graves of Graves Consulting was selected for her extensive knowledge of the Northern Colorado area. She came recommended from a significant number of Northern Colorado municipalities that use her services on a regular basis to research market data and recommend compensation guidelines for their organizations.

Based on feedback provided by Council, the compensation study examined data from twenty-seven public entities in the Northern Colorado area. Positions were then placed in grades based on the guidance from Council to target market rates. This means that positions were placed in a grade where the midpoint was at or near the market average for that position.

The attached final report shows all grades in the new 2024 General Government Pay Structure and 2024 Police Step Plan. This grade structure was created to provide a consistent and structured framework for compensation. Not all grades contain positions in 2024.

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Approving the 2024 General Government Pay Structure and 2024 Police Step Plan would authorize Staff to move all positions to at least the new minimum pay of their respective pay grade in 2024. Additional movement may be made within the grade based on experience and performance. All pay increases are included in the 2024 budget recommendations and are contingent upon fund allocation by Council.

The Town Council publically reviewed the compensation study at a work session on July 31, 2023; no public comments or concerns were forthcoming.

LEGAL ADVICE:

NA

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve the 2024 General Government Pay Structure and 2024 Police Step Plan as proposed in the attached Johnstown Compensation Study Final Report.

Reviewed and Approved for Presentation,



Town Manager

September 25, 2023

Laura Stephens
HR Director
Town of Johnstown, CO
450 S Parrish Ave
Johnstown, CO 80534

Dear Laura,

Thank you for the opportunity to work with the Town on a Compensation Study. The Study included a thorough review of the current pay structure and all positions within the Town, defining the market, and benchmarking all full and part-time positions using current market data.

The result is a comprehensive redesign of the pay structure and classification listing as well as recommendations for implementation and ongoing maintenance that we believe will serve the Town well for years to come.

In summary, the Town's pay structure needed a structural redesign and to be re-aligned to market rates, however, we believe good internal processes for pay administration and maintenance exist. We were easily provided with all requested information in an organized fashion, provided all analysis that we needed and provided help in facilitating discussions as necessary to complete this Study. We believe the Town has the infrastructure and systems that will allow for a smooth implementation of our recommendations and ongoing maintenance of the pay structure and systems.

This report covers our full scope of work and includes an overview of our process and methodology, as well as our findings and recommendations.

Sincerely,

Laurie Graves

Laurie Graves
President and Principal Consultant
Graves Consulting, LLC

Background

The Town contacted Graves Consulting earlier this year to request a proposal for a Compensation study. We responded and were ultimately awarded the project. Work began in April of this year.

Scope of Work

The Compensation Study included a comprehensive review of the Town’s current pay structure, a review of all job descriptions for current full time and part time positions (including some newly created positions), creation of a market definition for the Town and data analyzing from multiple sources. After months of collaborative effort between Graves Consulting staff and members of the Town’s leadership team, we have created the findings and recommendations outlined below.

Market

A foundational element for this project was the definition of an appropriate external market with which the Town would compare itself. The intent was to create a market broad enough to provide statistically valid data and matches for the Town’s positions. The Town had previously been using the Denver/Boulder and Northern Colorado communities, as outlined in the Employers Council survey data. We agree that this is an appropriate market definition, however, Council chose to narrow the comparators to the following subset of that group:

Johnstown Defined Market for 2024		
Adams County	Foothills P&R	Loveland
Boulder	Fort Collins	Milliken
Brighton	Frederick	South Suburban P&R
Broomfield	Greeley	Superior
Commerce City	Hyland Hills P&R	Thornton
Erie	Jefferson County	Weld County
Evans	Lafayette	Wellington
Firestone	Lakewood	Westminster
	Larimer County	Windsor
	Longmont	

**Private sector data for the same regions was also included for applicable positions*

Data Sources

Our primary data sources for this project were the Employers Council and Colorado Municipal League compensation surveys, as the Town has access through their memberships. The information was aged forward to account for market movement from the time the data was collected until the beginning of 2024 when these recommendations are set to be implemented.

Job Matching

Job matching is the other foundational element of a comprehensive Compensation study, in addition to Market Definition. Ensuring that we understand the Town’s positions well enough to choose accurate benchmarks is critical. Graves Consulting collected information on the Town’s positions through Job Description review and meetings with HR.

In comparing jobs, we match as many Town positions to the data sources listed above as possible. Between all the survey sources, we were able to match 78 of the Town’s 81 current and proposed positions. The remaining positions were “slotted” based on internal equity. We believe this provides a very solid foundation for this Compensation study.

For available matches, we extract actual wages being paid for that job in the Town’s defined market. For some positions, the survey pay ranges are reviewed as well.

We use standard “best practices” when matching jobs and extracting data from pay surveys. For example:

- It is common to blend job matches when a Town position matches with more than one survey job. We may combine survey positions to reflect the most accurate job match(es) available.
- We review the survey data sample size and do not include some matches with a limited sample size of data or where we believe an anomaly exists.
- We adjust some job matches as appropriate. For example, we may believe that a Town position is a good match with a job, but we know that the Town’s position has higher requirements or licensures than the survey job. We may add a percentage to the survey result to reflect the complexity of the Town’s position. We also trend a result downward if we feel the Town’s position is at a slightly lower level than the survey position.

Pay Structures and Classification – Current State and Recommended

General Government Pay Structure

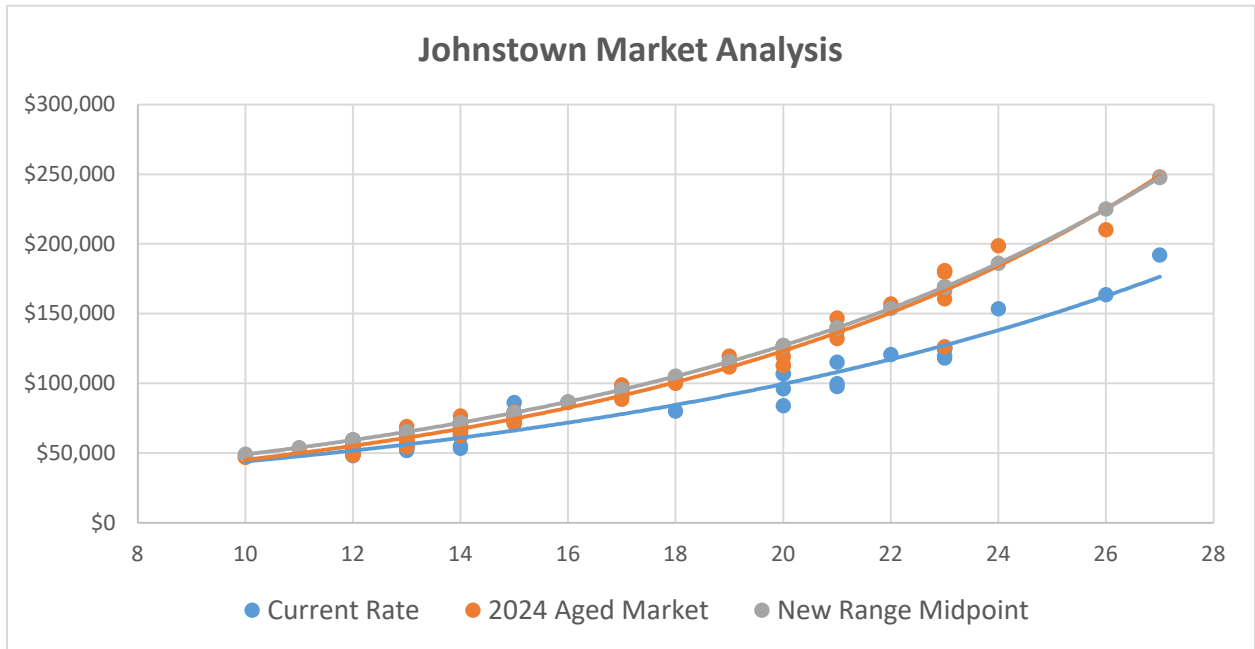
Currently, the Town has one open range pay structure for all general government positions. The current structure has 13 pay grades and ranges that vary from 35% to 50% wide. The grades are not uniformly distanced from each other with midpoint distances ranging from 4% to 23% apart.

Graves Consulting is proposing a revised pay structure for all General Government positions that is still open range. The proposed structure has 18 pay grades and ranges that are all 10% apart at the midpoint. Those ranges have similar widths to the current structure, varying from 35% wide at the bottom of the scale to 45% wide at the top. We believe this structure will allow the Town the flexibility to adjust maintain alignment to market for all positions over time.

Below is our proposed pay structure:

Johnstown - Proposed 2024 Gen Gov't Pay Structure								
Grade	Annualized			Hourly			Design	
	Min	Mid	Max	Min	Mid	Max	Width	Distance
10	\$41,702	\$49,000	\$56,298	\$20.05	\$23.56	\$27.07	35%	
11	\$45,872	\$53,900	\$61,928	\$22.05	\$25.91	\$29.77	35%	10%
12	\$49,408	\$59,290	\$69,172	\$23.75	\$28.50	\$33.26	40%	10%
13	\$54,349	\$65,219	\$76,089	\$26.13	\$31.36	\$36.58	40%	10%
14	\$59,784	\$71,741	\$83,698	\$28.74	\$34.49	\$40.24	40%	10%
15	\$65,762	\$78,915	\$92,067	\$31.62	\$37.94	\$44.26	40%	10%
16	\$72,339	\$86,806	\$101,274	\$34.78	\$41.73	\$48.69	40%	10%
17	\$79,573	\$95,487	\$111,402	\$38.26	\$45.91	\$53.56	40%	10%
18	\$87,530	\$105,036	\$122,542	\$42.08	\$50.50	\$58.91	40%	10%
19	\$96,283	\$115,539	\$134,796	\$46.29	\$55.55	\$64.81	40%	10%
20	\$103,750	\$127,093	\$150,437	\$49.88	\$61.10	\$72.33	45%	10%
21	\$114,125	\$139,803	\$165,481	\$54.87	\$67.21	\$79.56	45%	10%
22	\$125,537	\$153,783	\$182,029	\$60.35	\$73.93	\$87.51	45%	10%
23	\$138,091	\$169,161	\$200,232	\$66.39	\$81.33	\$96.27	45%	10%
24	\$151,900	\$186,077	\$220,255	\$73.03	\$89.46	\$105.89	45%	10%
25	\$167,090	\$204,685	\$242,280	\$80.33	\$98.41	\$116.48	45%	10%
26	\$183,799	\$225,154	\$266,508	\$88.36	\$108.25	\$128.13	45%	10%
27	\$202,179	\$247,669	\$293,159	\$97.20	\$119.07	\$140.94	45%	10%

The following chart shows that with the proposed pay ranges, the Town’s Range Midpoints are well aligned to the 2024 Aged Market data. This was our goal. This chart further shows that the current Employee pay rates are almost all below market averages which may be appropriate for newer employees but indicates that many are below where their experience and tenure would suggest they should be.



Sworn Non-Exempt Police Step Plan

Currently, the Town has a separate pay structure for Sworn Non-Exempt Police positions, as is customary. The structure includes Officer, Detective and Sergeant.

Graves Consulting is recommending that these positions stay on a separate step plan pay structure, however we are recommending fewer steps for Officer and Detective. The current step plan has 7 steps, and we are recommending 6 as this is the average number of Officer steps in the Denver/Boulder area. The Sergeant step range would remain at 5.

This has been a rapidly moving labor market, so the rates needed a considerable increase to be aligned to market. The Town chose to be relatively aggressive with the starting rate for Officers, to ensure the ability to compete with larger surrounding communities. Top end Officer rates are well aligned to market. The following shows our proposed structure for these positions:

Town of Johnstown Proposed Step Plan for Sworn, Non-Exempt Police -						
Position						
Police Cadet Rate (Non-Sworn)	\$63,232 30.40					
Police Officer	<u>Entry</u> \$79,040 38.00	<u>Step 1</u> \$82,992 39.90	<u>Step 2</u> \$87,142 41.90	<u>Step 3</u> \$91,499 43.99	<u>Step 4</u> \$96,074 46.19	<u>Step 5</u> \$100,877 48.50
Police Sergeant	<u>Entry</u> \$105,921 50.92	<u>Step 1</u> \$111,217 53.47	<u>Step 2</u> \$116,778 56.14	<u>Step 3</u> \$122,617 58.95	<u>Step 4</u> \$128,748 61.90	
Detective	<u>Entry</u> \$80,038 38.48	<u>Step 1</u> \$83,990 40.38	<u>Step 2</u> \$88,140 42.38	<u>Step 3</u> \$92,497 44.47	<u>Step 4</u> \$97,072 46.67	<u>Step 5</u> \$101,876 48.98
Detective Sergeant	<u>Entry</u> \$106,920 51.40	<u>Step 1</u> \$112,216 53.95	<u>Step 2</u> \$117,776 56.62	<u>Step 3</u> \$123,615 59.43	<u>Step 4</u> \$129,746 62.38	

Implementation and Financial Impact for Base Pay Adjustments

Graves Consulting recommends implementing the proposed pay structures and ensuring that not only are rates at or above the range maximums, but that employees with more experience are placed appropriately in their pay ranges. This is an important part of implementation to both relieve and prevent pay compression.

Twenty-Two of the Town’s positions have incumbents below the minimum of their new pay range. Further, the majority of the Town’s positions have incumbents below where they should be in their range, based on experience and tenure. Those adjustments are driving the majority of the financial impact.

Ongoing Maintenance and Movement Through Pay Ranges

We recommend the Town have a set process for the ongoing maintenance of these pay structures and for determining pay increases for employees.

There are normally two ways an employee can receive an increase. First, is when an employee receives a pay increase that moves them further up in their pay range. These increases are normally based on either annual across the board increase percentages or vary based on performance. Second, is when the pay structure is increased to keep pace with market. If the ranges increase, many organizations keep employees in the same relative position in the pay grade which results in a pay increase. We recommend that both range adjustments and pay increases occur annually.

Timing for each type of increase is also something to consider. Would the Town prefer to make both increases at once, on a common date, separate the timing but do each on a set date, or make market adjustments on a common date and movement through range increases on anniversary dates? There is not a right or wrong way, just budgeting and administrative issues to consider.

Graves Consulting does not have an opinion or recommendation on timing of the increases. We see this as entirely a matter of preference for the Town. However, we do recommend that a process be developed regarding timing and expectation of annual increases that can be shared with all employees.

We would recommend adjusting the overall pay structure by a set percentage annually to stay current to market. Additionally, we would recommend that this percentage be based on a combination of what others in the Town's defined market are doing and what the Town can afford. We believe this information could be easily obtained through the projections that Employers Council provides each year.

As an example, if others on average say their pay structures are increasing by 2% and pay is increasing by 4%. Assuming this is within budget, the Town would increase all pay structures by 2% and keep employees in the same relative position in their pay grade. Then the Town would increase all employees who are not at range max by an additional 2%. This would keep the Town's pay structure current and keep employees moving up in their pay ranges, albeit rather slowly. We believe it's administratively easier to do this at the same time so that the Town only has to administer pay increases once per year, but that's an internal decision.

Graves Consulting believes that the Town can internally manage the ongoing maintenance of the pay structures based on our guidance above. We would recommend an external assessment every two to three years to ensure alignment to market for all positions. This will ensure that the pay structure increases that have been made are keeping the Town tied to its defined market and would also assist in identifying positions that have moved more than others and may need to be upgraded.

Summary

We believe the Town's pay structure has been appropriate in the past but some structural changes as well as more alignment to market will allow the Town to be both more flexible and competitive now and in the future.

The changes to the structure that we are recommending are primarily for the purpose of addressing the concerns that were mentioned at the start of this project. Specifically, ensuring competitiveness to market, addressing internal equity, and providing flexibility and a method for ongoing maintenance of the structures for the Town. Additionally, we believe our recommendations will allow the Town to have an objective and transparent structure and process for pay that is more easily communicated to employees.

All results and recommendations are based on compiled market data; however, Town leadership should review and adjust for specific circumstances that we may not be aware of.

We are available to discuss this report in further detail with you or any other members of the leadership team or Town Council, as is appropriate.

Town of Johnstown
List of Bills - August 24, 2023 - September 20, 2023

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
21st Century Equipment	Tractors	PW	30,483.57
2534 Retail Phase 1, LLC	Reimbursement of sales tax	ADM	87,606.65
4990 Ronald Reagan LLC	Police substation lease	PD	1,519.75
Ace Hardware	Supplies	PW	1,406.54
Adamson Police Products	Uniforms	PD	201.34
Advanced Engineering LLC	Engineering services	PW	440.00
Advanced Mechanical Services, Inc	Equipment maintenance	PW	19,364.00
AED Everywhere, Inc.	Supplies	PD	469.95
Aguilars Corp	Charlotte Street project	PW	2,864.00
All Copy Products, Inc	Copier supplies	ADM/PD	338.38
Aqua Engineering	Central/Low Point projects	PW	327,103.72
Arapahoe Rental	Equipment rental	PW	261.95
Arrowhead Scientific Inc.	Lab supplies	PD	295.99
Artemis Development	Hydrant meter deposit refund	ADM	1,500.00
Blackburn MFG	Supplies	PW	528.84
BlueWater Engineering Ltd	Water treatment plant project	PW	8,358.38
Bobcat of the Rockies	Equipment maintenance	PW	136.39
Breaching Technologies Inc	Safety equipment	PD	968.30
Brenner Builders LLC	Sidewalk maintenance	PW	16,200.00
Browns Hill Engineering & Controls	SCADA	PW	810.00
Business Equipment Service	Equipment maintenance	ADM	140.00
Card Services	Training/travel/supplies	ALL	18,870.88
Cate Brothers Inc.	Hydrant meter deposit refund	ADM	1,750.00
Central Square Technologies, LLC	Software	ADM	4,345.12
Central Weld County Water District	Interconnects	PW	1,032.34
Century Communities	Hydrant meter deposit refund	ADM	1,750.00
CenturyLink	Phone/internet	PW	805.44
Cintas	Mat supplies/service	ALL	820.50
Cirsa	Insurance	PW	1,000.00
City of Loveland	Training	PD	800.00
CivicPlus	Software	ADM	6,051.10
CMC Tire	Supplies	PW	1,080.54
Colorado Analytical Labs	Lab testing	PW	1,804.00
Colorado Department of Public Health	Annual testing	PW	1.30
Colorado Department of Transportation	I-25 project	PW	523,507.27
Colorado Greenbelt Management	Landscaping services	PW	1,375.00
Connell Resources, Inc.	North Interceptor/maintenance	PW	308,087.24
Consolidated Hillsborough Ditch Co	Water legal	PW	187.50
Consolidated Home Supply Ditch &	Water legal	PW	2,986.40
Core & Main	Hydrant meters	PW	10,079.87
Crow Creek Construction	Hydrant meter deposit refund	ADM	1,750.00
D2C Architects	PD design	PD	13,166.92
Dana Kepner Co.	Supplies	PW	2,108.00
DBC Irrigation Supply	Supplies	PW	449.23

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Defense Technology	Equipment	PD	325.00
Denali Water Solutions LLC	Sludge removal	PW	3,236.60
Denver Industrial Sales & Services Co	Supplies	PW	3,729.38
DES Pipeline Maintenance, LLC	Maintenance	PW	1,575.00
Desotec US LLC	Chemicals	PW	122,556.45
Dietze and Davis P.C.	Billback - Legal services	ADM	4,104.98
Ditesco LLC	Little Thompson Trail project	PW	18,537.24
Downtown Colorado Inc	Dues	ADM	1,000.00
DPC Industries Inc	Chemicals	PW	80,313.51
Employee Reimbursement	Travel and supplies	ALL	282.59
Envirotech Services, Inc	Chemicals	PW	14,839.50
Ferguson Waterworks	Water meters	PW	38,105.00
Firestone Complete Auto Care	Vehicle repairs	PD	1,251.85
First Class Security Systems	Fire system monitoring	PW	238.80
Front Range Roofing Systems LLC	Building maintenance	PW	1,943.28
Frontier Precision	Software	PW	10,283.95
Frontier Self Storage	Storage	PW	280.00
Garrison Minerals	Chemicals	PW	5,448.18
Gerrard Family Limited Partnership	Reimbursement of sales tax	ADM	101.92
Glenn A. Jones Library	Library support	ADM	103,786.43
Golden Goodness Food Truck	Employee event	ALL	1,239.65
Grainger, Inc.	Supplies	PW	1,631.91
Greeley Lock and Key	Equipment maintenance	PW	230.00
Ground Engineering Consultants, Inc.	Low Point expansion project	PW	393.00
Hays Market Inc	Supplies	PW	17.95
Helton & Williamsen, P.C.	Water Legal	ADM	10,328.80
Herc Rentals	Equipment rental	PW	940.14
IMEG Corp	Billback - Engineering services	ADM	44,595.00
IMEG Corp	Engineering services	ADM	7,513.00
Infosend, Inc.	Utility bill printing/newsletter	ADM	7,062.09
Insight North America LLC	Investment services	ADM	2,822.86
J&D Creations	Uniforms	ALL	214.26
J&S Contractors Supply Co.	Supplies	PW	7,409.32
John Deere Financial	Supplies	PW	1,433.59
Johnstown Breeze	Publications	PD	389.22
J-U-B Engineers, Inc.	Billback - Engineering	ADM	20,616.30
J-U-B Engineers, Inc.	Engineering services	PW	3,580.40
Kangaroo Express of Longmont, Inc	Lab testing	PW	330.00
Ken Garff Ford Fort Collins	Vehicle repair	PD	664.01
Keystone Ridge Designs Inc	Safety equipment	PW	17,385.00
King Surveyors	Easement	PW	750.00
Kinsco, LLC	Uniforms	PD	227.98
Kosty LLC	Hydrant meter deposit refund	ADM	1,500.00
L.E.C Construction	Building maintenance	PW	4,180.00
Larimer County Sales Tax Administrator	Use Tax - Reimbursement	ADM	4,577.26
Law Office of Avi Rocklin LLC	Billback - Legal services	ADM	11,332.75

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Law Office of Avi Rocklin LLC	Legal services	ADM	20,054.00
Lazar, Michael	Municipal Court Judge	ADM	2,250.00
Little Thompson Water District	Interconnects	PW	347.62
Community Center Refund	Community Center refund	ADM	30.00
Marmac Water	Lab testing	PW	3,000.00
Mary's Mountain Cookies	Reimbursement of sales tax	ADM	554.88
McGeady Becher P.C.	Billback - Legal services	ADM	749.92
Microbac Laboratories Inc	Chemicals	PW	944.00
Mike Maroone Ford Longmont	Vehicle repair	PW	13,340.47
Mile High Elevator LLC	Elevator maintenance	PW	210.00
Milliken Johnstown Electric	Equipment maintenance	PW	2,275.00
Miracle Recreation Equipment	Equipment maintenance	PW	2,500.18
Modstreet	Supplies	PW	531.00
Moltz Construction Inc.	Central/Low Point projects	PW	1,986,951.32
Morton Electric	SH60 & Carlson signal	PW	316,242.74
Motor Diagnostic Systems	Equipment maintenance	PW	4,600.00
Motorola Solutions, Inc.	Vehicle Upfit	PD	25,004.55
Mountain West Vegetation Management Inc	Building maintenance	PW	1,630.00
Mr. Lauren & Mrs. Kay Sandburg	Easement	PW	22,167.00
MWH Constructors	Water treatment plant project	PW	52,608.00
Nalco Company LLC	Chemicals	PW	13,312.26
Napa Auto Parts, Inc	Supplies	PW/PD	936.82
National Trench Safety	Training	PW	2,590.00
Northern Water	Water assessment	PW	27,201.55
Oakwood Homes	Surety deposit refund	ADM	127,325.00
Office Depot Business Credit	Supplies	ALL	720.33
Otak	Little Thompson Trail project	PW	7,022.75
Paul's Plumbing & Heating	Equipment maintenance	PW	13,437.00
Photon Brothers, Inc.	YMCA solar project	ADM	100,000.00
Pitney Bowes Bank Inc Purchase Power	Supplies	ADM	150.00
Pitney Bowes Inc	Supplies	ADM	286.74
Poudre Valley REA	North Interceptor project	PW	17,519.75
Quality of Life & Safety Designs LLC	Fire safety	ADM	25.00
Quality Traffic Control	Traffic control services	PW	15,552.00
RD3	YMCA repairs	PW	17,529.05
Recreational Electrical	Vehicle Upfit	PD	1,819.00
Redi Services, LLC	Port o lets	PW	2,000.00
Rhinehart Oil Co., Inc.	Fuel	PW	13,105.39
Rise & Shine Window Cleaning	Window cleaning	ADM	1,350.00
RoadSafe Traffic Systems	Supplies	PW	3,016.45
Rocky Mountain Bronze Shop	Sculpture repair	PW	1,400.00
Rocky Mountain Water Environment Assoc.	Training	PW	1,300.00
SAFEBuilt LLC	Inspection services	PW	25,000.00
Sam's Club MC/SYNCB	Supplies	ALL	861.43
Sanderson Stewart	Colorado Boulevard project	PW	2,434.50
SavATree	Tree services	PW	937.50

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Shred Vault Colorado	Shredding	ADM	2,095.00
SMH West, LLC	South Tank project	PW	38,636.96
Striglos	Software	ADM	1,770.00
TDS	Phone/internet	ALL	2,610.45
TechMedia, LLC	Supplies	ADM	2,400.00
Terminix	Insect mitigation	PW	122.00
Terracon Consultants, Inc.	Charlotte Street project	PW	1,750.00
The Home Depot/GECF	Supplies	PW	959.56
Thompson Ranch Development	Reimbursement of sales tax	ADM	47,576.79
Tier One Networking, LLC	Computer equipment	ADM	7,966.98
TimberLAN	IT services	ALL	4,350.00
T-Mobile	Cell phones	PD	33.15
TruGreen Chemlawn	Chemicals	PW	7,075.29
U.S. Postal Service	Annual fees	PD	118.00
UC Health Medical Group	Lab testing	PD	381.46
United Power, Inc	Utilities	ALL	28.76
United States Plastic Corp	Supplies	PW	48.10
USA Bluebook	Supplies	PW	5,912.43
Utility Notification Center of Colorado	Locates	PW	3,703.59
Utility Refund	Utility refunds	ADM	3,826.75
Vector Disease Control	Mosquito spraying	PW	4,499.00
Verizon Connect	Phone/internet	ALL	239.25
Verizon Wireless	Phone/internet	ALL	4,316.59
Wagner Equipment Co.	Equipment maintenance	PW	1,262.70
Waste Connections of Colorado Inc.	Waste removal	PW	84,086.56
Weld County Dept of Public	Lab services	PW	596.50
Weld County Sheriff	Jail fees	PD	15.04
Wesco	Equipment maintenance	PW	4,235.00
Western Fire Extinguisher	Supplies	PW	228.00
Xcel Energy	Utilities	ALL	78,259.09
Yost Cleaning	Monthly cleaning service	PW	3,362.66
			<u>5,133,399.41</u>

Town of Johnstown
List of Bills -September 21, 2023 - October 4, 2023

Vendor	Description	Dept	Amount
AC/DC Electric	Building maintenance	ALL	14,770.70
Ace Hardware	Supplies	PW	1,507.99
Arapahoe Rental	Equipment rental	PW	310.64
Benesch	Colorado Blvd/Hillsboro projects	PW	17,486.16
BlueWater Engineering Ltd	Water treatment plant project	PW	56,367.38
Browns Hill Engineering & Controls	SCADA	PW	3,743.28
CDPHE, Water Quality Control Division	Permits	PW	369.89
Churchich Recreation LLC	Equipment maintenance	PW	17,366.00
Cintas	Mat supplies/service	ALL	241.99
Cirsa	Insurance	PW	4,000.00
City of Louisville	Training	PW	355.83
Colorado Analytical Labs	Lab testing	PW	703.00
Colorado Greenbelt Management	Landscaping services	PW	1,375.00
Colorado Paving Inc	Charlotte Steet project	PW	477,748.81
Community Center Refund	Community center refunds	ADM	410.00
Connell Resources, Inc.	SH 60 repairs	PW	87,166.50
Consolidated Hillsborough Ditch Co	Water legal	PW	357.00
Consolidated Home Supply Ditch & Core & Main	Water legal	PW	1,642.20
D2C Architects	Hydrant meters	PW	26,966.40
Denali Water Solutions LLC	PD design	PD	25,312.88
Dennis R. Messner, P. E.	Sludge removal	PW	2,486.53
DES Pipeline Maintenance, LLC	Engineering services	PW	3,957.50
Dietze and Davis P.C.	Equipment maintenance	PW	731.25
Dietze and Davis P.C.	Billback - Legal services	ADM	7,438.97
Dietze and Davis P.C.	Legal services	ADM	558.00
Ditesco LLC	Little Thompson Trail project	PW	376.38
Dodge Media Group	Supplies	ADM	1,100.00
DPC Industries Inc	Chemicals	PW	13,803.50
Faris Machinery Co.	Supplies	PW	2,517.57
Felsburg Holt & Ullevig Inc	Billback - Engineering services	ADm	12,682.50
First National Bank	Custodial fees	ADM	949.22
Frontier Self Storage	Storage	PW	280.00
General Rubber	Equipment maintenance	PW	949.24
Grainger, Inc.	Supplies	PW	1,830.97
Hach Company	Supplies	PW	518.90
Herc Rentals	Equipment rental	PW	4,226.21
Hill & Robbins, PC	Water legal	ADM	464.00
Employee Reimbursement	Training	PD	259.00
J-U-B Engineers, Inc.	SH60 waterline	PW	21,606.72
JWO Engineering	SH60 & CO Blvd	PW	22,050.17
Kissinger & Fellman P.C.	Legal services	ADM	762.50
Martin/Martin, Inc.	Building maintenance	PW	1,857.50
McGeady Becher P.C.	Billback - Legal services	ADM	820.62
Medicine for Business & Industry LLC	Drug screen	PW	141.78

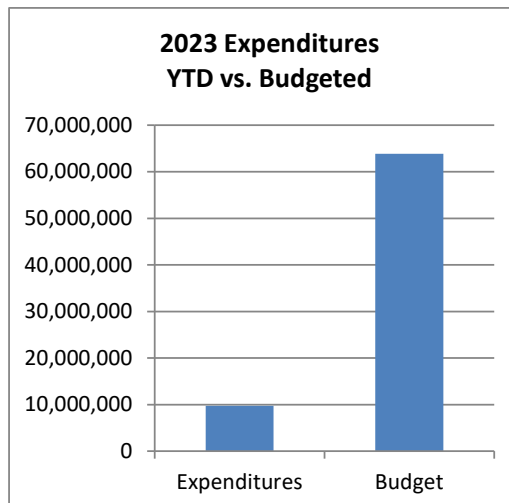
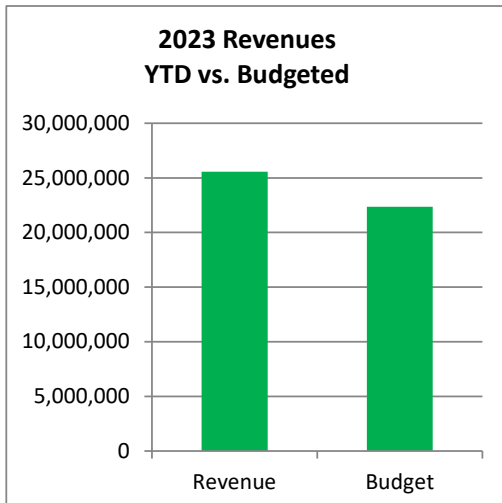
<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Mile High Elevator LLC	Elevator maintenance	PW	210.00
Milliken Johnstown Electric	Equipment maintenance	PW	1,424.00
Moltz Construction Inc.	Central expansion project	PW	778,894.42
Northern Safety Co Inc	Lab supplies	PW	213.44
Ohlson Lavoie Corporation	Pool feasibility study	PW	975.00
Paul's Plumbing & Heating	Jet services	PW	6,000.00
Pitney Bowes Inc	Supplies	ADM	115.11
PK Safety Supply	Supplies	PW	484.62
Poudre Valley REA	Utilities	ALL	20,102.84
Raftelis	Water rate study	PW	22,509.39
Rhinehart Oil Co., Inc.	Fuel	PW	5,187.34
RoadSafe Traffic Systems	Supplies	PW	290.00
Roosevelt High School	Homecoming window painting	ADM	50.00
Royal-T	Building maintenance	PW	330.00
Sanderson Stewart	Colorado Blvd & SH60	PW	5,502.50
Security Central, Inc	Fire monitoring	ADM	248.34
TDS	Phone/internet	ALL	553.35
TechMedia, LLC	Supplies	ADM	971.26
The Verdin Company	Supplies	PW	966.17
TruGreen Chemlawn	Chemicals	PW	1,761.24
UC Health Medical Group	Lab testing	PD	572.19
UMB Bank N.A.	Bond agent fees	ADM	400.00
United Power, Inc	Utilities	ALL	750.10
Utility Refund	Utility refund	ADM	46.06
Verizon Connect	Phone/internet	ALL	4,697.20
Waste Connections of Colorado Inc.	Waste removal	PW	4,242.78
Weld County	Radio maintenance	PD	260.00
Xcel Energy	Utilities	ALL	9,031.31
			<u>1,707,359.34</u>

Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - General Fund
Period Ending September 30, 2023
Unaudited

General Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	89,263,737	89,263,737	
Revenues:			
Taxes & Fees	19,418,897	19,417,534	100.0%
Licenses & Permits	3,150,107	1,963,700	160.4%
Fines & Forfeitures	204,022	175,500	116.3%
Intergovernmental	178,346	25,000	713.4%
Earnings on Investment	1,744,882	15,000	11632.5%
Miscellaneous Revenue	864,078	757,500	114.1%
<i>Transfers In</i>	-	-	
Total Operating Revenues	25,560,330	22,354,234	114.3%
Expenditures:			
Legislative	1,089,158	831,440	131.0%
Town Manager	961,880	1,442,430	66.7%
Town Clerk	294,409	441,910	66.6%
Finance	311,200	450,870	69.0%
Planning	301,764	566,310	53.3%
Reimbursements	466,923	700,000	66.7%
Building Inspections	256,086	413,820	61.9%
Police	3,965,061	6,006,610	66.0%
Public Works	568,620	761,350	74.7%
Buildings	235,727	288,100	81.8%
<i>Transfers Out</i>	1,268,927	51,945,508	2.4%
Total Expenditures	9,719,755	63,848,348	15.2%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	15,840,575	(41,494,114)	
Prior Period Adjustment			
Ending Fund Balance*	105,104,312	47,769,623	

* - Unaudited

75% of the fiscal year has elapsed

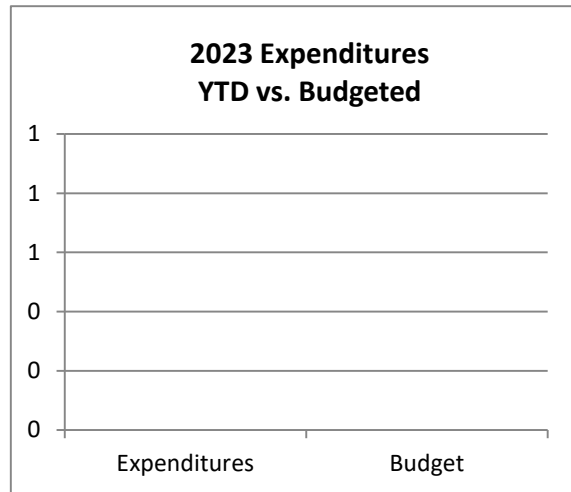
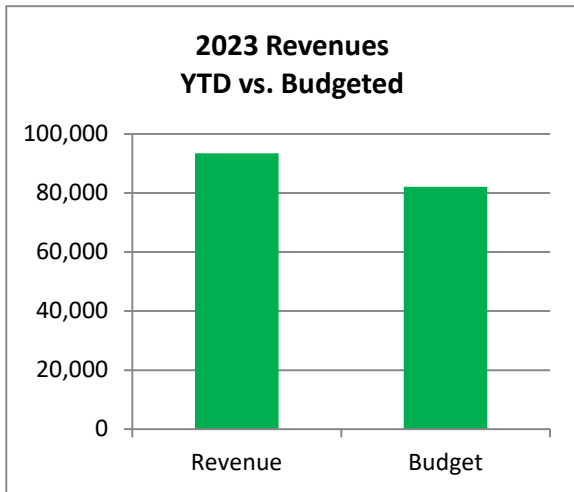


Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Conservation Trust Fund
Period Ending September 30, 2023
Unaudited

Conservation Trust Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	132,112	132,112	
Revenues:			
Intergovernmental	89,835	82,000	109.6%
Earnings on Investment	4,026	50	8052.0%
	93,861	82,050	114.4%
Total Operating Revenues	93,861	82,050	
Expenditures:			
Operations	-	-	
Capital Outlay	-	-	
	-	-	
Total Expenditures	-	-	
Excess (Deficiency) of Revenues and Other Sources over Expenditures	93,861	82,050	
Ending Fund Balance*	225,973	214,162	

* - Unaudited

75% of the fiscal year has elapsed



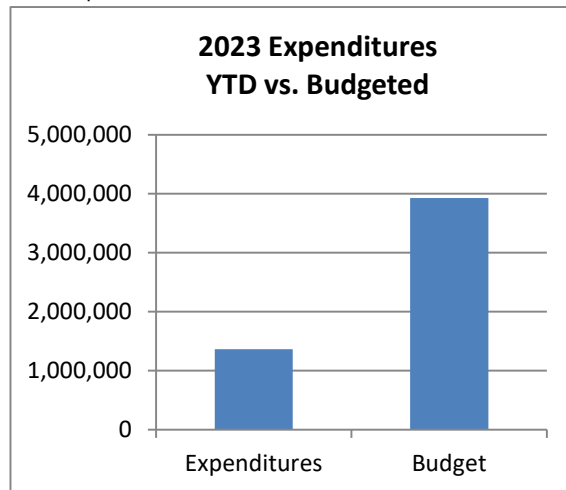
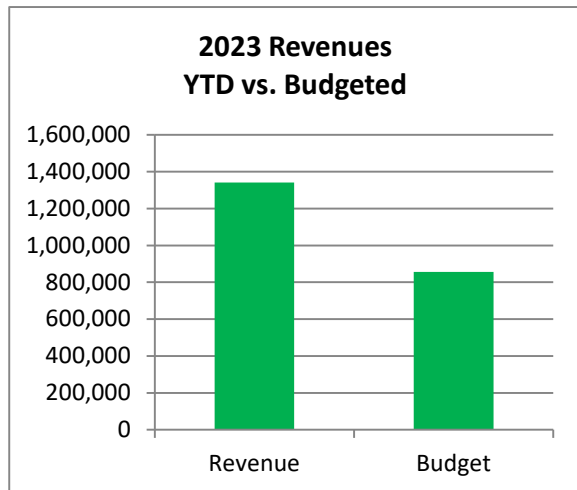
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Parks and Open Space Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Parks and Open Space Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	7,992,579	7,992,579	
Revenues:			
Taxes & Fees	1,124,106	786,030	143.0%
License & Permit	735	500	147.0%
Earnings on Investment	110,224	2,000	5511.2%
Miscellaneous Revenue	56,403	17,000	331.8%
<i>Transfers In</i>	50,000	50,000	100.0%
Total Operating Revenues	1,341,468	855,530	156.8%
Expenditures:			
Operations	572,407	2,905,000	19.7%
Capital Outlay	790,558	1,024,940	77.1%
<i>Transfers Out</i>	-	-	
Total Expenditures	1,362,965	3,929,940	34.7%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	(21,496)	(3,074,410)	
Ending Fund Balance*	7,971,082	4,918,169	

* - Unaudited

75% of the fiscal year has elapsed

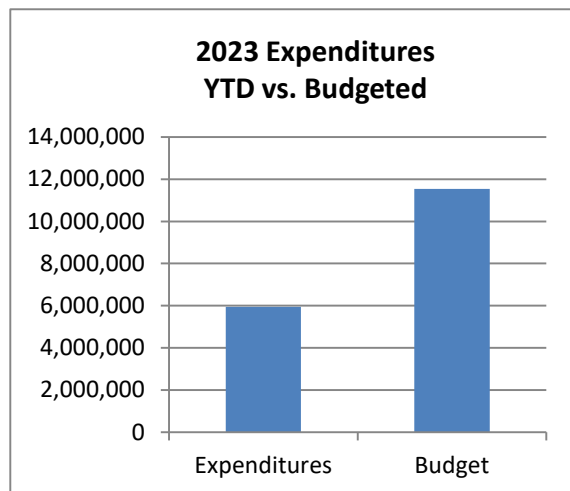
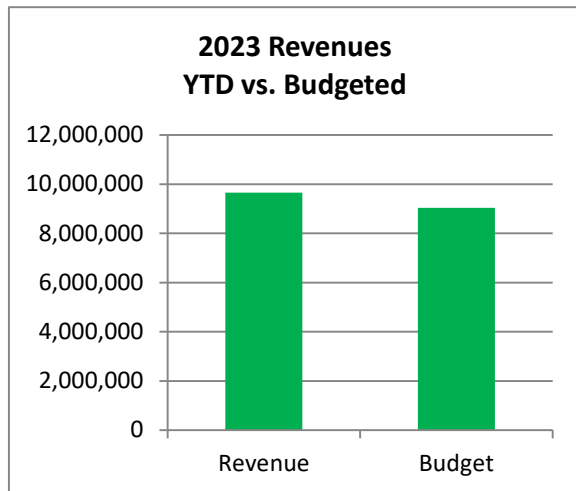


Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Street and Alley Fund
Period Ending September 30, 2023
Unaudited

Street and Alley Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	17,863,626	17,863,626	
Revenues:			
Taxes & Fees	4,154,608	4,171,405	99.6%
Intergovernmental	590,955	1,290,000	45.8%
Charges for Services	756,671	945,000	80.1%
Capital Investment Fees	2,431,248	1,174,000	207.1%
Earnings on Investment	271,270	10,200	2659.5%
Miscellaneous Revenues	5,655	-	
Tranfers In	1,450,000	1,450,000	100.0%
Total Operating Revenues	9,660,406	9,040,605	106.9%
Expenditures:			
Operations & Maintenance	1,662,245	3,698,790	44.9%
Capital	4,278,015	7,848,000	54.5%
Total Expenditures	5,940,260	11,546,790	51.4%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	3,720,147	(2,506,185)	
Ending Fund Balance*	21,583,773	15,357,441	

* - Unaudited

75% of the fiscal year has elapsed



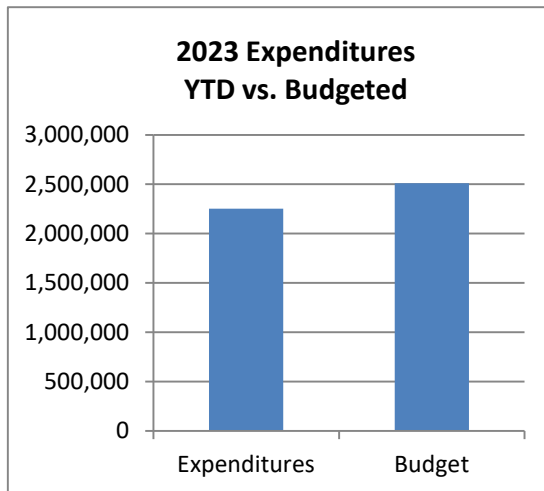
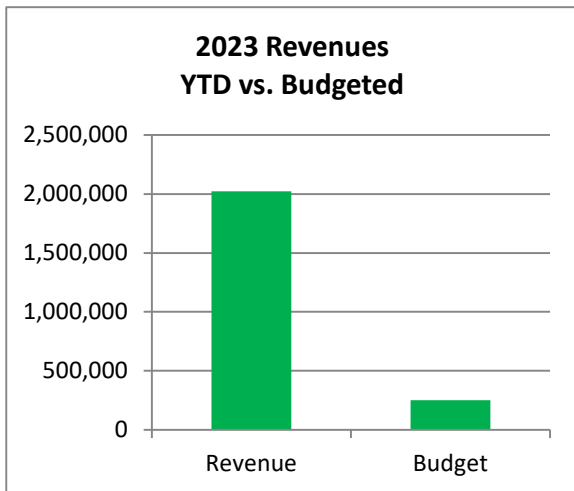
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Capital Projects Fund
Period Ending September 30, 2023
Unaudited

Item #10.

	2023 Actuals September	2023 Adopted Budget	%
Capital Projects Fund			Complete
Beginning Fund Balance	10,868,807	10,868,807	
Revenues:			
Taxes and Fees	1,615,248	300,000	538.4%
Miscellaneous Revenue	-	-	
Interest	407,583	2,200	18526.5%
<i>Transfers In</i>	-	(50,000)	0.0%
Total Operating Revenues	2,022,831	252,200	802.1%
Expenditures:			
Capital Outlay	2,254,202	2,511,500	89.8%
<i>Transfers Out</i>	-	-	0.0%
Total Expenditures	2,254,202	2,511,500	89.8%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	(231,371)	(2,259,300)	
Ending Fund Balance*	10,637,436	8,609,507	

* - Unaudited

75% of the fiscal year has elapsed



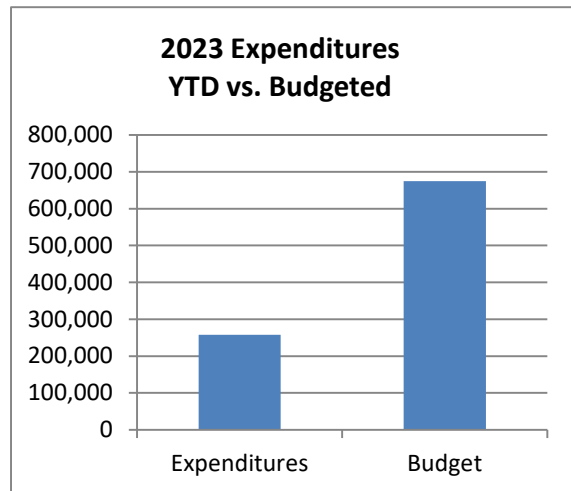
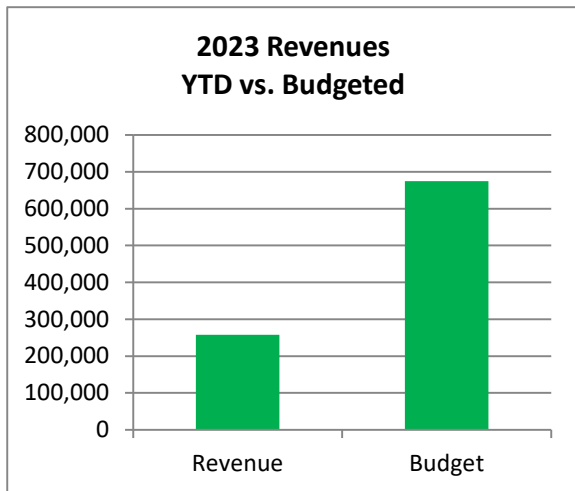
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Tax Allocation Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Tax Allocation Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	41,435	41,435	
Revenues:			
Taxes & Fees	257,587	675,000	38.2%
Earnings on Investment	-	-	
Total Operating Revenues	257,587	675,000	38.2%
Expenditures:			
Miscellaneous	257,587	675,000	38.2%
Total Expenditures	257,587	675,000	38.2%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	-	-	
Ending Fund Balance*	41,435	41,435	

* - Unaudited

75% of the fiscal year has elapsed



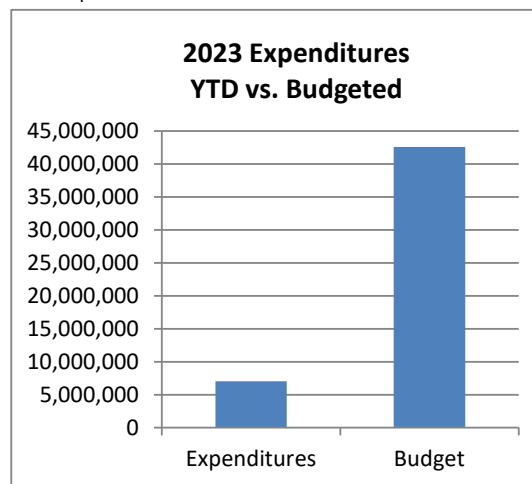
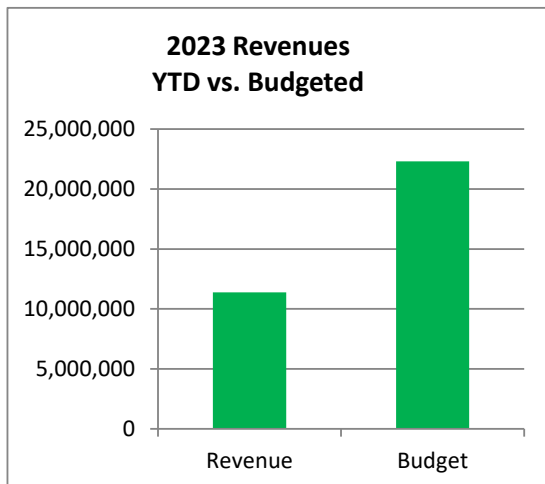
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Water Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Water Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Cash Balance	18,030,853	18,030,853	
Revenues:			
Charges for Services	<u>3,734,325</u>	<u>4,555,000</u>	82.0%
Total Operating Revenues	<u>3,734,325</u>	<u>4,555,000</u>	82.0%
Expenses:			
Administration	168,162	235,300	71.5%
Operations	2,625,701	4,365,350	60.1%
Capital Outlay	3,238,577	36,417,280	8.9%
Depreciation	408,114	970,000	42.1%
Transfers Out	<u>600,000</u>	<u>600,000</u>	100.0%
Total Operating Expenses	<u>7,040,554</u>	<u>42,587,930</u>	16.5%
Operating Income (Loss)	<u>(3,306,229)</u>	<u>(38,032,930)</u>	
Non-Operating Revenues (Expenses)			
Tap Fees	2,367,757	1,357,605	174.4%
Capital Investment Fees	2,058,490	1,147,945	179.3%
Misc. Revenues	2,636,820	15,226,500	17.3%
Interest Expense	<u>579,308</u>	<u>20,000</u>	2896.5%
Total Non-Operating Revenues (Expenses)	<u>7,642,375</u>	<u>17,752,050</u>	43.1%
Excess (Deficiency) of Revenues and Other Sources over Expenses	<u>4,336,146</u>	<u>(20,280,880)</u>	
Ending Cash Balance*	<u>22,366,999</u>	<u>\$ (2,250,027)</u>	

* - Unaudited

75% of the fiscal year has elapsed



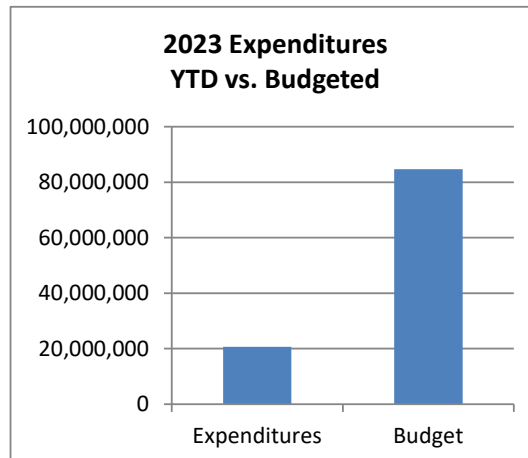
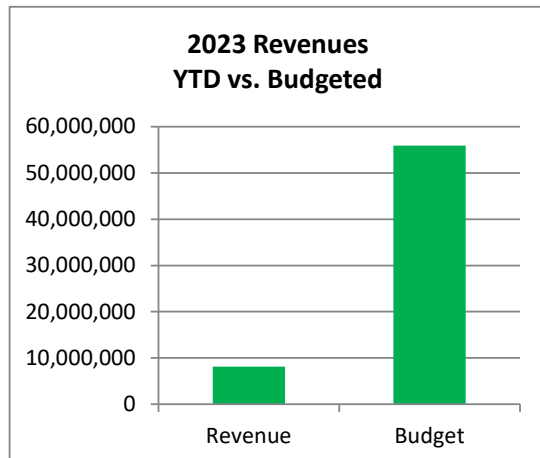
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Sewer Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Sewer Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Cash Balance	42,699,361	42,699,361	
Revenues:			
Charges for Services	<u>2,519,053</u>	<u>3,181,500</u>	79.2%
Total Operating Revenues	<u>2,519,053</u>	<u>3,181,500</u>	79.2%
Expenses:			
Administration	158,227	227,750	69.5%
Operations	1,518,665	2,087,960	72.7%
Capital Outlay	17,602,625	78,381,000	22.5%
Depreciation	393,570	1,200,000	32.8%
Debt Service	976,575	2,764,000	35.3%
	-	-	
Total Operating Expenses	<u>20,649,661</u>	<u>84,660,710</u>	24.4%
Operating Income (Loss)	<u>(18,130,609)</u>	<u>(81,479,210)</u>	
Non-Operating Revenues (Expenses)			
Capital Improvement Fees	3,844,090	3,218,560	119.4%
Misc. Revenues	46,709	18,900	247.1%
Interest Expense	2,298,425	100,000	2298.4%
Transfers In/(Out)	<u>(600,000)</u>	<u>49,400,000</u>	
Total Non-Operating Revenues (Expenses)	<u>5,589,223</u>	<u>52,737,460</u>	10.6%
Excess (Deficiency) of Revenues and Other Sources over Expenses	<u>(12,541,385)</u>	<u>(28,741,750)</u>	
Ending Cash Balance*	<u>30,157,976</u>	<u>13,957,611</u>	

* - Unaudited

75% of the fiscal year has elapsed



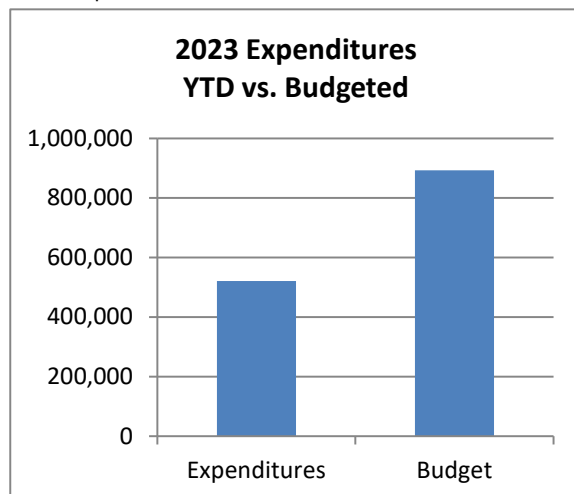
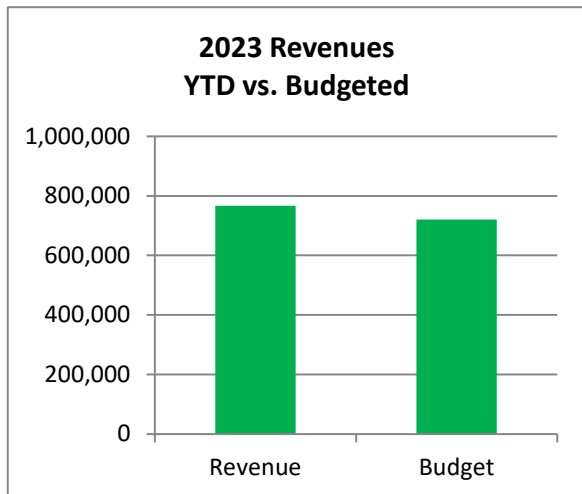
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Drainage Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Drainage Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Cash Balance	3,977,376	3,977,376	
Revenues:			
Charges for Services	395,331	500,000	79.1%
Total Operating Revenues	395,331	500,000	79.1%
Expenses:			
Administration	94,004	150,400	62.5%
Operations	176,754	493,025	35.9%
Capital Improvements	-	-	
Transfer Out	250,000	250,000	100.0%
Total Operating Expenses	520,758	893,425	58.3%
Operating Income (Loss)	(125,426)	(393,425)	
Non-Operating Revenues (Expenses)			
Capital Revenues	293,865	220,000	133.6%
Misc. Revenues	-	-	
Interest Expense	77,444	1,000	7744.4%
Total Non-Operating Revenues (Expenses)	371,309	221,000	168.0%
Excess (Deficiency) of Revenues and Other Sources over Expenses	245,882	(172,425)	
Ending Cash Balance*	4,223,258	3,804,951	

* - Unaudited

75% of the fiscal year has elapsed



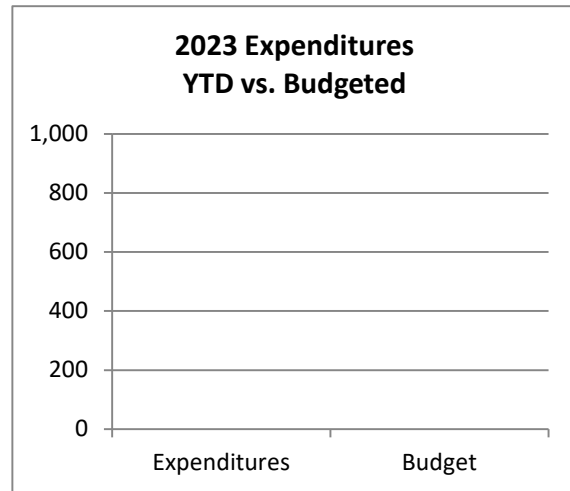
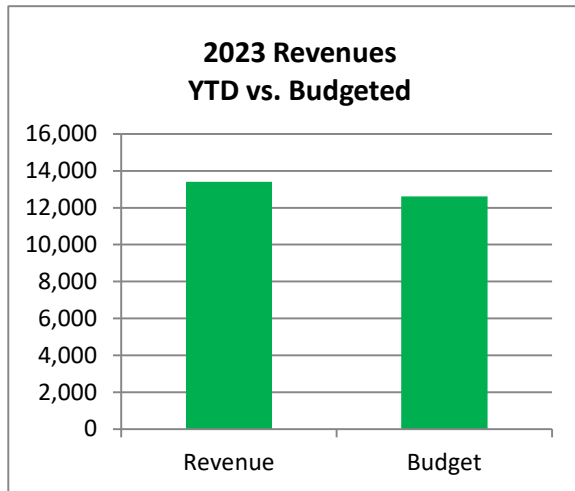
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Cemetery Perpetual Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Cemetery Perpetual Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	168,889	168,889	
Revenues:			
Miscellaneous Revenue	8,865	12,560	70.6%
Earnings on Investment	4,538	60	7563.3%
Total Operating Revenues	13,403	12,620	106.2%
Expenditures:			
Operations & Maintenance	-	-	
Capital Outlay	-	-	
Transfers Out	-	-	
Total Expenditures	-	-	
Excess (Deficiency) of Revenues and Other Sources over Expenditures	13,403	12,620	
Ending Fund Balance*	182,292	181,509	

* - Unaudited

75% of the fiscal year has elapsed



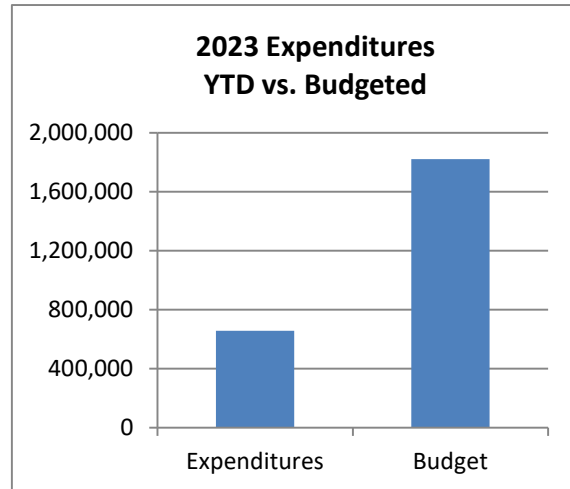
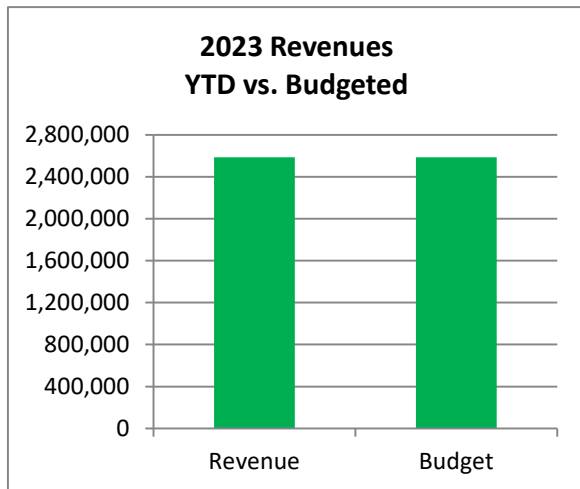
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Library Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Library Fund	2023 Actuals September	2023 Adopted Budget	%
			Complete
Beginning Fund Balance	8,539,939	8,539,939	
Revenues:			
Intergovernmental	827,145	819,186	101.0%
Miscellaneous Revenue	13,458	11,000	122.3%
Capital Investment Fees	666,197	439,410	151.6%
Interest	253,995	75,000	338.7%
<i>Transfers In</i>	824,399	1,243,246	66.3%
Total Operating Revenues	<u>2,585,195</u>	<u>2,587,842</u>	99.9%
Expenditures:			
Operations	657,349	1,821,000	36.1%
Capital Outlay	-	-	
Total Expenditures	<u>657,349</u>	<u>1,821,000</u>	36.1%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	<u>1,927,846</u>	<u>766,842</u>	
Ending Fund Balance*	<u><u>10,467,785</u></u>	<u><u>9,306,781</u></u>	

* - Unaudited

75% of the fiscal year has elapsed



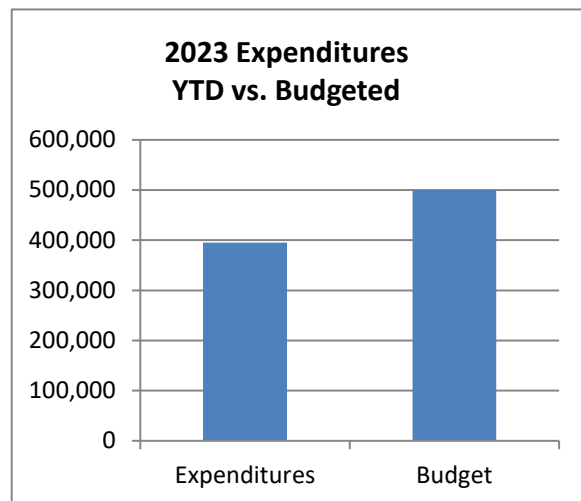
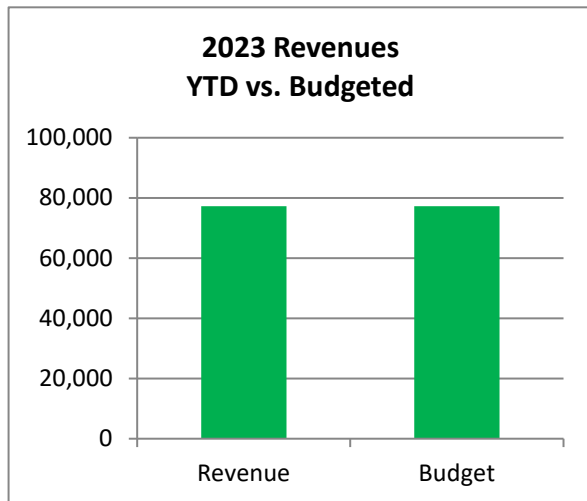
Town of Johnstown, Colorado
Statement of Revenues, Expenditures, and Changes in
Fund Balances - Recreation Center Fund
Period Ending September 30, 2023
Unaudited

Item #10.

Recreation Center Fund	2023 Actuals September	2023 Adopted Budget	% Complete
Beginning Fund Balance	422,738	422,738	
Revenues:			
State Grants	-	0	
Transfers In	77,262	77,262	100.0%
Earnings on Investment	-	-	
Total Operating Revenues	<u>77,262</u>	<u>77,262</u>	
Expenditures:			
Operations & Maintenance	394,786	500,000	79.0%
Capital Outlay	-	-	
Total Expenditures	<u>394,786</u>	<u>500,000</u>	79.0%
Excess (Deficiency) of Revenues and Other Sources over Expenditures	<u>(317,524)</u>	<u>(422,738)</u>	
Ending Fund Balance*	<u>105,215</u>	<u>0</u>	

* - Unaudited

75% of the fiscal year has elapsed





Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

- AGENDA DATE:** October 16, 2023
- SUBJECT:** An Agreement Between the Town of Johnstown and MWH Constructors for Early Construction and Equipment Procurement on the Water Treatment Plant Project
- ACTION PROPOSED:** Award Construction Contract for two early work packages, Work Authorization 1 and 2, on the Water Treatment Plant project.
- ATTACHMENTS:**
1. Work Authorization 1: Memo, Quote & Schedule
 2. Work Authorization 2: Memo & Quote
 3. CMAR Construction Contract
- PRESENTED BY:** Ellen Hilbig, Utilities Director
-

AGENDA ITEM DESCRIPTION:

Enclosed for Council review and consideration is a request to award a Construction Contract to MWH Constructors, Inc. for two early work packages, Work Authorization 1 in the amount of \$9,907,537 for early construction activities and Work Authorization 2 in the amount of \$22,543,126 for early equipment procurement.

The primary goal for the issuance of these two early work packages is to support a construction schedule that allows for the new plant to come online in early 2026 before the summer high water usage season. The early construction work identified in Work Authorization 1 involves relocation of existing yard pipe to prepare for the excavation of the future treatment plant buildings. This work requires plant shutdowns and utilization of the Towns interconnect water supplies which needs to occur during the 2023 winter low water demand season. The equipment procurement items in Work Authorization 2 have all been identified as long lead items that could critically impact the Contractors ability to meet the schedule goals if they are not ordered as soon as possible.

The pricing identified in these two early work packages was based on the Opinion of Probable Construction Cost developed by the MWH team on the 60% design and includes quotes for all materials and equipment. The drawing set for Work Authorization 1 and the equipment procurement packages for Work Authorization 2 will be competitively bid with any cost savings being rolled over to the projects 90% Guaranteed Maximum Price (GMP). The 90% design that

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the GMP will be based on will come out at the end of January and is expected to come to Council in April. Allowing for these early work packages ensures that the project team can effectively use the next 6 months to get a head start on plant construction and meet the early 2026 schedule.

The Town is working with the Design Engineer (Burns & McDonnell), Owners Representative (BlueWater) and Contractor (MWH) to bring the all-in construction budget for the project to below \$80 million. This number includes construction costs, construction engineering costs, materials testing, miscellaneous permitting and utility coordination for the entire project.

In addition to requesting Council award the early work packages as not to exceed, Staff is also asking that Council authorize the Town Manager to approve the use of an Owners Contingency in an amount not to exceed \$1.3 million (4% of early work package costs) for unforeseen construction expenses encountered on the project.

LEGAL ADVICE:

The Contract has been reviewed by the Town’s Attorney

FINANCIAL ADVICE:

The Town budgeted \$30 million in 2023 budget and \$30 million in the 2024 budget for the Water Treatment Plant project and will be required to address project funding to cover the total project costs in the budget year 2025 & 2026.

RECOMMENDED ACTION: Town Staff recommends the award of the Construction Contract to MWH Constructors, Inc. for two early work packages in an amount not to exceed \$9,807,537 for Work Authorization 1 and \$22,543,126 for Work Authroization 2 and authorize the Town Manager to approve the use of an Owners Contingency in an amount not to exceed \$1.3 million.

SUGGESTED MOTIONS:

For Approval: I move to award the Construction Contract to MWH Constructors, Inc. for two early work packages in an amount not to exceed \$9,807,537 for Work Authorization 1 and \$22,543,126 for Work Authroization 2 and authorize the Town Manager to approve the use of an Owners Contingency in an amount not to exceed \$1.3 million.

For Denial: I move to deny the award of Construction Contract for the early work packages on the Water Treatment Plant project and direct Staff to formally bid out the project.

Reviewed and Approved for Presentation,



Town Manager

October 5, 2023

Ellen Hilbig, P.E.
Utilities Director, Town of Johnstown
450 S. Parish Ave
Johnstown, Colorado 80534

Subject: Johnstown WTP Work Authorization 1 - Early Work Activities

Dear Ellen,

MWH Constructors is pleased to submit this Work Authorization – 1, Early Construction Activities proposal addressing the procurement of early construction activities in the amount of \$9,807,537.00. This proposal is based on the 60% design and Opinion of Probably Construction Costs.

Early Work Activities Packages will include the following:

- S-01 – Relocation, demolition, and installation of yard piping including tie-ins during plant shut down window.
- S-02 – Ground Improvements (Aggregate Piers)
- S-03 – Excavation and Dewatering
- S-04 – Structural Concrete (Clarified Water Wet Well)
- S-05 – Site Civil, Clear/Grub, Temp Roadways

The Pre-Construction tasks for these bid packages include bidding, negotiating, and executing purchase agreements and subcontracts that will be included in our Construction Contract. Also included is the management and supervision of the Early Work Activities Packages.

General condition items include, but are not limited to the following:

- Permits
- Site Survey
- Storm Water Management Implementation and Maintenance

The proposal is based on the following:

- Estimated prices for the procurement of long lead materials and early work activities are based upon 60% design budgetary quotes and are our best estimate of cost but are subject to change pending final design updates and competitive bidding process for actual binding pricing.
- Final construction documents including complete specifications and associated drawings are required prior to any Purchase Agreement can be executed.

- Procurement of long lead items and work that must be completed in the early plant shut down window, that are critical for the expedient delivery of the project.
- Subcontracts for early work activities including earthwork, yard pipe and yard pipe tie ins required during plant shutdown windows, aggregate piers, and concrete at the Clarified Water Wet Well.
- All purchase agreements and subcontracts will be vetted through the Owner and Engineer as required in the Construction Contract.
- Payments in Work Authorization 1 for material and equipment will be in accordance with payment schedules negotiated with successful bidders, and in accordance with the executed Construction Agreement. It is anticipated that the payment schedule may include some or all the following milestone payments, to be negotiated prior to final issuance of Purchase Agreement:
 - *10% Purchase Price for Submittals and Engineering*
 - *40% Purchase Price for Raw Materials*
 - *40% Purchase Price for Materials Stored or Delivered to Site*
 - *5% Purchase Price for Startup and Testing*
 - *5% Retainage*

All work associated with this early work package will be in accordance with the terms and conditions of the Construction Contract and General Conditions.

Builders Risk policy is being carried for the entire project in Work Authorization 1. This premium is based on a final GMP contract value of \$77,000,000. This policy premium will be adjusted based on the final GMP amount.

Attached in Exhibit B is the schedule for the Early Work Activities. The early work activities has a substantial completion date of October 31, 2024.

Sincerely,

Matthew M. Wojtkiewicz

Digitally signed by Matthew M. Wojtkiewicz
DN: C=US,
E=Matthew.Wojtkiewicz@MWHConstructors.com,
OU=MWH Constructors, CN=Matthew M.
Wojtkiewicz
Date: 2023.10.05 14:24:36-06'00'

Matthew M. Wojtkiewicz
Project Executive
MWH Constructors

Exhibit B - WA1 - Executive Summary x WBS

Project Specific Information

Job Name : Johnstown Water Treatment Plant Expansion	Bid Review Date : 9/20/2023
Job Type : Water Treatment Plant Upgrades	Anticipated Award Date : TBD
Owner : Town of Johnstown, CO	Construction Start : 10/1/2023
Location : Johnstown, CO	Construction Completion : 6/15/2026
Contract Type : CMAR	Warranty Period : 1 year(s)
Bond Required? : YES	Estimating Phase : 60% Design

SP Labor and Subcontract/ POA Risk Items

Direct Cost Summary by WBS

Scope Description	SP Man Hours	% of Total MH	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	Percent of Direct Cost
WA1 S-01 Yard Pipe	6,146	26.81%	\$50.65	\$311,272	\$1,489,089	\$310,966	\$265,578	\$2,376,905	33.28%
WA1 S-02 Aggregate Piers	-	0.00%	\$0	\$0	\$0	\$4,248	\$200,600	\$204,848	2.87%
WA1 S-03 Excavation / Dewatering	1,510	6.59%	\$46.71	\$70,539	\$12,626	\$307,131	\$735,626	\$1,125,922	15.77%
WA1 S-04 Wet Well Concrete	4,296	18.74%	\$46.11	\$198,108	\$329,448	\$73,006	\$159,101	\$759,663	10.64%
WA1 S-05 Site Civil / Temporary Roads	10,973	47.87%	\$50.52	\$554,397	\$440,036	\$714,252	\$965,494	\$2,674,179	37.45%
Total Direct by WBS	22,925	100.00%	\$49.48	\$1,134,316	\$2,271,198	\$1,409,604	\$2,326,400	\$7,141,517	100.00%
% of Direct Cost				15.88%	31.80%	19.74%	32.58%	100.00%	

General Conditions

Description	SP Man Hours	Admin Man Hours	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	% of Total Cost
99-GCGR Bidding GCs	-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	1%
9999-GCGR Construction GCs	-	8,520	\$113.77	\$969,335	\$184,185	\$168,639	\$0	\$1,322,159	19%
Total General Conditions	-	9,100	\$249.77	\$1,048,215	\$184,812	\$170,776	\$0	\$1,403,802	16%
TOTAL COST OF WORK	22,925	9,100		\$2,182,530	\$2,456,010	\$1,580,380	\$2,326,400	\$8,545,320	

Mark-Up Costs

T & I/ Bond	Rate	UOM	Total Cost	Notes	Fee and Contingency	Rate	UOM	Total Cost
Liability Insurance	0.660%	%	\$63,544	Project total	Owner Contingency (on Direct Cost of Work)	0.00%	%	\$0
Builders Risk Insurance	0.266%	%	\$205,302		Contractor Contingency (on Cost of Work)	5.00%	%	\$427,266
					Escalation	0.00%	%	\$0
					Overhead (on Cost of Work incl. Contingency)	3.50%		\$264,907
Project Bond	0.770%	%	\$74,134		Profit (on Cost of Work incl. Contingency)	3.00%		\$227,063
Total Mark-Up Cost			\$342,980		Total Fee and Cont. Cost			\$919,237

Total Project Cost							Key Ratios		
	Labor	Material	Equipment	Sub	Contingency, Fee, Bonds & Insurance	Project Total	Description	Rate	Manhours
Total Project Cost	\$2,182,530	\$2,456,010	\$1,580,380	\$2,326,400	\$1,262,217	\$9,807,537	Craft to Supervision	2.52	32,025
							Fee as % of Project	5.02%	
							Contingency as % of Project	4.4%	

Activity ID	Activity Name	Orig Dur	Rem Dur	ACD	Start	Finish	Total Float	Work Package	2023												2024												2025												2026												2027											
									F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
Johnstown WTP Expansion Project									Item #11.																																																											
Contract Milestones (L1)																																																																				
MSL1000015	NTP Early Construction Package and S&P Packages (LLE, Underground Utility Relcations)	0	0	0	30-Oct-23		-33	WA1	<ul style="list-style-type: none"> ◆ NTP Early Construction Package and S&P Packages (LLE, Underground Utility Relcations) ■ Early Work Package Closeout ◆ Early Work Package Substantial Completion 																																																											
MSL1000055	Early Work Package Closeout	20	20	20	04-Oct-24	31-Oct-24	547	WA1																																																												
MSL1000065	Early Work Package Substantial Completion	0	0	0		31-Oct-24	547	WA1																																																												
Design																																																																				
Early Work Package Separation																																																																				
A1440	Storm Water Design - EWP	10	10	10	08-Sep-23	21-Sep-23	-99	WA1	<ul style="list-style-type: none"> ■ Storm Water Design - EWP 																																																											
A1460	Yard Piping & JUB Coordination - EWP	15	15	15	08-Sep-23	28-Sep-23	-104	WA1	<ul style="list-style-type: none"> ■ Yard Piping & JUB Coordination - EWP 																																																											
A1470	Site Grading & Access Roads - EWP	10	10	10	08-Sep-23	21-Sep-23	-99	WA1	<ul style="list-style-type: none"> ■ Site Grading & Access Roads - EWP 																																																											
A1430	Finalize Early Work Package Drawing Set - EWP	10	10	10	29-Sep-23	12-Oct-23	-104	WA1	<ul style="list-style-type: none"> ■ Finalize Early Work Package Drawing Set - EWP 																																																											
A1480	Town Review - EWP	10	10	10	13-Oct-23	26-Oct-23	-34	WA1	<ul style="list-style-type: none"> ■ Town Review - EWP 																																																											
A1490	Review Meeting - EWP	1	1	1	27-Oct-23	27-Oct-23	-34	WA1	<ul style="list-style-type: none"> ■ Review Meeting - EWP 																																																											
Preconstruction																																																																				
S-Packages																																																																				
A5390	S-Package - Work Authorization 1 Development	0	0	0	13-Oct-23		-70	WA1	<ul style="list-style-type: none"> ◆ S-Package - Work Authorization 1 Development 																																																											
A5400	S-Package - Develop Bid Packages	10	10	10	13-Oct-23	26-Oct-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Develop Bid Packages 																																																											
A5410	S-Package - Submit Bid Packages to Town	0	0	0		26-Oct-23	-70	WA1	<ul style="list-style-type: none"> ◆ S-Package - Submit Bid Packages to Town 																																																											
A5420	S-Package - Town Reviews Bid Packages	10	10	10	27-Oct-23	09-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Town Reviews Bid Packages 																																																											
A5430	S-Package - Prepare and Advertise Bids	10	10	10	30-Oct-23	10-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Prepare and Advertise Bids 																																																											
A5440	S-Package - Manage Through Bid Process	10	10	10	13-Nov-23	28-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Manage Through Bid Process 																																																											
A5450	S-Package - Receive and Review Bids	1	1	1	29-Nov-23	29-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Receive and Review Bids 																																																											
A5460	S-Package - Bid Evaluations, Post Bid Interviews, Final Evaluation and Submission	10	10	10	30-Nov-23	13-Dec-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Bid Evaluations, Post Bid Interviews, Final Evaluation and Submission 																																																											
A5470	S-Package - Town Selection of Bidders	5	5	5	14-Dec-23	20-Dec-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Town Selection of Bidders 																																																											
S-01 Relocation, Demolition, and Installation of Yard Pipe																																																																				
A4950	Negotiations, Development, and Execute of Contracts with Vendors - S-01 Relocation, Demo, and Install	15	15	15	21-Dec-23	16-Jan-24	-24	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-01 Relocation, Demo, and Install 																																																											
S-02 Ground Improvements (Aggregate Peirs)																																																																				
A5030	Negotiations, Development, and Execute of Contracts with Vendors - S-02 Ground Improvements (Aggr	15	15	15	21-Dec-23	16-Jan-24	770	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-02 Ground Improvements (Aggr) 																																																											
S-03 Excavation & Dewatering																																																																				
A5110	Negotiations, Development, and Execute of Contracts with Vendors - S-03 Excavation & Dewatering	15	15	15	01-Dec-23	21-Dec-23	-70	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-03 Excavation & Dewatering 																																																											
S-04 Structural Concrete (Clarified Water Wet Well Only)																																																																				
A5190	Negotiations, Development, and Execute of Contracts with Vendors - S-04 Structural Concrete	15	15	15	21-Dec-23	16-Jan-24	-21	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-04 Structural Concrete 																																																											
S-05 Site Civil, Clear & Grub, Temp Roadways																																																																				
A5270	Negotiations, Development, and Execute of Contracts with Vendors - S-05 Site Civil, Clear & Grub, Temp	15	15	15	21-Dec-23	16-Jan-24	63	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-05 Site Civil, Clear & Grub, Temp 																																																											
Permitting																																																																				
A3620	Early Works Construction Permits	10	10	10	13-Oct-23	26-Oct-23	822	WA1	<ul style="list-style-type: none"> ■ Early Works Construction Permits 																																																											
A3640	Potable Water Pipe Asbestos - Permit CDPHE	10	10	10	13-Oct-23	26-Oct-23	311	WA1	<ul style="list-style-type: none"> ■ Potable Water Pipe Asbestos - Permit CDPHE 																																																											
Procurement																																																																				
Submittals/Deliveries																																																																				
CSI Current Format																																																																				
Division 03 - Concrete																																																																				
A1190	Submit/Approve/Deliver Concrete Mix Designs (20/25/)	45	45	45	17-Jan-24	20-Mar-24	-21	WA1	<ul style="list-style-type: none"> ■ Submit/Approve/Deliver Concrete Mix Designs (20/25/) 																																																											
A1200	Submit/Approve/Deliver Reinforcements (20/25/)	45	45	45	17-Jan-24	20-Mar-24	-21	WA1	<ul style="list-style-type: none"> ■ Submit/Approve/Deliver Reinforcements (20/25/) 																																																											
Division 31 - Earthwork																																																																				
A1170	Submit/Approve/Deliver Dewatering (20/25/10)	55	55	55	22-Dec-23	14-Mar-24	-37	WA1	<ul style="list-style-type: none"> ■ Submit/Approve/Deliver Dewatering (20/25/10) 																																																											
Construction																																																																				
Work Authorization 1																																																																				
A3940	Shutdown Window - October 15th to April 15th	140	140	140	30-Oct-23	17-Mar-24	-47	WA1	<ul style="list-style-type: none"> ■ Shutdown Window - October 15th to April 15th 																																																											
A3930	Procure Pipe (PVC or C900), Tee, Valves and Blind Flanges (24" PW, 18" RAW, 16" PW, 8" SAN)	20	20	20	21-Dec-23	23-Jan-24	-24	WA1	<ul style="list-style-type: none"> ■ Procure Pipe (PVC or C900), Tee, Valves and Blind Flanges (24" PW, 18" RAW, 16" PW, 8" SAN) 																																																											
A6520	Clear and Grub Site	5	5	5	22-Dec-23	02-Jan-24	-70	WA1	<ul style="list-style-type: none"> ■ Clear and Grub Site 																																																											

Data Date: 10-Feb-23
Run Date: 05-Oct-23
Project ID: JTWTP-PC
Page 1 of 2

- Remaining Level of Effort
- Actual Level of Effort
- Actual Work
- Remaining Work
- Critical Remaining Work
- Last Update Milestone
- Milestone

Johnstown WTP Expansion Project
Update View



October 5, 2023

Ellen Hilbig, P.E.
Utilities Director, Town of Johnstown
450 S. Parish Ave
Johnstown, Colorado 80534

Subject: Johnstown WTP Work Authorization 2 - Early Equipment Procurement

Dear Ellen,

MWH Constructors is pleased to submit this Work Authorization – 2, Early Equipment Procurement proposal addressing procurement of long lead materials in the amount of \$22,543,126.00. This proposal is based on the 60% design and Opinion of Probably Construction Costs.

Procurement Packages will include the following:

- P-01 – Emergency Generators
- P-02 – Motor Control Centers and Harmonic Filters
- P-03 – Vertical Turbine Pumps and VFD’s
- P-04 – GAC Vessels and Media
- P-05 – Membrane Filter System
- P-06 – Pre-Engineered Metal Building (Treatment Building Only)
- P-07 – Electrical Preconstruction Services

The Pre-Construction tasks for these bid packages include bidding, negotiating, and executing purchase agreements that will be included in our Construction Contract. Also included is the management and supervision of the Procurement Packages.

All bid packages will be reviewed with the Town of Johnstown and Burns and McDonnell prior to any award.

The proposal is based on the following:

- Estimated prices for the procurement of long lead materials and early work activities are based upon 60% design budgetary quotes and are our best estimate of cost but are subject to change pending final design updates and competitive bidding process for actual binding pricing.
- Final construction documents including complete specifications and associated drawings are required prior to any Purchase Agreement can be executed.

- Procurement of long lead items that are critical for the expedient delivery of the project. The estimated equipment manufacturing and delivery lead-times we have been given following approved submittals are (subject to change)
 - *P-01 – Emergency Generators: 52 Weeks*
 - *P-02 – Motor Control Centers and Harmonic Filters: 65 Weeks*
 - *P-03 – Vertical Turbine Pumps and VFD’s: 48 Weeks*
 - *P-04 – GAC Vessels and Media: 36 Weeks*
 - *P-05 – Assignment of Membrane Supply: 30 Weeks*

- All purchase agreements and subcontracts will be vetted through the Owner and Engineer as required in the Construction Contract.

- Payments in Work Authorization 2 for material and equipment will be in accordance with payment schedules negotiated with successful bidders, and in accordance with the executed Construction Agreement. It is anticipated that the payment schedule may include some or all the following milestone payments, to be negotiated prior to final issuance of Purchase Agreement:
 - *10% Purchase Price for Submittals and Engineering*
 - *40% Purchase Price for Raw Materials*
 - *40% Purchase Price for Materials Stored or Delivered to Site*
 - *5% Purchase Price for Startup and Testing*
 - *5% Retainage*

All work associated with this early work package will be in accordance with the terms and conditions of the Construction Contract and General Conditions.

Sincerely,

Matthew M. Wojtkiewicz

Digitally signed by Matthew M. Wojtkiewicz
DN: C=US,
E=Matthew.Wojtkiewicz@MWHConstructors.com,
OU=MWH Constructors, CN=Matthew M. Wojtkiewicz
Date: 2023.10.05 12:49:26-06'00'

Matthew M. Wojtkiewicz
Project Executive
MWH Constructors

Exhibit C - WA2 - Executive Summary x Bid Package



Project Specific Information			
Job Name :	Johnstown Water Treatment Plant Expansion	Bid Review Date	9/20/2023
Job Type :	Water Treatment Plant Upgrades	Anticipated Award Date	TBD
Owner :	Town of Johnstown, CO	Construction Start	10/1/2023
Location :	Johnstown, CO	Construction Completion	6/15/2026
Contract Type :	CMAR	Warranty Period	1 year(s)
Bond Required?	YES	Estimating Phase	60% Design

SP Labor and Subcontract/ POA Risk Items									
Direct Cost Summary by WBS									
Scope Description	SP Man Hours	% of Total MH	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	Percent of Direct Cost
WA2 P-01	Emergency Generators	-	0.00%	\$0	\$0	\$0	\$1,757,500	\$1,757,500	8.88%
WA2 P-02	MCC, Harmonic Filters	-	0.00%	\$0	\$0	\$0	\$5,122,201	\$5,122,201	25.88%
WA2 P-03	Vertical Turbine Pumps & VFDs	-	0.00%	\$0	\$2,347,847	\$0	\$227,500	\$2,575,347	13.01%
WA2 P-04	GAC Vessels & Media	-	0.00%	\$0	\$4,240,000	\$0	\$0	\$4,240,000	21.42%
WA2 P-05	Membrane Filters	-	0.00%	\$0	\$4,554,434	\$0	\$0	\$4,554,434	23.01%
WA2 P-06	PEMB (Treatment Building Only)	-	0.00%	\$0	\$0	\$0	\$1,492,632	\$1,492,632	7.54%
WA2 P-07	Electrical Preconstruction Services	-	0.00%	\$0	\$0	\$0	\$52,000	\$52,000	0.26%
Total Direct by WBS		-	0.00%	\$0.00	\$0	\$11,142,281	\$8,651,833	\$19,794,114	100.00%
% of Direct Cost					0.00%	56.29%	0.00%	43.71%	100.00%

General Conditions										
Description	SP Man Hours	Admin Man Hours	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	% of Total Cost	
99-GCGR	GC's and GR's	-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	0%
Total General Conditions		-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	0%
TOTAL COST OF WORK		-	580		\$78,880	\$11,142,907	\$2,137	\$8,651,833	\$19,875,757	

Mark-Up Costs									
T & I/ Bond	Rate	UOM	Total Cost	Notes	Fee and Contingency	Rate	UOM	Total Cost	
Liability Insurance	0.660%	%	\$148,785		Owner Contingency (on Direct Cost of Work)	0.00%	%	\$0	
					Contractor Contingency (on Cost of Work incl. GCGR)	5.00%	%	\$993,788	
					Escalation	0.00%	%	\$0	
					Overhead (on Cost of Work incl. Contingency)	3.50%		\$727,577	
					Profit (on Cost of Work incl. Contingency)	3.00%		\$623,637	
Project Bond	0.770%	%	\$173,582						
Total Mark-Up Cost			\$322,367		Total Fee and Cont. Cost			\$2,345,001	

Total Project Cost						Key Ratios			
	Labor	Material	Equipment	Sub	Contingency, Fee, Bonds & Insurance	Project Total	Description	Rate	Manhours
Total Project Cost	\$78,880	\$11,142,907	\$2,137	\$8,651,833	\$2,667,368	\$22,543,126	Craft to Supervision	-	580
							Fee as % of Project	5.99%	
							Contingency as % of Project	4.4%	

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

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

Prepared By



AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

This Agreement is by and between the Town of Johnstown, a Colorado home-rule municipality (“Owner”), and MWH Constructors, Inc., a Delaware corporation (“Construction Manager at Risk” or “CMAR”).

Terms used in this Agreement have the meanings stated herein and in the General Conditions and the Supplementary Conditions.

The Owner and CMAR hereby agree as follows:

ARTICLE 1—THE PROJECT AND INITIAL WORK AUTHORIZATIONS

- 1.01 The Project, of which the CMAR Services and the Work under the Contract Documents are a part, is generally described as follows: **Johnstown Water Treatment Plant Expansion Project (“Project”)**.
- 1.02 The Owner and CMAR anticipate that there will be three Work Authorizations. At the time of the execution of this Agreement, the design phase of the Project is approximately 60 % complete. Despite the early stages of the Project, wherein the full scope is not yet known, the Owner and CMAR desire to move forward with two initial Work Authorizations. Work Authorization 1, which is attached hereto and incorporated herein by reference as Exhibit ____, relates to procurement of equipment to address long lead times. Work Authorization 2, which is attached hereto and incorporated herein by reference as Exhibit ____, relates to procurement of early construction activities. The Owner and CMAR are executing this Agreement to move forward with Work Authorization 1 and Work Authorization 2 and to generally govern the parties’ relationship when the full scope of the Project is known. The Owner and CMAR, however, reserve the right to modify certain terms of the Agreement by written agreement at a subsequent date when the design phase of the Project is complete or closer to completion.
- 1.03 When the Drawings and Specifications are approximately 90% complete, the Owner and CMAR anticipate negotiating and thereafter executing Work Authorization 3, which will cover the remaining portions of the Project. Concurrently therewith, the Owner and CMAR anticipate executing a Contract Amendment to set forth the Guaranteed Maximum Price of the Contract.

ARTICLE 2— OWNER’S ADVISOR AND ENGINEER; OWNER’S PROJECT TEAM

- 2.01 The Owner has not retained a consultant to act as Owner’s representative, assume all duties and responsibilities of advisor to Owner and construction contract administrator on behalf of Owner, and have the rights and authority assigned to Owner’s Advisor in the Contract. Any reference to Owner’s Advisor in the Contract Documents shall be deemed to mean Owner. At any time subsequent hereto, the Owner may, at its sole discretion, retain a third-party consultant to act as the Owner’s Advisor and perform the duties and responsibilities assigned to Owner’s Advisor pursuant to the Contract Documents.
- 2.02 Unless otherwise modified by the Owner by written notice to CMAR, at the Owner’s discretion, the Owner has retained Burns & McDonnell Engineering Company, Inc. a Missouri Corporation (Engineer) to design the Project, to assume all duties and responsibilities of Engineer during the construction of the Project, and to have the rights and authority assigned to Engineer in the CMAR Contract.

ARTICLE 3—CMAR SERVICES

- 3.01 Scope of CMAR Service. On or about February 6, 2023, the Owner and CMAR executed a Professional Services Agreement (“PSA”) that governs the CMAR Services, a copy of which is attached hereto and incorporated herein

by reference as Exhibit A. This Agreement and the PSA shall be read harmoniously. To the extent of a

ARTICLE 4—COMPENSATION FOR PERFORMANCE AND COMPLETION OF THE WORK

- 4.01 Owner shall compensate CMAR for performance and completion of the Work in accordance with the Contract Documents. Payment for Work will consist of the following:
 - A. Payment for Construction Support Costs in accordance with Article 5, and as set forth in the Exhibits B & D
 - B. Payment for Cost of the Work as provided in Article 6; and
 - C. Payment of a CMAR Fee as set forth in Article 7 and in Exhibit A
- 4.02 This Agreement establishes a CMAR Contingency Allowance for use in paying for unforeseen costs as set forth in Article 8.
- 4.03 The amounts for CMAR’s compensation summarized in Paragraph 4.01 are subject to additions and deletions as provided in the Contract, up to limitations established in the Guaranteed Maximum Price (GMP) as provided in Article 11.

ARTICLE 5—CONSTRUCTION SUPPORT COSTS

- 5.01 Construction Support Costs
 - A. Construction Support Costs (field overhead or “general conditions” costs) are those costs associated with and in support of construction that are not directly related to specific construction activities. Construction Support Costs are not compensable as Cost of the Work and may be included by CMAR in proposed Work Authorizations that occur outside the GMP schedule submitted to the Owner for approval and issuance. Construction Support Costs include without limitation:
 - 1. CMAR project management costs, including project managers, superintendents, field engineering staff, and clerical support located at the Site;
 - 2. Management of Subcontractors and Suppliers;
 - 3. Management of delegated professional design services, if any;
 - 4. Costs associated with safety programs, including safety managers and safety representatives;
 - 5. Quality management not specifically designated to be covered in a Work Authorization;
 - 6. Costs associated with obtaining permits, or paying patent fees or royalties, if not specifically designated to be covered in a Work Authorization;
 - 7. [Intentionally omitted];
 - 8. Compliance with Laws and Regulations;
 - 9. [Intentionally omitted]
 - 10. Contract administration costs, including costs for:
 - a. Meetings, reporting, notifications, and other communications and coordination,
 - b. Document management,
 - c. Submittals, record data, and other documentation,
 - d. Creating and maintaining Project schedules per Article 4 of the General Conditions,
 - e. Changes to the CMAR Contract per Article 11 of the General Conditions,

- f. Applications for Payment per Article 15 of the General Conditions,
 - g. Maintenance of Record Documents, and
 - h. Other contract administration costs included in the Contract Documents;
11. Performance, payment, and warranty bonds, if any, provided to cover the construction of the entire Project;
 12. General insurance costs, excluding Builder's Risk or other coverage that applies specifically to Work and specifically designated to be covered in a Work Authorization, and Worker's Compensation Insurance which is to be included in payroll cost per Paragraph 6.02.A.1;
 13. Costs associated with CMAR temporary facilities and temporary infrastructure at the Site;
 14. The cost of purchasing, renting, or furnishing small tools and hand tools. These are defined as any tool or equipment whose current price, if purchased new at retail would be less than \$500 **[or insert other threshold price]**;
 15. Costs for site maintenance, storage of materials, waste disposal, environmental controls, management of water, protection of site and adjacent property, cleaning during construction and final cleaning;
 16. Costs associated with startup and commissioning of the Work, including training of Owner's personnel, temporary operation of facilities by the CMAR; and performance acceptance testing, if any;
 17. Costs associated with substantial completion, partial utilization, and final completion; and
 18. Costs associated with general warranty, guarantees and correction of defective work during the Correction Period.
- B. The organization of the Work into Work Packages will not result in changes to the CMAR's compensation for Construction Support Costs.
 - C. The CMAR shall exclude sales and use taxes from all Work Authorizations and the GMP proposal. The Project is located within the jurisdictional limits of the Town of Johnstown, Colorado and the Owner shall provide the CMAR with a sales and use tax exemption for the use with contracting with subcontractors and suppliers. If any sales and use taxes are assessed despite the efforts of CMAR to exclude such taxes and with prior written notice and approval of the Town, the amounts will be an adjustment to the GMP by a change order.

ARTICLE 6—COST OF THE WORK

6.01 Purposes for Determination of Cost of the Work

- A. The term Cost of the Work is defined in the General Conditions, Article 1, as the sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement; such provisions are set forth in this Article 6. Cost of the Work is determined for each Work Authorization, subject to any limits described in this Article. The provisions of this Article are used for two distinct purposes:
 1. To determine Cost of the Work for purposes of CMAR's base compensation for construction under this Contract; or
 2. When needed to determine the value of a Change Proposal, Change Order, Claim, set-off, or other adjustment to the Guaranteed Maximum Price. When the value of any such adjustment is determined based on Cost of the Work, CMAR 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. For purposes of determining CMAR's base compensation, Cost of the Work applies only to Work that has been duly authorized in a Work Authorization.

C. The Cost of the Work will include only those items identified in Paragraph 6.02.

6.02 Cost of the Work

- A. Payroll Cost—Payroll costs for employees in the direct employ of CMAR performing Work described in Work Authorizations, and excluding those efforts covered in Construction Support costs per Paragraph 5.01. Payroll costs will be based on actual amounts paid as indicated on Certified Payroll reports. Payroll costs are to include salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturdays, Sundays, or legal holidays, will be included in the above to the extent authorized by Owner in writing.
- B. Incorporated Equipment and Material Cost—Cost of all materials and equipment furnished or incorporated in the Work, including costs for transportation and storage prior to delivery to the Site. Cost for proper storage at the Site is to be included in Construction Support Cost per Paragraph 5.01. Cost for equipment is to include Suppliers' services for submittals, factory and field testing and inspections, installation checks, start-up assistance, and training, if any. All cash discounts accrue to CMAR unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner.
- C. Consumable Equipment and Material Cost—Cost, including transportation and maintenance, of all materials, supplies, equipment, tools, and machinery at the Site, which are consumed in the performance of the Work, less market value of such items used but not consumed which remain the property of CMAR. In establishing costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or 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. CMAR will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such items.
- D. Subcontractor Cost—Payments made by CMAR to Subcontractors for Work performed by Subcontractors. CMAR shall obtain competitive bids from subcontractors acceptable to Owner and CMAR and shall deliver such bids to Owner, which will then determine, with the advice of Owner's Advisor, 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 CMAR's Cost of the Work and fee as provided in this Article 6.
- E. Construction Equipment Cost—Cost of providing construction equipment and machinery to construct the Work described in the Work Authorization.
1. Include all the costs for transporting, loading, unloading, assembly, dismantling, and removal of the equipment and machinery with Consumable Equipment and Material Cost per Paragraph 6.02.C.
 2. Construction equipment and machinery cost will be billed at rates approved by the Owner's Advisor as part of each Work Authorization.
 - a. All operating costs will include costs for fuel, maintenance, parts, and associated labor. Billing rates for equipment fueling and maintenance do not include payroll costs for equipment operators, which will be included in Payroll cost per Paragraph 6.02.A.
 - b. Costs for equipment and machinery owned by CMAR or a Subcontractor cannot exceed the rates shown for equipment in the EquipmentWatch Cost Recovery Rental Rate Blue Book, (<https://equipmentwatch.com/blue-book-cost-recovery>). Hourly rates will be as shown in EquipmentWatch or mutually agreed upon by CMAR and Owner. These rates will include all operating costs per Paragraph 6.02.E.2.a.
 - c. Payment for rented equipment will be in accordance with rental agreements as to price, including any surcharge or special rates applicable to overtime use of the construction equipment or

machinery, and all such costs will be in accordance with the terms of said rental agreement. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

- d. No markup is allowed on equipment rented or leased from any company owned in total or in part by CMAR or a Subcontractor, or is owned by the same holding company or a company with a close legal affiliation to CMAR or Subcontractor, since markups are included in rental or lease rates.
 - e. Equipment used for site maintenance is to be included in Construction Support Costs. Equipment used for multiple Work Authorizations must be billed on the basis of time worked on each Work Authorization.
3. With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Guaranteed Maximum 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.
- F. Supplemental Costs which consist of the following:
1. The proportion of necessary transportation, travel, and subsistence expenses of CMAR's employees incurred in the discharge of duties connected with the Work Authorization.
 2. Costs of special consultants including engineers, architects, testing laboratories, and surveyors, employed or retained for services specifically related to the Work Authorization and expressly excluding costs incurred by consultants performing CMAR Services.
 3. [Intentionally omitted]
 4. Deposits lost for causes other than the negligence or willful misconduct of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
 5. Royalty payments and fees for permits, patents, and licenses directly related to a Work Authorization.
 6. The cost of premiums for performance, payment, and warranty bonds obtained by CMAR as a requirement of a Work Authorization, in addition to the bonds purchased for the construction as a whole within the scope of Construction Support Costs per Paragraph 5.01.A.11. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
 7. Cost for any Subcontractor bonds that must be required to protect Owner's and CMAR's interests in the event of a Subcontractor default associated with a Work Authorization. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.
 8. The cost of premiums for Builder's Risk insurance and other Work Authorization-specific insurance that CMAR is required by the Contract Documents to purchase and maintain, but not including costs of commercial general liability, automobile liability, and contractor's pollution liability insurance which are covered as Construction Support Costs per Article 5. The compensation for worker's compensation is included as part of payroll costs per Paragraph 6.01.A.1. Final compensation for such premium costs will be based on reconciled costs at the conclusion of the Work.

6.03 Specific Exclusions from Cost of the Work

- A. The following items are not included in the Cost of the Work. This express itemization does not confer Cost of the Work or compensable status to otherwise ineligible items not listed here. Cost for any items not included in the Cost of the Work are to be included in the CMAR Fee unless specifically itemized at Construction Support Costs described in Article 5.

1. [Intentionally omitted]
2. Expenses of CMAR's principal and branch offices.
3. Any part of CMAR's capital expenses, including interest on CMAR's capital employed for the Work and charges against CMAR for delinquent payments.
4. Costs due to the negligence or willful misconduct of CMAR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
5. Cost for the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property not paid from CMAR's Contingency per Article 8.
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 6.03.
8. Costs recovered or reimbursed under other Construction Support Cost or Cost of the Work provisions.

6.04 Compensation for the Cost of the Work

- A. Compensation for the Cost of the Work is based on the amount earned for Work completed for each Work Authorization.

ARTICLE 7—CONSTRUCTION MANAGER AT RISK FEE

7.01 The CMAR Fee will be determined as follows:

- A. The CMAR Fee is a specified percentage of the Cost of the Work as shown in Exhibit A. No fee will be payable on the basis of costs itemized as excluded in Paragraph 6.03.

ARTICLE 8—CMAR CONTINGENCY ALLOWANCE

8.01 CMAR Contingency Allowance

- A. The CMAR Contingency Allowance funds are for the exclusive use of CMAR while executing the Work, to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued.
- B. The CMAR Contingency Allowance funds may be used by CMAR for costs sustained by either CMAR itself or a Subcontractor, at CMAR's discretion. The CMAR contingency funds may not be used for costs which are reimbursable or recoverable under other provisions of the Contract.
- C. Without excluding other possible uses of the CMAR Contingency Allowance, the following uses are expressly acknowledged as eligible uses of the CMAR Contingency Allowance funds:
 1. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMAR or a Subcontractor in connection with the performance of the Work;
 2. Corrective work, regardless of fault if non-conformance is unintended;
 3. Subcontractor defaults;
 4. Overruns in Construction Support Costs;
 5. Builder's Risk deductibles;
 6. Verified excusable errors in estimates;
 7. Non-compensable overtime and other acceleration costs; or

8. Bidding scope gap.
- D. CMAR shall not utilize the CMAR Contingency Allowance if CMAR recovers funds (1) from bonds and insurance coverage payments for such expenditures or (2) from defaulting Subcontractors or Suppliers for such expenditures.
 - E. The CMAR Contingency Allowance will not be used to fund Owner-directed changes in the Work. Such changes will be administered through the contractual procedures established for changes in the scope of the Work, including expenditures from the Owner's Contingency Allowance, if any, Work Authorizations as modified by Change Order, and Contract Amendments or other modifications that impact the Guaranteed Maximum Price.
 - F. The CMAR Contingency Allowance will not be used to recover the cost of items that are compensable as a Cost of the Work.
 - G. The CMAR Fee does not apply to expenditures from the CMAR Contingency Allowance.
 - H. The designated CMAR Contingency Allowance, as duly replenished, is the maximum amount available to CMAR to recover eligible costs under this Article; Owner will not increase the CMAR Contingency Allowance or otherwise reimburse CMAR for eligible costs incurred in excess of the CMAR Contingency Allowance.
 - I. CMAR will submit applications for reimbursement from the CMAR Contingency Allowance to Owner's Advisor, in a format acceptable to Owner's Advisor, together with appropriate documentation. The Owner shall have ten (10) business days to review and approve use of the CMAR Contingency Allowance, which approval shall not be unreasonably withheld or conditioned. If approved, payments from the CMAR Contingency Allowance will be recorded in the Application for Payment.
 - J. The CMAR Contingency Allowance will be established at the time of establishment of the GMP. Upon agreement of the Owner and CMAR, a CMAR Contingency Allowance may be included in Work Authorization 1 and Work Authorization 2. If a Contingency Allowance is included in the Work Authorizations, Owner and Contractor may agree prior to final completion of a Work Authorization to allow remaining unused contingency to be applied as contingency for the next or subsequent Work Authorization or the GMP.

ARTICLE 9—WORK AUTHORIZATIONS

9.01 General Provisions Regarding Work Authorizations

- A. Work Authorizations will be based on Work Packages prepared by CMAR describing equipment and materials to be purchased for installation or Work to be performed in accordance with the approved Work Authorization.
- B. All Work to be provided by CMAR must be authorized by the Owner in an approved Work Authorization specifying or referencing the scope of Work to be conducted.
- C. The Owner and CMAR must approve each Work Authorization in writing.
- D. The Work Authorization will indicate the not to exceed compensation to which CMAR is entitled for providing the authorized Work.
- E. CMAR is not entitled to compensation for providing Work that Owner has not authorized.
- F. For cost savings realized in a Work Authorizations, Owner and Contractor agree prior to final completion of a Work Authorization to allow remaining unused funds to be applied as either a deductive change order or Owner Contingency for the next or subsequent Work Authorization or the GMP.

9.02 First Work Authorization

- A. The first Work Authorization, authorizing the commencement of construction, will include, in addition to authorization for a specific Work Package, or multiple specific Work Packages, the authorization of

expenditures by CMAR for Contract-specific (1) performance and payment bond premiums (2) Builder's Risk premiums, if CMAR is required to purchase and maintain Builder's Risk insurance, and (3) premiums for other specific insurance policies required by the Contract.

ARTICLE 10—PROCUREMENT OF SUBCONTRACTORS; CMAR SELF-PERFORMANCE OF AUTHORIZED WORK

10.01 Performance of the Authorized Work

- A. CMAR will solicit and receive competitive bids on the Work included in each Work Authorization, including the purchase of materials and equipment. CMAR will prepare bid packages supporting the Work Authorization and make opportunities available to Subcontractors and Suppliers in a way that will increase competition and allow bids by trade contractors or specialty entities. CMAR may prepare bid packages for Work the CMAR may wish to self-perform, so long as doing so will not limit bidding by competing bidders (prospective subcontractors).
- B. CMAR may negotiate on Work Packages, or portions thereof, if fully qualified to self-perform the subject Work
- C. [Intentionally omitted]
- D. CMAR will award the subcontract for the Work under the Work Authorization to the responsible bidder submitting the lowest responsible and responsive bid for that portion of the Work for which bids are received. CMAR may self-perform Work when CMAR is the low bidder.

ARTICLE 11—GUARANTEED MAXIMUM PRICE

11.01 Subject to the provisions of Article 4, CMAR guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, or GMP) for the sum of the amounts for Paragraphs 11.01.A through D that follow will be the binding GMP established by the process stated in Paragraphs 11.02 and 11.03.

- A. Construction Support Cost Amount (Article 5);
- B. Cost of the Work (Article 6);
- C. CMAR Fee (Article 7); and
- D. CMAR's Contingency Allowance Amount (Article 8).

11.02 [Intentionally omitted.]

11.03 A binding GMP will be established at any time agreeable to Owner and CMAR, but not later than the time when the Drawings and Specifications are 90% complete. The GMP shall be set forth in an agreed upon Contract Amendment.

- A. The Work Packages released and authorized prior to 90% completion of the Drawings and Specifications shall be counted when calculating the time period establishment of the GMP.
- B. If the Work will be authorized over time, as the design for individual Work Packages is completed, in a series of incremental Work Authorizations (fast tracking or similar design/construction process) then the binding GMP will be developed in a series of incremental changes as the design for each Work Package reaches 90% completion, culminating, when all Work Packages have been authorized, in a binding GMP for the Contract.

11.04 Owner's Appropriation

- A. Pursuant to Section 24-91-103.6, C.R.S., as amended, the Owner has appropriated the money necessary to fund the Project. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original contract amount, unless the Owner provides written

assurance to CMAR that lawful appropriations have been made to cover the cost of the additional work, unless such work is covered under the remedy-granting provisions of the Contract.

11.05 Conversion of Cost of Work to a Lump Sum Amount

- A. If Owner and CMAR mutually agree, compensation for all Work on the Project, or for any Work Authorization, may be converted to a lump sum (stipulated amount). If compensation for all Work on the Project is converted to a lump sum amount, this lump sum amount will include costs for Construction Support Cost, Cost of the Work, the CMAR Fee, and all other costs associated with the Contract, all as if bid as a lump sum amount.
- B. If a Work Authorization is converted to a lump sum amount, this lump sum amount will include costs for Cost of the Work, the CMAR Fee, and all other costs associated with the Work Authorization, all as if bid as a lump sum amount; provided, however, that Construction Support Costs will continue to be compensated per Paragraph 5.05.
- C. The following will continue to apply for conversions to lump sum covered in Paragraphs B and C:
 1. The Cost of the Work provisions in Article 6 will continue to apply to pricing certain Change Orders and other similar matters, as set forth in Paragraph 6.01.A.2.
 2. Construction Support Costs Extended Rate provisions of Paragraph 5.04 will continue to apply for Change Orders.
 3. Owner's Contingency will continue to be available per Article 12.

ARTICLE 12—OWNER'S CONTINGENCY ALLOWANCE

12.01 Owner's Contingency Allowance

- A. Owner's Contingency Allowance is used at the sole discretion of the Owner to cover unforeseen costs, Owner-directed changes in the scope of the Work, or any other unanticipated change in the Contract Price. These funds can only be accessed by the CMAR when and to the specific extent authorized by the Owner.
- B. The Owner's Contingency Allowance is to be included in the Contract Amount awarded but is not part of the CMAR's GMP.

ARTICLE 13—PAYMENT PROCEDURES

13.01 Submittal and Processing of Payments

- A. Billing and payment for CMAR Services are addressed in Article 3. The provisions in this Article 13 pertain to billing and payment for the Work.
- B. CMAR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of the CMAR Fee then payable. Applications for Payment will be processed by Owner's Advisor as provided in the General Conditions.

13.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of CMAR's Applications for Payment as recommended by Owner's Advisor within thirty (30) days after approval of an Application for Payment.
- B. Progress payments on account of the Cost of the Work.
 1. Prior to Substantial Completion of the Work, including for each Work Authorization, 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. Ninety-five percent (95%) of the value of the Work completed, with the balance being retained.
- b. Ninety-five percent (95%) of cost of materials and equipment not incorporated in the Work, with the balance being retainage.

13.03 2. Upon completion of the Work under a Work Authorization, including completion of all punch list items, on the condition that the Work Authorization, or portion thereof contains a substantial completion date for such Work and CMAR completed the Work by such date, Owner shall pay an amount sufficient to increase total payments to CMAR for the labor and materials portion of the Work (not the early procurement of the equipment) to 100% percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.02.E of the General Conditions and subject to compliance with the Colorado Public Works Act, Section 38-26-101, et seq., C.R.S. Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Article 15 of the General Conditions and the law.

13.04 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless CMAR submits written consent of the surety to such payment, return, or release.

13.05 Interest

- A. All undisputed amounts not paid when due will bear interest at the rate of [number] percent per annum.

ARTICLE 14—DOCUMENTATION AND AUDIT

14.01 Documentation

- A. Whenever the Cost of the Work for any purpose is to be determined pursuant to this Contract, CMAR and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices.
- B. CMAR will provide documentation of all Costs of the Work with the Application for Payment as directed by the Owner's Advisor.

14.02 Audit

- A. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all CMAR's accounts, records, books, correspondence, instructions, drawings, receipts, and similar data relating to the Cost of the Work and the CMAR Fee. CMAR shall preserve all such documents for a period of three years after the final payment by Owner. Subcontractors performing Work on a Cost of the Work basis will afford such access to Owner, and preserve such documents, to the same extent required of CMAR.

ARTICLE 15—CONTRACT TIMES

15.01 [Intentionally omitted]

15.02 Contract Times—Days

- A. The Owner and CMAR shall agree upon the date when the Work will be substantially complete at the time of establishment on the GMP and the concurrent execution of a Contract Amendment.
- B. The number of days in which the Work will be substantially complete, and in which the Work will be completed and ready for final payment, will be set out in a Contract Amendment and comply with provisions of Article 15. Completion dates for specified portions of the Work, if applicable, may be set out in Work Authorizations or Change Orders.

15.03 Liquidated Damages

- A. CMAR and Owner recognize that Substantial Completion of the Work, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved 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 CMAR agree that as liquidated damages for delay, but not as a penalty:
1. Substantial Completion – CMAR shall pay Owner \$1,500.00 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 CMAR 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, CMAR shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Milestones CMAR shall pay Owner the amount specified in Paragraph 15.05 for each day that expires after the time, as duly adjusted pursuant to the Contract, specified for achievement of each Milestone, until that Milestone is achieved.
 4. If Owner recovers liquidated damages for a delay in completion of the Project or a 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.
- B. Bonus: CMAR and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and CMAR agree that as a bonus for early completion, Owner shall pay CMAR \$100.00 for each day prior to the time specified above for Substantial Completion, as duly adjusted pursuant to the Contract, that the Work is substantially complete. The maximum value of the bonus will be limited to \$500.00.

15.04 [Intentionally omitted]

15.05 Milestones and Associated Damages

- A. Work required to be complete to meet the following Milestone(s) will be included in a separate Work Authorization, if at all, or established with the GMP and set forth in a Contract Amendment.

ARTICLE 16—CONTRACT DOCUMENTS

16.01 Contents

- A. The Contract Documents consist of all of the following:
1. This Agreement.
 2. General Conditions.
 3. Supplementary Conditions.
 4. General Requirements (Division 01 of the Specifications.)
 5. Drawings and Specifications completed as of the Effective Date of the Contract: **[itemize or incorporate list]**.
 6. Exhibits to this Agreement (enumerated as follows):

- a. Exhibit A, Scope of CMAR's Services;
 - b. Exhibit B, Work Authorization 1
 - c. Exhibit C; Work Authorization 2
 - d. Exhibit D; Work Authorization 3 - GMP
 - e. **[List other exhibits, if any].**
7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Contract Amendments;
 - b. Executed Work Authorizations, including any exhibits identified as Drawings, Specifications, or other Contract Documents;
 - c. Work Authorization Modifications;
 - 1) Work Change Directives;
 - 2) Change Orders; and
 - 3) Field Orders.
 - d. Performance and Payment Bonds; and
 - e. Warranty Bonds, if any.
- B. There are no Contract Documents other than those listed above in this Article 16.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 17—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

17.01 CMAR's Representations

- A. To induce Owner to enter into this Contract, CMAR makes the following representations:
1. CMAR has examined and carefully studied the Contract Documents, including Addenda.
 2. CMAR has visited the Site, is familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. CMAR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. CMAR has studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. [Intentionally omitted]
 6. CMAR has considered the information known to CMAR 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 **[Proposal]** Documents; with respect to the effect of such information, observations, on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR; and (c) CMAR's safety precautions and programs.
 7. [Intentionally omitted]

8. CMAR is aware of the general nature of work to be performed by Owner and others at the relates to the Work as indicated in the Contract Documents.
9. CMAR will provide Owner's Advisor written notice of all conflicts, errors, ambiguities, or discrepancies that CMAR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Owner's Advisor is acceptable to CMAR. If CMAR performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without providing notice of such error, inconsistency or omission to Owner, CMAR shall assume responsibility for such construction activity and shall bear the costs attributable to any necessary correction.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. CMAR's entry into this Contract constitutes representation by CMAR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

17.02 CMAR's Certifications

- A. CMAR 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 17.02:
 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 proposal process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Proposal process or the execution of the Contract to the detriment of Owner, (b) to establish proposal 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 Proposers, with or without the knowledge of Owner, a purpose of which is to establish proposal 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 proposal process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and CMAR have signed this Agreement.

This Agreement will be effective on _____ **which Contract becomes effective]**, which is the Effective Date of the Contract.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

MWH CONSTRUCTORS, INC

By: _____
Name: Blair Lavoie
Title: President/CEO

STATE OF COLORADO)) ss
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2023, by Blair Lavoie as the President of MWH Constructors, Inc.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

Address for giving notices:

450 S. Parish Avenue
P.O. Box 609
Johnstown, CO 80534

Designated Representative:

Name: Ellen Hilbig
(typed or printed)

Title: Utilities Director
(typed or printed)

Address:

450 S. Parish Avenue
P.O. Box 609
Johnstown, CO 80534

Phone: 970.578.9619

Email: ehilbig@johnstownco.gov
(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Address for giving notices:

8001 Arista Pl Suite 500
Broomfield, CO 80021

Designated Representative:

Name: Tom Paul
(typed or printed)

Title: Director of Business Development
(typed or printed)

Address:

8001 Arista Pl Suite 500
Broomfield, CO 80021

Phone: 720.547.5354

Email: Tom.paul@mwhconstructors.com

License No.: _____
(where applicable)

State: _____

**TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 6 day of February 2023 (the "Effective Date") by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the "Town") and MWH Constructors, Inc., a Foreign Corporation ("Contractor") (collectively, the "Parties").

RECITALS

WHEREAS, the Town desires to engage the services of Contractor and Contractor desires to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference ("Services"), to the Town; and

WHEREAS, the Parties wish to memorialize their contractual relationship.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals herein and in consideration of the mutual promises, agreements, undertakings and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree as follows:

SECTION 1: PARTIES

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement.

SECTION 2: SERVICES, COMPENSATION AND TERM

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Compensation. In consideration of Contractor's performance of the Services contemplated herein, the Town agrees to pay Contractor the compensation set forth on Exhibit A. Contractor shall submit detailed invoices reflecting the portion of the Services completed to the date of the invoice. The Town shall provide payment for Services to Contractor within thirty (30) days of receipt of the invoice. In its discretion, the Town may withhold payment for disputed portions of invoices on the condition that the Town provides written notice to Contractor of the dispute. Upon delivery of notice, the Town and Contractor shall promptly endeavor to resolve such dispute.

2.03 Expenses: Contractor shall not incur any expense or debt on behalf of the Town

without the Town's prior written authorization.

2.04 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through December 31, 2023 and shall not extend beyond that date absent the written approval of the Town.

SECTION 3: OPERATIONS

3.01 Contractor Status. Contractor avers that it has the background, expertise and education to provide the Services. Contractor shall be responsible for the proper performance of the Services in accordance with the terms hereof. Contractor shall obtain the necessary permits, if any, and maintain all required licenses, including but not limited to a Town business license.

3.02 Schedule. Unless otherwise set forth in Exhibit A, Contractor shall provide the Services in accordance with the timeline requested by the Town

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance.

A. Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future Town comprehensive or personal injury liability insurance policies. As a material term of this Agreement, Contractor agrees to maintain and keep in force during the term of this Agreement one or more policies of insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado in the following amounts:

1. Workers' compensation insurance as required by law;
2. Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate;
3. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that Contractor's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Contractor who utilizes an automobile in providing services to Town under this Agreement; and
4. Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.

B. Contractor shall procure and maintain the minimum insurance coverages

listed herein. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Contractor's insurance policies.

C. A certificate of insurance shall be completed by Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and, upon request by the Town, shall be subject to review and approval by the Town. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities, or failures to act, under this Agreement. Contractor agrees that it will at all times protect, defend, indemnify and hold harmless the Town, its elected officials, employees, agents, and their successors and assigns, from and against all liabilities, losses, claims, demands, actions and costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons arising from or resulting in any manner from the actions or failures to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person.

SECTION 5: TERMINATION

5.01 Termination. [The Town or Contractor] may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to [Contractor/the other Party]. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

SECTION 6: INDEPENDENT CONTRACTOR

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** As long as there is not a conflict of interest with the

Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

SECTION 7: NOTICE

7.01 Notices. All notices required under this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail ("email") return receipt or written acknowledgment requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO THE TOWN:
 Town of Johnstown
 Attn: Ellen Hilbig
 450 S. Parish Avenue
 P.O. Box 609
 Johnstown, CO 80534
 Email: ehilbig@johnstownco.gov

TO CONTRACTOR:
 MWH Constructors Headquarters
 Attn: Tom Paul
 8001 Arista Pl Suite 500,
 Broomfield, CO 80021
 Email: tom.paul@mwhconstructors.com

SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

8.03 Laws and Regulations. In the conduct of the Services, Contractor shall comply with all applicable laws, rules and regulations, and the directives or instructions issued by the Town or its designated representatives.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

8.07 Waiver. No consent or waiver, express or implied, by the Town to or of any breach or default by Contractor in the performance by Contractor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act or to declare Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time, or otherwise available to the Town, its elected officials, employees or agents.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the Parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

8.11 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.12 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.13 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, employee or agent of the Town.

8.14 No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of

legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

8.15 Controlling Document. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

8.18 Right to Injunction. The Parties hereto acknowledge that the Services to be rendered by Contractor and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by Contractor.

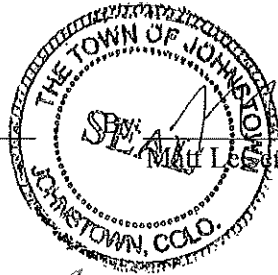
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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: Hannah Hill
Hannah Hill, Town Clerk



Sean Matthews
Sean Matthews, Town Manager

MWH CONSTRUCTORS, INC

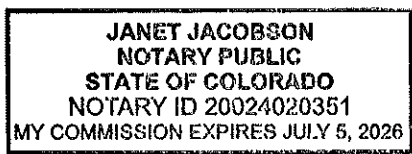
By: Blair Lavoie
Name: Blair Lavoie
Title: President/CEO

STATE OF COLORADO)
) ss
COUNTY OF Bradley

SUBSCRIBED AND SWORN to before me this 10th day of February, 2023, by Blair Lavoie as the President/CEO of MWH Constructors, Inc.

WITNESS my hand and official seal.

My commission expires: 07/05/2026



Janet Jacobson
Notary Public

**EXHIBIT A
SERVICES**

RFP: SCOPE OF DESIGN PHASE SERVICES

The selected CMAR will be provided separate contracts for design phase services and construction phase services with the Town. The design phase services agreement will provide for specific services and compensation for project team activities other than construction phase services. The proposed Design Phase services and activities are listed below.

- Participate as a member of the project team in evaluating alternative facility arrangements, construction materials, and sequencing of construction which may affect the selection, design and arrangement of project components.
- Provide input and feedback regarding comparative cost of implementation of required facilities as defined by the project team.
- Provide value engineering assistance to determine options that may reduce the total construction costs of the project (for example, help determine site layout efficiencies or phasing of the project that will reduce total costs).
- Assist and participate as a member of the project team through the completion of construction documents providing a project schedule at approximately two or three additional intervals during completion of the drawings and specifications.
- Assist and participate in any early procurement packages identified by the project.
- Identify appropriate subcontractors and material suppliers that will be invited to participate/bid in the pricing and/or construction of the project. Suitability will be determined by concurrence of the entire project team.
- Assist and participate as a member of the project team through completion of construction documents providing an estimate of probable costs at approximately one or two additional intervals during completion of the drawings and specifications.
- Participate as a member of the project team in the completion and approvals of required permits including building code compliance for the proposed design and construction as needed. This will be a responsibility of the CMAR who shall meet the contractor licensing requirements of the Town.
- Based on a mutually agreed upon completion level of the drawings and specification (for example, 90% design), prepare a final construction project cost in the form of a guaranteed maximum price (GMP). The Town may accept the GMP and use it as a cost basis for the CMAR contract, or reject the GMP, which would terminate the design phase agreement. The Town also reserves the right to compare the GMP independently to ensure the project cost is reasonable.
- The CMAR firm may be requested to commence construction in phases, before Construction Drawings and Specifications are completed. Therefore, pricing of any individual tasks prior to the GMP construction shall be substantiated as an additional service request basis with the predetermined parameters, process and procedures. Allowances for certain tasks or equipment items may be necessary.
- Other required services for project completion outlined in the CMAR Contract.

TAB C: COST PROPOSAL:

As part of the CMAR Construction Phase Contract negotiations the scope of the work and GMP will be established. The project is being funded by Town reserves. It is the Town's intention to minimize the final cost to complete project. Any savings will be accrued to the Town. There is potential that alternative funding sources for the Project may become available. Town may pursue these funding sources and as a result be required to publicly bid the construction services for the Project. Respondents to this RFP are made aware that the CMAR selection, construction schedule, funding, and other services may be revised per the outcomes of the Infrastructure Bill. Contractor will work with design team to value engineer costs to meet the Town's budget.

- Design Phase Services:

Provide hourly rates for the proposed key project staff from your firm (and subcontractors if necessary) for assistance to the project design team during the design phase of a project. Present these rates in a unit pricing format for each of the CMAR's representatives, staff members, and/or subcontractors that are proposed to participate as members of the project team in the design phase activities.

Provide a total design phase budget based on the following:

1. Project kick-off meeting: 1 meeting, 4-hours each
2. Progress Meetings: 1hr each Bi-Weekly – assume 18
3. Project Design Workshops: 2x each month in person , 3-hours each – assume 18
 - a. Schedule & Sequencing Workshop: 60% & 90%
 - b. Value Engineering Workshop: 60% & 90%
 - c. Risk & Opportunity Assessment Workshop: 60% & 90%
4. Design Review & Procurement Plan/Packages: 60% & 90% - assume 80 hours
5. In-house project estimating and other design phase services: - assume 120 hours
 - a. 60% Project Budget & Construction Cost Development:
 - b. 90% GMP Project Budget & Construction Cost Development:
6. Other costs if the CMAR considers inclusive of design phase services; e.g., reproductions, travel time, that it should be compensated.
 - a. Condition Assessment for DAF Building Upgrades – assume 40 hrs

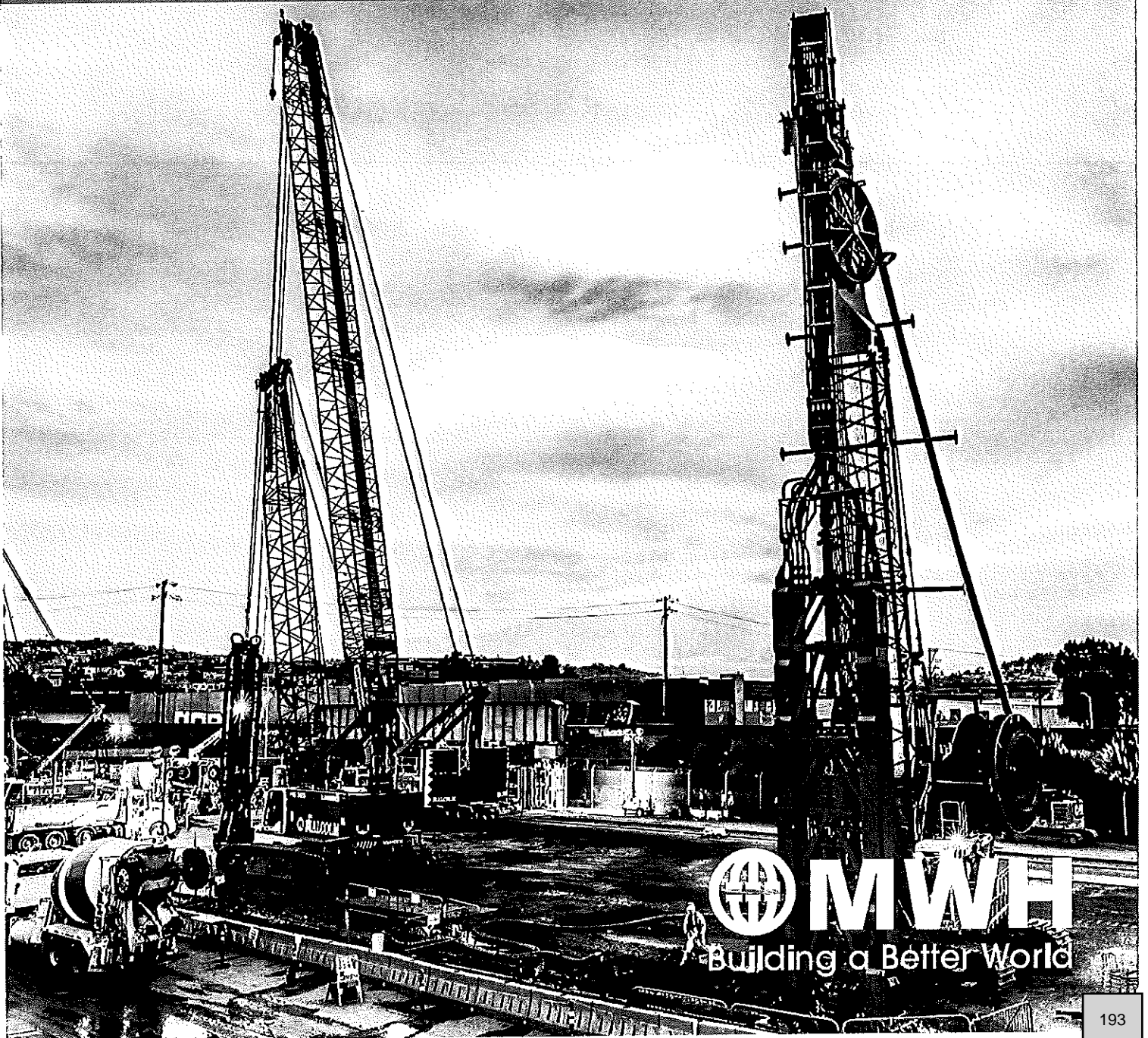
GMP Approach:

Discuss how the GMP will be determined for construction phase of the project. In addition, included as supplement to the GMP Approach; provide the following:

1. Itemized unit labor cost for personnel on the CMAR's staff expected to be involved in the project; i.e., cost per hour by job title or labor classification. Itemize for each labor category the unit payroll cost and the direct labor overhead cost applicable to each labor hour charged.
2. Provide the factor, percentage or lump sum, or other manner of pricing of the CMAR's general overhead required to be compensated during the construction phase.
3. Provide a detailed description and manner of determination of the CMAR's fee and/or profit factor desired to be attained and priced in the GMP.

4. Describe your approach to developing a cost to complete this project. How will this affect your firm's design input?
5. Describe contingency, how it is managed, and use of contingency.
6. Describe your approach to developing value engineering ideas through construction delivery to enhance the work product while potentially saving cost.
7. Provide an itemization, if any, of CMAR's overhead, fee, and/or profit to be applied to both materials and subcontractor costs incorporated into the project.
8. Provide an itemization of the CMAR's proposed equipment and temporary facilities to be used and/or installed at the project site together with applicable unit pricing proposed for compensation throughout the project. Examples include company owned vehicles, field office, storage facilities, toilet(s), dumpster(s)/ debris disposal. Include any project specific operation and maintenance costs (communication services/equipment, employee accommodations. When describing equipment, address owned, leased or rented equipment. Include a description and example of the way a "small tool allowance" and expendable tools and parts will be compensated.
9. Describe the approach, general facilities, and basis of compensation for construction and maintenance of a temporary power system during construction.
10. Describe any additional cost elements or factors applied to project labor, materials, equipment or subcontractor's costs to determine the GMP.
11. Itemize and describe the rates and/or other cost factors in providing comprehensive general liability, auto liability, and builders risk insurance during the construction period.
12. Describe and itemize the rate applicable to this project which will be utilized to determine the payment and performance bond premiums for the project.
13. Itemize those factors involved in change orders, contract modifications order and/or adjustments to the GMP including supervision allowance (i.e., percentage of direct labor hours, cost or other approach), labor and material markups and overhead and profit percentages if they are different than the factors used in determining the initial GMP.

C. COST PROPOSAL



MWH
Building a Better World

DESIGN PHASE SERVICES PROPOSED RATES

MWH CONSTRUCTORS
 Town of Johnstown, Water Treatment Plant Expansion Project
 CMAR Design Phase (Preconstruction) Services - Cost Proposal
 Date: Dec. 1, 2022

Design Phase, Preconstruction Services Cost Proposal Summary

Description	Project Executive Tom Peal		Preconstruction Manager Tom Peal		Project Manager Kara Birman		Superintendent Tyler Hendrix		Electrical Superintendent Victor Ebers		Lead Estimator Britt Henderson		Quality Engineer TBD		Safety Engineer TBD		Total
	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	
1. Project kick-off meeting: 1 meeting, 4-hours each			4		4		4		4		4						20.0
	Subtotal (Hours):		4.0		4.0		4.0		4.0		4.0		0.0	0.0	0.0	0.0	20.0
	Subtotal (Cost):	\$0	\$749		\$519		\$508		\$482		\$535		\$0	\$0	\$0	\$0	\$2,793
2. Progress Meetings: 1hr each Bi-Weekly -- assume 18 meetings			18.0		18.0		9.0		9.0		9.0						63.0
	Subtotal (Hours):	0.0	18.0		18.0		9.0		9.0		9.0		0.0	0.0	0.0	0.0	63.0
	Subtotal (Cost):	\$0	\$3,371		\$2,337		\$1,443		\$1,084		\$1,204		\$0	\$0	\$0	\$0	\$9,139
3. Project Design Workshops 2x each month in person, 3-hours each -- assume 18																	0.0
a. Schedule & Sequencing Workshop: 60% & 90%			18.0		18.0		9.0		9.0		9.0						0.0
b. Value Engineering Workshop: 60% & 90%			18.0		18.0		9.0		9.0		9.0						63.0
c. Risk & Opportunity Assessment Workshop: 60% & 90%			18.0		18.0		9.0		9.0		9.0						63.0
	Subtotal (Hours):	0.0	54.0		54.0		27.0		27.0		27.0		0.0	0.0	0.0	0.0	189.0
	Subtotal (Cost):	\$0	\$10,114		\$7,010		\$3,429		\$3,251		\$3,612		\$0	\$0	\$0	\$0	\$27,416
4. Design Review & Procurement Plan/Packages: 60% & 90% - assume 80 hours																	0.0
-60%			20.0		20.0		10.0		10.0		8.0		6.0	6.0	6.0	6.0	80.0
-90%			20.0		20.0		10.0		10.0		8.0		6.0	6.0	6.0	6.0	80.0
	Subtotal (Hours):	0.0	40.0		40.0		20.0		20.0		16.0		12.0	12.0	12.0	12.0	160.0
	Subtotal (Cost):	\$0	\$7,492		\$5,193		\$2,540		\$2,408		\$2,141		\$1,138	\$978	\$0	\$0	\$21,889
5. In-house project estimating and other design phase services - assume 120 hours																	0.0
a. 60% Project Budget & Construction Cost Development:			8.0		8.0		8.0		8.0		8.0		8.0	8.0	8.0	8.0	0.0
b. 90% GMP Project Budget & Construction Cost Development:			8.0		8.0		8.0		8.0		8.0		8.0	8.0	8.0	8.0	0.0
	Subtotal (Hours):	0.0	16.0		16.0		16.0		16.0		17.6		0.0	0.0	0.0	0.0	240.0
	Subtotal (Cost):	\$0	\$2,997		\$2,077		\$2,092		\$1,926		\$2,346		\$0	\$0	\$0	\$0	\$52,578
6. Other costs if the CMAR considers inclusive of design phase services; e.g., reproductions, travel time, that it should be compensated.																	0.0
- General Management, Administrative Services:			80.0		180.0		80.0		60.0		20.0		8.0	8.0	8.0	8.0	0.0
- Condition Assessment for DAF Building Upgrades - assume 40 hrs:			4.0		12.0		8.0		8.0		8.0		8.0	8.0	8.0	8.0	40.0

DESIGN PHASE SERVICES PROPOSED RATES CONTINUED

MWH Constructors
 Town of Johnstown, Water Treatment Plant Expansion Project
 CMAR Design Phase (Preconstruction) Services - Cost Proposal
 Date: Dec. 1, 2022

Design Phase, Preconstruction Services Cost Proposal Summary

Description	Project Executive Tom Paul	Preconstruction Manager Tom Paul	Project Manager Nancy Boromann	Project Supervisor Tyler Hendrix	Electrical Supervisor Victor Ebara	Local Estimator Brett Henderson	Quality Engineer TBD	Safety Engineer TBD	Total
	0.0	84.0	192.0	88.0	68.0	23.0	8.0	8.0	476.0
	\$0	\$15,733	\$24,925	\$11,176	\$8,188	\$3,746	\$759	\$652	\$65,178
Subtotal (Hours):									
Subtotal (Cost):									
7. Preliminary GMP									
Early Work / Long Lead Procurement		8.0	60.0	40.0	16.0	24.0	8.0	8.0	0.0
GMP Work Package Plan Development, Work Package Solicitation, Preparation of GMP		40.0	120.0	120.0	40.0	32.0	10.0	10.0	0.0
	0.0	48.0	180.0	160.0	56.0	56.0	18.0	18.0	536.0
	\$0	\$8,990	\$23,367	\$20,320	\$6,743	\$7,492	\$1,708	\$1,467	\$70,086
Totals (Hours):									
Total Hourly Billable Rate:									
	\$187	\$187	\$130	\$127	\$120	\$134	\$95	\$81	\$1,684.0
Total Preconstruction Staff Labor:	\$0	\$49,446	\$65,427	\$41,148	\$24,081	\$42,276	\$3,605	\$5,096	\$229,080

GMP APPROACH

1. *Itemized unit labor cost for personnel on the CMAR's staff expected to be involved in the project; i.e., cost per hour by job title or labor classification. Itemize for each labor category the unit payroll cost and the direct labor overhead cost applicable to each labor hour charged.*

DESIGN PHASE / PRECONSTRUCTION SERVICES: PROPOSED HOURLY STAFF RATES:

Project Executive – \$185.00/HR
 Project Manager – \$130.00/HR
 Assistant Project Manager – \$115.00/HR
 General Superintendent – \$125.00/HR
 Superintendent – \$115.00/HR
 Lead Estimator – \$134.00/HR
 Estimator – \$110.00/HR
 Project Engineer – \$110.00/HR
 Office/Field Engineer – \$100.00/HR
 SU&C Manager – \$145.00/HR
 Scheduler – \$110.00/HR
 Quality Manager – \$105.00/HR
 Safety Manager – \$105.00/HR

2. *Provide the factor, percentage or lump sum, or other manner of pricing of the CMAR's general overhead required to be compensated during the construction phase.*

MWH proposes a fixed percentage of 3.5% on top of Cost of Work, excluding bonds and insurance.

3. *Provide a detailed description and manner of determination of the CMAR's fee and/or profit factor desired to be attained and priced in the GMP.*

MWH proposes a fixed percentage of 3.0% on top of Cost of Work, excluding bonds and insurance.

4. *Describe your approach to developing a cost to complete this project. How will this affect your firm's design input?*

MWH will work openly and in partnership with the Town and Engineer to perform cost estimation services and ultimately to produce a Guaranteed Maximum Proposal(s) for the construction of this project. We believe that all CMAR projects require a baseline construction cost estimate to facilitate thorough and objective decision-making during the course of design for the project to achieve the goal of producing an on-schedule and under budget project. Having a baseline estimate in place for the project will allow for itemized cost-based decision making

CONSTRUCTION PHASE (PRELIMINARY GMP): PROPOSED HOURLY STAFF RATES:

Project Executive – \$220.00/HR
 Project Manager – \$151.00/HR
 Assistant Project Manager – \$135.00/HR
 General Superintendent – \$140.00/HR
 Superintendent – \$130.00/HR
 Lead Estimator – \$156.00/HR
 Estimator – \$120.00/HR
 Project Engineer – \$130.00/HR
 Office/Field Engineer – \$115.00/HR
 SU&C Manager – \$160.00/HR
 Scheduler – \$120.00/HR
 Quality Manager – \$115.00/HR
 Safety Manager – \$115.00/HR
 BIM / VDC Manager – \$120.00/

to be performed. There are several key decisions made early in the project which have compounding implications to final project design once decided upon and cemented into the project's design. As an example, our team will provide input early on with regards to proposed facilities layouts and sizing, routing of utilities, process and key equipment selection, and selection of building materials. As the project evolves from 60% to 90% design, we will support decision-making by providing input and cost estimation services for design alternatives and value engineering ideas.

Once design progresses to the 60% design, MWH will provide further cost estimation services as desired by the Town. The 60% design estimate produced by MWH will be substantiated by detailed quantity take-offs, market-based input for costs of materials and equipment, detailed risk assessment and contingency assessment by means of a risk register, and cost escalation analysis. At the time of the 60% estimate, MWH will prepare several reports to breakdown the estimated cost of construction including estimate reports by facility/building, discipline of work per CSI specification grouping, work phasing, and bid packaging. Following completion and submission of the 60% design OPCC estimate, MWH will prepare a cost summary presentation for the Town and Engineer. In tandem with the 60% estimate, our team will prepare a detailed construction schedule outlining the remaining timelines for design

development, bid packaging and bid processes, GMP development, and construction, including facility start up and commissioning. The project construction schedule will be used to develop and support the estimated durations needed for CMAR project management General Conditions staff.

As the project progresses from 60% design to 90% design, we will prepare a site logistics plan, confirm long lead items, and prepare safety, quality management plans. We recognize that this phase of the project is critical for the identification and avoidance of potential conflicts. MWH understands that preconstruction will be very intense for the first several months, which is why our team is available to begin immediately. We also see as critical during preconstruction the procuring of other early works packages and following the 60% estimate can progress directly into GMP development.

Our team will provide design review between 60%, 90% and final design stages with dedicated focus towards constructability reviews and including review of plans, standard details, and specifications. At the 90% design stage, MWH will produce a final estimate and report. Similar to the 60% stage, the 90% will be supported by detailed take-offs, subcontractor and supplier provided budgetary pricing, detailed risk register, escalation analysis, and General Conditions pricing. Should the Town desire to fast-track the project schedule, MWH can prepare and issue out competitive bid packages for subcontractor and supplier pricing to be incorporated into a 90% design GMP proposal. MWH will advertise and solicit bids for all bid packages identified for the project as competitively bid and/or best-value selection-based scopes of work. Upon receipt of bids, MWH will perform a comparison and analysis of the bids received and will make a recommendation of award for each bid package to the Town for approval. The final selected bid pricing will be incorporated alongside the self-performed scopes of work and General Conditions pricing prepared by MWH into a final GMP proposal for the balance of work. Any scopes of work that are deemed appropriate to defer for bidding due to extended time to complete (e.g., site paving and landscaping, painting and coatings, commissioning and startup) will be allocated into a project allowance and will be bid out at a later date closer to the time of need for construction. The GMP proposal prepared by MWH will include the Direct Cost of Work including subcontracted work, supply of equipment and materials, and self-performed construction by MWH. Additionally, the cost of

CMAR General Conditions will be included. MWH will prepare a final project risk register which will itemize and allocate out responsible entities (either CMAR or the Town) for ownership of project risks and will associate estimated costs and probabilities to each risk to build up and determine necessary amounts to be included in the GMP proposal for CMAR Contingency, Owner Allowances, and Owner's Contingency.

5. Describe contingency, how it is managed, and use of contingency.

Contingency is the funds to mitigate project risks. During the preconstruction phase and through construction, we will update the project Risk Register. This register captures all risks, mitigation strategies, their costs and also the costs of accepting the risk without mitigation. As a project team we will review the Risk Register and determine which risks are most valid. From this proofing exercise we will be able to determine a budget for contingency. Contingency typically amounts to 3% to 7% of the Cost of Work. We typically see contract terms which allow for contingency to be utilized without permission up to a pre-determined value. Once that threshold is reached then the Town would need to approve contingency utilization. Typical uses for contingency are scope gap, schedule acceleration, rework, trade flow.

6. Describe your approach to developing value engineering ideas through construction delivery to enhance the work product while potentially saving cost.

We define Value as equaling Functionality divided by Cost. This allows us to increase the value of a change by providing better functionality, reducing cost, or both. Making a structure smaller or removing scope does not increase value, as these changes reduce function. **Without this relationship, VE is often used as a scope reduction tool that alters design intent instead of identifying overall improvements that can provide cost savings or value.**

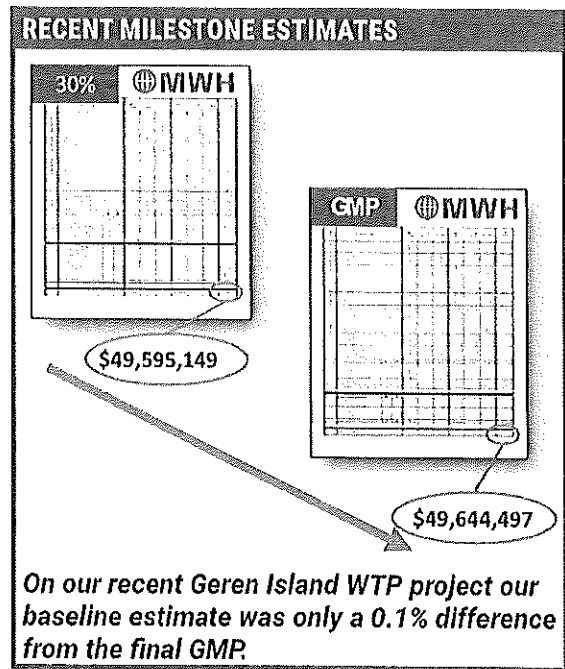
Therefore, our team explores all options within the guidelines and considers initial cost, life-cycle cost, operational flexibility, performance, reliability, constructibility, and future expansion considerations. MWH has a proven value engineering process that transparently tracks design alternatives and detailed cost estimates to allow the Town to make informed decisions.

DEVELOPING ACCURATE ESTIMATES

MWH's ability to self-perform, our experience with Colorado subcontractors and suppliers, and our focus on W/WW projects, allows us to accurately prepare detailed estimates for the Town to make informed decisions. We develop full project cost estimates corresponding to each design milestone. However, our team does not wait until each design phase is completed to estimate portions of the project - we maintain constant communication with the design team to update costs in the baseline model to reflect market pricing. MWH uses a Cost Trend Log (CTL) to quantify the scope and cost changes occurring between design deliverables. This is an integral part of developing early cost certainty and provides the baseline for Value Engineering (VE) efforts. Our comparison of the initial estimates to the low bidders for subcontracted work is typically within 4.9%.

VALUE ANALYSIS

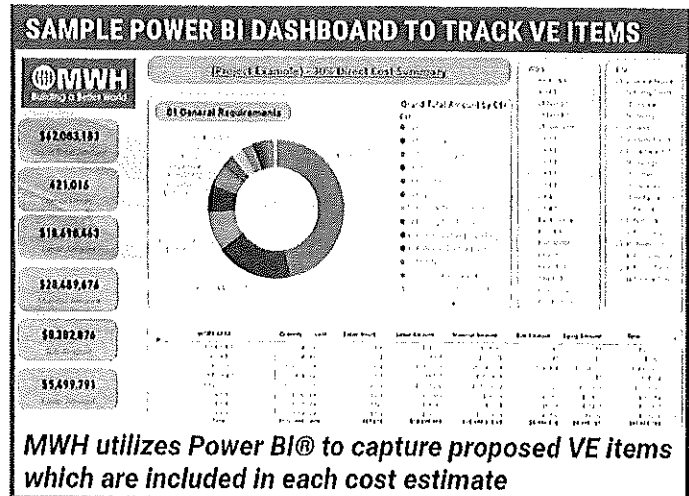
MWH's goal as your CMAR is to deliver your project successfully while identifying opportunities to provide additional value through cost reduction or improvements to the facilities functionality and lifespan. A successful VE analysis identifies opportunities to provide the Town with best value improvements to the Johnstown WTP Expansion project – this is not simply a reduction in cost. Therefore, our team explores all options within the guidelines and considers initial cost, life-cycle cost, operational flexibility, performance, reliability, constructability, and future expansion considerations. MWH has a proven value engineering process that transparently tracks design alternatives and detailed cost estimates to allow the Town to make informed decisions.



EXPERIENCE TRACKING IDENTIFIED SAVINGS FROM VE/CONSTRUCTABILITY TO IMPLEMENTATION

MWH utilizes a variety of tools to track proposed VE and constructability ideas and alternatives through design and GMP development and then into full implementation. Our cost estimates are built to include all potential alternatives for consideration along with the impacts to schedule, cost, and risk elements of the project. MWH utilizes HCSS® for our cost estimates along with a variety of take-off tools to capture an accurate cost estimate.

Proposed VE items are fully priced and included in each cost estimate. We utilize Microsoft Power BI® to capture this data in dashboards for internal and client use and can track cost breakdowns in an interactive dashboard across work packages, structures, design progression, or by VE items. An example of this dashboard is shown to the right. As VE items are either accepted, rejected, or further considered we continue that progression into the next cost model as design progresses further.



Eventually all VE items are either accepted and implemented into the GMP, or they are rejected from consideration. After final GMP acceptance, costs are tracked by Work Breakdown Structure. So, if we align a particular VE item to a WBS category we can always reconcile that cost element. But any and all savings or value would already be implemented and credited to the project as that VE item is accepted and implemented into the project cost model, and eventually the GMP finalized and accepted. We can easily track implemented VE credits within this cost model and GMP process for the Town's evaluation.

7. Provide an itemization, if any, of CMAR's overhead, fee, and/or profit to be applied to both materials and subcontractor costs incorporated into the project.

Lets start with what is the GMP comprised of and how overhead, fee and/or profit are applied. All of the subcontractor bids and MHW self perform work values will be compiled into what is typically called the Cost of Work or COW. The COW doesn't differentiate between labor, materials, and construction equipment. With a value for the Cost of Work established then the overhead and profit percentages are added. This value is then multiplied by the insurance rate as well as the rate for payment and performance bonds. This new value is then added to the Contingency value which is the Guaranteed Maximum Price. MWH is responsible for assuring that the project is built for that value or less. Any unspent GMP is returned to the Town.

8. Provide an itemization of the CMAR's proposed equipment and temporary facilities to be used and/or installed at the project site together with applicable unit pricing proposed for compensation throughout the project. Include a description and example of the way a "small tool allowance" and expendable tools and parts will be compensated.

- ▶ Staff vehicles (owned ½-ton trucks) – \$1,400/month
- ▶ Cell phones (owned devices + data plan) – \$100/month
- ▶ Computers & Peripherals (owned devices + software) – \$75/month
- ▶ Office Trailer (Double Wide 24' x 60') – \$2,800/month (to be quoted)
- ▶ Connex Containers – \$200 each/month x 4 each
- ▶ Chemical Toilets – \$120 each/month x 4 each (to be quoted)
- ▶ Recycle & Trash Roll-off Dumpsters – \$400 each/month (to be quoted)
- ▶ Internet Service – \$200/month (to be quoted)
- ▶ Temporary Power Utilities – \$TBD (to be quoted)
- ▶ Office Supplies – \$300/month
- ▶ Printing & Reproduction – \$250/month
- ▶ Jobsite Printer/Copier/Scanner – \$500 each/

- month x2 each (to be quoted)
- ▶ Postage – \$100/month
- ▶ Coffee, Water, Ice – \$300/month
- ▶ First Aid Kit Replenishment – \$500/month
- ▶ Fire Extinguisher Inspection / Refill – \$100/month

9. Describe the approach, general facilities, and basis of compensation for construction and maintenance of a temporary power system during construction.

During the preconstruction phase we will layout a temporary power system for construction trailers, construction power. With the scope determined we have two options. The first is to negotiate this scope with an electrical contractor, or bid this work out. It has been our experience that it is easiest to include this scope with the electrical bid package, so that the installation, maintenance, and demobilization is taken care of by the electrical contractor in site

10. Describe any additional cost elements or factors applied to project labor, materials, equipment or subcontractor's costs to determine the GMP.

MWH does not have any additional cost to be applied to project labor, materials, equipment, or subcontractor's cost to determine the GMP.

11. Itemize and describe the rates and/or other cost factors in providing comprehensive general liability, auto liability, and builders risk insurance during the construction period.

- ▶ General Commercial Liability – 0.22%
- ▶ Automobile – Included
- ▶ Professional Liability – 0.22%
- ▶ Pollution Insurance – 0.22%
- ▶ Builder's Risk – 0.60%
- ▶ Total for Insurances – 1.26%

12. Describe and itemize the rate applicable to this project which will be utilized to determine the payment and performance bond premiums for the project.

List out standard P&P rate based on standard warranty period – generally 0.615% of project cost before bonds for 24 month or less contract duration.

For the Johnstown WTP project our surety provided a rate of 0.77%.

13. Itemize those factors involved in change orders, contract modifications order and/or adjustments to the GMP including supervision allowance (i.e., percentage of direct labor hours, cost or other approach), labor and material markups and overhead and profit percentages if they are different than the factors used in determining the initial GMP.

We will follow the same format as the initial GMP development. Potential credit for general conditions or insurance premium would have to be supported by a significant reduction in project scope and duration. Fee and bond are only billed as cost, therefore reduction in scope pertaining to fee and bonds would be a credit at project closeout. MWH will follow mutually agreeable percentage markups for additional material, labor and equipment.

Exhibit B - WA1 - Executive Summary x WBS

Project Specific Information

Job Name : Johnstown Water Treatment Plant Expansion	Bid Review Date : 9/20/2023
Job Type : Water Treatment Plant Upgrades	Anticipated Award Date : TBD
Owner : Town of Johnstown, CO	Construction Start : 10/1/2023
Location : Johnstown, CO	Construction Completion : 6/15/2026
Contract Type : CMAR	Warranty Period : 1 year(s)
Bond Required? : YES	Estimating Phase : 60% Design

SP Labor and Subcontract/ POA Risk Items

Direct Cost Summary by WBS

Scope Description	SP Man Hours	% of Total MH	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	Percent of Direct Cost
WA1 S-01 Yard Pipe	6,146	26.81%	\$50.65	\$311,272	\$1,489,089	\$310,966	\$265,578	\$2,376,905	33.28%
WA1 S-02 Aggregate Piers	-	0.00%	\$0	\$0	\$0	\$4,248	\$200,600	\$204,848	2.87%
WA1 S-03 Excavation / Dewatering	1,510	6.59%	\$46.71	\$70,539	\$12,626	\$307,131	\$735,626	\$1,125,922	15.77%
WA1 S-04 Wet Well Concrete	4,296	18.74%	\$46.11	\$198,108	\$329,448	\$73,006	\$159,101	\$759,663	10.64%
WA1 S-05 Site Civil / Temporary Roads	10,973	47.87%	\$50.52	\$554,397	\$440,036	\$714,252	\$965,494	\$2,674,179	37.45%
Total Direct by WBS	22,925	100.00%	\$49.48	\$1,134,316	\$2,271,198	\$1,409,604	\$2,326,400	\$7,141,517	100.00%
% of Direct Cost				15.88%	31.80%	19.74%	32.58%	100.00%	

General Conditions

Description	SP Man Hours	Admin Man Hours	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	% of Total Cost
99-GCGR Bidding GCs	-	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	1%
9999-GCGR Construction GCs	-	8,520	\$113.77	\$969,335	\$184,185	\$168,639	\$0	\$1,322,159	19%
Total General Conditions	-	9,100	\$249.77	\$1,048,215	\$184,812	\$170,776	\$0	\$1,403,802	16%
TOTAL COST OF WORK	22,925	9,100		\$2,182,530	\$2,456,010	\$1,580,380	\$2,326,400	\$8,545,320	

Mark-Up Costs

T & I / Bond	Rate	UOM	Total Cost	Notes	Fee and Contingency	Rate	UOM	Total Cost
Liability Insurance	0.660%	%	\$63,544	Project total	Owner Contingency (on Direct Cost of Work)	0.00%	%	\$0
Builders Risk Insurance	0.266%	%	\$205,302		Contractor Contingency (on Cost of Work)	5.00%	%	\$427,266
					Escalation	0.00%	%	\$0
					Overhead (on Cost of Work incl. Contingency)	3.50%		\$264,907
Project Bond	0.770%	%	\$74,134		Profit (on Cost of Work incl. Contingency)	3.00%		\$227,063
Total Mark-Up Cost			\$342,980		Total Fee and Cont. Cost			\$919,237

Total Project Cost							Key Ratios		
	Labor	Material	Equipment	Sub	Contingency, Fee, Bonds & Insurance	Project Total	Description	Rate	Manhours
Total Project Cost	\$2,182,530	\$2,456,010	\$1,580,380	\$2,326,400	\$1,262,217	\$9,807,537	Craft to Supervision	2.52	32,025
							Fee as % of Project	5.02%	
							Contingency as % of Project	4.4%	

October 5, 2023

Ellen Hilbig, P.E.
Utilities Director, Town of Johnstown
450 S. Parish Ave
Johnstown, Colorado 80534

Subject: Johnstown WTP Work Authorization 1 - Early Work Activities

Dear Ellen,

MWH Constructors is pleased to submit this Work Authorization – 1, Early Construction Activities proposal addressing the procurement of early construction activities in the amount of \$9,807,537.00. This proposal is based on the 60% design and Opinion of Probably Construction Costs.

Early Work Activities Packages will include the following:

- S-01 – Relocation, demolition, and installation of yard piping including tie-ins during plant shut down window.
- S-02 – Ground Improvements (Aggregate Piers)
- S-03 – Excavation and Dewatering
- S-04 – Structural Concrete (Clarified Water Wet Well)
- S-05 – Site Civil, Clear/Grub, Temp Roadways

The Pre-Construction tasks for these bid packages include bidding, negotiating, and executing purchase agreements and subcontracts that will be included in our Construction Contract. Also included is the management and supervision of the Early Work Activities Packages.

General condition items include, but are not limited to the following:

- Permits
- Site Survey
- Storm Water Management Implementation and Maintenance

The proposal is based on the following:

- Estimated prices for the procurement of long lead materials and early work activities are based upon 60% design budgetary quotes and are our best estimate of cost but are subject to change pending final design updates and competitive bidding process for actual binding pricing.
- Final construction documents including complete specifications and associated drawings are required prior to any Purchase Agreement can be executed.

Activity ID	Activity Name	Orig Dur	Rem Dur	ACD	Start	Finish	Total Float	Work Package	2023												2024												2025												2026												2027											
									F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
Johnstown WTP Expansion Project									Item #11.																																																											
Contract Milestones (L1)																																																																				
MSL1000015	NTP Early Construction Package and S&P Packages (LLE, Underground Utility Relcations)	0	0	0	30-Oct-23		-33	WA1	<ul style="list-style-type: none"> ◆ NTP Early Construction Package and S&P Packages (LLE, Underground Utility Relcations) ■ Early Work Package Closeout ◆ Early Work Package Substantial Completion 																																																											
MSL1000055	Early Work Package Closeout	20	20	20	04-Oct-24	31-Oct-24	547	WA1																																																												
MSL1000065	Early Work Package Substantial Completion	0	0	0		31-Oct-24	547	WA1																																																												
Design																																																																				
Early Work Package Separation																																																																				
A1440	Storm Water Design - EWP	10	10	10	08-Sep-23	21-Sep-23	-99	WA1	<ul style="list-style-type: none"> ■ Storm Water Design - EWP 																																																											
A1460	Yard Piping & JUB Coordination - EWP	15	15	15	08-Sep-23	28-Sep-23	-104	WA1	<ul style="list-style-type: none"> ■ Yard Piping & JUB Coordination - EWP 																																																											
A1470	Site Grading & Access Roads - EWP	10	10	10	08-Sep-23	21-Sep-23	-99	WA1	<ul style="list-style-type: none"> ■ Site Grading & Access Roads - EWP 																																																											
A1430	Finalize Early Work Package Drawing Set - EWP	10	10	10	29-Sep-23	12-Oct-23	-104	WA1	<ul style="list-style-type: none"> ■ Finalize Early Work Package Drawing Set - EWP 																																																											
A1480	Town Review - EWP	10	10	10	13-Oct-23	26-Oct-23	-34	WA1	<ul style="list-style-type: none"> ■ Town Review - EWP 																																																											
A1490	Review Meeting - EWP	1	1	1	27-Oct-23	27-Oct-23	-34	WA1	<ul style="list-style-type: none"> ■ Review Meeting - EWP 																																																											
Preconstruction																																																																				
S-Packages																																																																				
A5390	S-Package - Work Authorization 1 Development	0	0	0	13-Oct-23		-70	WA1	<ul style="list-style-type: none"> ◆ S-Package - Work Authorization 1 Development 																																																											
A5400	S-Package - Develop Bid Packages	10	10	10	13-Oct-23	26-Oct-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Develop Bid Packages 																																																											
A5410	S-Package - Submit Bid Packages to Town	0	0	0		26-Oct-23	-70	WA1	<ul style="list-style-type: none"> ◆ S-Package - Submit Bid Packages to Town 																																																											
A5420	S-Package - Town Reviews Bid Packages	10	10	10	27-Oct-23	09-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Town Reviews Bid Packages 																																																											
A5430	S-Package - Prepare and Advertise Bids	10	10	10	30-Oct-23	10-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Prepare and Advertise Bids 																																																											
A5440	S-Package - Manage Through Bid Process	10	10	10	13-Nov-23	28-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Manage Through Bid Process 																																																											
A5450	S-Package - Receive and Review Bids	1	1	1	29-Nov-23	29-Nov-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Receive and Review Bids 																																																											
A5460	S-Package - Bid Evaluations, Post Bid Interviews, Final Evaluation and Submission	10	10	10	30-Nov-23	13-Dec-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Bid Evaluations, Post Bid Interviews, Final Evaluation and Submission 																																																											
A5470	S-Package - Town Selection of Bidders	5	5	5	14-Dec-23	20-Dec-23	-70	WA1	<ul style="list-style-type: none"> ■ S-Package - Town Selection of Bidders 																																																											
S-01 Relocation, Demolition, and Installation of Yard Pipe																																																																				
A4950	Negotiations, Development, and Execute of Contracts with Vendors - S-01 Relocation, Demo, and Install	15	15	15	21-Dec-23	16-Jan-24	-24	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-01 Relocation, Demo, and Install 																																																											
S-02 Ground Improvements (Aggregate Peirs)																																																																				
A5030	Negotiations, Development, and Execute of Contracts with Vendors - S-02 Ground Improvements (Aggr	15	15	15	21-Dec-23	16-Jan-24	770	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-02 Ground Improvements (Aggr) 																																																											
S-03 Excavation & Dewatering																																																																				
A5110	Negotiations, Development, and Execute of Contracts with Vendors - S-03 Excavation & Dewatering	15	15	15	01-Dec-23	21-Dec-23	-70	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-03 Excavation & Dewatering 																																																											
S-04 Structural Concrete (Clarified Water Wet Well Only)																																																																				
A5190	Negotiations, Development, and Execute of Contracts with Vendors - S-04 Structural Concrete	15	15	15	21-Dec-23	16-Jan-24	-21	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-04 Structural Concrete 																																																											
S-05 Site Civil, Clear & Grub, Temp Roadways																																																																				
A5270	Negotiations, Development, and Execute of Contracts with Vendors - S-05 Site Civil, Clear & Grub, Temp	15	15	15	21-Dec-23	16-Jan-24	63	WA1	<ul style="list-style-type: none"> ■ Negotiations, Development, and Execute of Contracts with Vendors - S-05 Site Civil, Clear & Grub, Temp 																																																											
Permitting																																																																				
A3620	Early Works Construction Permits	10	10	10	13-Oct-23	26-Oct-23	822	WA1	<ul style="list-style-type: none"> ■ Early Works Construction Permits 																																																											
A3640	Potable Water Pipe Asbestos - Permit CDPHE	10	10	10	13-Oct-23	26-Oct-23	311	WA1	<ul style="list-style-type: none"> ■ Potable Water Pipe Asbestos - Permit CDPHE 																																																											
Procurement																																																																				
Submittals/Deliveries																																																																				
CSI Current Format																																																																				
Division 03 - Concrete																																																																				
A1190	Submit/Approve/Deliver Concrete Mix Designs (20/25/)	45	45	45	17-Jan-24	20-Mar-24	-21	WA1	<ul style="list-style-type: none"> ■ Submit/Approve/Deliver Concrete Mix Designs (20/25/) 																																																											
A1200	Submit/Approve/Deliver Reinforcements (20/25/)	45	45	45	17-Jan-24	20-Mar-24	-21	WA1	<ul style="list-style-type: none"> ■ Submit/Approve/Deliver Reinforcements (20/25/) 																																																											
Division 31 - Earthwork																																																																				
A1170	Submit/Approve/Deliver Dewatering (20/25/10)	55	55	55	22-Dec-23	14-Mar-24	-37	WA1	<ul style="list-style-type: none"> ■ Submit/Approve/Deliver Dewatering (20/25/10) 																																																											
Construction																																																																				
Work Authorization 1																																																																				
A3940	Shutdown Window - October 15th to April 15th	140	140	140	30-Oct-23	17-Mar-24	-47	WA1	<ul style="list-style-type: none"> ■ Shutdown Window - October 15th to April 15th 																																																											
A3930	Procure Pipe (PVC or C900), Tee, Valves and Blind Flanges (24" PW, 18" RAW, 16" PW, 8" SAN)	20	20	20	21-Dec-23	23-Jan-24	-24	WA1	<ul style="list-style-type: none"> ■ Procure Pipe (PVC or C900), Tee, Valves and Blind Flanges (24" PW, 18" RAW, 16" PW, 8" SAN) 																																																											
A6520	Clear and Grub Site	5	5	5	22-Dec-23	02-Jan-24	-70	WA1	<ul style="list-style-type: none"> ■ Clear and Grub Site 																																																											

Data Date: 10-Feb-23
Run Date: 05-Oct-23
Project ID: JTWTP-PC
Page 1 of 2

Remaining Level of Effort	Critical Remaining Work
Actual Level of Effort	Last Update Milestone
Actual Work	Milestone
Remaining Work	

Johnstown WTP Expansion Project
Update View

- Procurement of long lead items and work that must be completed in the early plant shut down window, that are critical for the expedient delivery of the project.
- Subcontracts for early work activities including earthwork, yard pipe and yard pipe tie ins required during plant shutdown windows, aggregate piers, and concrete at the Clarified Water Wet Well.
- All purchase agreements and subcontracts will be vetted through the Owner and Engineer as required in the Construction Contract.
- Payments in Work Authorization 1 for material and equipment will be in accordance with payment schedules negotiated with successful bidders, and in accordance with the executed Construction Agreement. It is anticipated that the payment schedule may include some or all the following milestone payments, to be negotiated prior to final issuance of Purchase Agreement:
 - *10% Purchase Price for Submittals and Engineering*
 - *40% Purchase Price for Raw Materials*
 - *40% Purchase Price for Materials Stored or Delivered to Site*
 - *5% Purchase Price for Startup and Testing*
 - *5% Retainage*

All work associated with this early work package will be in accordance with the terms and conditions of the Construction Contract and General Conditions.

Builders Risk policy is being carried for the entire project in Work Authorization 1. This premium is based on a final GMP contract value of \$77,000,000. This policy premium will be adjusted based on the final GMP amount.

Attached in Exhibit B is the schedule for the Early Work Activities. The early work activities has a substantial completion date of October 31, 2024.

Sincerely,

Matthew M. Wojtkiewicz 10/5/2023

Matthew M. Wojtkiewicz
Project Executive
MWH Constructors

Exhibit C - WA2 - Executive Summary x Bid Package



Project Specific Information			
Job Name :	Johnstown Water Treatment Plant Expansion	Bid Review Date	9/20/2023
Job Type :	Water Treatment Plant Upgrades	Anticipated Award Date	TBD
Owner :	Town of Johnstown, CO	Construction Start	10/1/2023
Location :	Johnstown, CO	Construction Completion	6/15/2026
Contract Type :	CMAR	Warranty Period	1 year(s)
Bond Required?	YES	Estimating Phase	60% Design

SP Labor and Subcontract/ POA Risk Items									
Direct Cost Summary by WBS									
Scope Description	SP Man Hours	% of Total MH	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	Percent of Direct Cost
WA2 P-01	Emergency Generators	-	0.00%	\$0	\$0	\$0	\$1,757,500	\$1,757,500	8.88%
WA2 P-02	MCC, Harmonic Filters	-	0.00%	\$0	\$0	\$0	\$5,122,201	\$5,122,201	25.88%
WA2 P-03	Vertical Turbine Pumps & VFDs	-	0.00%	\$0	\$2,347,847	\$0	\$227,500	\$2,575,347	13.01%
WA2 P-04	GAC Vessels & Media	-	0.00%	\$0	\$4,240,000	\$0	\$0	\$4,240,000	21.42%
WA2 P-05	Membrane Filters	-	0.00%	\$0	\$4,554,434	\$0	\$0	\$4,554,434	23.01%
WA2 P-06	PEMB (Treatment Building Only)	-	0.00%	\$0	\$0	\$0	\$1,492,632	\$1,492,632	7.54%
WA2 P-07	Electrical Preconstruction Services	-	0.00%	\$0	\$0	\$0	\$52,000	\$52,000	0.26%
Total Direct by WBS		-	0.00%	\$0.00	\$0	\$11,142,281	\$8,651,833	\$19,794,114	100.00%
% of Direct Cost					0.00%	56.29%	0.00%	43.71%	100.00%

General Conditions									
Description	SP Man Hours	Admin Man Hours	Avg. Wage Rate	Labor Total	Material Total	Equipment Total	Subcontract Total	Total Cost	% of Total Cost
99-GCGR	GC's and GR's	580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	0%
Total General Conditions		580	\$136.00	\$78,880	\$626	\$2,137	\$0	\$81,643	0%
TOTAL COST OF WORK		-		\$78,880	\$11,142,907	\$2,137	\$8,651,833	\$19,875,757	

Mark-Up Costs									
T & I/ Bond	Rate	UOM	Total Cost	Notes	Fee and Contingency	Rate	UOM	Total Cost	
Liability Insurance	0.660%	%	\$148,785		Owner Contingency (on Direct Cost of Work)	0.00%	%	\$0	
					Contractor Contingency (on Cost of Work incl. GCGR)	5.00%	%	\$993,788	
					Escalation	0.00%	%	\$0	
					Overhead (on Cost of Work incl. Contingency)	3.50%		\$727,577	
					Profit (on Cost of Work incl. Contingency)	3.00%		\$623,637	
Project Bond	0.770%	%	\$173,582						
Total Mark-Up Cost			\$322,367		Total Fee and Cont. Cost			\$2,345,001	

Total Project Cost						Key Ratios			
	Labor	Material	Equipment	Sub	Contingency, Fee, Bonds & Insurance	Project Total	Description	Rate	Manhours
Total Project Cost	\$78,880	\$11,142,907	\$2,137		\$8,651,833	\$2,667,368	\$22,543,126		
							Craft to Supervision	-	580
							Fee as % of Project	5.99%	
							Contingency as % of Project	4.4%	

October 5, 2023

Ellen Hilbig, P.E.
Utilities Director, Town of Johnstown
450 S. Parish Ave
Johnstown, Colorado 80534

Subject: Johnstown WTP Work Authorization 2 - Early Equipment Procurement

Dear Ellen,

MWH Constructors is pleased to submit this Work Authorization – 2, Early Equipment Procurement proposal addressing procurement of long lead materials in the amount of \$22,543,126.00. This proposal is based on the 60% design and Opinion of Probably Construction Costs.

Procurement Packages will include the following:

- P-01 – Emergency Generators
- P-02 – Motor Control Centers and Harmonic Filters
- P-03 – Vertical Turbine Pumps and VFD’s
- P-04 – GAC Vessels and Media
- P-05 – Membrane Filter System
- P-06 – Pre-Engineered Metal Building (Treatment Building Only)
- P-07 – Electrical Preconstruction Services

The Pre-Construction tasks for these bid packages include bidding, negotiating, and executing purchase agreements that will be included in our Construction Contract. Also included is the management and supervision of the Procurement Packages.

All bid packages will be reviewed with the Town of Johnstown and Burns and McDonnell prior to any award.

The proposal is based on the following:

- Estimated prices for the procurement of long lead materials and early work activities are based upon 60% design budgetary quotes and are our best estimate of cost but are subject to change pending final design updates and competitive bidding process for actual binding pricing.
- Final construction documents including complete specifications and associated drawings are required prior to any Purchase Agreement can be executed.

- Procurement of long lead items that are critical for the expedient delivery of the project. The estimated equipment manufacturing and delivery lead-times we have been given following approved submittals are (subject to change)
 - *P-01 – Emergency Generators: 52 Weeks*
 - *P-02 – Motor Control Centers and Harmonic Filters: 65 Weeks*
 - *P-03 – Vertical Turbine Pumps and VFD’s: 48 Weeks*
 - *P-04 – GAC Vessels and Media: 36 Weeks*
 - *P-05 – Assignment of Membrane Supply: 30 Weeks*

- All purchase agreements and subcontracts will be vetted through the Owner and Engineer as required in the Construction Contract.

- Payments in Work Authorization 2 for material and equipment will be in accordance with payment schedules negotiated with successful bidders, and in accordance with the executed Construction Agreement. It is anticipated that the payment schedule may include some or all the following milestone payments, to be negotiated prior to final issuance of Purchase Agreement:
 - *10% Purchase Price for Submittals and Engineering*
 - *40% Purchase Price for Raw Materials*
 - *40% Purchase Price for Materials Stored or Delivered to Site*
 - *5% Purchase Price for Startup and Testing*
 - *5% Retainage*

All work associated with this early work package will be in accordance with the terms and conditions of the Construction Contract and General Conditions.

Sincerely,

Matthew M. Wojtkiewicz 10/5/2023

Matthew M. Wojtkiewicz
Project Executive
MWH Constructors

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Proposal Documents 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 receipt of Proposals by the Owner which clarify, correct, or change the Proposal Documents or the proposed Contract Documents.
 2. Agreement—The written instrument, including its attached exhibits, executed by Owner and Construction Manager at Risk, that sets forth the Contract Price and Contract Times, identifies the Owner, Construction Manager at Risk, Owner's Advisor, and Engineer, and designates the specific items that are Contract Documents.
 3. Application for Payment—The document prepared by Construction Manager at Risk, in a form acceptable to Owner's Advisor, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. Change Order—A document which is signed by Construction Manager at Risk and Owner after the Effective Date of a governing Work Authorization and authorizes an addition, deletion, or revision in the authorized Work, an adjustment in the applicable incremental Guaranteed Maximum Price or Contract Times, or other revision to such Work Authorization.
 5. Change Proposal—A written request by Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Guaranteed Maximum Price or Contract Times; contesting a decision by Owner's Advisor, in consultation with 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.
 6. Claim
 - a. A demand or assertion by Owner directly to Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Owner's Advisor, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Construction Manager at Risk directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Owner's Advisor's decision, made in consultation with Engineer, regarding a Change Proposal.
 - c. A demand or assertion by Owner or Construction Manager at Risk, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Owner's Advisor has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
7. CMAR Contingency Allowance—An allowance used to reimburse CMAR for costs due to unforeseen causes, unintentional errors, or events which cannot specifically be anticipated at the time Work Authorizations are issued, as set forth in the Agreement, Article 8.
 8. CMAR Fee—The component of the Guaranteed Maximum Price that supplements the CMAR's compensation for the Cost of the Work, consisting of either a fixed fee (a stipulated price or lump sum amount) or a percentage of the Cost of the Work, as set forth in the Agreement.
 9. CMAR Services—Those specific planning, organizational, and advisory services to be performed or furnished by CMAR, consisting collectively of Preconstruction Services, Procurement Services, and any other services authorized by Owner's Advisor and expressly identified in such authorization as CMAR Services. CMAR Services are not part of the Work.
 10. 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.
 11. Construction Manager at Risk (CMAR)—The entity that has entered into the Contract with Owner. Under the Contract the CMAR will provide CMAR Services and construct the Work set out in the Drawings and Specifications, as duly authorized, using the Construction Manager at Risk project delivery method.
 12. Construction Period—The period from the commencement of Work on the first Work Authorization until Substantial Completion of the Work. This is the number of days for which Construction Support Costs will be compensated.
 13. Construction Support Costs—See Agreement, Article 5.
 14. Contract—The entire and integrated written agreement between Owner and Construction Manager at Risk concerning the CMAR Services and the Work.
 15. Contract Amendment—A document signed by Owner and Construction Manager at Risk which modifies the terms and conditions of the Contract, including but not limited to modifications of the time or compensation provisions of the Agreement and the scope of CMAR Services. A Contract Amendment is not used to make changes in the Work or

to a Work Authorization, such changes properly being made in a Change Order or supplemental Work Authorization.

16. **Contract Documents**—Those items so designated in the Agreement, and which together comprise the Contract.
17. **Contract Price**—The money that Owner has agreed to pay Construction Manager at Risk for performance and completion of the CMAR Services and the Work, in accordance with the Contract Documents. The Contract Price may be subdivided into component parts based on authorized CMAR Services and Work Authorizations. The Contract Price includes the CMAR’s compensation for CMAR Services, Construction Support Costs, Cost of the Work, the CMAR Fee, CMAR Contingency Allowances, and the Owner’s Contingency Allowance.
18. **Contract Times**—The number of days or the dates by which Construction Manager at Risk shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work and all required services. The Contract Times may be subdivided into component parts based on Work Authorizations and authorized CMAR Services.
19. **Contractor**—The term “Contractor,” if used in the Contract, means Construction Manager at Risk.
20. **Cost of the Work**—The sum of eligible costs incurred by CMAR for the performance of the Work, as allowed by the Cost of the Work provisions set forth in the Agreement. Cost of the Work as a defined term does not include Construction Support Costs.
21. **Drawings**—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Construction Manager at Risk.
22. **Effective Date of the Contract**—The date indicated in the Agreement, on which the Contract becomes effective.
23. **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.
24. **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.
25. **Engineer**—The individual or entity that has primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Engineer in the Agreement.
26. **Estimated Cost of the Work**—An estimate of the Cost of the Work prepared by the Owner for use (a) during the CMAR selection process in evaluating Proposals submitted in response to the Request for Proposals and (b) during the early stages of the Contract in calculating an Estimated Guaranteed Maximum Price until the design has progressed

to the point where Owner and CMAR can mutually agree upon a Guaranteed Maximum Price.

27. Estimated Guaranteed Maximum Price—A preliminary Guaranteed Maximum Price calculated on the basis of the Estimated Cost of the Work. This is a non-binding price used on an interim basis for comparison or estimation of Owner’s Construction Budget until the design has progressed to the point that a Guaranteed Maximum Price for the Work is established, or a Guaranteed Maximum Price for a portion of the Work is established by issuance of a Work Authorization by the Owner’s Advisor.
28. Field Order—A written order issued by Owner’s Advisor which requires minor changes in the Work but does not change the Guaranteed Maximum Price or the Contract Times.
29. Final Completion—The point at which the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner, all required services have been completed, and the Contract is ready for final payment.
30. Guaranteed Maximum Price (GMP)—The maximum amount to be paid by Owner to CMAR for the sum of the Construction Support Costs, plus Cost of the Work, plus the CMAR Fee, all as set forth in the Agreement.
31. 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.
32. 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.
33. Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
34. Milestone—A principal event in the performance of the Work that the Contract requires Construction Manager at Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
35. Notice of Award—The written notice by Owner stating that Owner will enter into the Construction Manager at Risk contract with the selected Construction Manager at Risk.
36. Owner—The entity with which Construction Manager at Risk has contracted regarding the CMAR Services and the Work, and which has agreed to pay Construction Manager

at Risk for the performance of the CMAR Services and the Work, pursuant to the terms of the Contract.

37. Owner's Advisor (OA)—The individual or entity named as Owner's Advisor in the Agreement. The Owner's Advisor provides services to the Owner, as an advisor and representative.
38. Owner's Construction Budget (Budget)—The amount budgeted by the Owner to pay CMAR to perform and complete the Work in accordance with the Contract Documents. This amount includes compensation for Cost of the Work, the CMAR Fee, and Construction Support Costs, but does not include compensation for CMAR Services.
39. Owner's Project Team (OPT)—As used in this Contract, refers to Owner, Owner's Advisor and Engineer, collectively.
40. Preconstruction Services—Those planning, management, and support services to be performed or furnished by CMAR as set forth in the Scope of CMAR Preconstruction Services Exhibit to the Agreement. Preconstruction Services are separate and distinct from Procurement Services, and from the performance of the Work itself, and are a component of CMAR Services.
41. Preconstruction Services Price—The total amount to be paid to CMAR for the Preconstruction Services described in the Scope of CMAR Preconstruction Services Exhibit to the Agreement.
42. Procurement Services—Those services relating to assembling Work Packages and procurement of construction Subcontractors, Suppliers, and materials and equipment, to be performed or furnished by CMAR as set forth in the procurement-related provisions of the Scope of CMAR Services Exhibit to the Agreement. Procurement Services are separate and distinct from Preconstruction Services, and from the performance of the Work itself, and are a component of CMAR Services.
43. Procurement Services Price—The total amount to be paid to CMAR for providing the Procurement Services described in the Scope of CMAR Procurement Services Exhibit to the Agreement.
44. Progress Schedule—A schedule, prepared and maintained by Construction Manager at Risk, describing the sequence and duration of the activities comprising Construction Manager at Risk's plan to accomplish the Work within the Contract Times.
45. Project—The total undertaking to be accomplished for Owner by construction managers, engineers, contractors, advisors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the CMAR Services and the Work to be performed under the Contract are a part.
46. 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.
47. Schedule of Submittals—A schedule, prepared and maintained by Construction Manager at Risk, of required Submittals and the time requirements for review of the Submittals.

48. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Construction Manager at Risk and submitted by Construction Manager at Risk to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
49. 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 Construction Manager at Risk.
50. 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.
51. Subcontractor—An individual or entity having a direct contract with Construction Manager at Risk or with any other Subcontractor for the performance of a part of the Work.
52. Submittal—A written or graphic document, prepared by or for Construction Manager at Risk, which the Contract Documents require Construction Manager at Risk to submit to Owner’s Advisor, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner’s Advisor. 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 approved or accepted by Owner’s Advisor or Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
53. Substantial Completion—The time at which the Work, or a specified part thereof, has progressed to the point where, the Work, or the specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that the Work, or the 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.
54. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
55. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Construction Manager at Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Construction Manager at Risk or a Subcontractor.

56. 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 Construction Manager at Risk.
 - 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 in the Drawings.
57. 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.
58. Unit Price Work—Work to be paid for based on unit prices.
59. 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.
60. Work Authorization—A document issued by Owner’s Advisor and signed by Owner and CMAR which identifies and defines new Work Packages and establishes the amount to be paid, times for completion, and any special or supplementary provisions applicable to the authorized Work.
61. Work Package—A specific portion of the Work developed by Engineer and Owner’s Advisor in collaboration with the CMAR and subsequently authorized by a Work Authorization.
62. Work Change Directive—A written directive issued by Owner’s Advisor to Construction Manager at Risk on or after the Effective Date of a governing Work Authorization, 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 Proposal Documents 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 Owner’s Advisor or 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 Owner’s Advisor or 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 will not be effective to assign to Owner’s Advisor or 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 period 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 Owner’s Advisor’s recommendation of final payment unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.04 or Paragraph 15.05.
- 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 their 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 their intended use.
 4. If the Contract Documents establish an obligation of CMAR with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then CMAR shall furnish and install said services, materials, or equipment complete and ready for their 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 CMAR delivers the signed counterparts of a Work Authorization to Owner, CMAR shall also deliver to Owner the performance bond and payment bond, if the Contract requires CMAR to furnish such bonds, or confirm that existing performance and payment bonds have been supplemented to account for the additional authorized Work.
- B. Evidence of CMAR’s Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR 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 CMAR in accordance with Article 6, except to the extent the Supplementary Conditions or Agreement 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 insurance documentation, Owner shall promptly deliver to CMAR, 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 CMAR 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 CMAR for review. Owner may delegate the responsibilities under this provision to Owner’s Advisor.

2.03 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Owner’s Advisor, Engineer, and CMAR may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Owner’s Advisor, and CMAR 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.

2.04 Construction Management

- A. In addition to providing CMAR Services, during the course of the Contract, and especially during the performance of the Work, CMAR will:
1. Organize and manage the resources required for construction of the Work, commissioning, and correction of defective Work after Substantial Completion of the Work.
 2. Administer, coordinate, monitor, and report on construction progress and associated activities.
 3. Assist the Owner's Advisor in collecting, disseminating, and storing documents and information.
 4. Manage the Work to meet Contract goals and objectives.
 5. Recommend action to the Owner related to the management of the Work.
 6. Develop schedule and cost control systems to monitor and report on the progress of the overall Contract.

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. Owner's Advisor, in consultation with 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 CMAR, 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, Owner's Advisor, 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, Owner's Advisor, 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 receipt of Proposals, 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, CMAR, Owner's Advisor, or Engineer from those set forth in the Contract Documents. No such provision or instruction will be effective to assign to Owner, Owner's Advisor, 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 Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. CMAR's Verification of Figures and Field Measurements—Before undertaking each part of the Work, CMAR shall carefully study the applicable Drawings and Specifications, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CMAR shall promptly report in writing to Owner's Advisor any conflict, error, ambiguity, or discrepancy that CMAR 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 Owner's Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.
2. CMAR's Review of Drawings and Specifications—If, while performing or providing CMAR Services, or during the performance of the Work, CMAR discovers any conflict, error, ambiguity, or discrepancy within the Drawings and Specifications, whether in draft or final form, or between such 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 CMAR shall promptly report it to Owner's Advisor in writing. CMAR shall not proceed with the Work affected thereby, except in an emergency as required by Paragraph 7.18, until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Owner's

Advisor, in consultation with Engineer, and, if appropriate, an amendment or supplement to the Contract is issued by Owner's Advisor pursuant to Paragraph 11.01.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Drawings and Specifications take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Drawings and Specifications 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 Interpretation of the Contract Documents

- A. During the performance of the Work and until final payment, CMAR and Owner shall submit to the Owner's Advisor in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation) or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.
- B. Owner's Advisor will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. In determining its response, Owner's Advisor will consider CMAR's prior involvement and obligations with respect to reviewing and commenting on draft design documents during CMAR's provision of CMAR Services. Owner's Advisor's written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Engineer, and (2) will be final and binding on CMAR, unless CMAR appeals by submitting a Change Proposal, and on Owner, unless Owner appeals by filing a Claim.

3.05 Reuse of Documents

- A. CMAR 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 CMAR 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 Effective Date of the Contract, or as specified in Work Authorizations.
- 4.02 Starting the Work
- A. CMAR shall start to perform the Work promptly upon receipt of the first Work Authorization. No Work may be done at the Site prior to such authorization.
- 4.03 Reference Points
- A. Owner shall provide engineering surveys to establish reference points for construction. CMAR 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. CMAR shall report to Owner's Advisor whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and CMAR 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. CMAR shall adhere to the Progress Schedule established as part of Preconstruction Services, as it may be adjusted from time to time as provided below.
1. CMAR shall submit to Owner's Advisor for its information 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. CMAR 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 CMAR may otherwise agree in writing.
- 4.05 Delays in CMAR's Progress
- A. If Owner, Owner's Advisor, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum Price or Contract Times.
- B. CMAR shall not be entitled to an adjustment in Guaranteed Maximum Price or Contract Times for delay, disruption, or interference caused by or within the control of CMAR. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier will be deemed to be within the control of CMAR.
- C. If CMAR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, CMAR, and those for which they are responsible, then CMAR shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be CMAR'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. CMAR's entitlement to an adjustment of Contract Times or Guaranteed Maximum Price is limited as follows:
1. CMAR'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. CMAR shall not be entitled to an adjustment in Guaranteed Maximum 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 CMAR. Such a concurrent delay by CMAR shall not preclude an adjustment of Contract Times to which CMAR is otherwise entitled.
 3. Adjustments of Contract Times or Guaranteed Maximum Price are subject to the provisions of Article 11.
- E. Each CMAR request or Change Proposal seeking an increase in Contract Times or Guaranteed Maximum 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 because of each such cause of delay, disruption, or interference; and
 5. The impact on Guaranteed Maximum Price, in accordance with the provisions of Paragraph 11.07.

CMAR shall also furnish such additional supporting documentation as Owner or Owner's Advisor 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 CMAR in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMAR must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish CMAR 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. CMAR 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. CMAR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CMAR 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. CMAR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CMAR'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 CMAR or those for which CMAR 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 CMAR or those for which CMAR is responsible, CMAR shall (a) take immediate corrective or remedial action as required by Paragraph 7.18, 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, Owner's Advisor, 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, Owner's Advisor, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CMAR's performance of the Work, or because of other actions or conduct of the CMAR or those for which CMAR is responsible.

- B. Removal of Debris During Performance of the Work—During the progress of the Work the CMAR 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 CMAR shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work CMAR 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—CMAR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CMAR subject any part of the Work or adjacent structures or land to stresses or pressures that could damage said structures or decrease their durability.

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 described 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 CMAR on Technical Data—CMAR 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 CMAR may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b.
- D. Limitations of Other Data and Documents—Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, 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 CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, 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 CMAR, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
- E. Confirmation of Site Conditions—As a part of Preconstruction Services CMAR will inform Owner if CMAR concludes that additional examination, investigation, exploration, testing, or study (Supplemental Investigations) of subsurface or physical conditions at the Site prior to commencement of construction would be advantageous, practical, and cost-effective, specifically identifying the nature and scope of any such recommended Supplemental Investigations. If Owner authorizes CMAR to conduct such Supplemental Investigations, through CMAR's own personnel or through a qualified consultant, or if Owner conducts such Supplemental Investigations, through Owner's Advisor, the Engineer, or a consultant, then CMAR will be entitled to rely on the results of the Supplemental Investigations, together with the Technical Data cited above, in planning and pricing construction at the Site.
- F. If Owner does not authorize any Supplemental Investigations of Site conditions, then CMAR will proceed with planning and pricing construction based on the Technical Data made available to it.
- G. CMAR will be bound by any additional knowledge regarding Site conditions that CMAR gains while providing Preconstruction services.

5.04 Differing Subsurface or Physical Conditions

- A. Notice by CMAR—If CMAR 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 or Supplemental Investigations results on which CMAR 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 CMAR 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 7.18, notify Owner's Advisor in writing about such condition. CMAR 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 CMAR to do so.

- B. Owner's Advisor's Review—After receipt of written notice as required by the preceding paragraph, Owner's Advisor, in consultation with 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 CMAR; prepare recommendations to Owner regarding the CMAR'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 Owner's Advisor's findings, conclusions, and recommendations.
- C. Owner's Statement to CMAR Regarding Site Condition—After receipt of Owner's response and instructions regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR 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 informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- D. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.
- E. Possible Price and Times Adjustments
 - 1. CMAR shall be entitled to an equitable adjustment in Guaranteed Maximum 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 CMAR'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 Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02; and
 - c. CMAR's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
 - 2. CMAR shall not be entitled to any adjustment in the Guaranteed Maximum Price or Contract Times with respect to a subsurface or physical condition if:
 - a. CMAR knew of the existence of such condition at the time CMAR made a commitment to Owner with respect to Guaranteed Maximum Price and Contract Times through a Work Authorization;

- 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 Proposal Documents or Contract Documents to be conducted by or for CMAR prior to CMAR's making such commitment;
 - c. The existence of such condition reasonably could have been discovered or revealed as a result of practical and cost-effective Supplemental Investigations, as defined in Paragraph 5.03.E, but CMAR did not recommend any such Supplemental Investigations to Owner; or
 - d. CMAR failed to give the written notice required by Paragraph 5.04.A.
- 3. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 - 4. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR 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. CMAR's Responsibilities—Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all the following is included in the Guaranteed Maximum Price, and CMAR shall have full responsibility for:
- 1. collaborating with Engineer during the design phase, as part of Preconstruction Services, to improve the accuracy and completeness of information regarding Underground Facilities that Engineer gathers and depicts in the final Contract Documents;
 - 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 prior to 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 CMAR—If CMAR believes that an Underground Facility that is uncovered or revealed at the Site during construction was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then CMAR 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 7.18, notify Owner and Owner's Advisor in writing regarding such Underground Facility.

C. Owner's Advisor's Review

1. Owner's Advisor will:

- a. promptly review the Underground Facility in consultation with Engineer, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
- b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner, and if necessary, issue any preliminary instructions to CMAR regarding the CMAR's resumption of Work in connection with the Underground Facility in question;
- c. obtain any pertinent cost or schedule information from CMAR; 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
- d. advise Owner and Engineer in writing of Owner's Advisor's findings, conclusions, and recommendations.

During such time, CMAR shall be responsible for the safety and protection of such Underground Facility.

D. Owner's Advisor's Statement to CMAR Regarding Underground Facility—After receipt of Owner's response to and recommendations regarding Owner's Advisor's written findings, conclusions, and recommendations, Owner's Advisor will issue a written statement to CMAR 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 informing CMAR of Owner's Advisor's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.

E. Early Resumption of Work—If at any time Owner's Advisor, in consultation with Engineer, determines that Work in connection with the Underground Facility may resume prior to completion of Owner's Advisor's review or Owner's Advisor's issuance of its statement to CMAR, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then Owner's Advisor may instruct CMAR to resume such Work.

F. Possible Price and Times Adjustments

1. CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum 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 CMAR'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 Guaranteed Maximum Price will be subject to the provisions of Paragraph 13.02;

- b. CMAR'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. CMAR gave the notice required in Paragraph 5.05.B.
2. If Owner and CMAR agree regarding CMAR's entitlement to and the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. CMAR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Guaranteed Maximum Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to CMAR 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 Manual 38, Standard Guideline for Investigating and Documenting Existing Utilities, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, CMAR'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 described in such reports and drawings.
- B. Reliance by CMAR on Technical Data Authorized—CMAR 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 CMAR may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.55.b. Except for such reliance on Technical Data, CMAR may not rely upon or make any claim against Owner, Owner's Advisor, 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 CMAR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAR, 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 CMAR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

- C. CMAR 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. CMAR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CMAR, Subcontractors, Suppliers, or anyone else for whom CMAR 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 CMAR 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 CMAR or anyone for whom CMAR is responsible creates a Hazardous Environmental Condition, then CMAR 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 7.18; and (3) notify Owner, Owner's Advisor, and Engineer, and promptly thereafter confirm such notice in writing. Owner shall promptly consult with Owner's Advisor and 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 Owner's Advisor and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide CMAR with the written notice required by Paragraph 5.06.E. If CMAR or anyone for whom CMAR 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. CMAR 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 CMAR 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 CMAR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by CMAR, 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, CMAR 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, CMAR 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 CMAR, Subcontractors, Owner's Advisor, 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 construction managers, 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 CMAR or by anyone for whom CMAR 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, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, 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 construction managers 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 CMAR or by anyone for whom CMAR is responsible, or to a Hazardous Environmental Condition created by CMAR or by anyone for whom CMAR is responsible. Nothing in this Paragraph 5.06.J obligates CMAR 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. No later than the execution of the first Work Authorization the CMAR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, 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. The premium costs of such bonds are:
 - 1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or
 - 2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.
- B. CMAR 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 Contract 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. CMAR 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 CMAR is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then CMAR shall promptly notify Owner and Owner’s Advisor 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 CMAR has failed to obtain a required bond, Owner may exclude the CMAR 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 CMAR 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, CMAR shall provide a copy of the payment bond to such person or entity.
- I. Performance Bonds required of certain Subcontractors and Suppliers—see Paragraph 7.10.O.

6.02 Insurance—General Provisions

- A. Owner and CMAR 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 CMAR 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 must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. CMAR shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that CMAR has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, CMAR 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, CMAR, 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 CMAR, 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 CMAR 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 CMAR to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or CMAR 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 CMAR, 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 CMAR, and CMAR cannot rely upon Owner's liability policies for any of CMAR's obligations to the Owner, Owner's Advisor, Engineer, or third parties.
- H. CMAR 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, Owner's Advisor and Engineer, and any other individuals or entities identified in the Supplementary Conditions as additional insureds on CMAR's liability policies, on each Subcontractor's commercial general liability 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 cancellation of the required coverage.
- J. If CMAR has failed to obtain and maintain required insurance, CMAR'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 CMAR or CMAR's interests. CMAR is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that CMAR deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on CMAR'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 must provide a copy of the notice to Owner's Advisor and each other insured.

6.03 CMAR's Insurance

- A. Required Insurance—CMAR 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 15.07.D, and longer if expressly required elsewhere in this Contract, and at all times thereafter when CMAR 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 CMAR, 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 CMAR's commercial general liability, automobile 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, Owner's Advisor, 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 CMAR's acts or omissions, or the acts and omissions of those working on CMAR's behalf, in the performance of CMAR's operations.

6.04 Builder's Risk and Other Property Insurance

- A. **Builder's Risk**—Unless otherwise provided in the Supplementary Conditions, beginning at the commencement of construction CMAR 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.

For purposes of the builder's risk and other required property insurance, "commencement of construction" first occurs when materials are in the course of delivery to the Site or an off-site storage location required to be insured if transit coverage is required, or if transit coverage is not required, when materials are delivered to the Site, or an off-site storage location required to be insured.

- 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 15.07.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 15.07.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 15.05, then Owner, directly, if it is the purchaser of the builder's risk policy, or through CMAR, will provide advance notice of such occupancy or use to the builder's risk insurer and obtain coverage or 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 CMAR

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, CMAR may do so at its 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 Owner's Advisor, Engineer, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
1. Owner and CMAR 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 Owner's Advisor, 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 CMAR 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 15.05, after Substantial Completion pursuant to Paragraph 15.04, or after final payment pursuant to Paragraph 15.07, 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 CMAR, Subcontractors, Owner's Advisor, 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.
- C. Owner waives all rights against CMAR, Subcontractors, Owner's Advisor, 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. 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. CMAR shall assure that each subcontract contains provisions whereby the Subcontractor waives all rights against Owner, CMAR, Owner's Advisor, Engineer, all individuals or entities identified in the Supplementary Conditions as insureds, their 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 will 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 must 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, CMAR shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CMAR'S RESPONSIBILITIES

7.01 CMAR's Means and Methods of Construction

- A. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or CMAR determines, that professional engineering or other design services are needed to carry out CMAR's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then CMAR shall cause such services to be provided by a properly licensed design professional, at CMAR's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner, Owner's Advisor, nor Engineer has any responsibility with respect to (1) CMAR's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by CMAR, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

- A. CMAR 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, CMAR shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Owner's Advisor except under extraordinary circumstances.

7.03 CMAR Services—Key Personnel and Subconsultants

- A. CMAR will provide the services of the key individuals identified in the Agreement for CMAR Services (Preconstruction Services and Procurement Services) for the duration of the time required to provide these services. CMAR may substitute other individuals for the key individuals identified in the Agreement or for individuals previously approved only upon good cause and with the written consent of the Owner. Subject to the foregoing, not providing the individuals proposed may be the grounds for termination of this Contract.
- B. CMAR may provide CMAR Services through one or more subconsultants under contract to CMAR provided, however, that CMAR remains responsible to the Owner for all duties and obligations of the CMAR under this Contract, and in rendering services any such subconsultant must comply with all applicable terms and conditions of the Contract Documents. If the Agreement identifies a specific subconsultant, CMAR will provide the services of such subconsultant for the duration of the time required to complete the subcontracted tasks. CMAR may substitute other subconsultants for the subconsultants identified in the Agreement or previously approved only with the written consent of the Owner. Subject to the foregoing, not providing the subconsultants proposed may be the grounds for termination of this Contract.

7.04 Quality of CMAR Services

- A. The Owner's Advisor, with the concurrence of Owner and Engineer, has the right to reject or disapprove any substandard portion of the CMAR Services. Owner's Advisor will provide written notice stating the reason for the rejection or disapproval. CMAR will revise the services in question to address the inadequacies identified by Owner's Advisor.
- B. CMAR acknowledges that any review or approval of CMAR Services by the Owner or Owner's Advisor does not relieve CMAR of its responsibility to properly and timely perform such services.

7.05 Continuation or Termination of CMAR Services

- A. Owner may terminate this Contract for Owner's convenience at the completion of Preconstruction Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as the quality of the CMAR Services, facts that indicate that the Project cannot be constructed for a cost within the Owner's budget, and changes in key personnel.
- B. The Owner may terminate the Contract for Owner's convenience at the end of Procurement Services if Owner determines that doing so is in Owner's best interest. Owner is not obligated to cite a reason for such a termination, but in making its determination Owner may wish to consider factors such as whether CMAR is unable to offer a Guaranteed Maximum Price within the Owner's Construction Budget, or whether it will be advantageous to bid out the Work as a whole on a stipulated price basis.

7.06 Labor; Working Hours

- A. CMAR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CMAR shall maintain good discipline and order at the Site.
- B. CMAR shall provide or furnish:
 - 1. Construction-related services as described in Division 00 and Division 01 of the Contract Documents;
 - 2. Post-construction services as described in Division 00 and Division 01 of the Contract Documents; and
 - 3. All other construction-related and post-construction services described in the Contract Documents.
- C. CMAR shall be fully responsible to Owner, Owner's Advisor, and Engineer for all acts and omissions of CMAR's employees; of subconsultants, Suppliers, and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the CMAR Services or the Work, just as CMAR is responsible for CMAR's own acts and omissions.
- D. 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. CMAR will not perform Work on a Saturday, Sunday, or legal holiday. CMAR 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.

7.07 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, CMAR 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 Owner's Advisor, the CMAR 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.
- D. CMAR will be fully responsible for the quality and effectiveness (1) of all services performed or provided by CMAR, including but not limited to CMAR Services and general services in support of construction, and (2) of the deliverables and documentation associated with all such services.

7.08 “Or Equals”

- A. CMAR’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 Guaranteed Maximum Price has been based upon CMAR 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, CMAR may request that Owner’s Advisor authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Owner’s Advisor, in consultation with Engineer, determines that an Item of equipment or material proposed by CMAR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner’s Advisor 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 Owner’s Advisor, in consultation with 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. CMAR 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. CMAR’s Expense—CMAR shall provide all data in support of any proposed “or equal” Item at CMAR’s expense.
- C. Owner’s Advisor’s Evaluation and Determination—Owner’s Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each “or-equal” request. Owner’s Advisor may require CMAR to furnish additional data about the proposed “or-equal” item. Owner’s Advisor, in consultation with Engineer, will be the sole judge of acceptability. No “or-equal” Item will be ordered, furnished, installed, or utilized until Owner’s Advisor’s review is complete and Owner’s Advisor, in consultation with Engineer, has determined that the proposed Item is equal, which will be evidenced by an approved Shop Drawing or other written communication. Owner’s Advisor will advise CMAR in writing of any negative determination.

- D. Effect of Owner’s Advisor’s Determination—Neither approval nor denial of an “or-equal” request will result in any change in Guaranteed Maximum Price. The Owner’s Advisor’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 Owner’s Advisor determines that an Item of equipment or material proposed by CMAR does not qualify as an “or-equal” item, CMAR may request that Owner’s Advisor consider the Item a proposed substitute pursuant to Paragraph 7.09.

7.09 Substitutes

- A. CMAR’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, CMAR may request that Owner’s Advisor authorize the use of other items of equipment or material under the circumstances described below.
- B. To the extent possible such requests must be made as part of Preconstruction Services, before the completion of the applicable portion of the design, the Procurement of Subcontractors, construction pricing, and execution of the governing Work Authorization (Preconstruction Substitute Requests). Preconstruction Substitute Requests are further addressed in Paragraph 7.09.E below; substitute requests made after the applicable Work Authorization are addressed in Paragraph 7.09.F.
- C. The following provisions apply to all substitute requests:
 - 1. CMAR shall submit adequate information as provided below to allow Owner’s Advisor, in consultation with Engineer, to determine if the Item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner’s Advisor will not accept requests for review of proposed substitute items of equipment or material from anyone other than CMAR.
 - 2. The requirements for review by Owner’s Advisor, in consultation with Engineer, will be as set forth in Paragraph 7.09.D, as supplemented by the Specifications, and as Owner’s Advisor may decide is appropriate under the circumstances.
 - 3. CMAR shall make written application to Owner’s Advisor for review of a proposed substitute Item of equipment or material that CMAR seeks to furnish or use. The application:
 - a. will certify that the proposed substitute Item will:
 - 1) adequately perform 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, to the extent applicable, an itemized estimate of all costs, anticipated price impacts, or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Guaranteed Maximum Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- D. Owner's Advisor's Evaluation and Determination—Owner's Advisor, in consultation with Engineer, will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Owner's Advisor may require CMAR to furnish additional data about the proposed substitute item. Owner's Advisor, in consultation with Engineer, will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's Advisor's review is complete and Owner's Advisor determines that the proposed Item is an acceptable substitute.
- E. Preconstruction Substitute Requests—CMAR will research potential substitutes, furnish data, and prepare a Preconstruction Substitute Request as compensable Basic Preconstruction Services. CMAR will not be responsible for costs incurred by Owner, Owner's Advisor, or Engineer in response to a Preconstruction Substitute Request. If such a request is approved, CMAR will not be required to issue a special guarantee with respect to the substitute's inclusion in the final design.
- F. For substitute requests made after a Work Authorization, or in an untimely manner such that the substitution cannot be made part of the final design on which binding construction pricing is based, the following apply:
- 1. Owner's Advisor's determination will be evidenced by a Field Order, or a proposed Change Order issued by the Owner's Advisor accounting for the substitute itself and all related impacts, including changes in Guaranteed Maximum Price or Contract Times. Owner's Advisor will advise CMAR in writing of any negative determination.
 - 2. Special Guarantee —Owner's Advisor may require CMAR to furnish at CMAR's expense a special performance guarantee or other surety with respect to the substitute.
 - 3. Reimbursement of Review Cost—Owner's Advisor and Engineer will record their costs in evaluating the substitute proposed or submitted by CMAR. Whether or not Owner's Advisor approves a substitute so proposed or submitted by CMAR, CMAR shall

reimburse Owner for the reasonable charges of Owner's Advisor and Engineer for evaluating each such proposed substitute. CMAR shall also reimburse Owner for the reasonable charges of Owner's Advisor and 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.

4. CMAR's Expense—CMAR shall provide all data in support of any proposed substitute at CMAR's expense.
5. Effect of Owner's Advisor's Determination—If Owner's Advisor approves the substitute request, CMAR shall execute a Change Order and proceed with the substitute. The Owner's Advisor'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. CMAR may challenge the scope of reimbursement costs imposed under Paragraph 7.09.F.3, by timely submittal of a Change Proposal.

7.10 Concerning Subcontractors and Suppliers

- A. CMAR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The CMAR's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve CMAR's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. CMAR shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. As a general matter, CMAR shall retain Subcontractors and Suppliers for Work Packages through the procurement process described in the Agreement, including but not limited to the Procurement Strategy Plan and Exhibit A Article 3 of the Agreement. If there is a conflict between such provisions of the Agreement and this paragraph, the provisions of the Agreement will govern.
- D. Subsequent to the submittal of CMAR's Proposal or final negotiation of the terms of the Contract, Owner may not require CMAR to retain any Subcontractor or Supplier against which CMAR has reasonable objection to furnish or perform any of the Work.
- E. Prior to entry into any binding subcontract or purchase order, CMAR 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 CMAR selection process, the Subcontractor and Supplier procurement process, or otherwise. Such proposed Subcontractor or Supplier will be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- F. Owner may require the replacement of a Subcontractor or Supplier. Owner also may require CMAR to retain specific replacements; provided, however, that Owner may not require a replacement to which CMAR has a reasonable objection. If CMAR has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, through the Subcontractor and Supplier procurement process or otherwise, 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. CMAR shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- G. If Owner requires the replacement of any Subcontractor or Supplier retained by CMAR to perform any part of the Work, then CMAR shall be entitled to an adjustment in Guaranteed Maximum Price or Contract Times, with respect to the replacement; and CMAR shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- H. 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.
- I. On a monthly basis, CMAR shall submit to Owner's Advisor a complete list of all Subcontractors and Suppliers having a direct contract with CMAR, and of all other Subcontractors and Suppliers known to CMAR at the time of submittal.
- J. CMAR shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- K. The divisions and sections of the Specifications and the identifications of any Drawings do not control CMAR in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- L. All Work performed for CMAR 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, Owner's Advisor, and Engineer.
- M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CMAR for Work performed for CMAR by the Subcontractor or Supplier.
- N. CMAR shall restrict all Subcontractors and Suppliers from communicating with Owner's Advisor or Owner, except through CMAR or in case of an emergency, or as otherwise expressly allowed in this Contract.
- O. CMAR will perform or undertake the responsibilities of any Subcontractor or Supplier that defaults, fails to perform, declares bankruptcy, or meets any of the other requirements for termination for cause listed as applying to the CMAR as described in Paragraph 16.02 of the General Conditions.
 - 1. If, for a specific Subcontractor or Supplier, CMAR determines that CMAR would not reasonably be able to self-perform the Subcontractor's work or meet the Supplier's obligations in the event of the Subcontractor or Supplier default, then CMAR may require a subcontract/supplier performance bond, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement). Before requiring such a bond, CMAR will consult with Owner's Advisor and consider whether other protective measures are feasible and more cost-effective.
 - 2. If Owner requires that CMAR enter into a subcontract with a Subcontractor to which the CMAR has reasonable objections, CMAR may require subcontract performance and payment bonds, the costs of which will be reimbursed as a Cost of the Work under the Subcontract costs category (Paragraph 6.02, Agreement).

7.11 Patent Fees and Royalties

- A. CMAR 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, Owner's Advisor, or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then 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 CMAR, 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 construction managers, 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, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, 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 construction managers, 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.

7.12 Permits

- A. Unless otherwise provided in the Contract Documents, CMAR shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist CMAR, when necessary, in obtaining such permits and licenses. CMAR 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 CMAR's Proposal. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.13 Taxes

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

7.14 Laws and Regulations

- A. CMAR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of CMAR Services or the Work. Neither Owner, Owner's

Advisor, nor Engineer will be responsible for monitoring CMAR's compliance with Laws or Regulations.

- B. If CMAR performs any CMAR Services or Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CMAR shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Owner's Advisor, 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 construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to such CMAR Services, Work, or other action.
- C. It is not CMAR'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 CMAR of its obligations under Paragraph 3.03.
- D. Owner or CMAR may give written notice to the other party of any changes after the Effective Date of the 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 CMAR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Guaranteed Maximum Price or Contract Times resulting from such changes, then within 30 days of such written notice CMAR may submit a Change Proposal, or Owner may initiate a Claim.

7.15 Record Documents

- A. CMAR 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, Contract Amendments, Work Packages, Work Authorizations, written interpretations and clarifications, and approved Shop Drawings. CMAR 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 Owner's Advisor and Engineer for reference. Upon completion of the Work, CMAR shall deliver these record documents to Owner's Advisor.

7.16 Safety and Protection

- A. CMAR 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. CMAR 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. CMAR 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 7.16.C.2 or 7.16.C.3 caused, directly or indirectly, in whole or in part, by CMAR, 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, will be remedied by CMAR at its expense, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Owner's Advisor, 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 CMAR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them.
- E. CMAR 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. CMAR shall notify Owner's Advisor; Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities, if the identity of such owners is known to CMAR; and other contractors and utility owners performing work at or adjacent to the Site, in writing, when CMAR 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. CMAR 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. CMAR shall inform Owner, Owner's Advisor, and Engineer of the specific requirements of CMAR's safety program with which Owner's, Owner's Advisor's, and Engineer's employees and representatives must comply while at the Site.
- I. CMAR's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner's Advisor has issued a written notice to Owner and CMAR in accordance with Paragraph 15.07.C that the Work is acceptable, and CMAR has left the Site, except as otherwise expressly provided in connection with Substantial Completion.
- J. CMAR's duties and responsibilities for safety and protection will resume whenever CMAR 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.

7.17 Hazard Communication Programs

- A. CMAR shall be responsible for coordinating any exchange of 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.

7.18 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CMAR is obligated to act to prevent damage, injury, or loss. CMAR shall give Owner's Advisor prompt written notice if CMAR 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 CMAR's response to an emergency. If Owner's Advisor, in consultation with Engineer, determines that a change in the Contract Documents is required because of an emergency or CMAR's response, a Work Change Directive or Change Order will be issued.

7.19 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, CMAR 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 CMAR'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 CMAR has satisfied CMAR's obligations under the Contract Documents with respect to CMAR's review of that Submittal, and that CMAR approves the Submittal.
3. With each Shop Drawing or Sample, CMAR shall give Owner's Advisor 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—CMAR shall label and submit Shop Drawings and Samples to Owner’s Advisor for review by Engineer in accordance with the accepted Schedule of Submittals.
1. Shop Drawings
 - a. CMAR 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 the services, materials, and equipment CMAR proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.19.D.
 2. Samples
 - a. CMAR shall submit the number of Samples required in the Specifications.
 - b. CMAR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner’s Advisor may require to enable Engineer to review the Sample for the limited purposes required by Paragraph 7.19.D.
- C. Proceeding without Engineer’s Approval—Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, Owner will not pay for related Work, including equipment or materials, until Engineer approves the Shop Drawing or Sample. If CMAR proceeds without such approval, CMAR will bear the full risk of all resulting delays, costs, and losses, including but not limited to removal, corrective, purchase, and installation costs, if such approval is not granted.
- D. 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 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, if any, 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, if any, of a separate Item as such will not indicate approval of the assembly in which the Item functions.
 4. Engineer’s review and approval, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for any variation from the requirements of the Contract Documents unless CMAR has complied with the requirements of Paragraph 7.19.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. Owner’s Advisor, in consultation with 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, if any, of a Shop Drawing or Sample will not relieve CMAR from responsibility for complying with the requirements of Paragraphs 7.19.A and B.
 6. Engineer's review and approval, if any, 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 Guaranteed Maximum Price, unless such changes are included in a Change Order.
 7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such Item becoming a Contract Document.
 8. CMAR 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 7.19.D.4.
- E. Resubmittal Procedures for Shop Drawings and Samples
1. CMAR shall make required corrections and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. CMAR shall direct specific attention in writing to revisions other than the corrections called for on previous Submittals.
 2. CMAR shall furnish required Shop Drawing and Sample submittals with adequate 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 CMAR shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges.
 3. If CMAR requests a change of a previously approved Shop Drawing or Sample, CMAR shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due CMAR to secure reimbursement for such charges, unless the need for such change is beyond the control of CMAR.
- F. 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. CMAR shall submit all such Submittals to Owner's Advisor in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. A timely review will be made 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. 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, CMAR shall confer with Owner's Advisor 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 4.04, 7.19, and 15.02.
 - G. Owner-delegated Designs–Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.22.
- 7.20 CMAR's General Warranty and Guarantee
- A. CMAR warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Advisor and Engineer are entitled to rely on CMAR'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 15.09. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.20 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 15.09:
 - 1. Owner shall give CMAR 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. CMAR's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than CMAR, Subcontractors, Suppliers, or any other individual or entity for whom CMAR is responsible; or
 - 2. normal wear and tear under normal usage.
 - D. CMAR shall perform or provide CMAR Services in accordance with the Contract Documents and good construction management practice.
 - E. CMAR's obligation to perform and complete the CMAR Services and the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of CMAR Services or Work that is not in accordance with the Contract Documents, a release of CMAR's obligation to perform the CMAR Services or Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.20:
 - 1. Observations by Owner's Advisor or Engineer;
 - 2. Recommendation by Owner's Advisor or payment by Owner of any progress or final payment;
 - 3. The acceptance of CMAR Services without objection;
 - 4. The issuance of a certificate of Substantial Completion by Owner's Advisor or any payment related thereto by Owner;

5. Use or occupancy of the Work or any part thereof by Owner;
 6. Any review and approval of a Shop Drawing or Sample submittal;
 7. The issuance of a notice of acceptability by Owner's Advisor;
 8. The end of the correction period established in Paragraph 15.09;
 9. Any inspection, test, or approval by others; or
 10. Any correction of defective Work by Owner.
- F. If the Contract requires CMAR 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 CMAR's performance obligations to Owner for the Work described in the assigned contract.

7.21 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CMAR under the Contract or otherwise, CMAR shall indemnify and hold harmless Owner, Owner's Advisor, 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 CMAR Services or 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 CMAR, any Subcontractor, any Supplier, subconsultant, or any individual or entity directly or indirectly employed by any of them to perform any of the CMAR Services or Work, or anyone for whose acts any of them may be liable.
- B. In claims against Owner, Owner's Advisor, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any CMAR employee, or the survivor or personal representative of such employee, 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 7.21.A will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for CMAR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.22 Delegation of Professional Design Services

- A. Owner may require CMAR 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 CMAR must furnish to Owner's Advisor with respect to the Owner-delegated design.
- B. CMAR 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 CMAR, a Subcontractor, or others for submittal to Owner's Advisor, then such Shop Drawing or other Submittal must bear the written approval of CMAR's design professional when submitted by CMAR to Owner's Advisor.
- D. Owner, Owner's Advisor, 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 CMAR 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 7.22, Engineer's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by CMAR pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that CMAR, through its design professionals, has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by CMAR is consistent with the design concept expressed in the Contract Documents.
- F. CMAR shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. CMAR 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 CMAR 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 CMAR.
- C. CMAR 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. CMAR 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. CMAR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CMAR may cut or alter others' work with the written consent of Owner's Advisor and the others whose work will be affected.
- E. If the proper execution or results of any part of CMAR's Work depends upon work performed by others, CMAR shall inspect such other work and promptly report to Owner's Advisor in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMAR's Work. CMAR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMAR'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 CMAR 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 CMAR 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 CMAR 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 CMAR shall be entitled to an equitable adjustment in the Guaranteed Maximum Price or the Contract Times. CMAR must submit any Change Proposal seeking an equitable adjustment in the Guaranteed Maximum 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 consider information, if any regarding such other work that was provided to CMAR in the Contract Documents prior to the submittal of the Proposal or the final negotiation of the terms of the Contract, and any remedies available to CMAR under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable

adjustment in Guaranteed Maximum Price will be conditioned on CMAR assigning to Owner all CMAR'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. CMAR's entitlement to an adjustment of the Contract Times or Guaranteed Maximum Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. CMAR 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 CMAR 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 CMAR, and assign to such other contractor or utility owner the Owner's contractual rights against CMAR 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, CMAR 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 CMAR'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 CMAR.
- C. If CMAR 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 CMAR's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of CMAR'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 CMAR, Owner, Owner's Advisor, or Engineer, then CMAR 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, Owner's Advisor, and Engineer, and their officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages, including but not limited to all fees and charges of construction managers, 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 CMAR

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to CMAR through Owner's Advisor.

9.02 Replacement of Owner's Advisor or Engineer

- A. Owner may at its discretion appoint a replacement for Owner's Advisor, provided CMAR makes no reasonable objection to the replacement. The replacement's status under the Contract Documents will be that of the former Owner's Advisor.

- B. Owner may at its discretion appoint an engineer to replace Engineer, provided CMAR 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 CMAR
- A. Owner shall make payments to CMAR 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 CMAR 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 Owner's Tasks in Support of CMAR Services
- A. Owner shall provide CMAR with all criteria and full information as to Owner's requirements for the Project including drafts of proposed Contract Documents, general schedules and completion requirements, reports, surveys, permits, record documents from related previous projects, and other information as required for CMAR to provide services. Owner shall be responsible for, and CMAR may rely upon, the accuracy and completeness of all such criteria and information, and of any other programs, instructions, data, and other information furnished by Owner to CMAR pursuant to this Agreement. CMAR may use such criteria and information in performing or furnishing CMAR Services.
- B. Owner shall provide reasonable assistance to CMAR in securing the release of documents and information held by private entities and by public agencies as needed to provide services required by this Agreement.
- C. Owner shall arrange for safe access to and make all provisions for CMAR to enter upon public and private property as required for CMAR to perform services.

- D. Owner shall review documents presented by CMAR, make decisions, and carry out Owner's other responsibilities in a timely manner so as not to delay the CMAR's performance of its services.
- E. Owner shall provide the services of attorneys, insurance consultants, financial advisors, and other professional advisors or consultants required for the Project, but not provided by the CMAR.
 - 1. Advise CMAR of the identity and scope of services of any independent consultant, designer, contractor, or other construction manager employed by Owner to perform or furnish services in regard to the Project, including cost estimating, project peer reviews, value engineering, and constructability reviews.
 - 2. Define and set forth the duties, responsibilities, and limitations of authority of these other parties as they relate to the duties, responsibilities, and authority of CMAR.
- F. Owner is not responsible for discovering deficiencies in the CMAR's Services. CMAR will correct any deficiencies without additional compensation, except to the extent this corrective action is directly attributable to deficiencies in Owner-furnished information.

9.10 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.

9.11 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.12 Evidence of Financial Arrangements

- A. Upon request of CMAR, Owner shall furnish CMAR reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract, including obligations under proposed changes in the Work.

9.13 Safety Programs

- A. While at the Site, Owner's employees and representatives will comply with the specific applicable requirements of CMAR's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to CMAR.

ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ENGINEER DURING CONSTRUCTION

10.01 Owner's Advisor

- A. Owner's Advisor will be Owner's representative during the construction period.
- B. The general duties, responsibilities, and the limitations of authority of Owner's Advisor and Engineer during construction are set forth below.

10.02 Visits to Site

- A. Owner's Advisor will either be based at the Site or make visits to the Site on a regular basis. Owner's Advisor will observe the Work; check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.
- B. 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 CMAR's executed Work. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer will report to Owner's Advisor regarding information obtained during such Site visits and observations.
- C. Owner's Advisor's and Engineer's visits and observations are subject to all the limitations on Owner's Advisor's and Engineer's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Owner's Advisor's and Engineer's visits or observations of CMAR's Work, neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Determinations for Unit Price Work

- A. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR as set forth in Paragraph 13.02.

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

- A. Owner's Advisor will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.
 - 1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, "or equal" and substitute requests, emergencies, Field Orders, and similar matters, Owner's Advisor will consult with Engineer as to all matters in question involving (a) the design, as set forth in the Drawings, Specifications, or otherwise, (b) the quality or acceptability of the Work under the Contract Documents, or (c) other engineering matters.
 - 2. With respect to such matters, Owner's Advisor's decisions and judgments as rendered will be in accord with Engineer's professional analysis, opinions, recommendations, and conclusions.
- B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Owner's Advisor nor Engineer will show partiality to Owner or CMAR, and neither Owner's Advisor nor Engineer will be liable to Owner, CMAR, or others in

connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.

- C. Owner's Advisor may at any time request that CMAR furnish proposed changes to Guaranteed Maximum Price and Contract Times that would result from specified proposed changes to the Contract Documents.

10.05 Limitations on Owner's Advisor's and Engineer's Authority and Responsibilities

- A. Neither Owner's Advisor's nor Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Owner's Advisor or 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 Owner's Advisor or Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner's Advisor or Engineer to CMAR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Neither Owner's Advisor nor Engineer will supervise, direct, control, or have authority over or be responsible for CMAR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAR to comply with Laws and Regulations applicable to the performance of the Work. Neither Owner's Advisor nor Engineer will be responsible for CMAR's failure to perform the Work in accordance with the Contract Documents.
- C. Neither Owner's Advisor nor Engineer will be responsible for the acts or omissions of CMAR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Owner's Advisor'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 CMAR under Paragraph 15.07.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

10.06 Compliance with Safety Program

- A. While at the Site, Owner's Advisor's and Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and CMAR's safety programs of which Owner's Advisor and Engineer have 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 Contract Amendment, Work Authorization, Change Order, Work Change Directive, or Field Order.
- B. A Work Authorization, as more fully defined in Paragraph 1.01, is used to authorize specified Work, and establish related compensation. Change Orders, Work Change Directives, and Field Orders are used to modify a Work Authorization, including but not limited to

modifications of the authorized Work and changes to the Guaranteed Maximum Price and Contract Times associated with the Work Authorization.

If a modification under a Work Authorization includes a change in the Guaranteed Maximum Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

- C. A Contract Amendment, as more fully defined in Paragraph 1.01, is used for general contract modification purposes.
- D. 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 matters, must be supported by Engineer's recommendation. Owner and CMAR may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 Change Orders

- A. With respect to a governing Work Authorization, Owner and CMAR shall execute appropriate Change Orders covering:
 - 1. Changes in Guaranteed Maximum Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive;
 - 2. 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 matters; and
 - 3. 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; Paragraph 13.02.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or CMAR 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.
- C. Owner and CMAR will enter into either a Change Order, if related to a specific Work Authorization, or a Contract Amendment with respect to the following:
 - 1. Changes in Guaranteed Maximum Price resulting from an Owner set-off, unless CMAR has duly contested such set-off;
 - 2. Changes that embody the substance of any final and binding results under Article 12, Claims; Paragraph 13.01, final adjustments resulting from allowances; and similar provisions.

11.03 Work Change Directives

- A. A Work Change Directive will not change the Guaranteed Maximum 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 Guaranteed Maximum 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 Guaranteed Maximum Price.

- B. If Owner has issued a Work Change Directive and:
1. CMAR believes that an adjustment in Contract Times or Guaranteed Maximum Price is necessary, then CMAR 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 Guaranteed Maximum 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. Owner's Advisor, in consultation with Engineer, may authorize minor changes in the Work if the changes do not involve an adjustment in the Guaranteed Maximum Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on CMAR, which shall perform the Work involved promptly.
- B. If CMAR believes that a Field Order justifies an adjustment in the Guaranteed Maximum Price or Contract Times, then before proceeding with the Work at issue, CMAR 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 matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and CMAR have agreed as to the effect, if any, of the changes on Contract Times or Guaranteed Maximum Price; or by a Work Change Directive. Upon receipt of any such document, CMAR 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 CMAR to undertake work that CMAR reasonably concludes cannot be performed in a manner consistent with CMAR's safety obligations under the Contract Documents or Laws and Regulations.

11.06 Unauthorized Changes in the Work

- A. CMAR shall not be entitled to an increase in the Guaranteed Maximum 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 7.18 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 be changed by a Work Authorization, Change Order, or Contract Amendment. Any Change Proposal for an adjustment in the Guaranteed Maximum 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 Guaranteed Maximum Price with respect to the Work 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;
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; 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 in accordance with the Cost of the Work provisions in the Agreement, plus the CMAR Fee, applied proportionally, for overhead and profit determined in accordance with the terms in the Agreement.

11.08 Change of Contract Times

- A. The Contract Times may be changed by a Work Authorization, Change Order, or Contract Amendment. 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—CMAR shall submit a Change Proposal to Owner’s Advisor to request an adjustment in the Contract Times or Guaranteed Maximum Price; contest a decision by Owner’s Advisor 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 Guaranteed Maximum Price, or other proposed relief; identify any governing Work Authorization; indicate CMAR’s recommendation for the correct means of amending the Contract (Work Authorization, Change Order, or Contract Amendment) if the proposed change is accepted; 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. Determination of Changes in Guaranteed Maximum Price for Work—If a Change Order under a Work Authorization entails a change in Guaranteed Maximum Price, then:
 - 1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions Article 6 of the Agreement.
 - 2. The CMAR Fee for changes will be those agreed to Article 7 of the Agreement.

3. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in the Cost of the Work and CMAR Fee, as duly determined.
 4. The amount of any increases or decreases in the CMAR Fee, or in Guaranteed Maximum Price, will be set forth in the applicable Change Order.
- C. Change Proposal Procedures
1. Submittal—CMAR shall submit each Change Proposal to Owner’s Advisor within 30 days after the start of the event giving rise thereto, or after such decision.
 2. Supporting Data—The CMAR shall submit supporting data, including the proposed change in Guaranteed Maximum Price or Contract Time, if any, to the Owner’s Advisor 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 Guaranteed Maximum Price based on Cost of the Work must include full and detailed account of eligible costs, such as materials incorporated into the Work, labor and equipment used for the subject Work, and Subcontract costs.

The supporting data must be accompanied by a written statement that the supporting data is accurate and complete, and that any requested time or price adjustment is the entire adjustment to which CMAR believes it is entitled as a result of said event.
 3. Owner’s Advisor’s Initial Review—Owner’s Advisor, in consultation with Engineer, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Owner’s Advisor concludes that additional supporting data is needed before conducting a full review and deciding regarding the Change Proposal, then Owner’s Advisor may request that CMAR submit such additional supporting data by a date specified by Owner’s Advisor, prior to Owner’s Advisor beginning its full review of the Change Proposal.
 4. Owner’s Advisor’s Full Review and Action on the Change Proposal—Upon receipt of CMAR’s supporting data, including any additional data requested by Owner’s Advisor, Owner’s Advisor, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the CMAR’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 CMAR. If Owner’s Advisor does not act on the Change Proposal within 30 days, then either Owner or CMAR may at any time thereafter submit a letter to the other party indicating that as a result of Owner’s Advisor’s inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. Binding Decision—Owner’s Advisor’s decision is final and binding upon Owner and CMAR, unless Owner or CMAR appeals the decision by filing a Claim under Article 12.
- D. Post-Completion—CMAR shall not submit any Change Proposals after Owner’s Advisor issues a written recommendation of final payment pursuant to Paragraph 15.07.B.

11.10 Notification to Surety

- A. CMAR shall notify the performance and payment bond surety of the issuance of each Work Authorization and confirm that the bonds have been adjusted to reflect the changes in Guaranteed Maximum Price and Contract Times.
- B. 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, Guaranteed Maximum Price or Contract Times, the giving of any such notice will be CMAR'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 CMAR are subject to the Claims process set forth in this article:
 - 1. Appeals by Owner or CMAR of Owner's Advisor's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Subject to the waiver provisions of Paragraph 15.08, any dispute arising after Owner's Advisor has issued a written recommendation of final payment pursuant to Paragraph 15.07.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 Owner's Advisor and Engineer, for their information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by CMAR seeking an increase in the Contract Times or Contract Price, CMAR shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of CMAR's knowledge and belief the amount of time or money requested accurately reflects the full amount to which CMAR is entitled.
- C. Review and Resolution—The party receiving a Claim shall review it thoroughly and consider 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 Owner's Advisor and Engineer.
- D. Mediation
 - 1. At any time after initiation of a Claim, Owner and CMAR 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 CMAR agree to mediation, then after 60 days from such agreement, either Owner or CMAR 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 CMAR 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 act on the Claim within 90 days, then either Owner or CMAR 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—ALLOWANCES; UNIT PRICE WORK

13.01 Allowances

- A. The CMAR Contingency Allowance (Agreement, Article 8) and Owner's Contingency Allowance (Agreement, Article 12) are governed by the applicable provisions of the Agreement.
- B. CMAR confirms that it has included the CMAR Contingency Allowance in the Guaranteed Maximum Price 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 Owner's Advisor.
- C. CMAR confirms that it has included the Owner's Contingency Allowance in the Contract Price and that use of Owner's Contingency Allowance is subject to the provisions of Article 12 in the Agreement.
- D. Cash Allowances—CMAR agrees that:
 1. the cash allowances include the cost to CMAR, 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. CMAR'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 Guaranteed Maximum Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

- E. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Advisor to reflect actual amounts due CMAR for Work covered by allowances, and the Guaranteed Maximum Price will be correspondingly adjusted.

13.02 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Guaranteed Maximum 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 Proposals and determining an Estimated Guaranteed Maximum Price. Payments to CMAR for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by CMAR to be adequate to cover CMAR's overhead and profit for each separately identified item.
- D. Owner's Advisor will determine the actual quantities and classifications of Unit Price Work performed or furnished by CMAR. Owner's Advisor will review with CMAR the Owner's Advisor's preliminary determinations on such matters before rendering a written decision thereon, by recommendation of an Application for Payment or otherwise. Owner's Advisor's written decision thereon will be final and binding except as modified by Owner's Advisor to reflect changed factual conditions or more accurate data upon Owner and CMAR, and the final adjustment of Guaranteed Maximum Price will be set forth in a Change Order, subject to the provisions of the following Paragraph.
- E. Adjustments in Unit Price
 1. CMAR 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 CMAR differs materially and significantly from the estimated quantity of such Item indicated in the Agreement; and
 - b. CMAR'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 CMAR's costs to perform such other Work, such that the resulting overall change in Guaranteed Maximum Price is equitable to Owner and CMAR.
 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, Owner's Advisor, 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. CMAR shall provide them with proper and safe conditions for such access and

advise them of CMAR's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 Tests, Inspections, and Approvals

- A. CMAR shall give Owner's Advisor 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 those 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, CMAR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Advisor the required certificates of inspection or approval.
- D. CMAR 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 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 CMAR'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 Owner's Advisor.

- E. If the Contract Documents require the Work, or part thereof, to be accepted by Owner, Owner's Advisor, Engineer, or another designated individual or entity, then CMAR 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 CMAR without written concurrence of Owner's Advisor, CMAR shall, if requested by Owner's Advisor, uncover such Work for observation. Such uncovering will be at CMAR's expense unless CMAR has given Owner's Advisor timely notice of CMAR's intention to cover the same and Owner's Advisor had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. CMAR's Obligation—It is CMAR's obligation to assure that the Work is not defective.
- B. Owner's Advisor's Authority—Owner's Advisor has the authority to determine, in consultation with Engineer, whether Work is defective, and to reject defective Work.
- C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Owner's Advisor, or Engineer has actual knowledge will be given to CMAR.
- D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, CMAR shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Owner's Advisor 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, CMAR 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, CMAR 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 CMAR 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. 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. CMAR 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 Owner's Advisor as to reasonableness, and for the diminished value of the Work to the extent not otherwise paid by CMAR. 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 Guaranteed Maximum 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, CMAR shall pay an appropriate amount to Owner.

14.05 Uncovering Work

- A. Owner's Advisor 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 Owner's Advisor, then CMAR shall, if requested by Owner's Advisor, uncover such Work for Owner's Advisor's or Engineer's observation, and then replace the covering, all at CMAR's expense.

- C. If Engineer or Owner's Advisor considers it necessary or advisable that covered Work be observed by Owner's Advisor or Engineer, or inspected or tested by others, then Owner's Advisor will so advise CMAR, and CMAR shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Advisor 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, CMAR 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 CMAR'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, CMAR shall be allowed an increase in the Guaranteed Maximum 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 CMAR 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 CMAR 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 CMAR 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 CMAR, 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 CMAR fails within a reasonable time after written notice from Owner's Advisor to correct defective Work, or to remove and replace defective Work as required by Owner's Advisor, then Owner may, after 7 days' written notice to CMAR, 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 CMAR from all or part of the Site, take possession of all or part of the Work and suspend CMAR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid CMAR but which are stored elsewhere. CMAR shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, Owner's Advisor, Engineer, and their 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 CMAR 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 CMAR's defective Work.

- D. CMAR 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 CMAR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Payment for CMAR Services

- A. The basis and procedures for payment for CMAR Services are set forth in the Agreement, Article 3. The provisions of this Article 15 pertain to payment for performance and furnishing of the Work, unless noted otherwise.

15.02 Progress Payments

A. Basis for Progress Payments

1. CMAR will, at least 10 days prior to applying for Payment, prepare and submit for approval by Owner's Advisor a schedule allocating portions of the Guaranteed Maximum Price to various portions of the Work, as determined by the applicable Work Authorizations.
2. The Schedule of Values will serve as the basis for progress payments and will be incorporated by Owner's Advisor into an Application for Payment form. 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 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by CMAR 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, CMAR shall submit to Owner's Advisor for review an Application for Payment filled out and signed by CMAR 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 CMAR 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 CMAR stating that all previous progress payments received by CMAR have been applied to discharge CMAR'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. Owner's Advisor 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 CMAR indicating in writing Owner's Advisor's reasons for refusing to recommend payment. In the latter case, CMAR may make the necessary corrections and resubmit the Application.
 2. Owner's Advisor's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Advisor to Owner, based on Owner's Advisor's (a) observations of the executed Work, (b) consultations with Engineer, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Advisor'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 13.02, and any other qualifications stated in the recommendation; and
 - c. the conditions precedent to CMAR's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Advisor's responsibility to observe the Work.
 3. By recommending any such payment Owner's Advisor 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 Owner's Advisor in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle CMAR to be paid additionally by Owner or entitle Owner to withhold payment to CMAR.
 4. Neither Owner's Advisor's review of CMAR's Work for the purposes of recommending payments nor Owner's Advisor's recommendation of any payment, including final payment, will impose responsibility on Owner's Advisor:
 - 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 CMAR's failure to comply with Laws and Regulations applicable to CMAR's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes CMAR 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. Owner's Advisor may refuse to recommend the whole or any part of any payment if, in Owner's Advisor's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.02.C.2.
 6. Owner's Advisor will recommend reductions in payment (set-offs) necessary in Owner's Advisor's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
 - 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 CMAR is responsible; or
 - e. Owner's Advisor has actual knowledge of the occurrence of any of the events that would constitute a default by CMAR and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due
1. Ten days after Owner's Advisor's presentation of the Application for Payment to Owner with Owner's Advisor's recommendation, the amount recommended, subject to any Owner set-offs, will become due, and when due will be paid by Owner to CMAR.
- E. Reductions in Payment by Owner
1. In addition to any reductions in payment (set-offs) recommended by Owner's Advisor, 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 CMAR's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from CMAR'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. CMAR 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. CMAR 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 CMAR is responsible;
 - e. Owner has incurred extra charges for advisory services 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 Guaranteed Maximum Price has been reduced by Change Orders or other Contract modifications;
 - i. An event has occurred that would constitute a default by CMAR and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of CMAR'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 CMAR has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. Claims have been made or costs have been incurred arising from CMAR Services; or
 - m. 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 Owner's Advisor, Owner will give CMAR immediate written notice, with a copy to Owner's Advisor, stating the reasons for such action and the specific amount of the reduction, and promptly pay CMAR any amount remaining after deduction of the amount so withheld. Owner shall promptly pay CMAR the amount so withheld, or any adjustment thereto agreed to by Owner and CMAR, if CMAR remedies the reasons for such action. The reduction imposed will be binding on CMAR 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 15.02.D.1 and subject to interest as provided in the Agreement.
- F. Where the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work, as measured by reference to the Schedule of Values, or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that CMAR prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price, if any, through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 CMAR's Warranty of Title

- A. CMAR 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.

15.04 Substantial Completion

- A. When CMAR considers the entire Work ready for its intended use CMAR shall notify Owner's Advisor in writing that the entire Work is substantially complete and request that Owner's

Advisor issue a certificate of Substantial Completion. CMAR shall at the same time submit to Owner's Advisor CMAR's proposed punch list of items to be completed or corrected before final payment.

- B. Promptly after CMAR's notification, Owner, CMAR, Owner's Advisor, and Engineer will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Owner's Advisor will notify CMAR in writing, giving the reasons for the determination.
- C. If the Work is deemed substantially complete, Owner's Advisor will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Owner's Advisor will attach to the certificate the Owner's Advisor's proposed 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 Owner's Advisor as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Owner's Advisor, in consultation with Engineer, concludes that the Work is not substantially complete, Owner's Advisor will, within 14 days after submission of the preliminary certificate to Owner, notify CMAR in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Owner's Advisor, in consultation with Engineer, concludes that the Work is substantially complete, then Owner's Advisor will, within said 14 days, execute and deliver to Owner and CMAR 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 Owner's Advisor believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and CMAR 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 CMAR 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 CMAR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CMAR 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 CMAR from the Site after the date of Substantial Completion subject to allowing CMAR reasonable access to remove its property and complete or correct items on the punch list.

15.05 Partial Use or Occupancy; Completion of Authorized Work

- 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, Owner's Advisor, Engineer, and CMAR 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 CMAR's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that CMAR permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when CMAR agrees that such part of the Work is substantially complete, CMAR, Owner, Owner's Advisor and Engineer will follow the procedures of Paragraph 15.04.A through 15.04.E for that part of the Work.
 2. At any time, CMAR may notify Owner and Owner's Advisor in writing that CMAR considers any such part of the Work substantially complete and request Owner's Advisor to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner, CMAR, Owner's Advisor and Engineer will inspect that part of the Work to determine its status of completion. If Owner's Advisor, in consultation with Engineer, does not consider that part of the Work to be substantially complete, Owner's Advisor will notify Owner and CMAR in writing, giving the reasons for its determination. If Owner's Advisor, in consultation with the Engineer, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.04 will apply with respect to certification of Substantial Completion, the Division of responsibility, and access.
 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.
 5. Neither the organization of the Work into Work Packages, nor the authorization of specified parts of the Work in a Work Authorization, establishes (a) that such packages or parts of the Work have been identified in the Contract Documents or otherwise as a part of the Work that Owner may use or occupy upon completion, or (b) that any such Work constitutes a separately functioning and usable part of the Work that upon completion can be used by Owner for its intended purpose without significant interference with CMAR's performance of the remainder of the Work. The determination of whether any part of the Work qualifies for partial use or occupancy under this Paragraph 15.05 will be made on the merits without reference to Work Packages or Work Authorizations.
- B. Substantial Completion of Authorized Work
1. When CMAR considers the entire Work authorized under a specific Work Authorization is ready for its intended use, CMAR shall notify Owner's Advisor in writing that such authorized Work is substantially complete and request that Owner's Advisor issue a certificate of Substantial Completion applicable solely to such authorized Work. CMAR shall at the same time submit to Owner's Advisor the CMAR's proposed punch list of items to be completed or corrected before such authorized Work is deemed complete.
 2. CMAR, Owner, Owner's Advisor, and Engineer will follow the procedures of Paragraphs 15.04.A, B, C, E, and F for such authorized Work. The terms of Paragraph 15.04.D are not applicable to the determination of Substantial Completion of the Work authorized under a Work Authorization.

3. Until Substantial Completion of the entire Work under this Contract under Paragraph 15.04, such authorized Work will not be eligible for Owner's use or occupancy, unless otherwise eligible for partial use or occupancy under Paragraph 15.05.A; the determination of a date of Substantial Completion for such authorized Work will not mark the commencement of the contractual correction period and applicable warranties required by the Contract for such authorized Work; and the authorized Work will remain the responsibility of CMAR.

15.06 Final Inspection

- A. Upon written notice from CMAR that the entire Work or an agreed portion thereof is complete, Owner's Advisor will promptly make a final inspection with Owner, Engineer, and CMAR and will notify CMAR in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. CMAR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.07 Final Payment

A. Application for Final Payment

1. After Owner's Advisor, in consultation with Engineer, determines that CMAR has (a) satisfactorily completed all corrections identified during the final inspection, (b) 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 7.15, and other documents, and (c) completed performance of all services required by the Contract, CMAR 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 15.07.A.2 and as approved by Owner, CMAR may furnish receipts or releases in full and an affidavit of CMAR 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, CMAR 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 CMAR and specified Subcontractors and Suppliers.

- B. **Owner's Advisor's Review of Final Application and Recommendation of Payment**—If, on the basis of Owner's Advisor's observation of the Work during construction and final inspection, consultation with Engineer regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Advisor is satisfied that CMAR has completed the Work and fulfilled CMAR's other obligations under the Contract, Owner's Advisor will, within 10 days after receipt of the final Application for Payment, indicate in writing Owner's Advisor'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 Owner's Advisor's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Owner's Advisor will return the Application for Payment to CMAR, indicating in writing the reasons for refusing to recommend final payment, in which case CMAR shall make the necessary corrections and complete the Work and all remaining services, and resubmit the Application for Payment.
- C. **Notice of Acceptability of the Work**—In support of its recommendation of payment of the final Application for Payment, Owner's Advisor, with Engineer's express approval, will also give written notice to Owner and CMAR that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.08.
- D. **Completion of Work**—The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the Owner's Advisor's written recommendation of final payment and issuance of Notice of Acceptability of the Work.
- E. **Final Payment Becomes Due**—Upon receipt from Owner's Advisor of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Owner's Advisor 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 CMAR within 30 days of Owner's receipt of the final Application for Payment from Owner's Advisor.

15.08 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by CMAR, 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 CMAR will constitute a waiver by CMAR 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.

15.09 Correction Period

- A. **Scheduled Correction Period Inspection**—Within one month before the end of the Contract's correction period, CMAR will participate in an inspection of the Work with the Owner, Owner's Advisor, and Engineer to ascertain whether any portion of the Work or the repair of

any damage to the Site or adjacent areas is defective and therefore subject to correction by CMAR.

- B. 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 CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR'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 CMAR shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. return to the Site with Owner, Owner's Advisor and Engineer to inspect any apparent or discovered defects in the Work, or unrepaired damage to the Site or adjacent areas;
 2. consult with Owner's Advisor and Engineer regarding recommendations as to replacement or correction of such defective Work, or the repair of any damage;
 3. correct the defective repairs to the Site or such adjacent areas;
 4. correct such defective Work;
 5. 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
 6. 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.
- C. 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 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.20.B.
- D. If, after receipt of a notice of defect within 60 days and within the correction period, CMAR 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. CMAR shall pay all costs, losses, and damages, including but not limited to all fees and charges of construction managers, 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. CMAR'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.
- E. 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.
- F. 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.

- G. CMAR'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 AND TERMINATION

16.01 Owner May Suspend CMAR Services or Work

- A. At any time and without cause, Owner may suspend the CMAR Services or the Work, or any portion thereof, for a period of not more than 90 consecutive days by written notice to CMAR and Owner's Advisor. Such notice will fix the date on which CMAR Services or Work will be resumed. CMAR shall resume the CMAR Services or Work on the date so fixed. CMAR shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. With respect to a suspension of the Work, 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 CMAR and justify termination for cause:
1. CMAR'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 CMAR to perform or otherwise to comply with a material term of the Contract Documents;
 3. CMAR's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. CMAR's repeated disregard of the authority of Owner, Owner's Advisor or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CMAR and any surety 10 days' written notice that Owner is considering a declaration that CMAR is in default and termination of the Contract, Owner may proceed to:
1. declare CMAR to be in default, and give CMAR, 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 CMAR 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 CMAR 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 CMAR 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, CMAR 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 Owner's Advisors, engineers, architects, attorneys, and other professionals, sustained by Owner, such excess will be paid to CMAR. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, CMAR shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Advisor as to their reasonableness and, when so approved by Owner's Advisor, 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 CMAR's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against CMAR then existing or which may thereafter accrue, or any rights or remedies of Owner against CMAR or any surety under any payment bond or performance bond. Any retention or payment of money due CMAR by Owner will not release CMAR from liability.
- G. If and to the extent that CMAR 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 CMAR and Owner's Advisor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, CMAR 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. CMAR 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 CMAR May Stop Work or Terminate

- A. If, through no act or fault of CMAR, (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) Owner's Advisor fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay CMAR any sum finally determined to be due, then CMAR may, upon 7 days' written notice to Owner and Owner's Advisor, and provided Owner or Owner's Advisor 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 Owner's Advisor 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 CMAR any sum finally determined to be due, CMAR may, 7 days after written notice to Owner and Owner's Advisor, stop the Work

until payment is made of all such amounts due CMAR, including interest thereon. The provisions of this paragraph are not intended to preclude CMAR from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CMAR'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 CMAR 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 CMAR 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, Owner's Advisor, CMAR, or Engineer when required, 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 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 Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner, Owner's Advisor, nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to CMAR for any claims, costs, losses, or damages sustained by CMAR 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 CMAR.

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 CMAR 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.

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

Prepared By



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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK CONTRACT

These Supplementary Conditions amend or supplement EJCDC® CMAR-700, Standard General Conditions of the Construction Manager at Risk Contract (2023). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added: for example, "Paragraph SC-4.05" references modifications to General Conditions Paragraph 4.05.

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:

- B. Evidence of CMAR's Insurance—When CMAR delivers the signed counterparts of the Agreement to Owner, CMAR shall also deliver to Owner copies of the policies, including all endorsements, and identification of applicable self-insured retentions and deductibles, of insurance required to be provided by CMAR in this Contract (other than insurance such as builder's risk that is required at a later date). CMAR may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- C. Evidence of Owner's Insurance—After receipt from CMAR of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to CMAR copies of the policies of insurance to be provided by Owner in this Contract, if any. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.02 Copies of Documents

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner shall furnish to CMAR only electronic copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

2.03 Electronic Transmittals

SC-2.03 Supplement Paragraph 2.03 of the General Conditions by adding the following paragraph:

- D. Requests by CMAR for Electronic Documents in Other Formats
1. Release of any Electronic Document versions of the Project design documents in formats other than those identified in the Electronic Documents Protocol, if any, or elsewhere in the Contract will be at the sole discretion of the Owner.
 2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project design documents and other Project information requested by CMAR (Request) in formats other than those identified in the Electronic Documents Protocol, if any, or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which CMAR agrees:
 - a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely and is being provided to CMAR on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, CMAR is advised and acknowledges that the content may not be suitable for CMAR's application or may require substantial modification and independent verification by CMAR. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.
 - b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to CMAR under the request are only for convenience of CMAR. Any conclusion or information obtained or derived from such data will be at the CMAR's sole risk and the CMAR waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.
 - c. CMAR shall indemnify and hold harmless Owner, OA, and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from CMAR's use, adaptation, or distribution of any Electronic Documents provided under the Request.
 - d. CMAR agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information, in source or modified file format, to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to CMAR's subcontractors. CMAR warrants that subsequent use by CMAR's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.
 3. In the event that Owner elects to provide or directs the Engineer to provide to CMAR any CMAR-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to CMAR, the Owner shall be reimbursed by CMAR on an hourly basis at \$200.00 per hour for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

ARTICLE 3—CONTRACT DOCUMENTS—INTENT, REQUIREMENTS, REUSE

3.01 Intent

SC-3.01 Delete Paragraph 3.01.C in its entirety.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 Delays in CMAR’s Progress

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraph:

- 5. *Weather-Related Delays.* If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Owner’s Advisor or Engineer within five days of the end of the abnormal weather condition event.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.02 Use of Site and Other Areas

SC-5.02 Add the following new paragraph immediately after 5.02.D:

- E. The responsibility for protection and safekeeping of equipment and materials on or near the Site is entirely that of CMAR, and no claim shall be made against Owner by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access to the sites occupied by stored materials and equipment, CMAR shall immediately move the same. No materials or equipment may be placed upon Owner’s property until Owner has agreed to the location contemplated by the CMAR to be used for storage.

5.03 Subsurface and Physical Conditions

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which CMAR may rely: **[Identified and amended at GMP]**

Report Title	Date of Report	Technical Data
		[Identify Technical Data]

- F. The following table lists the 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 specifically identifies the Technical Data upon which CMAR may rely: **[Identified and amended at GMP]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

- G. CMAR may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Proposal Documents or have not already been provided to CMAR at a mutually agreeable location.

5.06 Hazardous Environmental Conditions

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data, if any, upon which CMAR may rely:

Report Title	Date of Report	Technical Data
There are no known reports or hazards.	N/A	N/A

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data, if any, contained in such Drawings upon which CMAR may rely:

Drawings Title	Date of Drawings	Technical Data
There are no known reports or hazards.	N/A	N/A

SC-5.06.I Delete Paragraph 5.06.I in its entirety and renumber the subsequent paragraphs.

ARTICLE 6—BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

SC-6.01 Delete 6.01.A in its entirety and insert the following in its place:

- A. No later than the execution of the first Work Authorization, the CMAR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Guaranteed Maximum Price, as security for the faithful performance and payment of CMAR’s obligations under the Contract. These bonds must remain in effect until two years after the date when final payment on the Contract becomes due or until completion of the correction period for the Contract specified in Paragraph 15.09, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, or other provisions of the Contract. The premium costs of such bonds are:

1. included in Construction Support Cost if purchased for the Work based on the Estimated Guaranteed Maximum Price established with the Agreement; or
2. a reimbursable Cost of the Work if the bonds are purchased with the first Work Authorization and increased as subsequent Work Authorizations are approved.

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.C:

3. Required Performance Bond Form—The performance bond that CMAR furnishes will be in the form of EJCDC® C-610, Performance Bond (2018).
4. Required Payment Bond Form—The payment bond that CMAR furnishes will be in the form of EJCDC® C-615, Payment Bond (2018).

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.09.A of the General Conditions is hereby revised to be two years after Substantial Completion.

6.02 Insurance—General Provisions

SC-6.02 Delete the second sentence of Paragraph 6.02.B and replace it with the following:

Except any Colorado public entity self-insurance pool, all companies that provide insurance policies required under this Contract must have an A.M. Best Financial Strength Rating of A- or better, and an A.M. Best Financial Size Category of VII or larger.

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. CMAR may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.02 Delete Paragraph 6.02.E. in its entirety.

SC-6.02.N. Add the following clause to the end of the paragraph after insured:

“, and to Owner if such notice respects any policy of insurance required to be purchased and maintained by CMAR under this Contract.”

6.03 CMAR's Insurance

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. Other Additional Insureds—As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds, in addition to Owner, Owner's Advisor, and Engineer.
- E. Workers' Compensation and Employer's Liability—CMAR shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap

employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation, from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions, in the following minimum amounts:

Workers’ Compensation and Related Policies	Policy limits of not less than:
Workers’ Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman’s)	Statutory
Foreign voluntary workers’ compensation (employer’s responsibility coverage), if applicable	Statutory
Employer’s Liability	
Each accident	\$ 1,000,000
Each employee	\$ 1,000,000
Policy limit	\$ 1,000,000

- F. Commercial General Liability—Claims Covered—CMAR shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of CMAR, on an occurrence basis, against claims for:
 - 1. damages because of bodily injury, sickness or disease, or death of any person other than CMAR’s employees,
 - 2. damages insured by reasonably available personal injury liability coverage, and
 - 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

- G. Commercial General Liability—Form and Content. CMAR’s commercial liability policy must be written in a 1996, or later, Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
 - 1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. CMAR shall furnish Owner and each other additional insured, as identified in the Supplementary Conditions or elsewhere in the Contract, evidence of continuation of such insurance at final payment and three years thereafter, and to Owner, Owner’s Advisor or Engineer upon request at any time during the three-year period.
 - 2. Blanket contractual liability coverage, including but not limited to coverage of CMAR’s contractual indemnity obligations in Paragraph 7.21.
 - 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 - 4. Underground, explosion, and collapse coverage.

- 5. Personal injury coverage.
 - 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through both ISO Endorsements CG 20 10 04 13 and CG 20 37 04 13. For design professional additional insureds, ISO Endorsement CG 20 32 04 13 “Additional Insured: Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. Commercial General Liability—Excluded Content. The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
- 1. Any modification of the standard ISO definition of “insured contract,” except to delete the railroad protective liability exclusion if CMAR is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property.
 - 2. Any exclusion for water intrusion or water damage.
 - 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 - 4. Any exclusion of coverage relating to earth subsidence or movement.
 - 5. Any exclusion for the CMAR’s vicarious liability, strict liability, or statutory liability, other than worker’s compensation.
 - 6. Any limitation or exclusion based on the nature of CMAR’s work.
 - 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. Commercial General Liability—Minimum Policy Limits

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$ 2,000,000
Products—Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$ 1,000,000

- J. Automobile Liability—CMAR shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$ 1,000,000
Each Accident	\$ 1,000,000
Property Damage	
Each Accident	\$ 1,000,000
[or]	

Automobile Liability	Policy limits of not less than:
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$ 1,000,000

- K. Umbrella or Excess Liability—CMAR shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$ 5,000,000
General Aggregate	\$ 5,000,000

- L. Coverage limits—The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.
- M. Contractor’s Pollution Liability Insurance—CMAR shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from CMAR’s operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor’s Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$ 1,000,000
General Aggregate	\$ 1,000,000

- N. Contractor’s Professional Liability Insurance—CMAR shall purchase and maintain professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by CMAR or by others for whom CMAR is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor’s Professional Liability	Policy limits of not less than:
Each Claim	\$ 1,000,000
Annual Aggregate	\$ 1,000,000

- O. [Intentionally omitted.]
- P. Unmanned Aerial Vehicle Liability Insurance—If CMAR uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, CMAR shall purchase and maintain UAV liability insurance in the amounts stated; name Owner, Owner’s Advisor, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner

confirming CMAR’s compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Occurrence	\$ 1,000,000
Privacy Injury Aggregate	\$ 1,000,000

Q. Other Required Insurance

6.04 Builder’s Risk and Other Property Insurance

SC-6.04 Amend Paragraph 6.04.A as follows:

Remove the following language from the paragraph: “Unless otherwise provided in the Supplementary Conditions.”

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. Builder’s Risk Requirements—The builder’s risk insurance must:

1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following perils: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage, other than that caused by flood.
 - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder’s risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and CMAR.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

3. cover expenses incurred in the repair or replacement of any insured property, including but not limited to fees and charges of contractors, owners representatives, engineers, and architects.
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site, but not including property stored at the premises of a manufacturer or Supplier.
5. extend to cover damage or loss to insured property while in transit.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.07.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, CMAR, Subcontractors of every tier, and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, CMAR, and Subcontractors of every tier, include as insureds the following:
 - a. **Not applicable**
11. include, in addition to the Guaranteed Maximum Price amount, the value of the following equipment and materials to be installed by the CMAR but furnished by the Owner or third parties:
 - a. **Not applicable**
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of \$[amount].
13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:
 - a. **Not applicable**
14. The party responsible for purchasing and maintaining the builder's risk insurance is responsible for insurable losses in excess of the coverage limits.

Guidance Notes: Builder's Risk Deductibles—Paragraph 6.04.A of the General Conditions requires builder's risk insurance on a completed value basis, subject to such deductible amounts as are provided by the Supplementary Conditions. SC-6.04.H provides a means of identifying a primary deductible; other specific deductibles may also be added. It is common for builder's risk policies to feature several different

deductibles, typically including primary deductibles and specific deductibles applicable to specific types of loss, such as flood and earth movement.

In some cases, the Owner, as the party directing or specifying the content of the insurance-related Supplementary Conditions, will choose not to specify any deductibles, leaving establishment of the deductible amounts to the discretion of the purchasing party, which is responsible for payment of the deductibles. Even when a deductible is stipulated, it is typically a maximum amount; the purchaser may choose to purchase a policy with a lower deductible.

The builder's risk policies available for projects in coastal and other high-hazard areas may have special deductible provisions for wind and flood damage, hurricanes, earthquakes, and other specific perils. Such deductibles may be determined based on a percentage of the property value at the time of loss, rather than being stated as a specific dollar amount. SC-6.04.H should be revised to reflect coastal or other local conditions that change the approach to deductibles.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- G. Builder's Risk and Other Property Insurance Deductibles—The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.
 - 1. The builder's risk policy, or if applicable, the installation floater, will be subject to a deductible amount of no more than \$[specify amount] for direct physical loss in any one occurrence.

Guidance Notes: Installation Floater—An installation floater is insurance carried by a contractor (here, the CMAR), covering only the materials and equipment to be incorporated in the contractor's work. It typically does not insure against losses that occur after installation. In most cases, builder's risk insurance offers broader coverage, covers the Owner, CMAR, and Subcontractors, and is the preferred risk management instrument. On some projects, an installation floater may be an acceptable alternative to a builder's risk policy. For example, on a pipeline project it may be adequate from a risk management standpoint to insure against loss or damage to the piping until installation, at which time there is little further risk from standard insurable perils such as fire or windstorm. Because the Owner will typically not be insured, the use of an installation floater also assumes a risk management decision that protecting the CMAR's interest in the materials and equipment is adequate to insure the best interests of the project. See EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

If, after consultation with its risk managers, Owner elects to allow purchase of an installation floater rather than a builder's risk policy, the following SC-6.04.A should be included as a Supplementary Condition; GC-6.04.B, GC-6.04.C, GC-6.04.D, and GC-6.04.E should be retained; SC-6.04.F, Builder's Risk Requirements, should not be included; and SC-6.04.H, Builder's Risk and other Property Insurance Deductibles, should be included. Owner should determine whether soft cost and related coverage is available and warranted, and if so modify the contents of SC-6.04.G, Coverage for Completion Delays, for the installation floater requirement.

SC-6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:

- A. Installation Floater

1. CMAR shall provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (Covered Property). Coverage under the CMAR’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:
 - a. of the CMAR, and Covered Property of others that is in CMAR’s care, custody, and control;
 - b. while in transit to the Site, including while at temporary storage sites;
 - c. while at the Site awaiting and during installation, erection, and testing;
 - d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.
2. The installation floater coverage cannot be contingent on an external cause or risk or limited to property for which the CMAR is legally liable.
3. The installation floater coverage will be in an amount adequate to protect CMAR’s interest in the Covered Property. The CMAR will be solely responsible for any deductible carried under this coverage.
4. This policy will include a waiver of subrogation applicable to Owner, CMAR, OA, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

Guidance Notes: Builder’s Risk Waivers of Claims and Subrogation—Paragraph 6.05 of the General Conditions contains a mutual waiver of property loss claims, and waiver of the builder’s risk insurer’s subrogation rights. To the extent these provisions shield the Owner, the CMAR, and the Subcontractors from disputes regarding losses that are covered by insurance, they are generally accepted risk management measures. As published, the provisions also bring the Engineer and Owner’s Advisor—integral and essential members of the Project team—within the scope of their protection. However, the trend in the insurance industry, as of 2023, appears to be shifting against the acceptance of waivers (such as those on Paragraph 6.05) that protect the interests of architects/engineers. The user should consult with a risk manager or insurance professional to determine whether any revision of Paragraph 6.05 is advisable, based on the availability (or lack of availability) of price-competitive builder’s risk policies that allow for comprehensive waivers of subrogation rights.

6.05 Property Losses; Subrogation

SC-6.05 Delete Paragraph 6.05 in its entirety and insert the following in its place:

- A. All policies purchased in accordance with Paragraph 6.04, expressly including the builder’s risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Owner’s Advisor, Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. CMAR waives all rights against Owner and its officers, employees and agents for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner’s Advisor, Engineer, its consultants, all Subcontractors, all individuals or entities

identified in the Supplementary Conditions as 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. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or CMAR as trustee or fiduciary, or otherwise payable under any policy so issued.

- B. CMAR shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Owner's Advisor, Engineer, CMAR, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

ARTICLE 7—CMAR'S RESPONSIBILITIES

7.03 Delete Paragraph 7.03 in its entirety.

7.04 Delete Paragraph 7.04 in its entirety.

7.05 Delete Paragraph 7.05 in its entirety.

7.06 Labor; Working Hours

SC-7.06 Add the following new subparagraphs immediately after Paragraph 7.06.D:

1. Regular working hours will be i) on Mondays through Fridays, between the hours of 7:00 a.m. and 8:00 p.m. or dusk, whichever is earlier and (ii) on Saturdays, Sundays and holidays, between the hours of 8:00 a.m. and 7:00 p.m. or dusk, whichever is earlier.
2. Owner's legal holidays are New Years Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day.

SC-7.06 Add the following new paragraph immediately after Paragraph 7.06.D:

- E. CMAR shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for OA's or Engineer's services, including but not limited to, construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If CMAR is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

7.11 Patent Fees and Royalties

Delete Paragraph 7.11.B in its entirety.

7.13 Taxes

SC-7.13 Add a new paragraph immediately after Paragraph 7.13.A:

Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to CMAR for use in the purchase of supplies and materials to be incorporated into the Work.
1. 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by CMAR, or to supplies or materials not incorporated into the Work.

7.15 Record Documents

SC-7.15.A Amend paragraph by adding the following after "written interpretations and clarifications,":
Manufacturers' Certifications,

7.21 Indemnification

SC-7.21.A Add the words "or willful or wanton" after the word "negligent."

ARTICLE 8—OTHER WORK AT THE SITE

No suggested Supplementary Conditions in this Article.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.09 Delete Paragraph 9.09 in its entirety.

ARTICLE 10—STATUS OF OWNER'S ADVISOR AND ENGINEER DURING CONSTRUCTION

No suggested Supplementary Conditions in this Article.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No suggested Supplementary Conditions in this Article.

ARTICLE 13—ALLOWANCES; UNIT PRICE WORK

No suggested Supplementary Conditions in this Article.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CMAR; SET OFFS; COMPLETION; CORRECTION PERIOD

15.02 Progress Payments

SC-15.02.B.4 – Add the following language at the end of paragraph:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the CMAR.

SC-15.02.D.1 – Delete paragraph in its entirety and insert the following in its place:

The Application for Payment with Owner Advisor’s recommendations will be presented to the Owner for consideration. If the Owner finds the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.02.E will become due thirty (30) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the CMAR.

SC-15.03.A – Amend paragraph by striking out the following text: “7 days after”.

15.04 Substantial Completion

SC-15.04 Add the following new subparagraph to Paragraph 15.04.B:

- 1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by CMAR to Owner. If CMAR does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

SC-15.07 Final Payment

SC-15.07 Modify the first sentence of 15.07.A.1 as follows:

After Owner’s Advisor, in consultation with *Owner and Engineer*, determines that CMAR has

SC-15.09 Correction Period

SC-15.09.B Delete the first clause of Paragraph 15.09.B in its entirety and insert the following in its place:

- I. If within two years after the date of Substantial Completion, Owner gives CMAR written notice that any Work has been found to be defective, whether as a result of the scheduled correction period inspection or otherwise, or that CMAR’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 CMAR shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

....

SC-15.08.H Add Paragraph 15.08.H to read as follows:

- J. H. In Owner’s discretion, a warranty inspection shall be held during the sixty (60) day period prior to the expiration of the two-year warranty period. CMAR shall provide an authorized representative at such inspection to represent CMAR’s interests.

ARTICLE 16—SUSPENSION AND TERMINATION

Sc-16.02.E - Delete paragraph in its entirety and insert the following in its place:

- E. If Owner proceeds as provided in Paragraph 16.02.B, CMAR shall not be entitled to receive any further payment. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds the unpaid balance of the Contract Price, CMAR shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner’s Advisor as to their reasonableness and, when so approved by Owner’s Advisor, 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.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

No suggested Supplementary Conditions in this Article.

ARTICLE 18—MISCELLANEOUS

SC-18.01 Giving Notice

SC-18.01.A. Amend Paragraph 18.01.A.3 to read as follows:

- 3. upon confirmation of receipt by the intended recipient, by e-mail to the recipient, with the words “Formal Notice” or similar in the e-mail’s subject line.

SC-18.05 No Waiver

SC-180.5B. Add Paragraph 18.05.B to read as follows:

- A. CMAR understands and agrees that any waiver granted by Owner or Owner’s Advisor of any term or provision of the Contract shall not constitute a precedent. Neither the acceptance of the Work Owner or Owner’s Advisor nor the payment of all or part of the sum due CMAR hereunder shall constitute a waiver by Owner of any claim Owner may have against CMAR.

SC-18.11 Venue

SC-11 Add Paragraph 18.11 to read as follows:

- B. Venue for any legal proceeding shall be in the County of Weld, State of Colorado.

SC-18.12 Appropriation.

SC-18.12 Add Paragraph 18.12 to read as follows:

- A. Pursuant to Section 24-91-103.6, C.R.S., as amended, Owner has appropriated the money necessary to fund the Project. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original contract amount, unless Owner provides written assurance to the CMAR that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of the Contract.
- B. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of Owner payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being

appropriated, budgeted, and otherwise made available. This Contract shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

SC-18.13 Independent Contractor

SC-18.13 Add Paragraph 18.13 to read as follows:

- A. CMAR understands and agrees that CMAR is an independent contractor and not an employee of Owner. Owner shall not provide benefits of any kind to CMAR. Owner shall not be responsible for withholding any portion of CMAR's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. CMAR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM OWNER. CMAR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with Owner, CMAR may engage in any other lawful business activities during the term of this Contract.

SC-18.14 Governmental Immunity

SC-18.14 Add Paragraph 18.14 to read as follows:

- A. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. and under any other applicable law.

SC-18.15 Arbitration

SC-18.15 Add Paragraph 18.15 to read as follows:

- A. Notwithstanding any provision in the Contract Documents to the contrary, Owner shall have the sole right to determine whether to submit a dispute or other matters to arbitration. It shall be otherwise presumed that all disputes and matters shall be resolved by a court of competent jurisdiction.

SC-18.16 Colorado Public Works Act

SC-18.16 Add Paragraph 18.16 to read as follows:

- A. Notwithstanding any other provision of the Contract, Owner may withhold funds if required to do so pursuant to the Colorado Public Works Act, Section 38-26-101, et seq., C.R.S.

SC- 18.17 Colorado Labor

SC-18.17 Add Paragraph 18.17 to read as follows:

- A. Pursuant to Title 8, Article 17, C.R.S., CMAR agrees, except as otherwise waived by Owner, to employ Colorado labor to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under the Contract. "Colorado labor" means any person who is a resident of the state of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

SC-18.18 Costs and Attorney Fees

SC-18.18 Add Paragraph 18.18 to read as follows:

- A. In the event of litigation enforcing or interpreting the terms of the Contract, to the extent permitted by law, recognizing that Owner is prohibited by the Johnstown Home Rule Charter, Colorado Constitutional and Colorado law from expending unbudgeted and unappropriated funds, the prevailing party shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

SC-18.19 No Presumption

SC-18.19 Add Paragraph 18.19 to read as follows:

Each party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: Johnstown Veterans Memorial Landscaping

ACTION PROPOSED: Consider Funding Support for the Johnstown Veterans Memorial Landscaping

ATTACHMENTS: 1. Quote for Landscaping Services

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Completed and installed this year is the Johnstown Veterans Memorial in the roundabout at the intersection of the Frontage Road and Highway 402. The art piece recognizes the sacrifices by our armed forces and also includes monuments recognizing each of the 6 branches of the armed services. The statue has already been assigned to the Town’s ownership and it is included in our property and casualty insurance.

The remaining portion yet to be completed is the landscaping around the roundabout. The Veterans Memorial, LLC (a nonprofit organization) has a remaining balance in their accounts of \$11,000. They have taken a couple of quotes to complete the landscaping and the low bid they’ve received is \$28,400 which leaves a balance of \$17,400. The LLC has made a request to the Town to for financial assistance to complete the balance of this project.

Staff would recommend supporting up to \$18,000 to ensure this project is completed appropriately. As full disclosure, a director on the board of the LLC is Councilmember Berg.

LEGAL ADVICE:

Not applicable.

FINANCIAL ADVICE:

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

A budget amendment may be necessary to accommodate this request.

RECOMMENDED ACTION: Staff supports this request to complete the project.

SUGGESTED MOTIONS:

For Approval: I move to approve the financial support of the Johnstown Veterans Memorial at a cost of not more than \$18,000.

For Denial: I move to deny the financial request made to support the Johnstown Veterans Memorial.

Reviewed and Approved for Presentation,



Town Manager

JJM Landscaping, Concrete, & Fence

1071 Norma Ct.
 Milliken, CO 80543
 (720) 641-8929
 (720)341-2587

Terms of Service Agreement

Contract Date: 08-23-23

Customer Name: Damien Beg

Property Address: Johnston Veterans Memorial Landscaping

JJM landscaping is prepared to provide the following professional services installation will meet CC&R's Guidelines.

Calculations of Fees and Other Charge

Rate of Installation Per Foot	\$
Total Linear Footage	\$
Additional Services	\$
Total Cost of Installation	\$ 28,400
Initial Deposit	\$ 14,200
Balance Due Upon Completion	\$ 14,200

Diagram Of Yard

Zero Scaping
 around the statue
 on the Roundabout
 and Boulders

Termination of Contract by customer: The customer will incur a \$500 termination/cancellation fee, for service providers and staff services.

Termination by JJM Landscaping: JJM Landscaping reserves the right to terminate this agreement if, customer does not comply with said terms and service agreement, if initial deposits are not paid as agreed.

JJM Landscaping will not be responsible to any damage to landscape, sprinkler systems or drainage, etc. if not clearly marked. Customer is fully responsible for obtaining permit if required.

JJM Landscaping

Customer

Authorized Signature

Date

Authorized Signature

Date



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: October 16, 2023

SUBJECT: Ordinance No. 2023-255 an Ordinance Amending Article VII of Chapter 7 of the Johnstown Municipal Code Concerning the Sale or Disposition of Dogs or Cats from a Pet Shop and Concerning Nuisance, Noisy and Vicious Animals

ACTION PROPOSED: Consider Ordinance No. 2023-255

ATTACHMENTS: 1. Ordinance No. 2023-255

PRESENTED BY: Avi Rocklin, Town Attorney
Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION: Ordinance No. 2023-255 as proposed, amends Article VII of Chapter 7 of the Johnstown Municipal Code (“Animal Code”). The ordinance: (i) enacts a regulation prohibiting the sale of dogs or cats from pet shops absent limited circumstances; (ii) amends the definition section in the Animal Code; (iii) provides that a law enforcement officer may make a prima facie determination as to whether noise is excessive or continuous; (iv) cleans up the nuisance animal section; (v) corrects an inconsistency related to vicious animal; and (vi) removes specified fines for violations of the Animal Code.

Pet Shop: Section 7-149 of the Animal Code

Due to concerns about the conditions associated with the sale or disposition of dogs and cats that originate from puppy and kitten mills and are sold at pet shops, members of the public made a presentation to the Town Council requesting that the Town Council prohibit the sale or disposition of dogs and cats from pet shops. The Humane Society of the United States has similarly found that puppy and kitten mills constitute inhumane commercial breeding facilities that disregard the animals’ physical and emotional health to maximize profits. The Town Council is entitled to prohibit unwholesome business practices in the Town. Due to the concerns regarding the sale or disposition of dogs or cats that originate from puppy or kitten mills and are sold at pet shops, the Town Council requested that Town Staff prepare an ordinance prohibiting the sale or disposition of dogs or cats from a pet shop, with limited exception. The proposed ordinance adds Section 7-149 to the Animal Code, prohibiting such sales except when a pet shop collaborates with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats.

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

Definitions: Section 7-121 of the Animal Code

The proposed ordinance amends Section 7-121 of the Animal Code to add definitions supporting the pet shop provisions and omit terms not otherwise used in, and terms moved to, other sections of the Animal Code.

Noisy Animal: Section 7-136 of the Animal Code

The proposed ordinance amends Section 7-136 of the Animal Code to provide that a code enforcement officer, police officer or other designated officer of the Town may make a prima facie determination as to whether noise is excessive or continuous. If a police officer finds probable cause, the charge may be brought without such determination.

Nuisance Animal: Section 7-135 of the Animal Code

The proposed ordinance amends Section 7-135 of the Animal Code to move the definition of nuisance animal from Section 7-121 into this section and clarifies the definition of nuisance animal. The ordinance provides that all dogs may be in a park as long as the dog is leashed and that a code enforcement officer, police officer or other designated officer of the Town may make a prima facie determination as to whether odor, dust, noise or drainage is offensive to the use or enjoyment of adjoining properties.

Vicious Animal: Section 7-139 of the Animal Code

The proposed ordinance amends Section 7-139 of the Animal Code to clarify an inconsistency about when a vicious animal may remain in the Town. The Animal Code, as written, provides that a vicious animal may remain in the Town when a law enforcement officer requires the dog to be confined, muzzled and leashed and when the owner obtains insurance and posts a sign.

Violations: Section 7-154 of the Animal Code

The proposed ordinance amends Section 7-139 of the Animal Code to omit the specified fines. If the Town Council would like to specify fines, the Town Council may direct staff who will request that the Municipal Court Judge add such fines to the Municipal Court Fine Schedule.

LEGAL ADVICE:

The Town Attorney prepared Ordinance No. 2023-255

FINANCIAL ADVICE:

N/A

RECOMMENDED ACTION: Approve Ordinance No. 2023-255 on first reading.

SUGGESTED MOTIONS:

For Approval: I move to approve Ordinance 2023-255 an Ordinance Amending Article VII of Chapter 7 of the Johnstown Municipal Code Concerning the Sale or Disposition of Dogs or Cats from a Pet Shop and Concerning Nuisance, Noisy and Vicious Animals, on first reading.

For Conditional Approval: I move to approve Ordinance 2023-255, an Ordinance Amending Article VII of Chapter 7 of the Johnstown Municipal Code Concerning the Sale or Disposition of Dogs or Cats from a Pet Shop and Concerning Nuisance, Noisy and Vicious Animals, on first reading, on the condition(s) that _____.

For Denial: I move to deny approval of Ordinance No. 2023-255.

Reviewed and Approved for Presentation,



Town Manager

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2023-255**

AN ORDINANCE AMENDING ARTICLE VII OF CHAPTER 7 OF THE JOHNSTOWN MUNICIPAL CODE CONCERNING THE SALE OR DISPOSITION OF DOGS OR CATS FROM A PET SHOP AND CONCERNING NUISANCE, NOISY AND VICIOUS ANIMALS

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Article VII of Chapter 7 of the Johnstown Municipal Code regulates animal control and animal offenses; and

WHEREAS, due to concerns about the conditions associated with the sale or disposition of dogs and cats that originate from puppy and kitten mills and are sold at pet shops, members of the public made a presentation to the Town Council requesting that the Town Council prohibit the sale or disposition of dogs and cats from pet shops; and

WHEREAS, the Humane Society of the United States has similarly found that puppy and kitten mills constitute inhumane commercial breeding facilities that disregard the animals’ physical and emotional health to maximize profits; and

WHEREAS, based upon the concerns raised by the members of the public along with data generated by the Humane Society of the United States, the Town Council finds that the sale or disposition of dogs or cats that originate from puppy or kitten mills and are sold at pet shops is an unwholesome business practice and desires to prohibit the sale or disposition of dogs or cats from a pet shop; and

WHEREAS, the Town Council further desires to amend certain other provisions of Article VII of Chapter 7 to update Section 7-121 related to definitions, revise and supplement Section 7-135 relating to nuisance animals and Section 7-136 related to noisy animals and clarify Section 7-139 related to vicious animals; and

WHEREAS, to effectuate the foregoing, the Town Council finds, determines and declares that this Ordinance is promulgated under the general police power of the Town and is in the best interests of the Town of Johnstown.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Section 7-121 of Article VII of Chapter 7 of the Johnstown Municipal Code shall be repealed and readopted to read as follows:

Sec. 7-121. Definitions.

As used in this Article, the following words have the following meanings:

- (1) *Animal* means any live, vertebrate creature, domestic or wild, except human primate.
- (2) *Animal care facility* means an animal control center or animal shelter maintained by or under contract with any state, county or municipality, with a mission and practice of, in whole or significant part, to rescue and place animals in permanent homes.
- (3) *Animal rescue organization* means a nonprofit organization with tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, with a mission or practice, in whole or significant part, to rescue or place animals in permanent homes.
- (4) *Animal shelter* or *impoundment facility* means a facility that, in addition to other activities, provides care for animals impounded pursuant to this Article.
- (5) *At large* means off the premises of the owner and not under the control of the owner.
- (6) *Cat* means any animal of the species *Felis catus* or any hybrid thereof.
- (7) *Code enforcement officer* means a peace officer so designated by law, the ordinances of the Town or by written order of the Chief of Police to enforce the provisions of this Article.
- (8) *Dog* means any canine animal, including those related to the wolf, fox, coyote, or jackal.
- (9) *Exotic animal* means nonhuman primate, skunk, fox, raccoon, wild/exotic cat and similar animals.
- (10) *Farm animal* means horse, mule, ass, sheep, goat (excluding pygmy goat), llama, swine (excluding pot belly pig), cow or other cloven hoofed animals commonly known as livestock.
- (11) *Fowl animal* means chicken, turkey, goose, duck, guinea, household bird, pigeon and similar animals provided they are for the enjoyment of the occupants of the lot and are not kept primarily for the purpose of sale or commercial endeavor. Commercial activities must comply with all other ordinances and zoning regulations.
- (12) *Household* means a dwelling unit and surrounding property customarily used by a single family for living purposes.
- (13) *Livestock* means any bovine animal, horse, mule, ass, sheep or goat (except pygmy goat).
- (14) *Owner* means any person, partnership or corporation owning any animal or animals, or having the same in his or her or its care, custody or control, or who causes, encourages or suffers the same to remain upon their premises for a period of three (3) consecutive days or more.
- (15) *Pet animals* means domestic dog, domestic cat, rabbit, guinea pig, hamster, mouse, snake, iguana, turtle, pot belly pig, pygmy goat, ferret and similar animals provided they are for the enjoyment of the occupants of the lot and are not kept primarily for the purpose of sale or commercial endeavor.
- (16) *Pet shop* means a retail establishment where animals are sold, exchanged, bartered, or offered for sale as pets to the general public at retail, but excluding an animal care facility or animal rescue organization.
- (17) *Premises* means real property owned, rented, leased, used, kept or occupied by a person or persons, a partnership, a corporation or governmental unit, howsoever described.
- (18) *Raptor* means any migratory bird that is a member of falconiformes or strigiformes and, specifically, but not by way of limitation, means falcons, hawks, owls and eagles.

- (19) *Rodent pest* means any prairie dog, ground squirrel, pocket gopher, jackrabbit or other rodent not commonly kept within the home.
- (20) *Trap* means any device used to contain or capture an animal.
- a. *Humane trap* means any trap which does not cause injury to the animal trapped.
 - b. *Inhumane trap* means any trap which causes injury to the animal trapped.
- (21) *Wild animal* means any monkey (nonhuman primate), raccoon, skunk, poisonous snake or reptile, jaguar, cheetah, mountain lion, wildcat, panther, margay or any other species of cats other than ordinarily domesticated house cats, any bear, any nonpoisonous snake longer than six (6) feet, any crocodile or alligator longer than one (1) foot, any badger, prairie dog, beaver, muskrat or bat, or any wolf, coyote, fox or other species of canine other than ordinarily domesticated dogs.

Section 2. Section 7-125 of Article VII of Chapter 7 of the Johnstown Municipal Code shall be repealed and readopted to read as follows:

Sec. 7-125. License exemptions.

A license shall not be required for:

- (a) A dog or cat under the age of six (6) months;
- (b) A seeing-eye dog; or
- (c) A dog or cat brought into the Town for less than a thirty (30) day period if licensed by another municipality.

Section 3. Section 7-135 of Article VII of Chapter 7 of the Johnstown Municipal Code shall be repealed and readopted to read as follows:

Sec. 7-135. Nuisance animals prohibited.

- (a) The following animal behaviors constitute a public nuisance. Any animal that:
 1. Menaces, attacks or bites persons or vehicles;
 2. Menaces, attacks or bites other animals;
 3. Goes upon school premises without the permission of the person in charge thereof;
 4. Is at large;
 5. Damages or destroys private or public property;
 6. Barks, howls, yelps, bawls or makes other loud, persistent noise in a manner which, under nonmitigating circumstances, could be considered by reasonable persons of ordinary sensibilities as excessive or continuous;
 7. Being a female in heat, because of the nature of its confinement, or lack of the same, has attracted other animals and caused them to congregate or remain on or about any premises; or
 8. Any other act or condition in this Article designated as a nuisance.
- (b) Public nuisances created by animals are prohibited in the Town, and the owner shall be deemed responsible for the actions of the animal.

- (c) Areas in which animals are kept shall be maintained in a manner that does not create odors, dust, noise or drainage offensive to the use or enjoyment of adjoining properties based on the senses of smell, hearing or sight of reasonable persons with ordinary sensibilities. For purposes of this section, a code enforcement officer, police officer or other designated officer of the Town may make a prima facie determination as to whether odor, dust, noise or drainage is offensive to the use or enjoyment of adjoining properties. The failure to maintain areas in which animals are kept in the manner provided herein constitutes a public nuisance and is prohibited.

Section 4. Subsection 7-136(a) of Article VII of Chapter 7 of the Johnstown Municipal Code shall repealed and readopted to read as follows:

Sec. 7-136. Noisy animals.

- (a) It is unlawful for the owner, keeper, harbinger or any other person who has assumed the responsibility for an animal to permit such animal kept in any yard, house or other place to bark, howl, yelp, bawl or make other loud and persistent noise in a manner which, under nonmitigating circumstances, could be considered by reasonable persons of ordinary sensibilities as excessive or continuous. For purposes of this section, a code enforcement officer, police officer or other designated officer of the Town may make a prima facie determination as to whether the noise is excessive or continuous.

Section 5. The opening clause of Subsection 7-139(b) of Article VII of Chapter 7 of the Johnstown Municipal Code shall be amended to read as follows:

Sec. 7-139. Vicious animals.

...

- (b) No person shall own, keep, harbor or possess any vicious animal in the Town except as provided herein; provided, however, that an animal shall not be deemed a vicious animal because it has attacked or bitten any of the following persons:

.....

Section 6. Section 7-149 of Article VII of Chapter 7 of the Johnstown Municipal Code shall be repealed and readopted to read as follows:

Sec. 7-149. Restrictions on the Sale of Cats and Dogs.

No pet shop shall sell, deliver, offer for sale, barter, auction or otherwise transfer or dispose of dogs or cats. Notwithstanding the foregoing, a pet shop may collaborate with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats provided that the pet shop does not have an ownership interest in the dogs or cats offered for adoption and posts a sign with the name of the animal care facility or animal rescue organization from which the pet shop acquired each dog or cat.

Section 7. Section 7-154 of Article VII of Chapter 7 of the Johnstown Municipal Code shall be repealed and readopted to read as follows:

Sec. 7-154. Violation; cumulative remedies.

- (a) Any person who violates any provision of this Article may be punished in accordance with the provisions of Article IV of Chapter 1 of the Code.
- (b) No remedy provided herein shall be exclusive, but the same shall be cumulative. The taking of any action permitted by this Article shall not preclude or prevent the taking of other action, including the filing a charge or conviction of a violation of this Article in the Municipal Court.

Section 8. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 9. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Home Rule Charter of the Town of Johnstown, Colorado (“Charter”) and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2023.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____ By: _____
Hannah Hill, Town Clerk Troy D. Mellon, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2023.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____ By: _____
Hannah Hill, Town Clerk Troy D. Mellon, Mayor



**FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY**

September 19, 2023

Matt LeCerf
Town Of Johnstown
450 S. Parish Ave, P.O Box 609
Johnstown, CO 80534-0609

Dear Matt,

On behalf of the children, families, and individuals who will be impacted by your support of the YMCA of Northern Colorado, please accept my heartfelt thanks.

A bronze sponsorship payment of \$1,000.00 for the 2023 Y Splash Gala was received on 9/10/2023. You will receive a DR1317 tax form after the event when we have your tax deductible amount calculated.

With your help, the YMCA of Northern Colorado was able to raise \$443,105.00 which will provide financial assistance to thousands of children, teens, adults and seniors and allow access to life-changing Y programs. Because of your generosity and friendship, we can remain true to our promise that "no one is turned away because of inability to pay".

Again, thank you for your generous support of the Y. If you have questions or would like additional information, please contact me at 303-443-4474 ext 1301.

Sincerely,

Becky Fase

Becky Fase
Vice President of Financial Development
Becky.Fase@ymcanoco.org | ymcanoco.org

Thank you!

The Y.™ For a better us.

*The YMCA of Northern Colorado is a 501(c)3 not-for-profit organization (Federal Tax ID 84-0459944)
No goods or services were received in exchange for this donation.*

JONES MEMORIAL LIBRARY CASH FLOW REPORT - AUG 2023			Y-T-D	2023 BUDGET		Notes
BEGINNING CHECKING BALANCE		\$ 163,872.97	\$ -	\$ 20,000.00	To Date	
INFLOWS	Donations/Grants	\$ 150.00	\$ 3,355.00	\$ 3,500.00		
	Interest	\$ 354.31	\$ 232,563.79	\$ 75,000.00		
	Misc Income	\$ 178.40	\$ 8,962.58	\$ 7,500.00		
	<i>Investments</i>	\$ -	\$ -	\$ -		
	Town of Johnstown	\$ 103,786.43	\$ 824,399.20	\$ 1,243,246.00		
	High Plains Library District	\$ 16,077.00	\$ 827,145.49	\$ 811,068.00		
INFLOWS TOTAL		\$ 120,546.14	\$ 1,896,426.06	\$ -		
TOTAL AVAILABLE FUNDS		\$ 284,419.11		\$ 2,160,314.00		
OUTFLOWS	Advertising	\$ 1,771.88	\$ 13,142.88	\$ 22,000.00		
	Books -237	\$ 3,608.32	\$ 23,618.18	\$ 50,000.00	1670	
	DVD/Audio - 25	\$ 660.00	\$ 3,923.76	\$ 15,000.00	142	
	Library of Things	\$ 58.39	\$ 1,587.30	\$ 5,000.00		
	Collection Fees/Bad Debts	\$ -	\$ -	\$ 2,000.00		
	Computer Expenses	\$ -	\$ -	\$ 5,000.00		
	Equipment & Furniture	\$ -	\$ 3,541.56	\$ 40,000.00		
	MakerSpace	\$ 279.80	\$ 3,307.30	\$ 20,000.00		
	Gifts Given	\$ 50.27	\$ 1,160.19	\$ 2,500.00		
	<i>Investments</i>	\$ -	\$ 900,000.00	\$ 339,314.00		
	Legal Fees/Consulting Fees	\$ -	\$ -	\$ 10,000.00		
	Maintenance/Building Exp.	\$ 3,270.74	\$ 26,273.49	\$ 65,000.00		
	Memberships/Licenses	\$ -	\$ 133.88	\$ 2,500.00		
	Milliken Location	\$ 653.79	\$ 5,908.55	\$ 20,000.00		
	Outreach	\$ 32.61	\$ 996.86	\$ 10,000.00		
	Professional Enrichment	\$ -	\$ 698.64	\$ 5,000.00		
	Programming	\$ 2,070.45	\$ 21,169.77	\$ 190,000.00		
	MakerSpace	\$ 269.50	\$ 3,995.47	\$ 10,000.00		
	Salaries/Benefits/Perks	\$ 762.36	\$ 234,538.89	\$ 605,000.00		
	Health Ins./Retirement	\$ -	\$ 34,007.73	\$ 72,000.00		
	Subscriptions, Periodicals	\$ 179.00	\$ 1,551.22	\$ 5,000.00		
	Supplies, Janitorial	\$ -	\$ 582.25	\$ 3,000.00		
	Supplies/Expenses, Library	\$ 301.53	\$ 3,613.45	\$ 12,000.00		
	Telephone	\$ 523.55	\$ 4,403.01	\$ 10,000.00		
	Utilities	\$ 2,866.30	\$ 27,975.50	\$ 40,000.00		
	Capital Improvement	\$ -	\$ 105,947.01	\$ 600,000.00		
	Transfer to petty cash	\$ -	\$ 2,500.00	\$ -		
OUTFLOWS TOTAL		\$ 17,358.49	\$ 1,424,576.89	\$ 2,160,314.00		
ENDING CHECKING BALANCE		\$ 267,060.62				

Item #14.

						Notes
BEGINNING PETTY CASH BALANCE		\$ 2,085.01				Item #14.
	Programming	\$ 450.00				
	Library of Things	\$ 280.00				
ENDING PETTY CASH BALANCE		\$ 1,355.01				
	<i>COLORADO TRUST INVESTMENT</i>		Y-T-D			
BEGINNING BALANCE		\$ 7,436,322.10				
	Dividend -5.4503%	\$ 34,497.80	\$ 230,853.27			
	<i>Contribution</i>	\$ -				
	<i>Withdrawal</i>	\$ -				
ENDING BALANCE		\$ 7,470,819.90				

The regular meeting of the Glenn A. Jones, M.D. Memorial Library Board was called to order 7:18 pm. Debi Sauer, Jenna Hall, Corina Strickland and Director Kristi Plumb were present. Sheryl Ballard and Chad Young were absent.

July 2023 minutes were corrected and approved. Ending balance was corrected from \$160,623.97 to \$160, 623.67.

Treasurer's Report: Beginning balance \$160,623.67
Inflow \$164,892.78
Outflow \$161,643.48
Ending balance \$163,872.97
Petty cash ending balance \$2085.01
Colorado Trust Ending balance \$7,436,322.10

Director's Report:

Artist-In-Residence Stephanie Baudhuin and her collection of flamingos

New hires: Gabe Thexton to work mainly in the Maker Space with the job title "Patron Experience Specialist"; Kylee Body will do Maker Space classes for young patrons and also work Saturday and evening shifts as an associate

Landscaping: Punch list was approved after Robbie Pike, Vice President of Construction, spoke with Kristi about providing solutions to problems and questions she had. He agreed to replace the controller stand and two dead trees, along with looking for solutions for the standing water near the amphitheater.

Summer Reading Program total registration 1,868 and 1,886 prizes were distributed

Workroom Remodel quote is \$76,960.46 for cabinets, counter, and installation
Need to consider contractor, dumpster, electrician, drywall and paint

Kristi wants to have a staff meeting during the morning of August 24 (possibly) and so the library will be closed during the morning. All staff day at HRLD is October 6. The library will close the entire day for all staff to attend.

Johnstown door count 7123
Milliken door count 581

Johnstown circulation 9629
Milliken circulation 390

Meeting adjourned 8:25; next meeting September 19 at 7:00

Weld County School District RE-5J
Cash in Lieu Statement (Unaudited)
Prepared: 09/30/2023



Beginning Cash Balance, July 1, 2022 **648,414.22**

Johnstown Cash in Lieu Revenue	656,574.00	
Milliken Cash in Lieu Revenue	3,530.00	
Cash Collected Prior Year Accts Rec	12,936.00	
Total Cash in Lieu Revenue		673,040.00

Cash in Lieu Expenditures -

Johnstown Interest	28,085.69	
Milliken Interest	1,154.21	
Total Interest		29,239.90

Ending Cash Balance, June 30, 2023 **1,350,694.12**

Cash in Lieu Expenditures Description	Amount
No expenditures from Cash in Lieu occurred in 2022-23	

Building permits issued for individual dwelling units - 1991 to (date)

Single family, duplex, 3-plex, 4-plex, 5-plex, 6-plex, 7-plex*						
Year	Issued	Month avg		Year	Issued	Month avg
1961 - 90	165	0.0		2016	132	11.00
1991	2	0.17		2017	140	11.67
1992	5	0.42		2018	126	10.50
1993	7	0.75		2019	87	7.25
1994	47	3.92		2020	108	9.75
1995	106	8.83		2021	184	15.33
1996	145	12.00		2022	446	37.16
1997	143	11.92		2023*	364	40.44
1998	175	14.58				
1999	145	12.08		TOTAL	6242	
2000	134	11.92				
2001	152	12.67				
2002	262	21.92				
2003	284	24.17				
2004	331	27.67				
2005	375	31.33				
2006	180	15.75				
2007	160	133.42				
2008	97	8.00				
2009	89	7.42				
2010	124	10.33				
2011	184	15.34				
2012	310	25.84				
2013	378	31.50				
2014	272	22.67				
2015	162	13.50				

*Starting in 2023, number represents total number of units constructed including all single-family type structures. This number does not include apartments. Prior to 2023, the number represents single-family units only.

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141



Town of Johnstown

October 5, 2023

Suzette Mallette, Executive Director
North Front Range Metropolitan Planning Organization
419 Canyon Avenue, Ste 300
Fort Collins, CO 80521

Re: Support for the City of Greeley's **US34 Transit Operations** Project Call for Project Grant Application

Dear Ms. Mallette:

The purpose of this letter is to offer strong support for the City of Greeley's Department of Public Works grant application for NFRMPO's Call for Projects to provide operational support for transit services along US34 including fixed routes and stops within the Town of Johnstown's US34 corridor. It is our expectation that our financial support includes and is subject to a guarantee that transit stops will be included on the north side of the Town of Johnstown. Our commitment would be \$14,491 annually for at least FY26 and FY27.

The City of Greeley's efforts to improve and expand public transit along a major transportation corridor within Northern Colorado ensures long-term connectivity and access across several communities, all who are experiencing rapid growth and development. The Town of Johnstown is committed to serving as a partner agency throughout this project and support the efforts that the City of Greeley is taking to remove transportation barriers, ensure equitable access, reduce greenhouse gas emissions, and champion regionalism.

It is our hope that the NFRMPO and review committee will support our regional efforts in expanding public transit along US34 and in turn create catalytic impact to our region and communities. Should you have any questions or need further information please feel free to contact me at MLeCerf@johnstownco.gov.

Sincerely,


Matthew LeCerf
Town Manager

Cc: Mayor Troy Mellon & Town Councilmembers
Sarah Crosthwaite, Economic Development Manager

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141




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1144 Sherman St., Denver, CO 80203 

AGENDA

*CML Policy Committee
Friday, October 13, 2023*

Held in Hybrid Format

9:00 a.m. *Welcome and Introductions*

(Matthew Benjamin, Councilmember, City of Boulder & CML Policy Committee Chair)

Review of agenda and procedural processes

(Heather Stauffer, Legislative Advocacy Manager)

Consideration of CML initiated legislation and amendments to CML policy statement

(Heather Stauffer, Legislative Advocacy Manager)

Consideration of Action Items

(CML Staff)

Other Business

11:00 a.m. *Adjournment*



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HOUSING CONVENING UPDATE

Colorado's Statewide Housing Discussion Continues

Follow-up from the September 18, 2023, meeting

Dear colleague:

On September 18, 2023, the Colorado Municipal League, along with Colorado Counties, Inc. (CCI), held a second convening at housing policy. The meeting was hosted by our partners at Denver Regional Council of Governments (DRCOG). [Stakeholder groups](#) present ranged from housing providers, the business community, state and local government partners, home builders, environmental groups, and community organizations. This second meeting emphasized regional collaboration and transit-oriented development (TOD) policy.

DOLA UPDATE ON HOUSING GRANT PROGRAMS

At the start of the meeting, a Department of Local Affairs representative updated on the [Innovative Housing Strategies Grant Program](#), created by House Bill 22-1271. The presentation included an overview of both the incentives grant program, which has \$37.7 to award to local governments, and the planning grant program, which has \$6.8 to award. The update also included spotlights on several communities who have seen success with the program and future opportunities for local governments.

REGIONAL COLLABORATION

One of the central themes that emerged from the meeting was the importance of regional collaboration and planning in addressing housing challenges effectively. Participants acknowledged that housing issues transcend the boundaries of individual local governments, who all have unique challenges and solutions. However, there are few examples of regional planning where a region's housing, transit, infrastructure, and water needs are considered. There are several areas that have active housing authorities, however those entities are focused on approving individual housing projects, as opposed to planning. DRCOG and some rural resort areas have begun housing needs planning efforts, but most planning is being done by individual local governments. This policy discussion revealed several key insights:

- Regional planning faces limitations when local governments cannot reach a consensus. This highlights the need for mechanisms to resolve disputes and facilitate cooperation.

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- Some stakeholders called for an expectation that each community contributes a specified number of housing units at different income levels to the region. This notion of shared responsibility aims to ensure that housing solutions address the needs of all segments of the population.
- A recurring theme emphasized the importance of housing strategies that cater to a diverse range of residents and prevent displacement, including seniors, part-time workers, and individuals often overlooked in housing planning.
- It became clear that a one-size-fits-all approach is insufficient. Communities should have the flexibility to adopt housing plans that align with their unique needs and circumstances.
- Resistance to higher-density housing in some communities was noted along with challenges to increasing density in the built environment, raising questions about how to balance density with other factors in housing planning.
- Stakeholders underscored the need for housing plans that align with regional workforce needs, recognizing that a thriving workforce requires diverse housing options.

A key element of planning for housing includes conducting housing needs assessments. Some stakeholders in the rooms opined that state-level needs assessment might not be the most effective approach to strategically plan for housing. Rather, regional or local needs assessments might be able better illuminate gaps in a different communities' needs, which stresses the importance of flexibility and community involvement in devising housing strategies. This desire for more localized assessments was countered with the state's need for comprehensive data to inform housing policy decisions. From the state's perspective, accurate data is essential to understanding and addressing the housing challenges effectively.

The discussion also included insights from the state demographer who highlighted the need for housing solutions that can withstand economic fluctuations. Recent trends, such as an increase in building permits, were noted, indicating the dynamic nature of the housing market.

Home builders and representatives from the business community raised concerns about the challenges related to inspection and permit deadlines. They also introduced the notion that greenfield development might be more affordable initially due to lower infrastructure costs, sparking debate about the long-term economic implications.

TRANSIT-ORIENTED DEVELOPMENT

The second policy discussion focused on transit-oriented development, and various challenges housing providers, developers, and local governments come up against when planning for high density development in transit areas. Stakeholders discussed the state's role in funding TOD projects, emphasizing the need for both density and affordability in TOD planning. Avoiding displacement near transit hubs was also highlighted as a critical concern. The discussion uncovered various barriers to TOD projects, including regulatory requirements, lengthy processes, and legal challenges to decisions. The cost of capital and repeated reviews also presented significant hurdles for home builders.

Several groups raised concerns about securing federal funding for transit projects and noted the limited funding for transit operations. The importance of Bus Rapid Transit (BRT) in TOD was emphasized due to limitations in development near light rail lines.

Stakeholders called for better coordination between housing needs and transit funding. Challenges related to limited support and coordination from the Colorado Department of Transportation (CDOT) were highlighted. Local governments were encouraged to consider housing policies even in the absence of specific development projects. The discussion also acknowledged the need to consider businesses in addition to residents when addressing displacement, recognizing that both are important parts of the community.

CONCLUSION

This second meeting highlighted several key themes, including the need for regional collaboration, equitable housing distribution, community-driven solutions, comprehensive data collection, and addressing barriers to TOD. These themes underscore the complexity of the issues at hand and highlight the importance of continued dialogue and collaborative efforts in shaping effective policies that will create more affordable housing.

Both CML and CCI are committed to these collaborative efforts and will be conferring internally with our members about specific policies and strategies. Please continue to look for more communication from CML once we have policy proposals to share.

We look forward to the ongoing discussion.



Kevin Bommer
CML Executive Director

ATTACHMENTS:

- [Stakeholder groups](#) that CML and CCI have included in these discussion
- DOLA [Innovative Housing Strategies Grant Program](#) Slides



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On August 14, 2023, CML and CCI jointly hosted a meeting with multiple stakeholders with the goal of creating a space to discuss housing and help inform potential legislation. Attendees from each participating organization had an opportunity to share their perspectives about future housing policy to identify common ground, shared goals, and potential collaborative strategies. The group also had an opportunity to discuss strategies for construction litigation reform efforts.

Our meeting Monday was an excellent step moving from the common recognition that Colorado has a housing crisis toward identifying common goals that will lead, hopefully, to a range of actions that can receive broad support. Below CML staff has attempted to organize notes to provide a meaningful framework for future discussion.

- As a starting point, Monday's discussion identified several challenges and goals from which future discussions can grow, including:
 - The need to enhance regional efforts, including planning, and infrastructure. Regional collaboration efforts should also continue to recognize different needs and existing structures within each area.
 - An increased desire to ensure sound comprehensive planning, which should include more cohesive transportation and land use planning;
 - Affordable and attainable housing needs to increase, while also improving middle housing options. However, how affordability is defined and strategies to create *affordable* housing is a point where there is little agreement among the diverse group of stakeholders.
 - Impacts of new development should be mitigated while avoiding displacement of communities;
 - A recognition that development has to pay its way and there should be adequate resource allocation, which includes development costs, regulatory costs, and infrastructure and service costs;
 - Local and regional differences in place, needs, and capacities should be recognized, while providing for equitable distribution of housing;
 - An increased predictability in development processes, including streamlined permitting processes, decreasing repetitive and potentially unnecessary public hearings, and limiting unique and potentially onerous requirements and standards for developers; and
 - A desire to reduce environmental impacts of development while acknowledging that increasing statewide regulatory requirements for energy code development, green building standards, and statewide wildfire codes will ultimately have an impact on affordability.
- Immediate future conversations should continue to focus on confirming shared views of challenges and goals at this high level and then begin identifying strategies to mitigate the

challenges and achieve the shared goals. This will allow the group to identify additional common ground and bring a wide range of ideas to the table for consideration.

- There were a wide range of strategies discussed, including:
 - Stronger federal advocacy for federal housing funding;
 - Aligning state investments, particularly around transit;
 - Assisting with measures to maintain affordability;
 - Optimizing existing and future funding through ARPA and Prop 123;
 - protecting local cost recovery;
 - Advancing construction litigation reform;
 - Thoughtful structural changes to alleviate pressure from community; and
 - Streamlining environmental impact analysis for certain projects.

- Later meetings should be focused on identifying the most effective and equitable mechanisms to implement strategies and solutions. Given the range of issues and interests, there are opportunities to implement solutions immediately through collaborative efforts as well as longer-term legislative, regulatory, and advocacy actions.

This is a high-level summary of the meeting, and we encourage you to reach out with any additional thoughts and takeaways from the meeting that may be omitted above.

Below is a table of organizations and representatives that were invited to the meeting. If you see any omissions on this list, please notify CML staff.

Stakeholder List for August 14, 2023 Meeting

Organization	Main Contact
CCI	Reagan Shane
CCI	Steve O'Doriso
CCI	Eric Bergman
Special Districts Association	Ann Terry
CCAT	Thomas Davidson
Colorado Association of Ski Towns	Margaret Bowes
CC4CA	Jacob Smith
Metro Mayors Caucus	Heidi Williams

DRCOG	Doug Rex
AGNC	Tiffany Dickenson; Richard Orf will be attending
Pikes Peak Regional Council of Governments	Andrew Gunning
NWCCOG	John Stavney
Action 22	Sara Blackhurst
Colorado Chamber	Loren Furman
Colorado Chamber	Meghan Dollar
Denver Metro Chamber	JJ Ament
Denver Metro Chamber	Adam Burg
Colorado Association of Home Builders	Ted Leighty
Colorado Association of Realtors	Brian Tanner
Brownstein	Carolynne White
Gary Community Ventures	Luke Teater
Colorado Springs Chamber & Economic Development	David Dazlich
C3	Rachel Beck
Rocky Mountain Mechanical Contractors	Monica Colbert Burton
Vail Valley Partnership	Chris Romer
Gorman & CO	Kimball Crangle
Colorado Concern	Annelise Steel
Denver Water	Andrew Hill
Metro Water Recovery	Erin Bartoli

NW Colorado Council of Governments Water Quality/Quantity	Claire Carroll
Eagle River Water & Sanitation/Upper Eagle Regional Water Authority	Kristin Moseley
Aurora Water	Kathleen Kitzmann/ Steve Holdren
Water Congress	Doug Kemper/ Dianna Orf
Ute water Conservancy District	Katheen Curry
River District	Zane Kessler
Stormwater Council	Alan Searcy
Conservation Colorado	Jenny Gaeng
SWEEP	Matt Frommer
Western Resource Advocates	Linsay Roders
Enterprise Community Partners	Kinsey Hasstedt
Colorado Coalition for the Homeless	Cathy Alderman
Habitat for Humanity	Karen Kallenberg
CHFA	Jerrilynn Francis
Healthier Colorado	Christina Walker
Maiker Housing Partners	Peter LiFari
Community Economic Defense Project	Melissa Mejia
Housing Colorado	Brian Rossbert
Housing Colorado	Ally Upton
Colorado Housing Affordability Project	Brian Connolly
Community Builders	Clark Anderson

Neighborhood Development Collaborative	Jonathan Cappelli
Yampa Valley Housing Authority	Jason Peasley
Valley Housing Fund - Gunnison Valley Affordable Housing Catalyst	Scott Desmarais
Gov	Eleni Angelides
CEO	Kelly Blynn
DOLA	KC McPherson
DOLA/DOH	Andy Hill
COLA/Demography	Elizabeth Garner
CDOT	Nate Lindquist
American Planning Association	Joni Marsh (CML planning section chair)
American Planning Association	Susan Wood
American Council of Engineering Companies	Heidi Gordon
American Council of Engineering Companies	Holly Buck
Homeownership Alliance	Jen Penn
Homeownership Alliance	Michael Gifford

Member Proposals

Request for CML Initiated Legislation – CML Staff

Housing: CML-Initiated Land Use Legislation

Since the defeat of SB23-213, CML and CCI have been working with a wide range of stakeholders to inform a legislative solution to create more affordable housing that focuses on partnership, not preemption. Please see the two attached memos with detailed summaries of two convenings that CML hosted, along with our partners at CCI. You can also find a list of stakeholders that were invited to participate in these conversations, including the governor’s office staff. Senators Barbara Kirkmeyer and Rachel Zenzinger plan to introduce legislation with significant drafting assistance from CML that aligns with CML’s goals and perspectives. CML staff is seeking authorization to work on this legislation as CML-initiated legislation. **Staff recommendation: Approve CML-initiated legislation.** *Lobbyists: Heather Stauffer; Meghan MacKillop*

Action Items

Substance Abuse/Criminal Justice: Opioid Harm Reduction and Immunity for Use of Opioid Antagonist

The Opioid and Other Substance Use Disorders Study Committee is considering a harm reduction interim bill. Among other harm reduction strategies, the bill states a law enforcement agency, a first responder, a school district, a school, and an employee or agent of a school have civil and criminal immunity when they act in good faith to furnish or administer an opiate antagonist, including an expired opiate antagonist, to an individual they believe to be suffering an opiate-related drug overdose. The bill also creates an exemption to the prohibition on possessing drug paraphernalia for possession of drug paraphernalia that a person received from an approved syringe exchange program, or a program carried out by a harm reduction organization, while participating in such a program. **Staff recommendation: Support if amended.** *Lobbyist: Meghan MacKillop*

Policy Statement: *The League supports limitations on the liability of municipalities and their officers and employees.*

Substance Abuse/Land Use: Recovery from Substance Abuse Disorders

The Opioid and Other Substance Use Disorders Study Committee is considering a bill regarding recovery from substance abuse disorders. Among other provisions, the bill declares that recovery residences, sober living facilities, and sober homes are a residential use of land for zoning purposes. This provision is similar to statutory provisions that establish a statewide concern for group homes, also known as community residential homes. This provision is limited to a state-licensed group home with eight or fewer residents. Initially, CML staff would seek to eliminate this provision from the bill. Alternatively, CML staff would seek amendments to this provision to include the same restrictions placed on group homes, including the requirement that the recovery facility is state-licensed and limited to eight or fewer residents. **Staff recommendation: Oppose, unless amended.** *Lobbyist: Meghan MacKillop*

Policy Statement: *The League opposes delegation of municipal land use authority to state agencies or preemption of municipal land use controls.*

Housing: Construction Defect Litigation Reform

The Home Builders Association is moving forward with construction litigation reform legislation in the 2024 legislative session, and in doing so they are considering two options. Each option would be drafted as an individual bill. The first option would create a statewide warranty standard for builders. Builders who meet this standard would be protected from claims and lawsuits related to construction defects. Several municipalities have adopted their own warranty standards, and this bill would eliminate the need for local building departments to have separate standards. A statewide standard would create more consistency for builders and would help reduce costs. The second option is a hybrid approach that would address two major issues for builders, specifically delegable duties for design and trade professionals and a right to remedy with a release of liability. Delegable duties assign responsibility for repairing alleged defects to the party responsible for the workmanship. Builders can be found negligent if they deviate from design plans prepared by licensed design professionals. The right to remedy allows the responsible party to resolve issues without resorting to litigation. Combining these concepts aims to reduce litigation, lower insurance costs, and expedite defect claim resolutions. It also helps mitigate disputes between builders, subcontractors, and design professionals. Staff would recommend that CML support either approach to reduce costs of building and increase the development of multi-family housing for ownership. **Staff recommendation: Support.** *Lobbyist: Meghan MacKillop*

Policy Statement: *The League supports an adequate supply of diverse housing options, regardless of income level, and continued public–and private– sector support for such an effort.*

Taxes: Data for Simplified Sales and Use Tax Collection

This bill initiated by Simplify Colorado and being considered through the Sales and Use Tax Simplification Task Force establishes that any vendor or retailer that relies on the information in the GIS database to determine the local taxing jurisdictions to which tax is owed and the amount of such tax is held harmless in an audit by any local taxing jurisdiction, including home rule municipalities, for any tax, charge, or fee liability that would otherwise be due solely as a result of an error or omission in the GIS database. CML would seek amendments to provide additional safeguards for municipalities. **Staff recommendation: Oppose unless amended** *Lobbyist: Heather Stauffer*

Policy Statement: *CML supports cooperative efforts among municipalities to standardize municipal sales and use tax practices and utilization of technology for the convenience of taxpayers, the business community, and municipalities.*

Taxes: Local Filing Participation

This bill being considered through the Sales and Use Tax Simplification Task Force will raise the dollar threshold for filing frequency to either monthly, quarterly, or annually through SUTS. It may also impose a uniform filing threshold for all local jurisdictions, including self-collecting home-rule municipalities. The bill may also consider establishing filing thresholds for lodging taxes, which would apply to all local jurisdictions. Finally, the bill draft may include a requirement for the remaining self-collecting home rules not on SUTS to join by a date certain. **Staff recommendation: Staff discretion to oppose.** *Lobbyist: Heather Stauffer*

Policy Statement: *CML supports retention of authority for all municipalities to set local tax rates and for home rule municipalities to collect their own taxes and determine their own tax bases.*

Taxes: Improve Availability of Information

This bill from Simplify and Expedia, being considered through the Sales and Use Tax Simplification Task Force, would require local governments to report information about sales and use taxes on building and construction materials, as well as lodging tax rates to the Department of Revenue for inclusion in the DR1002, TTR, or similar system. The bill also amends the scope of the sales and use tax simplification task force to include simplification of local lodging tax and specifically directs the task force to consider establishing a lodging tax collection system during the 2024 interim. **Staff recommendation: Oppose unless amended.** *Lobbyist: Heather Stauffer*

Policy Statement: *CML supports cooperative efforts among municipalities to standardize municipal sales and use tax practices and utilization of technology for the convenience of taxpayers, the business community, and municipalities.*

Taxes: Uniform Definition and Report for Local Lodging Tax

This bill being considered through the Sales and Use Tax Simplification Task Force, would establish a statewide standard definition for short-term rental that applies to all local governments including self-collecting home rule municipalities. CML has requested that this be done through a resolution like past standard definition projects, rather than as a mandate. This bill would also limit the information that local governments could ask for from an accommodation intermediary like Expedia as part of their tax returns to only the type of information asked for from other marketplace facilitators. This might limit the ability of a local government to require information such as tourism data, information for STR enforcement, etc. Local governments may be able to enter into separate agreements to try to obtain this information, but it is unclear how this would work. **Staff recommendation: Oppose unless amended.** *Lobbyist: Heather Stauffer*

Policy Statement: *CML supports cooperative efforts among municipalities to standardize municipal sales and use tax practices and utilization of technology for the convenience of taxpayers, the business community, and municipalities.*

Taxes: Simplify/Update Local Tax Collection

This proposal from the Department of Revenue, being proposed through the Sales and Use Tax Simplification Task Force, would harmonize existing local government statutes and create a new, uniform local sales and use tax collection statute addressing: the timing of new tax and tax change effective dates, uniform vendor fees, distribution requirements, information sharing, cost recovery, procedures for local sales tax paid erroneously to the state, limiting relief from penalties and interest for retailers who pay sales tax to the wrong local jurisdiction, and a hold harmless provision for use of the GIS system. Concerning among the list of ideas from the Department is cost recovery mechanisms for DOR in which the department would charge local governments a percentage of the cost of collection based on the number of collections/ tax filings in each respective taxing jurisdiction. The hold harmless provision may raise some of the same issues identified in the bill on Data for Simplified Sales and Use Tax Collection. **Staff recommendation: Staff discretion to oppose unless amended.** *Lobbyist: Heather Stauffer*

Policy Statement: *CML supports programs that allow businesses to remit state and local sales taxes to a single point while preserving home rule authority over tax rates, base, and audit authority.*

Transportation: Railroad Safety Requirements

Recommended by the Transportation Legislation Review Committee (TLRC), this bill would introduce several safety requirements for railroads operating in the state. These requirements include limiting train length to 8,500 feet, monitoring trains for defects using wayside detector systems, and preventing trains from obstructing public crossings for more than 10 minutes. It also allows crew members to report safety violations and grants designated union representatives access to investigate such reports. Under the bill, the Public Utilities Commission (PUC) would be able to impose fines for safety violations and denial of access to union representatives, with guidelines to be developed by the PUC. Additionally, the bill establishes the Front Range Passenger Rail District Maintenance and Safety Fund, which consists of fines collected by the PUC. The fund will be used for safety planning, development, and maintenance of the state's passenger rail system. The bill also requires railroads to provide training to fire departments along their tracks, and, for those transporting hazardous materials, to maintain adequate insurance coverage, with minimum coverage amounts determined by the PUC.

Staff recommendation: Support. *Lobbyist: Meghan MacKillop.*

Policy Statement: *Supports increased dialogue and cooperation among federal, state and local officials and the development of cooperative intergovernmental solutions to common problems.*

Transportation: Vulnerable Road User Enterprise

Recommended by the Transportation Legislation Review Committee (TLRC), this bill would create the Vulnerable Road User Protection Enterprise in the Department of Transportation (CDOT). Beginning in 2025, the enterprise will implement a Vulnerable Road User Protection Fee in the state's 12 most populous counties. The fee would be imposed in tiered amounts based on weight for passenger cars and light trucks. The fee will fund transportation system infrastructure improvements that seek to prevent vehicular collisions with vulnerable road users, such as pedestrians or bicyclists. Beginning July 1, 2025, the enterprise would be authorized to provide grants for eligible projects within the following parameters:

- The enterprise must seek to award grants to each county in amounts that are reasonably proportional to the amount of fee revenue collected from each county.
- Grants must be at least \$250,000 and no more than \$2.5 million.
- The enterprise cannot require a recipient of a grant that is less than \$1 million to provide matching money for the grant.
- For grants that are at least \$1 million, the enterprise must require the grant recipient to provide matching money of 20 percent of the grant amount.

- Grants may be used as matching money for federal funds or in combination with other state sources of transportation infrastructure funding, in accordance with all applicable requirements.

Eligible entities for grant funding include municipalities, counties, and the department. There are 5 members appointed to the enterprise board, but there is no representative for local governments. CML would seek amendments to include local government representation on the board to balance the strong representation of the department. Additionally, CML staff would seek clarification that the department does not receive most of the grant funding and that local governments with need are prioritized. **Staff recommendation: Support, with amendments.** *Lobbyist: Meghan MacKillop*

Policy Statement: *The League supports increased funds to finance pressing surface transportation needs as long as an equitable portion of new revenues is returned to cities and towns, and the League supports close cooperation among Colorado Department of Transportation, counties, municipalities and interested stakeholders in improving Colorado's multi-modal transportation system*

Transportation: Programs to Reduce Ozone by Increased Transit Use

The bill creates a new grant program for youth transit in the Department of Transportation (CDOT) and relocates and extends the Ozone Season Transit Grant Program from the Colorado Energy Office (CEO) to CDOT. The new Youth Fare Free Transit Grant Program in CDOT provides grants to transit agencies for year-round, fare-free transit services to riders 19 years of age or younger. The bill specifies the maximum amount of grant funding a recipient may receive each year, how any grant awards must be spent, and annual reporting requirements. \$7 million is appropriated annually for each grant program. The bill was also amended to include the establishment of an exploratory committee to consider the feasibility of creating a statewide transit pass. **Staff recommendation: Support.** *Lobbyist: Meghan Mackillop*

Policy Statement: *The League supports close cooperation among Colorado Department of Transportation, counties, municipalities and interested stakeholders in improving Colorado's multi-modal transportation system.*

Substance Abuse: Harm Reduction Centers

During the 2023 legislative session, the General Assembly considered a bill that would grant local control to municipalities to permit overdose prevention centers to reduce the likelihood that persons suffering from substance abuse disorders overdose in public areas such as parks, libraries, and in and around local businesses. The bill was postponed

indefinitely in the Senate Health and Human Services Committee. A new version of the bill is being considered by the Opioid and Other Substance Use Disorders Study Committee. This bill would allow a municipality to authorize and approve a pilot program that would establish a harm reduction center, which would have to meet minimum standards adopted by rules of the Colorado Department of Public Health and Environment (CDPHE). The pilot program and the operation of harm reduction centers are scheduled to end by January 1, 2028, unless further authorized by the general assembly. The bill would also create a harm reduction center advisory committee to make recommendations to the executive director of CDPHE regarding minimum standards for their operation.

Staff recommendation: Support. *Lobbyist: Meghan MacKillop*

Policy Statement: *The League supports state enabling legislation that provides municipalities with authority and flexibility to address local needs.*

Information items

Air Quality: Lawn and Garden Equipment Regulation

The Air Quality Control Commission (AQCC) has scheduled a rulemaking regarding lawn and garden equipment regulations to take place December 12th through 15th. There are two competing proposals, one by the Air Pollution Control Division (APCD) and the Regional Air Quality Council (RAQC). APCD's proposal would establish a new regulation establishing in-use restrictions on lawn and garden equipment for local governments. This would apply to push and hand-held lawn and garden equipment used from June 1 to August 31, for local government agencies beginning in 2026. This regulation would not apply in jurisdictions where the equipment is used for abating or preventing damage during an emergency or fire mitigation activities. The RAQC proposal would similarly apply to local governments but beginning in 2025. IT would also prohibit the sale of gas-powered push and hand-held equipment in the state's nonattainment area. Staff has met with APCD staff, and it is staff's understanding that their proposal will be the one that moves forward to the AQCC. To understand how this regulation will impact municipal budgets, staff is collecting information from members. CML will submit written comments to the AQCC.

Beer & Liquor: LAG final report

The state Liquor Advisory Group (LAG) will be completing its scheduled meetings and considering a final report before the end of the year. The LAG is a broad stakeholder group representing various parts of the industry and was convened via a Governor's Executive Order. The LAG has considered several policy recommendations. As stated by the group guidelines, all proposals that have been considered by the LAG will be included

in a final report, but only the recommendations that received unanimous approval will be considered “official” recommendations. All policies without unanimous approval will be included in the report with the vote count of LAG members. CML anticipates that there will be several issues impacting local licensing included in the report, including a new catering license, changes to the marketing allowances for the existing arts license, removal of statutory licensing fee caps, and more. The official report will be published and shared with General Assembly members to inform potential 2024 legislation.

Economic Development: County Revitalization Authority

There will be another attempt in the 2024 session to create a mechanism for counties to form revitalization authorities that could use tax increment financing to fund improvements in unincorporated areas, like urban renewal authorities. The proposed legislation aims to grant counties the legal authority to allocate property tax revenue to specific unincorporated areas with long-term financial commitments to capitalize infrastructure and other improvements necessary for development that provides desired public benefits. Special districts and school districts would not be obligated to participate but would have the option to join projects under this new authority, which is a departure from the statutory requirements for URAs. The bill does not require a finding of blight as a precondition, but rather a finding that development of the “county revitalization area” would provide a public benefit. As proposed, the formation of a county revitalization area does not include municipalities in the approval process beyond an opportunity to provide input. The county would have to determine that there would be no undue impact on municipal services. Annexation of the territory would be prohibited unless the municipality satisfies any outstanding debt. CML is currently providing feedback to the proponents of the bill, which will include recommendations to align county revitalization requirements more closely with those of URAs and to provide specific limitations to protect municipal services and infrastructure, to address the annexation issues, and to avoid conflicts with municipal growth plans.

Water: Prohibition on Certain Landscaping Practices

After January 1, 2025, the bill prohibits local governments and HOAs from allowing the installation, planting, or placement of nonfunctional turf, artificial turf, or an invasive plant species on any commercial, institutional, or industrial property. While the bill declares that preventing the installation of nonfunctional turf is a matter of statewide concern, the current bill draft applies only to local governments and HOAs and leaves out state owned and operated properties. Non- functional turf is defined as turf that is solely ornamental and located in areas such as street, sidewalk, driveway, parking lot, frontage areas, or median that is not regularly used for civic community, or recreational purposes. It does not include turf used in parks, sports fields, or playgrounds. The bill does allow the

maintenance of turf planted prior to January 1, 2025 but prohibits new installation. This bill is being proposed at the Interim Water Resources and Agriculture Review Committee. The committee will vote on whether to move the draft forward at the October 31st interim committee meeting.