

B. Confirm Quorum, approve agenda; confirm location of meeting and posting of meeting notice.



III. CONSENT AGENDA– These items are considered to be routine and will be approved and/or ratified by one motion. There will be no separate discussion of these items unless a Board Member so requests, in which event, the item will be removed from the Consent Agenda and considered on the Regular Agenda.

- **[District Nos. 3 and 4]** Approve the Minutes from the April 8, 2024 Regular Meeting (enclosures).
- **[District No. 4]** Approve the Minutes from the August 15, 2022 Special Meeting.
- **[District Nos. 3 and 4]** Approve the Minutes from the November 8, 2021 Special Meeting.
- **[District Nos. 3 and 4]** Rescind approval of Acquisition and Reimbursement Agreement between the Districts and Pulte Home Company, LLC.
- **[District Nos. 3 and 4]** Rescind approval of Eligible Governmental Entity Agreement between the District and the Statewide Internet Portal Authority.
- **[District Nos. 3 and 4]** Rescind approval of Escrow Agreement for the purpose of construction of Pacific Avenue between the District and Pulte Homes.
- **[District No. 4]** Rescind approval of Engagement of AzTec Consultants, Inc. for Construction Surveying and Staking Services.
- **[District No. 3]** Ratify approval of Change Order to Construction Agreement with Alpine Civil Construction, Inc. for rock removal in the amount of \$13,563.50 (enclosure).

IV. FINANCIAL MATTERS

A. **[District No. 3]** Review and ratify approval of the payment of claims as follows (enclosures):

Fund	Period Ending April 30, 2024	Period Ending May 31, 2024	Period Ending June 30, 2024
General	\$ 4,128.86	\$ 5,802.48	\$ 2,823.90
Debt	\$ -0-	\$ -0-	\$ -0-
Capital	\$ 6,193.29	\$ 12,772.48	\$ 4,225.86
<b>Total</b>	<b>\$ 10,322.15</b>	<b>\$ 18,574.96</b>	<b>\$ 7,049.76</b>

B. Review and accept unaudited financial statements through the period ending March 31, 2024 (to be distributed).

C. Review and consider approval of Cost Verification No. 10 from Independent District Engineering Services, LLC (enclosure).



- D. Conduct Public Hearing to consider amendment of the 2023 Budget. If necessary, consider adoption of Resolution No. 2024-07-01, Resolution to Amend the 2023 Budget.
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- E. Review and consider approval of 2023 Audit and authorize execution of Representations Letter (enclosures).
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V. LEGAL MATTERS

- A. Discuss and consider appointment of representative to the Aurora Regional Transportation Authority.
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- B. Review proposal and approve Construction Contract with Pro Systems Professional Electrical Systems, Inc. for Street Lighting (enclosure).
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- C. Review Bid Tabulation and award bid to Brightview for Filing No. 1 landscape and irrigation installation and approve Construction Contract (enclosure).
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- D. Discuss District website accessibility matters and authorize necessary actions in connection therewith.
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VI. CONSTRUCTION MATTERS

- A. Report on status of construction of Harvest Road pursuant to the Offsite Improvement Reimbursement Agreement with Lennar Colorado LLC.
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VII. OPERATIONS AND MAINTENANCE

- A. \_\_\_\_\_

VII. OTHER BUSINESS

- A. \_\_\_\_\_

VIII. ADJOURNMENT **THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, OCTOBER 14, 2024**



## RECORD OF PROCEEDINGS

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### MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE HARVEST CROSSING METROPOLITAN DISTRICT NO. 3 HELD APRIL 8, 2024

A Regular Meeting of the Board of Directors (the “Board”) of the Harvest Crossing Metropolitan District No. 3 (formerly known as Villages at Murphy Creek Metropolitan District No. 1, referred to hereafter as the “District”) was convened on Monday, April 8, 2024, at 1:00 p.m. The meeting was open to the public.

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#### **ATTENDANCE**

##### **Directors In Attendance Were:**

Jerry Richmond, III, President  
Aaron Clutter, Treasurer  
Kurtis Williams, Assistant Secretary  
Eric Lee, Assistant Secretary

##### **Also In Attendance Were:**

David Solin and Kaitlyn Toman; Special District Management Services, Inc.  
  
Paula Williams, Esq. and Tim O’Connor, Esq.; McGeady Becher P.C.  
  
Rebecca Givens, Esq.; Frost Brown Todd LLP

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#### **DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST**

**Disclosure of Potential Conflicts of Interest / Quorum:** The Board discussed the requirements pursuant to the Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Solin requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at the meeting, and incorporated for the record those applicable disclosures made by the Board members prior to the meeting in accordance with the statute. It was noted by Attorney Williams that disclosures of potential conflicts of interest were filed with the Secretary of State for all directors, and no additional conflicts were disclosed.

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#### **PUBLIC COMMENT**

There were no public comments.

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#### **ADMINISTRATIVE MATTERS**

**Quorum/Confirmation of Meeting Location/Posting of Notice:** Mr. Solin confirmed the presence of a quorum.



## RECORD OF PROCEEDINGS

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**Agenda:** Mr. Solin reviewed a proposed Agenda for the District's Regular Meeting with the Board.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Agenda for the Regular Meeting was approved.

**Approval of Meeting Location:** The Board entered into discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District Board meeting.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Board determined to hold the Board meeting by video/teleconference. The Board further noted that notice of the time, date, location and video/teleconference information was duly posted and no objections, or any requests that the means of hosting the meeting be changed by taxpaying electors within the boundaries of the District have been received.

**Minutes of January 8, 2024 Regular Meeting:** The Board reviewed the Minutes from the January 8, 2024 Regular Meeting.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Williams and, upon vote unanimously carried, the Board approved the Minutes from the January 8, 2024 Regular Meeting, as presented.

### **FINANCIAL MATTERS**

**Claims:** The Board considered the payment of claims as follows:

Fund	Period Ending Jan. 31, 2024 Special Payment	Period Ending Jan. 31, 2024 Special Payment	Period Ending Jan. 31, 2024	Period Ending Feb. 29, 2024
General	\$ 650.00	\$ -0-	\$ 5,406.00	\$ 9,726.60
Debt	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Capital	\$ -0-	\$ 26,847.94	\$ 16,845.86	\$ 14,589.90
<b>Total</b>	<b>\$ 650.00</b>	<b>\$ 26,847.94</b>	<b>\$ 22,251.86</b>	<b>\$ 24,316.50</b>

Fund	Period Ending March 31, 2024
General	\$ 6,149.55
Debt	\$ -0-
Capital	\$ 11,973.08
<b>Total</b>	<b>\$ 18,122.63</b>



## RECORD OF PROCEEDINGS

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Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Board ratified approval of the payment of claims.

**Unaudited Financial Statements:** The Board reviewed the unaudited financial statements through the period ending December 31, 2023.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Williams and, upon vote unanimously carried, the Board accepted the unaudited financial statements through the period ending December 31, 2023 as presented.

**Cost Certification from Independent District Engineering Services, LLC (“IDES”):** The Board reviewed Cost Certification No. 8 from IDES.

Following discussion, upon motion duly made by Director Clutter, seconded by Director Richmond and, upon vote unanimously carried, the Board approved Cost Certification No. 8 from IDES.

### **LEGAL MATTERS**

**IDES Task Order No. 3:** The Board reviewed IDES Task Order No. 3 under the Master Service Agreement for Cost Certification Services.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Board approved IDES Task Order No. 3 under the Master Service Agreement for Cost Certification Services.

### **CONSTRUCTION MATTERS**

**Status of Construction of Harvest Road:** Director Richmond updated the Board on the status of construction of the Harvest Road Project.

### **OPERATIONS AND MAINTENANCE MATTERS**

There were no updates at this time.

### **OTHER MATTERS**

There were no other matters at this time.

### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director Richmond, seconded by Director Williams and, upon vote unanimously carried, the meeting was adjourned.



## RECORD OF PROCEEDINGS

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Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meeting



## RECORD OF PROCEEDINGS

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### MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE HARVEST CROSSING METROPOLITAN DISTRICT NO. 4 HELD APRIL 8, 2024

A Regular Meeting of the Board of Directors (the “Board”) of the Harvest Crossing Metropolitan District No. 4 (formerly known as Villages at Murphy Creek Metropolitan District No. 2, referred to hereafter as the “District”) was convened on Monday, April 8, 2024, at 1:00 p.m. The meeting was open to the public.

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#### **ATTENDANCE**

##### **Directors In Attendance Were:**

Jerry Richmond, III, President  
Aaron Clutter, Treasurer  
Kurtis Williams, Assistant Secretary  
Eric Lee, Assistant Secretary

##### **Also In Attendance Were:**

David Solin and Kaitlyn Toman; Special District Management Services, Inc.

Paula Williams, Esq. and Tim O’Connor, Esq.; McGeady Becher P.C.

Rebecca Givens, Esq.; Frost Brown Todd LLP

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#### **DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST**

**Disclosure of Potential Conflicts of Interest / Quorum:** The Board discussed the requirements pursuant to the Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Solin requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at the meeting, and incorporated for the record those applicable disclosures made by the Board members prior to the meeting in accordance with the statute. It was noted by Attorney Williams that disclosures of potential conflicts of interest were filed with the Secretary of State for all directors, and no additional conflicts were disclosed.

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#### **PUBLIC COMMENT**

There were no public comments.

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#### **ADMINISTRATIVE MATTERS**

**Quorum/Confirmation of Meeting Location/Posting of Notice:** Mr. Solin confirmed the presence of a quorum.



## RECORD OF PROCEEDINGS

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**Agenda:** Mr. Solin reviewed a proposed Agenda for the District's Regular Meeting with the Board.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Agenda for the Regular Meeting was approved.

**Approval of Meeting Location:** The Board entered into discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District Board meeting.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Board determined to hold the Board meeting by video/teleconference. The Board further noted that notice of the time, date, location and video/teleconference information was duly posted and no objections, or any requests that the means of hosting the meeting be changed by taxpaying electors within the boundaries of the District have been received.

**Minutes of January 8, 2024 Regular Meeting:** The Board reviewed the Minutes from the January 8, 2024 Regular Meeting.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Williams and, upon vote unanimously carried, the Board approved the Minutes from the January 8, 2024 Regular Meeting, as presented.

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### **FINANCIAL MATTERS**

**Unaudited Financial Statements:** The Board reviewed the unaudited financial statements through the period ending December 31, 2023.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Williams and, upon vote unanimously carried, the Board accepted the unaudited financial statements through the period ending December 31, 2023 as presented.

**Cost Certifications from Independent District Engineering Services, LLC ("IDES"):** The Board reviewed Cost Certification No. 8 from IDES.

Following discussion, upon motion duly made by Director Clutter, seconded by Director Richmond and, upon vote unanimously carried, the Board approved Cost Certification No. 8 from IDES.

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## RECORD OF PROCEEDINGS

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### **LEGAL MATTERS**

**IDES Task Order No. 3:** The Board reviewed IDES Task Order No. 3 under the Master Service Agreement for Cost Certification Services.

Following discussion, upon motion duly made by Director Richmond, seconded by Director Clutter and, upon vote unanimously carried, the Board approved IDES Task Order No. 3 under the Master Service Agreement for Cost Certification Services.

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### **CONSTRUCTION MATTERS**

**Status of Construction of Harvest Road:** Director Richmond updated the Board on the status of construction of the Harvest Road Project.

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### **OPERATIONS AND MAINTENANCE MATTERS**

There were no updates at this time.

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### **OTHER MATTERS**

There were no other matters at this time.

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### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director Richmond, seconded by Director Williams and, upon vote unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meeting



## RECORD OF PROCEEDINGS

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### MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE HARVEST CROSSING METROPOLITAN DISTRICT NO. 4 HELD AUGUST 15, 2022

A Special Meeting of the Board of Directors (the “Board”) of the Harvest Crossing Metropolitan District No. 4 (formerly known as Villages at Murphy Creek Metropolitan District No. 1, referred to hereafter as the “District”) was convened on Monday, August 15, 2022 at 1:00 p.m. The meeting was open to the public via conference call.

#### ATTENDANCE

##### Directors In Attendance Were:

Daniel Frank  
Marc L. Cooper  
Richard Frank

##### Also In Attendance Were:

David Solin; Special District Management Services, Inc.

Paula Williams, Esq. and Tim O’Connor, Esq.; McGeady Becher P.C.

#### DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

**Disclosure of Potential Conflicts of Interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Solin noted that a quorum was present and requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at the meeting, and incorporated for the record those applicable disclosures made by the Board members prior to the meeting in accordance with the statute. No additional conflicts were disclosed.

#### PUBLIC COMMENT

There were no public comments.

#### ADMINISTRATIVE MATTERS

**Agenda:** Mr. Solin reviewed a proposed Agenda for the District’s Special Meeting with the Board.

Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Agenda for the Special Meeting was approved, as amended.



## RECORD OF PROCEEDINGS

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**Approval of Meeting Location:** The Board entered into discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District Board meetings.

Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board determined that the District meeting was held by conference call. The Board further noted that notice of the time, date, location and conference bridge information was duly posted and that they have not received any objections, or any requests that the means of hosting the meeting be changed by taxpaying electors within the boundaries of the District.

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### **CONSENT AGENDA**

The Board considered the following actions:

- Approve the Minutes from the June 29, 2022 Special Meeting.

Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved and/or ratified approval of the remaining Consent Agenda items.

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### **FINANCIAL MATTERS**

**Funding Agreement with Pulte Homes for construction of Pacific Avenue:** The Board entered into discussion regarding a Funding Agreement with Pulte Homes for construction of Pacific Avenue. The Board further discussed entering into an escrow agreement with Pulte Homes for the purpose of construction of Pacific Ave.

Following discussion, upon motion duly made by Director D. Frank, seconded by Director R. Frank and, upon vote, unanimously carried, the Board approved to entering into an escrow agreement with Pulte Homes for the purpose of construction of Pacific Ave. with funding of \$1,069,757.82.

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### **LEGAL MATTERS**

**Regional Infrastructure Authority:** The Board entered into discussion regarding the regional improvements and participation in Regional Infrastructure Authority. Director Cooper reported that he is making progress in discussions about joining MARIA.

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### **OTHER MATTERS**

There were no other matters to discuss.

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## RECORD OF PROCEEDINGS

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### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meeting



## RECORD OF PROCEEDINGS

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**MINUTES OF A SPECIAL MEETING OF  
THE BOARD OF DIRECTORS OF THE  
VILLAGES AT MURPHY CREEK  
METROPOLITAN DISTRICT NO. 1  
HELD  
NOVEMBER 8, 2021**

A special meeting of the Board of Directors (the “Board”) of the Villages at Murphy Creek Metropolitan District No. 1 (referred to hereafter as the “District”) was convened on Monday, November 8, 2021 at 1:00 p.m. The District Board meeting was held by telephone conference and at the physical location at the offices of McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203. Ms. Will was present at the physical location. The meeting was open to the public.

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### **ATTENDANCE**

#### **Directors In Attendance Were:**

Daniel Frank  
Marc L. Cooper  
Richard Frank

#### **Also In Attendance Were:**

David Solin; Special District Management Services, Inc.

Paula Williams, Esq. and Catherine Will; McGeady Becher P.C.

Kristine Lay, Kutak Rock LLP (for a portion of the meeting)

Sheila Mares, D.A. Davidson & Co. (for a portion of the meeting)

Creig Veldhuizen, Hilltop Securities Inc. (for a portion of the meeting)

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### **DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST**

**Disclosure of Potential Conflicts of Interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Solin noted that a quorum was present and requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at the meeting, and incorporated for the record those applicable disclosures made by the Board members prior to the meeting in accordance with the statute. No additional conflicts were disclosed.

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## RECORD OF PROCEEDINGS

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### **ADMINISTRATIVE MATTERS**

**Agenda:** Mr. Solin reviewed a proposed Agenda for the District's Special Meeting with the Board.

Following discussion, upon motion duly made by Director Cooper, seconded by Director R. Frank and, upon vote, unanimously carried, the Agenda for the Special Meeting was approved, as amended.

**Approval of Meeting Location:** The Board entered into discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District Board meetings.

Following discussion, upon motion duly made by Director Cooper, seconded by Director R. Frank and, upon vote, unanimously carried, the Board determined that the District Board meeting be held by telephone conference and at the offices of McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203.

**Resolution No. 2021-11-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices:** Mr. Solin discussed with the Board Resolution No. 2021-11-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

The Board determined to meet at 1:00 p.m. on June 13, 2022 and November 14, 2022 via teleconference.

Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-01; Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

**§32-1-809, C.R.S. Reporting Requirements, Mode of Eligible Elector Notification for 2022:** The Board discussed §32-1-809, C.R.S. reporting requirements and mode of eligible elector notification for 2022 and directed staff to post the Transparency Notice on the Special District Association's website and the District website.

### **PUBLIC COMMENT**

There were no public comments.



## RECORD OF PROCEEDINGS

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**CONSENT AGENDA** The Board considered the following actions:

- Approve Minutes from the August 19, 2021 and October 18, 2021 Special Meetings.

Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved and/or ratified approval of the Consent Agenda items.

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### **FINACIAL MATTERS**

**2021 Audit:** Following discussion, upon motion duly made by Director R. Frank, seconded by Director D. Frank and, upon vote, unanimously carried, the Board authorized Mr. Solin to obtain proposals for preparation of the 2021 Audit and further authorized the District President to engage an auditor for the 2021 Audit.

**2021 Budget Amendment Hearing:** The President opened the public hearing to consider the Resolution to Amend the 2021 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of a Resolution to Amend the 2021 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to this public hearing. No public comments were received, and the public hearing was closed.

Following review and discussion, Director Cooper moved to adopt the Resolution to Amend 2021 Budget, Director D. Frank seconded the motion and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-02 to Amend the 2021 Budget. A copy of the adopted Resolution is attached hereto and incorporated herein by this reference.

**2022 Budget Hearing:** The President opened the public hearing to consider the proposed 2022 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of the 2022 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to or at this public hearing. No public comments were received, and the President closed the public hearing.

Mr. Solin reviewed the estimated year-end 2021 revenues and expenditures and the proposed 2022 estimated revenues and expenditures.

Following discussion, the Board considered the adoption of Resolution No. 2021-11-03 to Adopt the 2022 Budget and Appropriate Sums of Money and Resolution



## RECORD OF PROCEEDINGS

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No. 2021-11-04 to Set Mill Levies (for the General Fund at 10.000 mills and the Debt Service Fund at 55.664 mills, Other Fund at 1.114 mills, for a total of 66.778 mills). Upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Resolutions were adopted, as discussed, and execution of the Certification of Budget and Certification of Mill Levies was authorized, subject to receipt of final Certification of Assessed Valuation from the County on or before December 10, 2021. Mr. Solin was authorized to transmit the Certification of Mill Levies to the Board of County Commissioners of Arapahoe County and the Division of Local Government not later than December 15, 2021. Mr. Solin was also authorized to transmit the Certification of Budget to the Division of Local Government not later than January 30, 2022. Copies of the adopted Resolutions are attached hereto and incorporated herein by this reference.

**DLG-70 Mill Levy Certification Form:** Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board authorized the District Accountant to prepare and sign the DLG-70 Mill Levy Certification form for certification to the Board of County Commissioners and other interested parties.

**2023 Budget Preparation:** Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board appointed the District Accountant to prepare the 2023 Budget. The Board determined to hold the public hearing to consider adoption of the 2023 Budget on November 14, 2022, at 1:00 p.m. via teleconference.

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### **LEGAL MATTERS**

**Facilities Acquisition Agreement between District No. 1, Jewell Developers, Inc., and Harvest & Jewell, LLC:** Following discussion, upon motion duly made by Director D. Frank, seconded by Director R. Frank and, upon vote, unanimously carried, the Board approved the Facilities Acquisition Agreement between District No. 1, Jewell Developers, Inc., and Harvest & Jewell, LLC, as discussed. Following further discussion, the Board approved the termination of all prior existing agreements.

**Election Resolution:** Following discussion, upon motion duly made by Director D. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-05; Resolution Calling a Regular Election for Directors on May 3, 2022, appointing the DEO and authorizing the DEO to perform all tasks required for the conduct of a mail ballot election. A copy of the adopted Resolution is attached hereto and incorporated herein by this reference.

**Regional Improvements and Participation in Regional Authority:** The Board deferred discussion.



## RECORD OF PROCEEDINGS

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**Resolution authorizing the issuance of District No. 1's Limited Tax General Obligation Bonds, Series 2021A<sub>(3)</sub> (the "Bonds") in a maximum aggregate principal amount of up to \$15,000,000, for the purpose of paying, reimbursing and financing certain public improvements and paying the costs incidental to the issuance of the Bonds:** The Board reviewed a Resolution authorizing the issuance of District No. 1's Limited Tax General Obligation Bonds, Series 2021A<sub>(3)</sub> (the "**Bonds**") in a maximum aggregate principal amount of up to \$15,000,000, for the purpose of paying, reimbursing and financing certain public improvements and paying the costs incidental to the issuance of the Bonds; and, in connection therewith, approving an Indenture of Trust, a Continuing Disclosure Agreement, a Bond Purchase Agreement.

Following discussion, upon motion duly made by Director D. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board adopted the Resolution authorizing the issuance of District No. 1's Limited Tax General Obligation Bonds, Series 2021A<sub>(3)</sub> (the "**Bonds**") in a maximum aggregate principal amount of up to \$15,000,000, for the purpose of paying, reimbursing and financing certain public improvements and paying the costs incidental to the issuance of the Bonds; and, in connection therewith, approved an Indenture of Trust, a Continuing Disclosure Agreement, a Bond Purchase Agreement, and other related documents and instruments; authorized the execution and delivery thereof and performance by the District thereunder; authorized incidental actions; and repealed prior inconsistent actions. The Board further appointed all Directors as District Representatives and Sales Delegates, Director D. Frank as primary and Directors R. Frank and Cooper as alternates.

**Engagement of Hilltop as Municipal Advisor:** Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved the engagement of Hilltop as municipal advisor.

**Engagement of King & Associates, Inc. for Appreciation Analysis Services:** Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved the engagement of King & Associates, Inc. for Appreciation Analysis services.

**Engagement of Zonda Advisory for Market Study Services:** Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved the engagement of Zonda Advisory for Market Study services.

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## RECORD OF PROCEEDINGS

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### **OTHER MATTERS**

**Engagement of Aztec Consultants, Inc. to Update the District's Boundary Maps:** Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved the engagement of Aztec Consultants, Inc. to update the District's boundary maps.

**Cost Verification Report:** Following discussion, upon motion duly made by Director D. Frank, seconded by Director R. Frank and, upon vote, unanimously carried, the Board appointed Independent District Engineering Services for Cost Verification Services.

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### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director Cooper, seconded by Director R. Frank and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meetings



## RECORD OF PROCEEDINGS

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**MINUTES OF A SPECIAL MEETING OF  
THE BOARD OF DIRECTORS OF THE  
VILLAGES AT MURPHY CREEK  
METROPOLITAN DISTRICT NO. 2  
HELD  
NOVEMBER 8, 2021**

A special meeting of the Board of Directors (the “Board”) of the Villages at Murphy Creek Metropolitan District No. 2 (referred to hereafter as the “District”) was convened on Monday, November 8, 2021 at 1:00 p.m. The District Board meeting was held by telephone conference and at the physical location at the offices of McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203. Ms. Will was present at the physical location. The meeting was open to the public.

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### **ATTENDANCE**

#### **Directors In Attendance Were:**

Daniel Frank  
Marc L. Cooper  
Richard Frank

#### **Also In Attendance Were:**

David Solin; Special District Management Services, Inc.

Paula Williams, Esq. and Catherine Will; McGeady Becher P.C.

Kristine Lay, Kutak Rock LLP (for a portion of the meeting)

Sheila Mares, D.A. Davidson & Co. (for a portion of the meeting)

Creig Veldhuizen, Hilltop Securities Inc. (for a portion of the meeting)

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### **DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST**

**Disclosure of Potential Conflicts of Interest:** The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board of Directors and to the Secretary of State. Mr. Solin noted that a quorum was present and requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at the meeting, and incorporated for the record those applicable disclosures made by the Board members prior to the meeting in accordance with the statute. No additional conflicts were disclosed.

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## RECORD OF PROCEEDINGS

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### **ADMINISTRATIVE MATTERS**

**Agenda:** Mr. Solin reviewed a proposed Agenda for the District's Special Meeting with the Board.

Following discussion, upon motion duly made by Director R. Frank, seconded by Director D. Frank and, upon vote, unanimously carried, the Agenda for the Special Meeting was approved, as amended.

**Approval of Meeting Location:** The Board entered into discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District Board meetings.

Following discussion, upon motion duly made by Director Cooper, seconded by Director R. Frank and, upon vote, unanimously carried, the Board determined that the District Board meeting be held by telephone conference and at the offices of McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203.

**Resolution No. 2021-11-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices:** Mr. Solin discussed with the Board Resolution No. 2021-11-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

The Board determined to meet at 1:00 p.m. on June 13, 2022 and November 14, 2022 via teleconference.

Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-01; Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

**§32-1-809, C.R.S. Reporting Requirements, Mode of Eligible Elector Notification for 2022:** The Board discussed §32-1-809, C.R.S. reporting requirements and mode of eligible elector notification for 2022 and directed staff to post the Transparency Notice on the Special District Association's website and the District website.

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### **PUBLIC COMMENT**

There were no public comments.

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### **CONSENT AGENDA**

The Board considered the following actions:

- Approve Minutes from the August 19, 2021 and October 18, 2021 Special Meetings.



## RECORD OF PROCEEDINGS

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Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved and/or ratified approval of the Consent Agenda items.

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### **FINACIAL MATTERS**

**2021 Application for Exemption from Audit:** The Board discussed the requirements for an audit.

Following discussion, upon motion duly made by Director R. Frank, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved the appointment of the District Accountant to prepare the Application for Exemption from Audit for 2021.

**2021 Budget Amendment Hearing:** The President opened the public hearing to consider the Resolution to Amend the 2021 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of a Resolution to Amend the 2021 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to this public hearing. No public comments were received, and the public hearing was closed.

It was noted that no amendment to the 2021 Budget was required.

**2022 Budget Hearing:** The President opened the public hearing to consider the proposed 2022 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of the 2022 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to or at this public hearing. No public comments were received, and the President closed the public hearing.

Mr. Solin reviewed the estimated year-end 2021 revenues and expenditures and the proposed 2022 estimated revenues and expenditures.

Following discussion, the Board considered the adoption of Resolution No. 2021-11-03 to Adopt the 2022 Budget and Appropriate Sums of Money and Resolution No. 2021-11-04 to Set Mill Levies (for the General Fund at 65.664 mills and the Debt Service Fund at 00.000 mills, for a total of 65.664 mills). Upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Resolutions were adopted, as discussed, and execution of the Certification of Budget and Certification of Mill Levies was authorized, subject to receipt of final Certification of Assessed Valuation from the County on or before



## RECORD OF PROCEEDINGS

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December 10, 2021. Mr. Solin was authorized to transmit the Certification of Mill Levies to the Board of County Commissioners of Arapahoe County and the Division of Local Government not later than December 15, 2021. Mr. Solin was also authorized to transmit the Certification of Budget to the Division of Local Government not later than January 30, 2022. Copies of the adopted Resolutions are attached hereto and incorporated herein by this reference.

**DLG-70 Mill Levy Certification Form:** Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board authorized the District Accountant to prepare and sign the DLG-70 Mill Levy Certification form for certification to the Board of County Commissioners and other interested parties.

**2023 Budget Preparation:** Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board appointed the District Accountant to prepare the 2023 Budget. The Board determined to hold the public hearing to consider adoption of the 2023 Budget on November 14, 2022, at 1:00 p.m. via teleconference.

**District Checking Account at First Bank:** Following discussion, upon motion duly made by Director R. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board ratified authorizing the District Accountant to open a District checking account at First Bank. The Board further authorized all Directors be authorized as signers on the account.

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### **LEGAL MATTERS**

**Election Resolution:** Following discussion, upon motion duly made by Director D. Frank, seconded by Director Cooper and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-05; Resolution Calling a Regular Election for Directors on May 3, 2022, appointing the DEO and authorizing the DEO to perform all tasks required for the conduct of a mail ballot election. A copy of the adopted Resolution is attached hereto and incorporated herein by this reference.

**Regional Improvements and Participation in Regional Authority:** The Board deferred discussion.

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### **OTHER MATTERS**

**Engagement of Aztec Consultants, Inc. to Update the District's Boundary Maps:** Following discussion, upon motion duly made by Director Cooper, seconded by Director D. Frank and, upon vote, unanimously carried, the Board approved the engagement of Aztec Consultants, Inc. to update the Districts boundary maps.



## RECORD OF PROCEEDINGS

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**Cost Verification Report:** Following discussion, upon motion duly made by Director D. Frank, seconded by Director R. Frank and, upon vote, unanimously carried, the Board appointed Independent District Engineering Services for Cost Verification Services.

\_\_\_\_\_

### **ADJOURNMENT**

There being no further business to come before the Board at this time, upon motion duly made by Director Cooper, seconded by Director R. Frank and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: \_\_\_\_\_  
Secretary for the Meetings



## Project Proposal



DATE: 6/19/24  
Bid Number: 2024-

PROJECT: Harvest Crossing Metro District No. 13

TO: Doug Richter  
7200 S. Altom Way, Suite C-400  
Centennial, CO 80112

SUBMITTED BY:  
Quinn Walters  
Project Manager  
quinn@goldendollarservices.com  
720-595-7688

Alpine Civil Construction is pleased to provide a cost proposal for your Colliers Hill 4D R&R project. This proposal is based from drawings and a geotechnical evaluation report if provided.

Item NO.	Description	Quantity	Units	Unit Price	Bid Total
1	Mobilization	1	LS	\$5,000.00	\$5,000.00
2	Load and Haul Rock to Stock Pile	3114	CY	\$2.75	\$8,563.50
Total					\$13,563.50

Owner Approval:

Signature:

Name (Printed):

Title:

Date:

*Terry B. Richmond*  
TERRY B. RICHMOND  
BOARD PRES.  
6/24/24

Contractor Approval:

Signature:

Name (Printed):

Title:

Date:

### Inclusions/Qualifications/Notations:

- Notes and Exclusions are to become an attachment to the contract.
- We assume that the on site material is suitable fill material.
- Proposal is based on current fuel rates.
- Proposal is based on one mobilization.
- Bid is valid for 30 days from date above.
- Any/all - Labor, Equipment and Materials Necessary to Install Above Listed Items per Provided 100% DD Plans and Specifications
- All Above Listed Pricing is Subject to Adjustment Upon review of Finalized Detailed Construction Drawings that have been Fully Approved by Res Engineer(s).
- All Above Pricing is Based Upon Consecutive Complete Installation of All items/activities Without Impacts by Others. If ADDITIONAL Construction Phasing is required, then Price Adjustment(s) may be Implemented in Order to Accommodate the Primary CPM Schedule.
- Quantities above reflect what has been estimated from the documents provided. Actual quantities may vary and may be directed as a change order with reasonable proof of additional work.

### Exclusions:

- Permit costs are not included.
- Testing and Survey is not included.
- Over excavation and the replacement of unsuitable material excluded.
- Muck excavation excluded.
- Any dewatering excluded.
- Shoring/buildingsupporting/bracing excluded.
- Any work associated with utility protection (unless noted) excluded.
- Permits; tap fees, street closure, sidewalk closure, right-of way permits are excluded, traffic control permits, All permits excluded.
- Anything not specifically described in the proposal is excluded.

Thank you for the opportunity to provide this proposal. If you have any questions regarding this information please contact me 720-208-8613 or dillon@alpine-civil.com.

Sincerely,



**Harvest Crossing Metropolitan District No. 3**  
**April-24**

Vendor	Invoice #	Date	Due Date	Amount	Expense Account	Account Number
McGeady Becher P.C.	893M 02/2024	2/29/2024	2/29/2024	\$ 1,299.26	Legal- D3	1675
McGeady Becher P.C.	893M 02/2024	2/29/2024	2/29/2024	\$ 1,948.89	Legal- Capital	3675
Special District Management Services, Inc.	D4 03/2024	3/31/2024	3/31/2024	\$ 111.54	Accounting-D4	3861
Special District Management Services, Inc.	D4 03/2024	3/31/2024	3/31/2024	\$ 74.36	Accounting- D4	1861
Special District Management Services, Inc.	D4 03/2024	3/31/2024	3/31/2024	\$ 33.80	Management- D4	1879
Special District Management Services, Inc.	D4 03/2024	3/31/2024	3/31/2024	\$ 50.70	Management-D4	3879
Special District Management Services, Inc.	D3 03/2024	3/31/2024	3/31/2024	\$ 2,295.56	Accounting- D3	1612
Special District Management Services, Inc.	D3 03/2024	3/31/2024	3/31/2024	\$ 4.00	Miscellaneous- D3	1685
Special District Management Services, Inc.	D3 03/2024	3/31/2024	3/31/2024	\$ 3,443.34	Accounting- Capital	3612
Special District Management Services, Inc.	D3 03/2024	3/31/2024	3/31/2024	\$ 6.00	Miscellaneous	3685
Special District Management Services, Inc.	D3 03/2024	3/31/2024	3/31/2024	\$ 632.82	Management	3620
Special District Management Services, Inc.	D3 03/2024	3/31/2024	3/31/2024	\$ 421.88	Management- D3	1620
				\$ 10,322.15		

Expense Breakdown	D3 Operating (40)	\$ 4,020.70	<b>Total Operating</b>		<b>Total Capital</b>
	D3 Capital (60)	\$ 6,031.05	\$ 4,128.86	\$	6,193.29
		\$ 10,051.75			
	D4 Operating (40)	\$ 108.16			
	D4 Capital (60)	\$ 162.24			
		\$ 270.40			



Harvest Crossing Metropolitan District No. 3

April-24

	General	Debt	Capital	Totals
Disbursements	\$ 4,128.86		\$ 6,193.29	\$ 10,322.15
Total Disbursements from Checking Acct	\$4,128.86	\$0.00	\$6,193.29	\$10,322.15



**Harvest Crossing Metropolitan District No. 3**  
**May-24**

Vendor	Invoice #	Date	Due Date	Amount	Expense Account	Account Number
IDES, LLC	PS-INV103119	3/31/2024	3/31/2024	\$ 2,034.37	Engineering- D4	3786
IDES, LLC	PS-INV103119	3/31/2024	3/31/2024	\$ 2,034.38	Engineering- D3	3784
McGeady Becher P.C.	893M 03/2024	3/31/2024	3/31/2024	\$ 1,470.56	Legal- D3	1675
McGeady Becher P.C.	893M 03/2024	3/31/2024	3/31/2024	\$ 2,205.85	Legal- Capital	3675
Special District Management Services, Inc.	D3 04/2024	4/30/2024	4/30/2024	\$ 2,705.96	Accounting- D3	1612
Special District Management Services, Inc.	D3 04/2024	4/30/2024	4/30/2024	\$ 2.56	Miscellaneous- D3	1685
Special District Management Services, Inc.	D3 04/2024	4/30/2024	4/30/2024	\$ 4,058.94	Accounting- Capital	3612
Special District Management Services, Inc.	D3 04/2024	4/30/2024	4/30/2024	\$ 3.84	Miscellaneous	3685
Special District Management Services, Inc.	D3 04/2024	4/30/2024	4/30/2024	\$ 1,127.04	Management	3620
Special District Management Services, Inc.	D3 04/2024	4/30/2024	4/30/2024	\$ 751.36	Management- D3	1620
Special District Management Services, Inc.	D4 04/2024	4/30/2024	4/30/2024	\$ 1,247.22	Accounting-D4	3861
Special District Management Services, Inc.	D4 04/2024	4/30/2024	4/30/2024	\$ 831.48	Accounting- D4	1861
Special District Management Services, Inc.	D4 04/2024	4/30/2024	4/30/2024	\$ 40.56	Management- D4	1879
Special District Management Services, Inc.	D4 04/2024	4/30/2024	4/30/2024	\$ 60.84	Management-D4	3879

\$ 18,574.96

Less engineering exp \$ 4,068.75

\$ 14,506.21

Expense Breakdown      D3 Operating (40)      \$5,802.48

Capital (60)      \$8,703.73  
Plus engineering exp      \$ 4,068.75  
\$12,772.48

D3 (50%) Capital      \$6,386.24  
D4 (50%) Capital      \$6,386.24



Harvest Crossing Metropolitan District No. 3  
May-24

	General	Debt	Capital	Totals
Disbursements	\$ 5,802.48		\$ 12,772.48	\$ 18,574.96
Total Disbursements from Checking Acct	\$5,802.48	\$0.00	\$12,772.48	\$18,574.96



**Harvest Crossing Metropolitan District No. 3**  
**June-24**

Vendor	Invoice #	Date	Due Date	Amount	Expense Account	Account Number
Aurora Regional Transportation Authority	D4- 2023 Mill Levy	5/23/2024	5/23/2024	\$ 2.60	ARI Mill Levy- D4	1751
Aurora Regional Transportation Authority	D3- 2023 Mill Levy	5/23/2024	5/23/2024	\$ 4.06	ARI Mill Levy- D3	1750
Special District Management Services, Inc.	D4 05/2024	5/31/2024	5/31/2024	\$ 954.78	Accounting-D4	3861
Special District Management Services, Inc.	D4 05/2024	5/31/2024	5/31/2024	\$ 636.52	Accounting- D4	1861
Special District Management Services, Inc.	D4 05/2024	5/31/2024	5/31/2024	\$ 67.60	Management- D4	1879
Special District Management Services, Inc.	D4 05/2024	5/31/2024	5/31/2024	\$ 101.40	Management-D4	3879
Special District Management Services, Inc.	D3 05/2024	5/31/2024	5/31/2024	\$ 1,882.32	Accounting- D3	1612
Special District Management Services, Inc.	D3 05/2024	5/31/2024	5/31/2024	\$ 0.96	Miscellaneous- D3	1685
Special District Management Services, Inc.	D3 05/2024	5/31/2024	5/31/2024	\$ 2,823.48	Accounting- Capital	3612
Special District Management Services, Inc.	D3 05/2024	5/31/2024	5/31/2024	\$ 1.44	Miscellaneous	3685
Special District Management Services, Inc.	D3 05/2024	5/31/2024	5/31/2024	\$ 344.76	Management	3620
Special District Management Services, Inc.	D3 05/2024	5/31/2024	5/31/2024	\$ 229.84	Management- D3	1620

\$ 7,049.76

Expense Breakdown	D3 Operating (40)	\$ 2,117.18		<b>Total Operating</b>		<b>Total Capital</b>
	D3 Capital (60)	\$ 3,169.68		\$ 2,823.90	\$	4,225.86
		\$ 5,286.86				
	D4 Operating (40)	\$ 706.72				
	D4 Capital (60)	\$ 1,056.18				
		\$ 1,762.90				



**Harvest Crossing Metropolitan District No. 3**  
**June-24**

	<b>General</b>	<b>Debt</b>	<b>Capital</b>	<b>Totals</b>
<b>Disbursements</b>	\$ 2,823.90		\$ 4,225.86	\$ 7,049.76
<b>Total Disbursements from Checking Acct</b>	<b>\$2,823.90</b>	<b>\$0.00</b>	<b>\$4,225.86</b>	<b>\$7,049.76</b>



# Harvest Crossing Metropolitan Districts Nos. 3 & 4 Cost Certification



**Report #10**  
**July 2024**



Independent District Engineering Services, LLC  
1626 Cole Blvd, Suite 125  
Lakewood, CO 80401  
[www.idesllc.com](http://www.idesllc.com)



# Harvest Crossing Metropolitan District Nos. 3 & 4 Cost Certification Report #10

## *Table of Contents*

### **Cost Certification Report**

Introduction .....	1
Reference Documents.....	1
Assumptions .....	2
Discussion.....	2
Summary Of Expenditures By Category .....	3
Recommendation .....	4

### **Attachments**

Attachment A – Site Map.....	5
Attachment B – Vendors Participation .....	7
Attachment C – Expenditure Data .....	9
Attachment D – Project Photos .....	11



July 18, 2024

Harvest Crossing Metropolitan District Nos. 3 & 4  
Attn: Paula Williams  
McGeady Becher, P.C.  
450 E 17th Avenue, Suite 400  
Denver, CO 80203-1254

## **HARVEST CROSSING METROPOLITAN DISTRICT NOS. 3 & 4 COST CERTIFICATION REPORT #10**

### **INTRODUCTION**

Independent District Engineering Services, LLC ("Engineer") was hired by the Harvest Crossing Metropolitan District No. 3 and Harvest Crossing Metropolitan District No. 4 (each "District" collectively "Districts") to provide review of expenditures paid by JEN COLORADO 20 LLC. ("Developer") or to be paid for by the District. This is to verify which expenditures are public in nature and that the public expenditures are reasonable. The expenditures are for the Harvest Crossing development located in the City of Aurora, Colorado. Only public expenditures are eligible for District reimbursement. This cost certification report summarizes the Engineer's approach and recommendations for the project.

The District Eligible Expenditures reviewed as part of this report to be paid directly by District No. 3 amount to **\$1,741,339.27**. District Eligible Expenditures reviewed as part of this report and reimbursable to the Developer from District No. 3 amount to **\$784,831.20**. The total District Eligible Expenditures for public financing for District No. 3 amount to **\$2,526,170.47** and the total District Eligible Expenditures for public financing for District No. 4 amount to **\$0.00**.

This report generally covers expenditures for wet utility installation, earthwork, and soft costs such as surveying, geotechnical engineering, and stormwater inspections.

### **REFERENCE DOCUMENTS**

The following documents were used in determining recommendations for this report:

- Service Plan for Villages at Murphy Creek Metropolitan District No. 1, by McGeady Sisneros, P.C.; dated May 25th, 2006.
- Service Plan for Villages at Murphy Creek Metropolitan District No. 2, by McGeady Sisneros, P.C.; dated May 25th, 2006.
- Facilities Funding and Acquisition Agreement by and between Harvest Crossing Metropolitan District No. 3 and JEN COLORADO 20 LLC, dated November 13, 2023.
- Facilities Funding and Acquisition Agreement by and between Harvest Crossing Metropolitan District No. 4 and JEN COLORADO 20 LLC, dated November 13, 2023.
- Operation and Capital Funding Repayment Agreement, by and between Villages at Murphy Creek Metropolitan District No. 1 and Villages at Murphy Creek, LLC and Harvest & Jewell, LLC; dated November 17, 2008.
- Facilities Funding and Acquisition Agreement, by and between Villages at Murphy Creek Metropolitan District No. 1 and Harvest & Jewell, LLC; dated November 17th, 2008.
- Facilities Acquisition Agreement, by and between Villages at Murphy Creek Metropolitan District No. 1,



Jewell Developers, and Harvest & Jewell, LLC., dated November 8th, 2021.  
The Engineer used the above documents only as a general guideline in certification of costs.

## **ASSUMPTIONS**

The following assumptions were made for this report.

- It is assumed that infrastructure will be formally accepted by the local jurisdiction or District before reimbursement for public expenditures are made.
- No storm water management practice inspections or recommendations were conducted as part of this report.
- This report is not an acceptance of improvements, but a cost accounting of the expenditures provided. The cost certification is only one of the requirements for infrastructure acquisition. It is our understanding that all local jurisdiction acceptances will be completed by the Developer as required by the Facilities Funding and Acquisition Agreement and any local jurisdiction requirements.
- Expenditures presented do not represent the entire contract value, but only the portion of the contract value provided for our review. Other expenditures for the project may exist.
- Expenditures that pertain to both public land and private lots are prorated on land percentage area. See Attachment C for the percentages. The percentages were used for work such as earthwork, storm water management practice activities, and planning.
- This report was prepared with a specific scope and an elaborate analysis was not performed. Daily construction observation was not performed. This is a realistic and reasonable analysis to verify the public expenditures for the invoices and information provided by the Developer. Additional expenditures and information may result in adjustments to our cost certification.

## **DISCUSSION**

### **Activities Conducted**

For this report, the following activities were performed:

- The reference documents provided by the Districts and the Developer were reviewed.
- Invoices and evidence of payment provided by the Developer were reviewed. A summary was created and is attached as Attachment B.
- A site visit was conducted. Project improvements were photographed.
- Contact was made with Developer to verify knowledge of the work and services performed.

### **Improvements**

The reviewed improvement locations are generally represented and shown on the following documents:

- Harvest Crossing Subdivision Filing No. 1 Final Plat, by AzTec Consultants, Inc., dated June 3rd, 2021.
- Harvest Crossing Filing No. 1 Construction Document, by Innovative Land Consultants, Inc., dated July 27th, 2022.
- Harvest Crossing Filing No. 1 Site Plan, by Plan West, dated August 24th, 2022.
- Harvest Crossing Subdivision PA 5-9 Final Plat, by AzTec Consultants Inc., dated March 17th, 2022.
- Harvest Crossing PA 5-9 Construction Documents Draft, by Kimley-Horn and Associates, Inc., dated October 2022.
- Harvest Crossing PA. 5, 6 & 7 Site Plan, by Plan West, dated September 29th, 2022.
- Harvest Crossing PA 1-2 Final Plat, by Aztec Consultants, Inc., dated April 4th, 2022.
- Harvest Crossing Subdivision PA 2 Site Plan, by Plan West, Inc., dated May 20th, 2022.



## Review of Expenditures

This report consists of expenditures provided between February of 2024 and July of 2024. To provide a cost certification of public improvements, invoices and evidence of payment provided by the Developer were reviewed. Expenditures were allocated as public (District Eligible Expenditures) or private (Non-Eligible Expenditures). Costs for work such as storm water management, planning, project management, and environmental studies pertaining to both public improvements, as described in the Special District Act, and private improvements were considered 52% District Eligible Costs based on the land area ratio (the "District Site Percent") for Filing 1 of the Project. With respect to the Harvest Crossing Road Project, all cost were considered District Eligible Costs. A summary is included as Attachment C.

## Vendors

All contractors, consultants, and vendors whose invoice information was submitted, were evaluated for their project participation and services performed, materials provided, or work completed. A summary of vendor participation is included as Attachment B.

## Site Visit

A site visit was conducted in June of 2024. Photos were taken of the project to memorialize the construction of infrastructure and are included in Attachment D. From our visual inspection, it appears the completed improvements were constructed in a quality manner consistent with other similar projects and meeting generally accepted construction requirements.

## SUMMARY OF EXPENDITURES BY CATEGORY

The tables below provide a summary of expenditures by category as set forth in the service plan.

Harvest Crossing Metropolitan District No. 3 Cost Certification Category		
Category	Amount	Percent
Water	\$1,344,619.58	53.23%
Sanitary Sewer	\$179,097.10	7.09%
Storm Sewer	\$193,785.45	7.67%
Street	\$625,511.37	24.76%
Park & Rec	\$183,156.97	7.25%
<b>Total</b>	<b>\$2,526,170.47</b>	<b>100.00%</b>

Harvest Crossing Metropolitan District No. 4 Cost Certification Category		
Category	Amount	Percent
Water	\$0.00	0.00%
Sanitary Sewer	\$0.00	0.00%
Storm Sewer	\$0.00	0.00%
Street	\$0.00	0.00%
Park & Rec	\$0.00	0.00%
<b>Total</b>	<b>\$0.00</b>	<b>0.00%</b>

The table below provides a summation of all expenditures submitted and the associated verified amount.

Cost Certification	Amount of Expenditures Submitted	Harvest Crossing Metropolitan District No. 3	Harvest Crossing Metropolitan District No. 4	Total Amount Certified
Report #1	\$278,958.34	\$186,716.89	\$0.00	\$186,716.89
Report #2	\$49,758.70	\$48,948.09	\$0.00	\$48,948.09
Report #3	\$230,317.87	\$190,875.97	\$0.00	\$190,875.97
Report #4	\$573,018.61	\$292,075.72	\$140,179.26	\$432,254.98
Report #5	\$242,801.32	\$0.00	\$191,713.36	\$191,713.36
Report #6	\$22,943.05	\$10,048.07	\$12,894.98	\$22,943.05



Report #7	\$26,847.94	\$16,832.04	\$4,722.81	\$21,554.85
Report #8	\$252,037.49	\$246,960.04	\$121.69	\$247,081.73
Report #9	\$859,062.16	\$705,434.37	\$436.04	\$705,870.41
Report #10	\$2,728,824.20	\$2,526,170.47	\$0.00	\$2,526,170.47
<b>TOTAL</b>	<b>\$5,264,569.68</b>	<b>\$4,224,061.66</b>	<b>\$350,068.14</b>	<b>\$4,574,129.80</b>

## RECOMMENDATION

In our professional opinion, the expenditures reviewed for the improvements were found to be reasonable. The costs of improvements are comparable to other similar projects in Colorado. At this time and based on the information provided, the Engineer certifies the expenditures provided by the Developer as public as shown in Attachment B. These public expenditures are certified in the amount of **\$2,526,170.47** of which **\$2,526,170.47** is certified for Harvest Crossing Metropolitan District No. 3 and **\$0.00** is certified for Harvest Crossing Metropolitan District No. 4.

This report is not an acceptance of improvements, but a certification of the costs associated with the public improvements proposed for District payment.

Should you have any questions or require further information please feel free to contact us.

Respectfully Submitted,

Andrew Gaittens, P.E.  
Independent District Engineering Services, LLC



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# Attachment A

## Site Map



VICINITY MAP



SCALE: NTS

LEGEND

- SANITARY SYSTEM IMPROVEMENTS
- WATER SYSTEM IMPROVEMENTS
- STORM SYSTEM IMPROVEMENTS

DEFINITIONS & NOTES

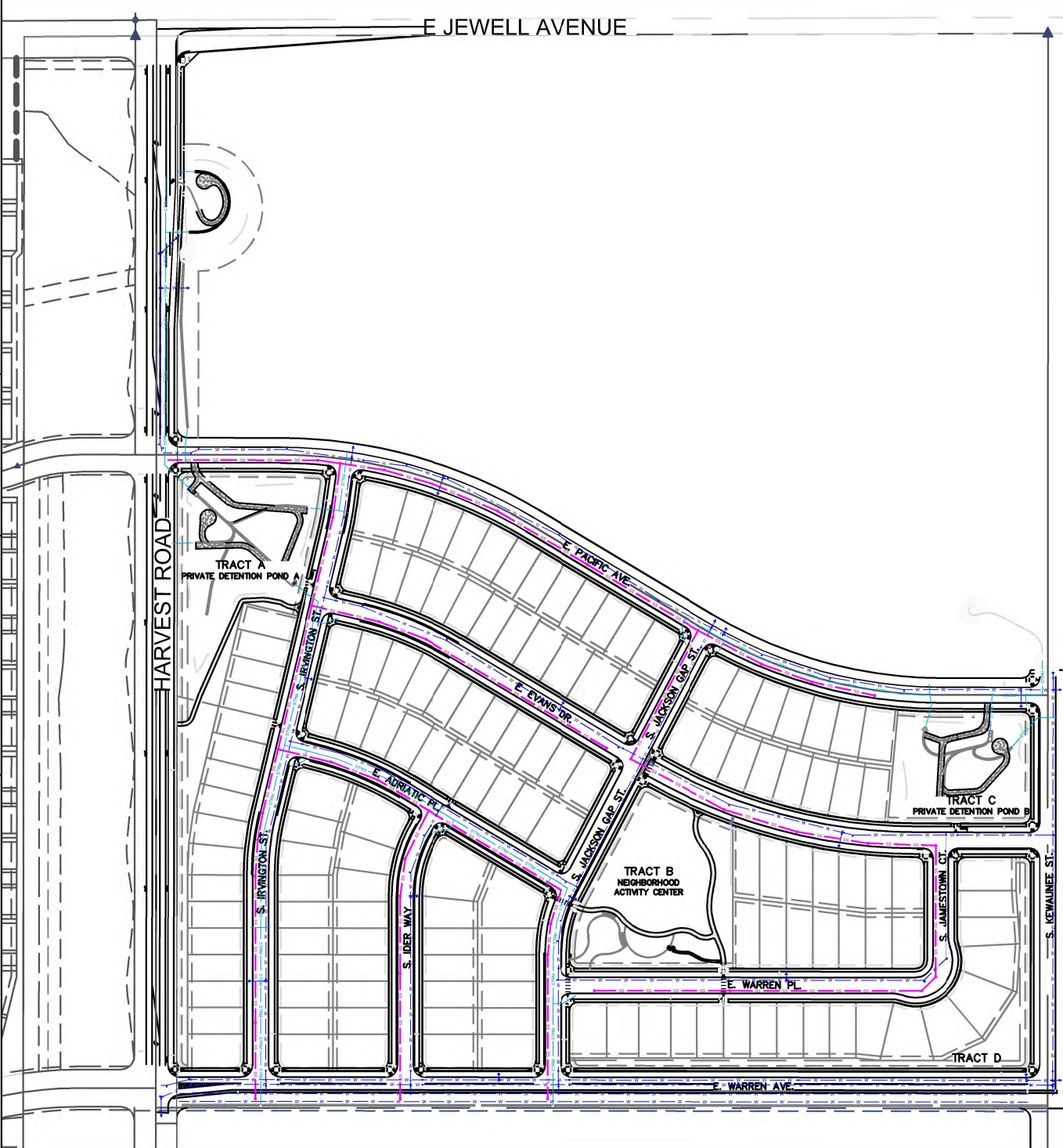
**HARD COSTS:** EXPENSES DIRECTLY RELATED TO THE PHYSICAL IMPROVEMENTS.

**SOFT COSTS:** DESIGN, TESTING, ENGINEERING, SURVEY, FEES/PERMITS, AND OTHER COSTS NECESSARY TO COMPLETE THE PHYSICAL IMPROVEMENTS

\*IMPROVEMENTS SHOWN ARE FOR VISUAL REPRESENTATION ONLY AND MAY NOT DEPICT THE AS-BUILT CONDITION. NOT FOR CONSTRUCTION\*

Harvest Crossing Metropolitan District No. 3 Cost Certification Category		
Category	Amount	Percent
Water	\$1,344,619.58	53.23%
Sanitary Sewer	\$179,097.10	7.09%
Storm Sewer	\$193,785.45	7.67%
Street	\$625,511.37	24.76%
Park & Rec	\$183,156.97	7.25%
Total	\$2,526,170.47	100.00%

Harvest Crossing Metropolitan District No. 4 Cost Certification Category		
Category	Amount	Percent
Water	\$0.00	0.00%
Sanitary Sewer	\$0.00	0.00%
Storm Sewer	\$0.00	0.00%
Street	\$0.00	0.00%
Park & Rec	\$0.00	0.00%
Total	\$0.00	0.00%





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# **Attachment B**

## **Vendors Participation**



# Attachment B

## Vendors Participation

Following is a summary of the contractors, consultants and vendors that performed work and services for the report.

**A.G. Wassenaar, Inc.** Geotechnical engineer who provided a pavement study, compaction testing, and concrete sampling services for Filing 1 of the Project. These services were provided for the overall site. Compaction testing was considered a District Eligible Expense at the District Site Percent.

**Alpine Civil Construction, Inc.** Contractor for the Filing 1 infrastructure whose work included flat work, paving, wet utilities, storm ponds, and dry utilities. The expenditures in this report pertained to storm sewer, sanitary sewer, and water systems and were considered District Eligible Expenses; however, expenditures that pertained to services were considered Non-Eligible Expenses.

**AzTec Consultants, Inc** Professional surveying firm who provided various surveying services for both the Harvest Crossing Road project and the Harvest Crossing Filing 1 project. Expenditures for the Harvest Crossing Road project were considered District Eligible Expenses and that eligible amount was split between District No. 3 and District No. 4. Expenditures for the earthwork for the Harvest Crossing filing 1 project were considered District Eligible Expenses at the District Site Percent. Expenditures related to water, sanitary sewer, and ROW were considered District Eligible Expenses. Re-staking and property corners were considered Non-Eligible Expenses.

**CMS Environmental Solutions, LLC.** Storm water management contractor for Filing 1 of the project who were responsible for obtaining permits and performing weekly inspections of the project. Expenditures generated by CMS Environmental Solutions were considered District Eligible Expenses at the Filing 1 District Site Percent.

**Monks Construction Company** Earthwork contractor for both Harvest Crossing Road and the Harvest Crossing Filing 1 project. Expenditures related to the Harvest Crossing Road project and the Harvest Crossing Filing 1 project were considered District Eligible Expenses. Expenditures for lot grading were considered Non-Eligible Expenditures.



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# Attachment C

## Expenditure Data



**Attachment C**  
**Harvest Crossing Metropolitan District Nos. 3 & 4**  
**Engineer's Summary for Cost Certification Report #10**

Invoice #	Invoice Date	Invoice Provided	Check #	Check Date	Description	Invoiced Amount	District Eligible Expenses	Non- Eligible Expenses	Notes
<b>Invoices to be Paid by the District</b>									
<b>A.G. Wassenaar, Inc.</b>									
INV024528	04/30/2024	Yes	HCMD No. 3	HCMD No. 3	Geotechnical Services	\$ 13,000.00	\$ 13,000.00	\$ -	Pavement Report
INV025694	05/23/2024	Yes	HCMD No. 3	HCMD No. 3	Geotechnical Services	\$ 12,297.00	\$ 7,509.05	\$ 4,787.95	Compaction testing eligible at Site Percent
<b>Subtotal A.G. Wassenaar, Inc.</b>						<b>\$ 25,297.00</b>	<b>\$ 20,509.05</b>	<b>\$ 4,787.95</b>	
<b>Alpine Civil Construction Inc.</b>									
2023-61.1, Pay app #1	02/29/2024	Yes	HCMD No. 3	HCMD No. 3	Concrete, Wet Utilities, and Paving	\$ 0.00	\$ (18,444.25)	\$ 18,444.25	Re-reviewed to remove Sanitary Services
2023-61.4, Pay App #4	05/23/2024	Yes	HCMD No. 3	HCMD No. 3	Water and Sanitary Sewer Installation	\$ 1,907,219.00	\$ 1,729,697.30	\$ 177,521.70	Services not eligible
<b>Subtotal Alpine Civil Construction Inc.</b>						<b>\$ 1,907,219.00</b>	<b>\$ 1,711,253.05</b>	<b>\$ 195,965.95</b>	
<b>AzTec Consultants, Inc</b>									
164338	05/24/2024	Yes	HCMD No. 3	HCMD No. 3	Surveying Consultant	\$ 10,852.00	\$ 9,252.00	\$ 1,600.00	
<b>Subtotal AzTec Consultants, Inc</b>						<b>\$ 10,852.00</b>	<b>\$ 9,252.00</b>	<b>\$ 1,600.00</b>	
<b>CMS Environmental Solutions, LLC.</b>									
169101	05/01/2024	Yes	HCMD No. 3	HCMD No. 3	Stormwater Inspection Services	\$ 625.00	\$ 325.17	\$ 299.83	Stormwater Inspection Eligible at Filing 1 Site Percent
<b>Subtotal CMS Environmental Solutions, LLC.</b>						<b>\$ 625.00</b>	<b>\$ 325.17</b>	<b>\$ 299.83</b>	
<b>Subtotal Invoices to be Paid by the District</b>						<b>\$ 1,943,993.00</b>	<b>\$ 1,741,339.27</b>	<b>\$ 202,653.73</b>	
<b>Invoices Paid by the Developer</b>									
<b>Monks Construction Company</b>									
CO20-#1	07/01/2024	Yes	Lien Waiver	Lien Waiver	Earthwork Contractor	\$ 784,831.20	\$ 784,831.20	\$ -	
<b>Subtotal Monks Construction Company</b>						<b>\$ 784,831.20</b>	<b>\$ 784,831.20</b>	<b>\$ -</b>	
<b>Subtotal Invoices Paid by the Developer</b>						<b>\$ 784,831.20</b>	<b>\$ 784,831.20</b>	<b>\$ -</b>	
<b>Total</b>						<b>\$ 2,728,824.20</b>	<b>\$ 2,526,170.47</b>	<b>\$ 202,653.73</b>	

"District Eligible Expenses" is the amount being recommended for reimbursement from the District  
 "Non Eligible Expenses" is the difference between the Invoiced Amount and the District Portion  
 These amounts do not include interest  
 Work that is both District and Non Eligible in nature was prorated at the Site % found below.  
 Eligible design consultant expenses were considered eligible at the Design % also found below.  
 HCR - Harvest Crossing Road



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# Attachment D

## Project Photos



## Harvest Crossing Metropolitan District Project Photos



North Portion of Site – Facing Northeast



South Portion of Site – Facing North



West Portion of Site – Facing West



East Portion of Site – Facing East



South Portion of Site – Facing Southwest



West Portion of Site – Facing West



West Portion of Site – Facing West



East Portion of Site – Facing East



**RESOLUTION NO. 2024-7-01**

**RESOLUTION TO AMEND BUDGET**

**RESOLUTION OF THE HARVEST CROSSING METROPOLITAN DISTRICT NO. 3  
TO AMEND THE 2023 BUDGET**

Pursuant to Section 29-1-109, C.R.S., the Board of Harvest Crossing Metropolitan District No. 3 (the “**District**”), hereby certifies that a special meeting of the Board of Directors of the District, was held on December 5, 2022, via video/teleconference.

A. At such meeting, the Board of Directors of the District adopted that certain Resolution No. 2022-12-01 to Adopt Budget appropriating funds for the fiscal year 2023 as follows:

General Fund	\$59,000
Debt Service Fund	\$11,192,624
Capital Projects Fund	\$11,191,623

B. The necessity has arisen for additional General Fund appropriation requiring the expenditure of funds in excess of those appropriated for the fiscal year 2023.

C. The source and amount of revenues for such expenditures, the purposes for which such revenues are being appropriated, and the fund(s) which shall make such supplemental expenditures are described on **Exhibit A**, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Harvest Crossing Metropolitan District No. 3 shall and hereby does amend the budget for the fiscal year 2023 as follows:

General Fund	\$80,000
--------------	----------

BE IT FURTHER RESOLVED, that such sums are hereby appropriated from unexpected revenues available to the District to the General Fund for the purposes stated.

**[SIGNATURE PAGE FOLLOWS]**



**[SIGNATURE PAGE TO RESOLUTION OF THE HARVEST CROSSING  
METROPOLITAN DISTRICT NO. 3 TO AMEND THE 2023 BUDGET]**

RESOLUTION APPROVED AND ADOPTED on July 18, 2024.

**HARVEST CROSSING METROPOLITAN  
DISTRICT NO. 3**

By: \_\_\_\_\_  
President

Attest:

By: \_\_\_\_\_  
Secretary



## **EXHIBIT A**

Original and Amended Budget Appropriations



## EXHIBIT A

## HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

GENERAL FUND  
2023 Amended Budget  
with 2023 Adopted Budget

	2023 Adopted Budget	2023 Amended Budget
BEGINNING FUND BALANCE	\$ 3,779	\$ 11,538
<b>REVENUE</b>		
Property Taxes	37	37
<b>Total Revenue</b>	37	37
<b>Total Funds Available</b>	3,816	11,575
<b>EXPENDITURES</b>		
Audit	5,500	5,500
Election Costs	1,200	1,200
Insurance/SDA Dues	6,000	6,000
Accounting	9,000	17,000
Legal	15,000	31,000
District Management	16,300	16,300
Miscellaneous	3,000	3,000
Contingency	3,000	-
<b>Total Expenditures</b>	59,000	80,000
<b>Transfers and Other Sources (Uses)</b>		
Emergency Reserve	(1)	-
Developer Advances	60,000	94,000
<b>Total Transfers and Other Sources (Uses)</b>	59,999	94,000
<b>Total Expenditures Requiring Appropriation</b>	58,999	80,000
<b>ENDING FUND BALANCE</b>	\$ 4,815	\$ 25,575



**HARVEST CROSSING  
METROPOLITAN DISTRICT NO. 3**

**ARAPAHOE COUNTY, COLORADO**

**ANNUAL FINANCIAL REPORT  
AND SUPPLEMENTAL INFORMATION  
FOR THE  
YEAR ENDED DECEMBER 31, 2023**



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

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## **ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED DECEMBER 31, 2023**

### **TABLE OF CONTENTS**

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<b>INTRODUCTION</b>	<b>Page</b>
District Officials	iii
 <b>FINANCIAL SECTION</b>	
Independent Auditors' Report	1-3
 <b>Basic Financial Statements</b>	
Government-wide Financial Statements	
- Statement of Net Position	4
- Statement of Activities	5
Fund Financial Statements	
- Balance Sheet – Governmental Funds	6-7
- Statement of Revenues, Expenditures and Changes in Fund Balances – Governmental Funds	8-9
- General Fund – Statement of Revenues, Expenditures, and Changes in Fund Balances – Budget and Actual	10
- Notes to the Financial Statements	11-22
 <b>Supplemental Information</b>	
Debt Service Fund - Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual	23
Capital Project Fund - Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual	24



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## ROSTER OF DISTRICT OFFICIALS DECEMBER 31, 2023

### BOARD OF DIRECTORS

Jerry Richmond.....President  
Aaron Clutter .....Treasurer  
Kurtis Williams.....Asst. Secretary  
Eric Lee.....Asst. Secretary

### DISTRICT MANAGER/SECRETARY

David Solin  
Special District Management Services, Inc.

### ATTORNEY

Paula Williams, Esq.  
McGeady Becher P.C.



**SCOTT C. WRIGHT**  
**CERTIFIED PUBLIC ACCOUNTANT**

9591 Mint Lane  
Salida, CO 81201  
scottwright.cpa@icloud.com  
(970) 471-9091

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**INDEPENDENT AUDITOR'S REPORT**

Board of Directors  
Harvest Crossing Metropolitan District No. 3  
Arapahoe County, Colorado

**Report on the Audit of the Financial Statements**

***Opinions***

I have audited the accompanying financial statements of the governmental activities and each major fund of Harvest Crossing Metropolitan District No. 3 as of and for the year ended December 31, 2023, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

In my opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of Harvest Crossing Metropolitan District No. 3 as of December 31, 2023, and the changes in financial position and the respective budgetary comparison for the General Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

***Basis for Opinions***

I conducted my audit in accordance with auditing standards generally accepted in the United States of America. My responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of my report. I am required to be independent of Harvest Crossing Metropolitan District No. 3 and to meet my other ethical responsibilities, in accordance with the relevant ethical requirements relating to my audit. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.



In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Harvest Crossing Metropolitan District No. 3's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### ***Auditor's Responsibilities for the Audit of the Financial Statements***

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, I:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Harvest Crossing Metropolitan District No. 3's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in my judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Harvest Crossing Metropolitan District No. 3's ability to continue as a going concern for a reasonable period of time.

I am required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that I identified during the audit.

### ***Required Supplementary Information***

Management has omitted management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate



operational, economic, or historical context. My opinion on the basic financial statements is not affected by this missing information.

### ***Supplementary Information***

My audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise Harvest Crossing Metropolitan District No. 3's basic financial statements. The supplementary budget comparison schedule identified in the table of contents is presented to supplement the basic financial statements and is presented for purposes of additional analysis and is not a required part of the basic financial statements.

Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In my opinion, the supplementary information is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

*Scott Wright*

Salida, Colorado  
June 29, 2024



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## STATEMENT OF NET POSITION DECEMBER 31, 2023

	Governmental Activities
<b>ASSETS</b>	
Cash and Cash Equivalents	\$ 12,754
Receivables	192
Due from Other Local Governments	25,968
Prepaid Expenses	3,120
Restricted Assets - Cash and Cash Equivalents	11,680,630
Capital Assets Not Being Depreciated	1,009,925
<b>Total Assets</b>	<b>12,732,589</b>
<b>LIABILITIES</b>	
Accounts Payable	37,735
Due to Other Local Governments	77,718
Accrued Interest Payable	1,449,744
Noncurrent Liabilities:	
Due Within One Year	-
Due In More Than One Year	12,581,394
<b>Total Liabilities</b>	<b>14,146,591</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>	
Deferred Revenue - Property Taxes	192
<b>NET POSITION</b>	
Net Investment in Capital Assets	(11,571,469)
Restricted For:	
Emergencies	11,389
Public Improvements	11,680,630
Unrestricted (Deficit)	(1,534,744)
<b>Total Net Position (Deficit)</b>	<b>\$ (1,414,194)</b>

The accompanying notes are an integral part of the financial statements.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## STATEMENT OF ACTIVITIES FOR THE YEAR ENDED DECEMBER 31, 2023

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	
<b>Governmental Activities:</b>					
General Government	\$ 75,692	\$ -	\$ -	\$ -	\$ (75,692)
Interest and Related Costs on Long-term Debt	<u>752,777</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(752,777)</u>
<b>Total Governmental Activities</b>	<u>\$ 828,469</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>(828,469)</u>
General Revenues:					
Property Taxes					264
Investment Earnings					575,429
Miscellaneous					<u>135</u>
<b>Total General Revenues</b>					<u>575,828</u>
<b>Increase (Decrease) in Net Position</b>					(252,641)
<b>Net Position (Deficit) - Beginning of Year</b>					<u>(1,161,553)</u>
<b>Net Position (Deficit) - End of Year</b>					<u>\$ (1,414,194)</u>

The accompanying notes are an integral part of the financial statements.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## BALANCE SHEET GOVERNMENTAL FUNDS DECEMBER 31, 2023

	General Fund	Debt Service Fund	Capital Projects Fund	Total
<b>ASSETS</b>				
Cash and Cash Equivalents	\$ 17,862	\$ 454	\$ -	\$ 18,316
Due From Other Local Governments	19,068	6,000	900	25,968
Property Taxes Receivable	30	162	-	192
Prepaid Expenses	1,248	-	1,872	3,120
Restricted Assets - Cash and Cash Equivalents	-	-	11,680,630	11,680,630
<b>Total Assets</b>	<u>\$ 38,208</u>	<u>\$ 6,616</u>	<u>\$ 11,683,402</u>	<u>\$ 11,728,226</u>
<b>LIABILITIES AND FUND BALANCES</b>				
Accounts Payable	\$ 8,431	\$ -	\$ 34,866	\$ 43,297
Due to Other Local Governments	-	-	77,718	77,718
Accrued Interest Payable	-	1,393,103	-	1,393,103
<b>Total Liabilities</b>	<u>8,431</u>	<u>1,393,103</u>	<u>112,584</u>	<u>1,514,118</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>				
Unavailable Revenue - Property Taxes	30	162	-	192
<b>Total Deferred Inflows of Resources</b>	<u>30</u>	<u>162</u>	<u>-</u>	<u>192</u>
<b>FUND BALANCES (DEFICITS)</b>				
Restricted For:				
TABOR Emergency Reserve	11,389	-	-	11,389
Public Improvements	-	-	11,680,630	11,680,630
Unassigned (Deficit)	18,358	(1,386,649)	(109,812)	(1,478,103)
<b>Total Fund Balances</b>	<u>29,747</u>	<u>(1,386,649)</u>	<u>11,570,818</u>	<u>10,213,916</u>
<b>Total Liabilities, Deferred Inflows of Resources, and Fund Balances</b>	<u>\$ 38,208</u>	<u>\$ 6,616</u>	<u>\$ 11,683,402</u>	<u>\$ 11,728,226</u>

The accompanying notes are an integral part of the financial statements.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

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## **RECONCILIATION OF THE BALANCE SHEET OF GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION DECEMBER 31, 2023**

---

	<u>Total</u>
Total Fund Balances - Governmental Fund	<u>\$ 10,213,916</u>
<i>Amounts reported for governmental activities in the statement of net position are different because:</i>	
Capital Assets used in governmental activities are not financial resources and therefore are not reported as an asset in the governmental funds.	
- Construction in Progress	<u>1,009,925</u>
Some liabilities, including bonds, notes and leases payable, and compensated absences are not due and payable in the current period and therefore are not reported as liabilities in the governmental funds.	
- Series 2021A(3) Bonds Payable	(12,358,000)
- Developer Advances	<u>(223,394)</u>
	<u>(12,581,394)</u>
Accrued interest payable that is not due and payable in the current period is not reported as a liability in the governmental funds.	
- Series 2021A(3) Bonds Payable	<u>(56,641)</u>
<b>Net Position of Governmental Activities</b>	<u><u>\$ (1,414,194)</u></u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCES GOVERNMENTAL FUNDS FOR THE YEAR ENDED DECEMBER 31, 2023

	General Fund	Debt Service Fund	Capital Projects Fund	Total
<b>Revenues</b>				
Taxes:				
General Property Taxes	\$ 41	\$ 206	\$ -	\$ 247
Specific Ownership Tax	3	14	-	17
Investment Earnings	-	-	575,429	575,429
Developer Advances	93,854	-	9,965	103,819
Miscellaneous	-	135	-	135
<b>Total Revenues</b>	<b>93,898</b>	<b>355</b>	<b>585,394</b>	<b>679,647</b>
<b>Expenditures</b>				
Current:				
General and Administrative	75,689	3	-	75,692
Capital Improvements	-	-	142,119	142,119
Debt Service:				
Interest	-	725,354	-	725,354
Fiscal Charges	-	-	27,423	27,423
<b>Total Expenditures</b>	<b>75,689</b>	<b>725,357</b>	<b>169,542</b>	<b>970,588</b>
<b>Net Change in Fund Balances</b>	<b>18,209</b>	<b>(725,002)</b>	<b>415,852</b>	<b>(290,941)</b>
<b>Fund Balances (Deficit), Beginning of Year</b>	<b>11,538</b>	<b>(661,647)</b>	<b>11,154,966</b>	<b>10,504,857</b>
<b>Fund Balances (Deficit), End of Year</b>	<b>\$ 29,747</b>	<b>\$ (1,386,649)</b>	<b>\$ 11,570,818</b>	<b>\$ 10,213,916</b>

The accompanying notes are an integral part of the financial statements.



## **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

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### **RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES FOR THE YEAR ENDED DECEMBER 31, 2023**

---

	<u>Total</u>
Net change in fund balances - Total Governmental Funds	<u>\$ (290,941)</u>
<i>Amounts reported for governmental activities in the statement of activities are different because:</i>	
Governmental funds report capital outlays as expenditures. However, for governmental activities, those capital outlays other than noncapitalizable items are shown in the Statement of Activities and the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense.	
- Construction in Progress	<u>142,119</u>
Developer advances provide current financial resources to governmental funds. However, developer advances are reported as long-term liabilities in the Statement of Net Position.	<u>(103,819)</u>
<b>Change in Net Position of Governmental Funds</b>	<u><u>\$ (252,641)</u></u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## GENERAL FUND

### STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES (BUDGETARY BASIS) - BUDGET AND ACTUAL FOR THE YEAR ENDED DECEMBER 31, 2023

	Budgeted Amounts Original and Final	Actual Amounts	Variance with Final Budget - Positive (Negative)
<b>Revenues</b>			
Taxes:			
General Property Taxes	\$ 37	\$ 37	\$ -
ARI Mill Levy	-	4	4
Specific Ownership Tax	-	3	3
Developer Advances	60,000	93,854	33,854
<b>Total Revenues</b>	60,037	93,898	33,861
<b>Expenditures</b>			
Current:			
Audit	5,500	2,700	2,800
Election Costs	1,200	1,294	(94)
Insurance / SDA Dues	6,000	6,811	(811)
Accounting	9,000	17,298	(8,298)
Legal	15,000	31,356	(16,356)
District Management	16,300	13,421	2,879
Miscellaneous	3,000	2,809	191
Emergency Reserve	1	-	1
Contingency	3,000	-	3,000
<b>Total Expenditures</b>	59,001	75,689	(16,688)
<b>Net Change in Fund Balances</b>	1,036	18,209	17,173
<b>Fund Balances, Beginning of Year</b>	3,779	11,538	7,759
<b>Fund Balances, End of year</b>	\$ 4,815	\$ 29,747	\$ 24,932

The accompanying notes are an integral part of the financial statements.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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The financial statements of Harvest Crossing Metropolitan District No. 3 (District) have been prepared in conformity with generally accepted accounting principles (GAAP) generally accepted in the United States of America as applied to governmental entities. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting board for establishing governmental accounting and financial reporting principles. The following notes are an integral part of the District's financial statements.

### **Note 1. Summary of Significant Accounting Policies**

#### **A. Financial Reporting Entity**

As required by GAAP, these financial statements present the activities of Harvest Crossing Metropolitan District No. 3, i.e., the primary government. The District does not have any component units for which the District is considered financially accountable, nor is the District a component unit of any other primary governmental entity.

*Primary Government.* The District, a quasi-municipal corporation and a political subdivision of the State of Colorado, was organized by order and decree of the District Court of Arapahoe County, Colorado, on February 13, 2007, and is governed pursuant to provisions of the Colorado Special District Act (Title 32, Article 1, Colorado Revised Statutes). The District was originally organized under the name Villages at Murphy Creek Metropolitan District No. 1, which was inactive beginning December 15, 2010 through March 31, 2021. On January 20, 2022, an Order Granting Petition for Name Change was recorded in Arapahoe County changing the District's name in order to represent the District's development plan more accurately. The District was established to furnish certain public facilities and services, including, but not limited to, streets, limited water, limited sanitation, parks and recreation, traffic and safety control, transportation, mosquito control, safety protection, security, limited fire protection and television relay and translation improvements that benefit the citizens of the District. The District's primary revenues are property taxes. The District is governed by an elected Board of Directors. The District has no employees, and all operations and administrative functions are contracted. The more significant accounting policies of the District are described as follows:

#### **B. Government-wide and Fund Financial Statements**

*Government-wide Financial Statements.* The government-wide financial statements (i.e. the Statement of Net Position and the Statement of Activities) report information on all non-fiduciary activities of the District. The Statement of Activities demonstrates the degree to which the direct expenses of a given function or business segment are offset by program revenues and helps identify the extent to which each is self-financing or draws from the general revenues of the District. Direct expenses are those that are clearly identifiable with a specific function or business segment. Program revenues include (1) charges to customers who purchase, use, or directly benefit from goods, services, or privileges provided by a given function and, (2) grants and contributions that are restricted to meeting the operational or



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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capital requirements of a particular function or business segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

*Fund Financial Statements.* Fund financial statements report detailed information about the District with the focus on major funds rather than on reporting funds by type. Separate financial statements are provided for governmental funds. The District has no proprietary or fiduciary funds. Individual governmental funds are reported as separate columns in the fund financial statements.

### **C. Measurement Focus, Basis of Accounting and Financial Statement Presentation**

*Measurement Focus and Basis of Accounting.* The government-wide financial statements have been prepared using the economic resources measurement focus and the accrual basis of accounting. Revenues are recognized when earned and expenses are recognized when the liability is incurred regardless of the timing of related cash flows.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenue is recorded when susceptible to accrual, i.e., both measurable and available. Available means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period (60 days). The major sources of revenue which are susceptible to accrual are property taxes. All other revenue items are considered to be measurable and available only when cash is received by the District. Expenditures generally are recorded when the liability is incurred, as under full accrual accounting. However, debt service expenditures, as well as expenditures related to claims and judgments, are recorded only when payment is due.

*Financial Statement Presentation – Fund Accounting.* A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts which are segregated for the purpose of accounting for specific activities. The District uses funds to report results of operations and financial position, and demonstrate compliance with legal, contractual, and regulatory requirements.

The District reports the following major governmental funds:

- *General Fund* - This is the District's primary operating fund. It is used to account for all activities of the District not required to be accounted for in another fund.
- *Debt Service Fund* - This fund is used to account for the resources accumulated and payments made for principal and interest on long-term general obligation debt of the governmental funds.
- *Capital Project Fund* – This fund is used to account for the acquisition and/or construction of major capital facilities and infrastructure.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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### D. Deferred Outflows / Inflows of Resources

In addition to assets, the statement of net position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents the consumption of net position that applies to a future period(s) that will not be recognized as an outflow of the resources (expenditure) until the future period. At the end of the current fiscal year, the District did not have any items that qualify for reporting in this category.

In addition to liabilities, the statement of net position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The District has one item that qualifies for reporting in this category – deferred property tax revenues.

The governmental funds also reported deferred inflows of resources representing unavailable property tax revenues.

Deferred outflows of resources are presented below the total assets on the government-wide and governmental fund statements. Deferred inflows of resources are presented below the total liabilities on the government-wide and governmental fund statements.

### E. Cash, Cash Equivalents, and Investments

The District follows the practice of pooling cash and investments of all funds to maximize investment earnings. Except when required by trust or other agreements, all cash is deposited to and disbursed from a single bank account. Cash and cash equivalents include amounts in demand deposits as well as short-term investments with a maturity date within 3 months of the date acquired by the Town. Colorado State Statutes authorize the District to invest its excess funds in direct U.S. Government treasury and agency securities, bonds and other obligations of states and political subdivisions, corporate bonds, and local government investment pools. Investments are stated at fair value.

### F. Long-term Obligations

In the government-wide Statement of Net Position long-term debt and other long-term obligations are reported as liabilities. Bond premiums and discounts are deferred and amortized over the life of the bonds using the interest method. Bonds payable are reported net of the applicable bond premium or discount.

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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Issuance costs, whether or not withheld from the actual debt proceeds are reported as debt service expenditures.

### **G. Fund Balance / Net Position**

The District utilizes the fund balance presentation as required under GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. Fund balances are categorized as nonspendable, restricted, committed, assigned or unassigned. These fund balance classifications describe the relative strength of the spending constraints placed on the purposes for which resources can be used:

- Nonspendable fund balance – amounts that are not in a spendable form (such as inventory or prepaid/deferred charges) or are legally or contractually required to be maintained intact;
- Restricted fund balance – amounts constrained to specific purposes by their providers (such as grantors, bondholders, and higher levels of government), through constitutional provisions, or by enabling legislation;
- Committed fund balance – amounts constrained to specific purposes by a government itself, using its highest level of decision-making authority; to be reported as committed, amounts cannot be used for any other purpose unless the government takes the same highest-level action to remove or change the constraint;
- Assigned fund balance – amounts a government intends to use for a specific purpose but is neither restricted nor committed; intent can be expressed by the governing body or an official or body to which the governing body delegates the authority;
- Unassigned fund balance – amounts that do not meet any other of the above criteria and are available for any purpose; positive amounts are reported only in the general fund.

The District establishes (and modifies or rescinds) fund balance commitments by passage of a resolution. This is typically done through adoption and amendment of the budget. A fund balance commitment is further indicated in the budget document as a designation or commitment of the fund. Assigned fund balance is established by the Board of Directors through adoption or amendment of the budget as intended for specific purposes (such as the purchase of capital assets, construction, debt service, or other purposes).

When fund balance resources are available for a specific purpose in more than one classification, it is the District's policy to use the most restrictive funds first in the following order: restricted, committed, assigned, and unassigned as they are needed. The District considers all unassigned fund balances to be "reserves" for future operations or capital replacement as defined within Article X, Section 20 of the Constitution of the State of Colorado (see Note 6).

### **H. Budgetary Information**

Budgets are adopted on a basis consistent with GAAP for all funds. According to Local Government Budget Law, the legal level of appropriations is at the total fund expenditures



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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level and lapse at year-end. During the year, the District's Board of Directors can modify the budget by line item within a fund's total appropriation without notification.

Upon meeting notification and publication requirements, supplemental amendments increasing appropriations may be passed by resolution of the Board of Directors. Budgeted amounts reported in the accompanying financial statements are as originally adopted and as amended by the Board of Directors.

### I. Property Taxes

Property taxes are levied by the District's Board of Directors. The levy is based on assessed valuations determined by the County Assessor generally as of January 1 of each year. The levy is normally set by December 15<sup>th</sup> by certification to the County Commissioners to put the tax lien on the individual properties as of January 1<sup>st</sup> of the following year. The County Treasurer collects the determined taxes during the ensuing calendar year. The taxes are payable by April or if in equal installments, at the taxpayer's election, in February and June. Delinquent taxpayers are notified in August and, generally, sale of the tax liens on delinquent properties are held in November or December. The County Treasurer remits the taxes collected monthly to the District. Property taxes, net of estimated uncollectible taxes, are recorded initially as deferred inflow of resources in the year they are levied and measurable. The unearned property tax revenues are recorded as revenue in the year they are available or collected.

### Note 2. Deposits and Investments

Cash and investments as of December 31, 2023, are classified in the accompanying financial statements as follows:

Cash and Cash Equivalents	\$ 12,754
Restricted Assets- Cash and Cash Equivalents	<u>11,680,630</u>
Total	<u>\$ 11,693,384</u>

Cash and investments as of December 31, 2023, consist of the following:

Deposits With Financial Institutions	\$ 12,754
Title Company Escrow Deposits	1,075,570
Deposits With Corporate Trust Institutions	<u>10,605,060</u>
Total	<u>\$ 11,693,384</u>

### Deposits

*Custodial Credit Risk.* Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the District would not be able to recover its deposits or would not be able to recover collateral securities that are in the possession of an outside party.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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The District's deposits with depository financial institutions are entirely covered by federal depository insurance (FDIC) or by collateral held under Colorado's Public Deposit Protection Act (PDPA). The FDIC insures the first \$250,000 of the District's deposits at each financial institution. Deposit balances over \$250,000 are collateralized as required by PDPA. PDPA requires that cash be deposited in eligible public depositories and that deposits in excess of federal insurance levels must be collateralized. The eligible collateral is determined by the PDPA. PDPA allows the institution to create a single collateral pool for all public funds with the District being a named participant in the single institution collateral pool. The minimum pledging requirement is 102% of the uninsured deposits. The Colorado State Banking Board verifies the market value at least monthly. Bank assets (usually securities) are required by PDPA to be delivered to a third-party institution for safekeeping and pledged to the Colorado Division of Banking. Based on the above, the Colorado State Auditor has concluded that there is no custodial risk for public deposits collateralized under PDPA.

In addition to deposits with depository financial institutions, other District deposits held at December 31, 2023, consisted of bond proceeds held with UMB Bank (UMB), a corporate bond trustee, and an escrow deposit with Land Title Guaranty Company pursuant to an Offsite Improvement and Escrow Agreement. A corporate bond trustee is a financial institution that is granted trust powers, such as a commercial bank or trust company. This entity, in turn, has a duty to the bond issuer to enforce the terms of a bond indenture. A trustee sees that bond interest payments and principal repayments are made as scheduled and protects the interests of the bondholders if the issuer defaults. UMB is a nationally recognized and ranked provider of corporate trust and escrow services.

### **Local Government Investment Pools**

Local government investment pools are trusts established for local government entities in Colorado to pool surplus funds. The State Securities Commissioner administers and enforces all State statutes governing the trusts. A designated custodial bank serves as custodian pursuant to a custodian agreement. The custodian acts as safekeeping agent for the trusts' investment portfolios and provides services as the depository in connection with direct investments and withdrawals. The custodian's internal records segregate investments owned by the trusts. The District participates in UMB's Corporate Trust FDIC Sweep program whereby the District has instructed UMB to nightly sweep its assets on deposit into the Colorado Local Government Liquid Asset Trust's COLOTRUST PLUS+ fund omnibus account. The PLUS+ fund may invest in U.S. Treasury securities and repurchase agreements collateralized by U.S. Treasury securities as well as in certain obligations of U.S. government agencies, highest rated commercial paper and repurchase agreements collateralized by certain obligations of U.S. government agencies. The PLUS+ fund is a stable \$1.00 net asset value (NAV) fund that offers daily liquidity.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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### Investments

*Credit Risk.* Colorado State Statutes specify investment instruments meeting defined rating and risk criteria in which local government entities may invest. These investments include local government investment pools and certain obligations of the United States government. State law limits investments in commercial paper, corporate bonds, and money market mutual funds to the top two ratings issued by nationally recognized statistical rating organizations. The District has no investment policy that would further limit its investment choices. Additionally, the District is not subject to concentration risk or investment custodial risk disclosure requirements for investments that are in the possession of another party.

*Interest Rate Risk.* The District does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

*Concentration of Credit Risk.* The District places no limit on the amount it may invest in any one issuer.

*Fair Value of Investments.* The District measures and records its investments using fair value measurement guidelines established by generally accepted accounting principles. These guidelines recognize a three-tiered fair value hierarchy, as follows:

- Level 1: Quoted prices for identical investments in active markets;
- Level 2: Observable inputs other than quoted market prices; and,
- Level 3: Unobservable inputs.

At December 31, 2023, the District had no investments measured at fair value and there were no unrealized losses reflective of changes in the fair market value of investments.

### Note 3. Legal Compliance – Budgets

No later than October 15, the District Manager submits to the Board of Directors a proposed budget for the calendar year commencing the following January 1. The budget is prepared by fund and line item and includes information on the prior year, current year estimates and requested appropriations and estimated revenues for the upcoming year.

The Board of Directors holds public hearings and must adopt the budget by resolution prior to December 15. Once adopted, the Board may at any time, by resolution, amend the budget. The District had no supplemental appropriations during the year ended December 31, 2023.

Expenditures may not legally exceed budgeted appropriations at the fund level. Budgetary comparisons in the accompanying required supplemental information are presented with a higher level of detail than legally required in order to facilitate closer financial analysis. General Fund and Debt Service Fund expenditures exceeded budgeted appropriations during 2023 which may be a violation of Colorado Budget Law.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

### Note 4. Capital Assets

Capital asset activity for the year ended December 31, 2023, was as follows:

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
<b>Governmental Activities:</b>				
Capital Assets, Not Being Depreciated:				
Construction in Progress	\$ 867,806	\$ 142,119	\$ -	\$ 1,009,925
Total Capital Assets, Not Being Depreciated	<u>867,806</u>	<u>142,119</u>	<u>-</u>	<u>1,009,925</u>
Governmental Activities Capital Assets, Net	<u>\$ 867,806</u>	<u>\$ 142,119</u>	<u>\$ -</u>	<u>\$ 1,009,925</u>

No depreciation expense was charged in the Statement of Activities for the year ended December 31, 2023.

### Note 5. Long-term Debt

*General Obligation Bonds.* On December 9, 2021, the District issued its Series 2021A(3) Limited Tax General Obligation Bonds (2021A(3) Bonds), totaling \$12,358,000 with an interest rate of 5.50%. The 2021A(3) Bonds were issued to finance or reimburse a portion of the costs of designing, acquiring, constructing, and installing certain public infrastructure improvements within the District and paying the costs of issuing the bonds. The 2021A(3) Bonds are secured by and payable from Pledged Revenue as defined by the Indenture of Trust to mean: (a) the Required Mill Levy, net of fees of the County Treasurer and any tax refunds or abatements authorized by or on behalf of the County; (b) the portion of the Specific Ownership Tax which is collected as a result of imposition of the Required Mill Levy; and (c) any other legally available moneys which the District determines, in its absolute discretion, to transfer to the Trustee for application as Pledged Revenue. General obligation bonds currently outstanding at December 31, 2023, are as follows:

<u>Purpose</u>	<u>Interest Rate</u>	<u>Amount</u>
General Government – Public Improvements	5.50%	<u>\$12,358,000</u>

Annual debt service requirements to maturity for general obligation bonds outstanding at December 31, 2023, are as follows:



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

Year Ending

<u>December 31</u>	<u>Principal</u>	<u>Interest</u>
2024	\$ -	\$ 679,690
2025	-	679,690
2026	-	679,690
2027	-	679,690
2028	-	679,690
2029-2033	-	3,398,450
2034-2038	-	3,398,450
2039-2043	-	3,398,450
2044-2048	-	3,398,450
2049-2051	<u>12,358,000</u>	<u>839,070</u>
Total	<u>\$ 12,358,000</u>	<u>\$17,831,320</u>

*Unpaid Debt Service.* The Series 2021A(3) Bonds were issued as “cash-flow” bonds, meaning that the general obligation bonds contain no scheduled principal payments prior to the final maturity date. Principal payments on the 2021A(3) Bonds are payable from, and solely to the extent of, Pledged Revenue, if any, remaining after the annual interest payment due on the 2021A(3) Bonds. Interest is payable on December 1 each year to the extent of Pledged Revenue is available therefor, commencing December 1, 2022. To the extent interest is not paid when due, such interest is compounding at the rate of 5.50% on each interest payment date. Remaining insufficiencies as of December 31, 2023 on the Series 2021A(3) Bonds are as follows:

<u>Application</u>	<u>Series 2021A(3) Bonds</u>	<u>Compound Interest</u>
December 1, 2022 Unpaid Interest	\$ 664,586	\$ -
December 1, 2023 Unpaid Interest	<u>679,690</u>	<u>36,552</u>
Total	<u>\$ 1,344,276</u>	<u>\$ 36,552</u>

*Developer Advances.* As discussed in Note 7 below, the District has entered into an Operations Funding Agreement with Jewell Developers whereby Jewell agreed to advance funds necessary to fund the District’s operations, maintenance, and administrative expenses on a periodic basis as needed. Such advances from the date of deposit into the District’s account will accrue simple interest at the rate of 5.5% per annum. At December 31, 2023, the District had a balance of \$223,394 in developer advances payable. Accrued interest on developer advances as of December 31, 2023 are as follows:

<u>Application</u>	<u>Developer Advances</u>
December 31, 2022 Accrued and Unpaid Interest	\$ 3,164
December 31, 2023 Accrued and Unpaid Interest	<u>9,111</u>
Total	<u>\$ 12,275</u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

*Optional Redemption.* The 2021A(3) Bonds are subject to redemption prior to maturity, at the option of the District, as a whole or in integral multiples of \$1,000, in any order of maturity and in whole or partial maturities, on December 1, 2026, and on any date thereafter, upon payment of par plus accrued interest thereon and a redemption premium equal to a percentage of the principal amount so redeemed, as follows:

Date of Redemption	Redemption Premium
December 1, 2026, to November 30, 2027	3.00%
December 1, 2027, to November 30, 2028	2.00%
December 1, 2028, to November 30, 2029	1.00%
December 1, 2029, and thereafter	0.00%

Notwithstanding any other provision provided in the indenture of Trust or the Pledge Agreement, the District shall not be required to impose the required mill levy for payment of the bonds after December, 2060 (for collection in 2061). In the event that any amount of principal of or interest on the 2021A(3) Bonds remains unpaid after the application of all Pledged Revenue available therefor on December 1, 2061, the 2021A(3) Bonds shall be deemed discharged.

*Authorized Debt.* At an election held on November 7, 2006, a majority of the qualified electors of the District authorized the issuance of general obligation indebtedness in an amount not to exceed \$70,000,000 for providing public improvements. As of December 31, 2021, \$57,642,000 of the Service Debt Authorization remains. In the future, the District may issue a portion or all of the remaining authorized but unissued general obligation debt for purposes of providing additional public improvements within the District's service area, if needed.

*Changes in Long-term Liabilities.* Long-term liability activity for the year ended December 31, 2023, was as follows:

	Beginning Balance	Additions	Deletions	Ending Balance	Due Within One Year
<i>Bonds Payable:</i>					
Series 2021A(3) GO Bonds	\$ 12,358,000	\$ -	\$ -	\$ 12,358,000	\$ -
<i>Developer Advances</i>					
Operations Funding Agreement	<u>119,575</u>	<u>103,819</u>	<u>-</u>	<u>223,394</u>	<u>-</u>
Total Long-term Liabilities	<u>\$ 12,477,575</u>	<u>\$ 103,819</u>	<u>\$ -</u>	<u>\$ 12,581,394</u>	<u>\$ -</u>

### Note 6. Risk Management

The District is exposed to various risks of loss related to torts; thefts of, damage to, or destruction of assets; errors or omissions; injuries to employees; or acts of God. The District maintains commercial insurance for significant insurable risks. The District is a member of the Colorado Special Districts Property and Liability Pool (Pool). The Pool is an organization created by intergovernmental agreement to provide property, liability, public officials' liability, boiler and machinery, and workers' compensation coverage to its members. Settled claims have not exceeded this coverage in any of the past three fiscal years.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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The District pays annual premiums to the Pool for liability, property, and public officials' liability coverage. In the event aggregated losses incurred by the Pool exceed amounts recoverable from reinsurance contracts and funds accumulated by the Pool, the Pool may require additional contributions from the Pool members. Any excess funds which the Pool determines are not needed for purposes of the Pool may be returned to the members pursuant to a distribution formula.

### **Note 7. Commitments, Contingencies and Agreements**

*Facilities Acquisition Agreement.* On November 17, 2008, effective as of August 5, 2008, the District and Harvest & Jewell LLC (Owner) entered into a Facilities Funding and Acquisition Agreement (Original FFAA) whereby the Owner agreed to advance funds to the District for construction related expenses and/or the District to acquire public improvements from the Owner upon completion. On November 8, 2021, the Owner requested that the Original FFAA be terminated, and any prior advances made thereunder be payable instead under the terms of a new Facilities Funding and Acquisition Agreement (New FFAA) to be entered into by and among the District, Owner, and Jewell Developers (Jewell). The New FFAA was entered into by the parties on November 8, 2021.

The New FFAA contemplated that Jewell would construct the public improvements and/or make advances to the District. However, any reimbursement would be made to Owner under the New FFAA. Any amounts incurred under the New FFAA accrue interest at a rate of eight percent (8%) per annum until paid. As of December 31, 2023, no amounts were payable by the District under the New FFAA.

*Operation Funding Agreement and First Amendment.* On March 31, 2021, the District and Jewell entered into an Operation Funding Agreement (OFA) whereby Jewell agreed to advance funds necessary to fund the District's operations, maintenance, and administrative expenses on a periodic basis as needed for the fiscal years 2021 through 2022 up to a shortfall amount of \$100,000. Such advances from the date of deposit into the District's account will accrue simple interest at the rate of 5.5% per annum. The obligation of the District to reimburse Jewell expires on December 31, 2062. Any amount of principal and interest owed on or before December 31, 2062, shall be deemed to be forever discharged and satisfied in full. The OFA was subsequently amended on December 5, 2022, to extend the period to include the 2023 fiscal year and increase the shortfall amount to \$150,000. The expiration date was also extended to December 31, 2063.

*ARTA Establishment Agreement.* On July 21, 2008, the District was admitted as a new member to the Aurora Regional Transportation Authority (ARTA) Establishment Agreement, an authority formed pursuant to Section 29-1-203. ARTA mandates each District to impose an ARI Mill Levy and then convey the funds to the ARI Authority to pay for operational and maintenance expenses. At December 31, 2023, the District did not collect any applicable ARTA property taxes.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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*Tax, Spending and Debt Limitations.* Article X, Section 20 of the Colorado Constitution, commonly known as the Taxpayer's Bill of Rights (TABOR) contains tax, spending, revenue and debt limitations which apply to the State of Colorado and all local governments.

Spending and revenue limits are determined based on the prior year's Fiscal Year Spending adjusted for allowable increases based upon inflation and local growth. Fiscal Year Spending is generally defined as expenditures plus reserve increases with certain exceptions. Revenue in excess of the Fiscal Year Spending limit must be refunded unless the voters approve retention of such revenue.

TABOR requires local governments to establish Emergency Reserves. These reserves must be at least 3% of Fiscal Year Spending (excluding bonded debt service). Local governments are not allowed to use the emergency reserves to compensate for economic conditions, revenue shortfalls, or salary or benefit increases. The District has established an emergency reserve for the year ended December 31, 2023, in the amount of \$11,389.

The District's management believes it is in compliance with the provisions of TABOR. However, TABOR is complex and subject to interpretation. Many of the provisions, including interpretation of how to calculate Fiscal Year Spending limits may require judicial interpretation.

### **Note 8. Related Parties**

One or more of the Board of Directors are employees, owners or is otherwise associated with the developers of the property within the District and may have conflicts of interest in dealing with the District. Management believes that all potential conflicts, if any, have been disclosed to the Board.

### **Note 9. Deficit Net Position**

The District has a deficit net position of \$1,414,194 as of December 31, 2023. The District has incurred general obligation debt since inception for the construction of public improvements within the District. In addition, pledged revenues have not been sufficient to pay accrued interest on the District's debt.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## DEBT SERVICE FUND

### SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES (BUDGETARY BASIS) - BUDGET AND ACTUAL FOR THE YEAR ENDED DECEMBER 31, 2023

	Budgeted Amounts Original and Final	Actual Amounts	Variance with Final Budget - Positive (Negative)
<b>Revenues</b>			
Taxes:			
General Property Taxes	\$ 206	\$ 206	\$ -
Specific Ownership Taxes	-	14	14
Interest Earnings	150,000	-	(150,000)
Miscellaneous	-	135	135
<b>Total Revenues</b>	<u>150,206</u>	<u>355</u>	<u>(149,851)</u>
<b>Expenditures</b>			
Current:			
County Treasurer Fees	1	3	(2)
Debt Service:			
Interest: 2021A Bonds	-	716,242	(716,242)
Interest: Developer Advances	-	9,112	(9,112)
Fiscal Charges	1,000	-	1,000
<b>Total Expenditures</b>	<u>1,001</u>	<u>725,357</u>	<u>(724,356)</u>
<b>Excess (Deficiency) of Revenues Over (Under) Expenditures</b>	149,205	(725,002)	(874,207)
<b>Other Financial Sources (Uses)</b>			
Operating Transfers Out - Capital Project Fund	(11,191,623)	-	11,191,623
<b>Net Change in Fund Balances</b>	(11,042,418)	(725,002)	10,317,416
<b>Fund Balances (Deficit), Beginning of Year</b>	<u>11,042,418</u>	<u>(661,647)</u>	<u>(11,704,065)</u>
<b>Fund Balances (Deficit), End of year</b>	<u>\$ -</u>	<u>\$ (1,386,649)</u>	<u>\$ (1,386,649)</u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 3

## CAPITAL PROJECTS FUND

### SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES (BUDGETARY BASIS) - BUDGET AND ACTUAL FOR THE YEAR ENDED DECEMBER 31, 2023

	Budgeted Amounts Original and Final	Actual Amounts	Variance with Final Budget - Positive (Negative)
<b>Revenues</b>			
Investment Earnings	\$ -	\$ 575,429	\$ 575,429
Developer Advances	-	9,965	9,965
<b>Total Revenues</b>	-	585,394	585,394
<b>Expenditures</b>			
Capital Improvements	11,191,623	142,119	11,049,504
Debt Service:			
Fiscal Charges	-	27,423	(27,423)
<b>Total Expenditures</b>	11,191,623	169,542	11,022,081
<b>Excess (Deficiency) of Revenues Over (Under) Expenditures</b>	(11,191,623)	415,852	11,607,475
<b>Other Financial Sources (Uses)</b>			
Operating Transfers In - Debt Service Fund	11,191,623	-	(11,191,623)
<b>Net Change in Fund Balances</b>	-	415,852	415,852
<b>Fund Balances, Beginning of Year</b>	-	11,154,966	11,154,966
<b>Fund Balances, End of year</b>	\$ -	\$ 11,570,818	\$ 11,570,818



**HARVEST CROSSING  
METROPOLITAN DISTRICT NO. 4**

**ARAPAHOE COUNTY, COLORADO**

**ANNUAL FINANCIAL REPORT  
AND SUPPLEMENTAL INFORMATION  
FOR THE  
YEAR ENDED DECEMBER 31, 2023**



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED DECEMBER 31, 2023**

### **TABLE OF CONTENTS**

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<b>INTRODUCTION</b>	<b>Page</b>
District Officials	iii
 <b>FINANCIAL SECTION</b>	
Independent Auditors' Report	1-3
 <b>Basic Financial Statements</b>	
Government-wide Financial Statements	
- Statement of Net Position	4
- Statement of Activities	5
Fund Financial Statements	
- Balance Sheet – Governmental Funds	6-7
- Statement of Revenues, Expenditures and Changes in Fund Balances – Governmental Funds	8-9
- General Fund – Statement of Revenues, Expenditures, and Changes in Fund Balances – Budget and Actual	10
- Notes to the Financial Statements	11-22
 <b>Supplemental Information</b>	
Debt Service Fund - Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual	23
Capital Project Fund - Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual	24



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## ROSTER OF DISTRICT OFFICIALS DECEMBER 31, 2023

### BOARD OF DIRECTORS

Jerry Richmond.....President  
Aaron Clutter .....Treasurer  
Kurtis Williams.....Asst. Secretary  
Eric Lee.....Asst. Secretary

### DISTRICT MANAGER/SECRETARY

David Solin  
Special District Management Services, Inc.

### ATTORNEY

Paula Williams, Esq.  
McGeady Becher P.C.



**SCOTT C. WRIGHT**  
**CERTIFIED PUBLIC ACCOUNTANT**

9591 Mint Lane  
Salida, CO 81201  
scottwright.cpa@icloud.com  
(970) 471-9091

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**INDEPENDENT AUDITOR'S REPORT**

Board of Directors  
Harvest Crossing Metropolitan District No. 4  
Arapahoe County, Colorado

**Report on the Audit of the Financial Statements**

***Opinions***

I have audited the accompanying financial statements of the governmental activities and each major fund of Harvest Crossing Metropolitan District No. 4 as of and for the year ended December 31, 2023, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

In my opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of Harvest Crossing Metropolitan District No. 4 as of December 31, 2023, and the changes in financial position and the respective budgetary comparison for the General Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

***Basis for Opinions***

I conducted my audit in accordance with auditing standards generally accepted in the United States of America. My responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of my report. I am required to be independent of Harvest Crossing Metropolitan District No. 4 and to meet my other ethical responsibilities, in accordance with the relevant ethical requirements relating to my audit. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.



In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Harvest Crossing Metropolitan District No. 4's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### ***Auditor's Responsibilities for the Audit of the Financial Statements***

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, I:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Harvest Crossing Metropolitan District No. 4's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in my judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Harvest Crossing Metropolitan District No. 4's ability to continue as a going concern for a reasonable period of time.

I am required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that I identified during the audit.

### ***Required Supplementary Information***

Management has omitted management's discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate



operational, economic, or historical context. My opinion on the basic financial statements is not affected by this missing information.

### ***Supplementary Information***

My audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise Harvest Crossing Metropolitan District No. 4's basic financial statements. The supplementary budget comparison schedule identified in the table of contents is presented to supplement the basic financial statements and is presented for purposes of additional analysis and is not a required part of the basic financial statements.

Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In my opinion, the supplementary information is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

*Scott Wright*

Salida, Colorado  
June 29, 2024



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## STATEMENT OF NET POSITION DECEMBER 31, 2023

	Governmental Activities
<b>ASSETS</b>	
Receivables	\$ 91
Due from Other Local Governments	77,718
Prepaid Expenses	3,121
Restricted Assets - Cash and Cash Equivalents	12,820,927
Capital Assets Not Being Depreciated	231,587
<b>Total Assets</b>	<b>13,133,444</b>
<b>LIABILITIES</b>	
Accounts Payable	20,221
Due to Other Local Governments	25,968
Accrued Interest Payable	1,504,193
Noncurrent Liabilities:	
Due In More Than One Year	12,913,000
<b>Total Liabilities</b>	<b>14,463,382</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>	
Deferred Revenue - Property Taxes	91
<b>NET POSITION</b>	
Net Investment in Capital Assets	(12,681,413)
Restricted For:	
Emergencies	18,990
Public Improvements	12,882,413
Unrestricted (Deficit)	(1,550,019)
<b>Total Net Position (Deficit)</b>	<b>\$ (1,330,029)</b>

The accompanying notes are an integral part of the financial statements.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## STATEMENT OF ACTIVITIES FOR THE YEAR ENDED DECEMBER 31, 2023

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	
<b>Governmental Activities:</b>					
General Government	\$ 7,436	\$ -	\$ -	\$ -	\$ (7,436)
Interest and Related Costs on Long-term Debt	1,038,462	-	-	-	(1,038,462)
<b>Total Governmental Activities</b>	<u>\$ 1,045,898</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>(1,045,898)</u>
General Revenues:					
Property Taxes					169
Investment Earnings					632,551
Miscellaneous					428
<b>Total General Revenues</b>					<u>633,148</u>
<b>Increase (Decrease) in Net Position</b>					(412,750)
<b>Net Position (Deficit) - Beginning of Year</b>					<u>(917,279)</u>
<b>Net Position (Deficit) - End of Year</b>					<u>\$ (1,330,029)</u>

The accompanying notes are an integral part of the financial statements.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## BALANCE SHEET GOVERNMENTAL FUNDS DECEMBER 31, 2023

	General Fund	Debt Service Fund	Capital Projects Fund	Total
<b>ASSETS</b>				
Due From Other Local Governments	\$ -	\$ -	\$ 77,718	\$ 77,718
Property Taxes Receivable	15	76	-	91
Prepaid Expenses	1,249	-	1,872	3,121
Restricted Assets - Cash and Cash Equivalents	-	8	12,820,919	12,820,927
<b>Total Assets</b>	<u>\$ 1,264</u>	<u>\$ 84</u>	<u>\$ 12,900,509</u>	<u>\$ 12,901,857</u>
<b>LIABILITIES AND FUND BALANCES</b>				
Accounts Payable	\$ 3,025	\$ -	\$ 17,196	\$ 20,221
Due to Other Local Governments	19,068	6,000	900	25,968
Accrued Interest Payable	-	1,426,177	-	1,426,177
<b>Total Liabilities</b>	<u>22,093</u>	<u>1,432,177</u>	<u>18,096</u>	<u>1,472,366</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>				
Unavailable Revenue - Property Taxes	15	76	-	91
<b>Total Deferred Inflows of Resources</b>	<u>15</u>	<u>76</u>	<u>-</u>	<u>91</u>
<b>FUND BALANCES (DEFICITS)</b>				
Restricted For:				
TABOR Emergency Reserve	18,990	-	-	18,990
Public Improvements	-	-	12,882,413	12,882,413
Unassigned (Deficit)	(39,834)	(1,432,169)	-	(1,472,003)
<b>Total Fund Balances (Deficit)</b>	<u>(20,844)</u>	<u>(1,432,169)</u>	<u>12,882,413</u>	<u>11,429,400</u>
<b>Total Liabilities, Deferred Inflows of Resources, and Fund Balances</b>	<u>\$ 1,264</u>	<u>\$ 84</u>	<u>\$ 12,900,509</u>	<u>\$ 12,901,857</u>

The accompanying notes are an integral part of the financial statements.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

## **RECONCILIATION OF THE BALANCE SHEET OF GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION DECEMBER 31, 2023**

	<u>Total</u>
Total Fund Balances - Governmental Fund	<u>\$ 11,429,400</u>
<i>Amounts reported for governmental activities in the statement of net position are different because:</i>	
Capital Assets used in governmental activities are not financial resources and therefore are not reported as an asset in the governmental funds.	
- Construction in Progress	<u>231,587</u>
Some liabilities, including bonds, notes and leases payable, and compensated absences are not due and payable in the current period and therefore are not reported as liabilities in the governmental funds.	
- Series 2022A <sup>(3)</sup> Bonds Payable	<u>(12,913,000)</u>
Accrued interest payable that is not due and payable in the current period is not reported as a liability in the governmental funds.	
- Series 2022A <sup>(3)</sup> Bonds Payable	<u>(78,016)</u>
<b>Net Position of Governmental Activities</b>	<u><u>\$ (1,330,029)</u></u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCES GOVERNMENTAL FUNDS FOR THE YEAR ENDED DECEMBER 31, 2023

	General Fund	Debt Service Fund	Capital Projects Fund	Total
<b>Revenues</b>				
Taxes:				
General Property Taxes	\$ 26	\$ 132	\$ -	\$ 158
Specific Ownership Tax	2	9	-	11
Investment Earnings	-	-	632,551	632,551
Miscellaneous	-	428	-	428
<b>Total Revenues</b>	<u>28</u>	<u>569</u>	<u>632,551</u>	<u>633,148</u>
<b>Expenditures</b>				
Current:				
General and Administrative	7,434	2	-	7,436
Capital Improvements	-	-	230,687	230,687
Debt Service:				
Interest	-	969,315	-	969,315
Fiscal Charges	-	-	30,139	30,139
<b>Total Expenditures</b>	<u>7,434</u>	<u>969,317</u>	<u>260,826</u>	<u>1,237,577</u>
<b>Net Change in Fund Balances</b>	(7,406)	(968,748)	371,725	(604,429)
<b>Fund Balances (Deficit), Beginning of Year</b>	<u>(13,438)</u>	<u>(463,421)</u>	<u>12,510,688</u>	<u>12,033,829</u>
<b>Fund Balances (Deficit), End of Year</b>	<u>\$ (20,844)</u>	<u>\$ (1,432,169)</u>	<u>\$ 12,882,413</u>	<u>\$ 11,429,400</u>

The accompanying notes are an integral part of the financial statements.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

## **RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES FOR THE YEAR ENDED DECEMBER 31, 2023**

	<u>Total</u>
Net change in fund balances - Total Governmental Funds	<u>\$ (604,429)</u>
<i>Amounts reported for governmental activities in the statement of activities are different because:</i>	
Governmental funds report capital outlays as expenditures. However, for governmental activities, those capital outlays other than noncapitalizable items are shown in the Statement of Activities and the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense.	
- Construction in Progress	<u>230,687</u>
Expenses reported in the Statement of Activities that do not require the use of current financial resources are not reported as expenditures in governmental funds.	
- Change in Accrued Interest Payable	<u>(39,008)</u>
<b>Change in Net Position of Governmental Funds</b>	<u><u>\$ (412,750)</u></u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## GENERAL FUND

### STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES (BUDGETARY BASIS) - BUDGET AND ACTUAL FOR THE YEAR ENDED DECEMBER 31, 2023

	Budgeted Amounts Original and Final	Actual Amounts	Variance with Final Budget - Positive (Negative)
<b>Revenues</b>			
Taxes:			
General Property Taxes	\$ 24	\$ 26	\$ 2
Specific Ownership Tax	-	2	2
Developer Advances	60,000	-	(60,000)
<b>Total Revenues</b>	60,024	28	(59,996)
<b>Expenditures</b>			
Current:			
Audit	5,000	3,025	1,975
Election Costs	3,000	598	2,402
Insurance / SDA Dues	5,000	-	5,000
Accounting	8,000	1,866	6,134
Legal	15,000	-	15,000
District Management	15,000	1,939	13,061
Miscellaneous	3,000	5	2,995
Treasurer's Fees	1	1	-
Emergency Reserve	1,500	-	1,500
Contingency	4,495	-	4,495
<b>Total Expenditures</b>	59,996	7,434	52,562
<b>Net Change in Fund Balances</b>	28	(7,406)	(7,434)
<b>Fund Balances (Deficit), Beginning of Year</b>	11	(13,438)	(13,449)
<b>Fund Balances (Deficit), End of year</b>	\$ 39	\$ (20,844)	\$ (20,883)

The accompanying notes are an integral part of the financial statements.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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The financial statements of Harvest Crossing Metropolitan District No. 4 (District) have been prepared in conformity with generally accepted accounting principles (GAAP) generally accepted in the United States of America as applied to governmental entities. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting board for establishing governmental accounting and financial reporting principles. The following notes are an integral part of the District's financial statements.

### **Note 1. Summary of Significant Accounting Policies**

#### **A. Financial Reporting Entity**

As required by GAAP, these financial statements present the activities of Harvest Crossing Metropolitan District No. 4, i.e., the primary government. The District does not have any component units for which the District is considered financially accountable, nor is the District a component unit of any other primary governmental entity.

*Primary Government.* The District, a quasi-municipal corporation and a political subdivision of the State of Colorado, was organized by order and decree of the District Court of Arapahoe County, Colorado, on February 13, 2007, and is governed pursuant to provisions of the Colorado Special District Act (Title 32, Article 1, Colorado Revised Statutes). The District was originally organized under the name Villages at Murphy Creek Metropolitan District No. 2. On January 20, 2022, an Order Granting Petition for Name Change was recorded in Arapahoe County changing the District's name in order to represent the District's development plan more accurately. The District was established to furnish certain public facilities and services, including, but not limited to, streets, limited water, limited sanitation, parks and recreation, traffic and safety control, transportation, mosquito control, safety protection, security, limited fire protection and television relay and translation improvements that benefit the citizens of the District. The District's primary revenues are property taxes. The District is governed by an elected Board of Directors. The District has no employees, and all operations and administrative functions are contracted. The more significant accounting policies of the District are described as follows:

#### **B. Government-wide and Fund Financial Statements**

*Government-wide Financial Statements.* The government-wide financial statements (i.e. the Statement of Net Position and the Statement of Activities) report information on all non-fiduciary activities of the District. The Statement of Activities demonstrates the degree to which the direct expenses of a given function or business segment are offset by program revenues and helps identify the extent to which each is self-financing or draws from the general revenues of the District. Direct expenses are those that are clearly identifiable with a specific function or business segment. Program revenues include (1) charges to customers who purchase, use, or directly benefit from goods, services, or privileges provided by a given function and, (2) grants and contributions that are restricted to meeting the operational or



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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capital requirements of a particular function or business segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

*Fund Financial Statements.* Fund financial statements report detailed information about the District with the focus on major funds rather than on reporting funds by type. Separate financial statements are provided for governmental funds. The District has no proprietary or fiduciary funds. Individual governmental funds are reported as separate columns in the fund financial statements.

### **C. Measurement Focus, Basis of Accounting and Financial Statement Presentation**

*Measurement Focus and Basis of Accounting.* The government-wide financial statements have been prepared using the economic resources measurement focus and the accrual basis of accounting. Revenues are recognized when earned and expenses are recognized when the liability is incurred regardless of the timing of related cash flows.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenue is recorded when susceptible to accrual, i.e., both measurable and available. Available means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period (60 days). The major sources of revenue which are susceptible to accrual are property taxes. All other revenue items are considered to be measurable and available only when cash is received by the District. Expenditures generally are recorded when the liability is incurred, as under full accrual accounting. However, debt service expenditures, as well as expenditures related to claims and judgments, are recorded only when payment is due.

*Financial Statement Presentation – Fund Accounting.* A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts which are segregated for the purpose of accounting for specific activities. The District uses funds to report results of operations and financial position, and demonstrate compliance with legal, contractual, and regulatory requirements.

The District reports the following major governmental funds:

- *General Fund* - This is the District's primary operating fund. It is used to account for all activities of the District not required to be accounted for in another fund.
- *Debt Service Fund* - This fund is used to account for the resources accumulated and payments made for principal and interest on long-term general obligation debt of the governmental funds.
- *Capital Project Fund* – This fund is used to account for the acquisition and/or construction of major capital facilities and infrastructure.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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### **D. Deferred Outflows / Inflows of Resources**

In addition to assets, the statement of net position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents the consumption of net position that applies to a future period that will not be recognized as an outflow of the resources (expenditure) until the future period. At the end of the current fiscal year, the District did not have any items that qualify for reporting in this category.

In addition to liabilities, the statement of net position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The District has one item that qualifies for reporting in this category – deferred property tax revenues.

The governmental funds also reported deferred inflows of resources representing unavailable property tax revenues.

Deferred outflows of resources are presented below the total assets on the government-wide and governmental fund statements. Deferred inflows of resources are presented below the total liabilities on the government-wide and governmental fund statements.

### **E. Cash, Cash Equivalents, and Investments**

The District follows the practice of pooling cash and investments of all funds to maximize investment earnings. Except when required by trust or other agreements, all cash is deposited to and disbursed from a single bank account. Cash and cash equivalents include amounts in demand deposits as well as short-term investments with a maturity date within 3 months of the date acquired by the Town. Colorado State Statutes authorize the District to invest its excess funds in direct U.S. Government treasury and agency securities, bonds and other obligations of states and political subdivisions, corporate bonds, and local government investment pools. Investments are stated at fair value.

### **F. Long-term Obligations**

In the government-wide Statement of Net Position long-term debt and other long-term obligations are reported as liabilities. Bond premiums and discounts are deferred and amortized over the life of the bonds using the interest method. Bonds payable are reported net of the applicable bond premium or discount.

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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Issuance costs, whether or not withheld from the actual debt proceeds are reported as debt service expenditures.

### **G. Fund Balance / Net Position**

The District utilizes the fund balance presentation as required under GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. Fund balances are categorized as nonspendable, restricted, committed, assigned or unassigned. These fund balance classifications describe the relative strength of the spending constraints placed on the purposes for which resources can be used:

- Nonspendable fund balance – amounts that are not in a spendable form (such as inventory or prepaid/deferred charges) or are legally or contractually required to be maintained intact;
- Restricted fund balance – amounts constrained to specific purposes by their providers (such as grantors, bondholders, and higher levels of government), through constitutional provisions, or by enabling legislation;
- Committed fund balance – amounts constrained to specific purposes by a government itself, using its highest level of decision-making authority; to be reported as committed, amounts cannot be used for any other purpose unless the government takes the same highest-level action to remove or change the constraint;
- Assigned fund balance – amounts a government intends to use for a specific purpose but is neither restricted nor committed; intent can be expressed by the governing body or an official or body to which the governing body delegates the authority;
- Unassigned fund balance – amounts that do not meet any other of the above criteria and are available for any purpose; positive amounts are reported only in the general fund.

The District establishes (and modifies or rescinds) fund balance commitments by passage of a resolution. This is typically done through adoption and amendment of the budget. A fund balance commitment is further indicated in the budget document as a designation or commitment of the fund. Assigned fund balance is established by the Board of Directors through adoption or amendment of the budget as intended for specific purposes (such as the purchase of capital assets, construction, debt service, or other purposes).

When fund balance resources are available for a specific purpose in more than one classification, it is the District's policy to use the most restrictive funds first in the following order: restricted, committed, assigned, and unassigned as they are needed. The District considers all unassigned fund balances to be "reserves" for future operations or capital replacement as defined within Article X, Section 20 of the Constitution of the State of Colorado (see Note 6).

### **H. Budgetary Information**

Budgets are adopted on a basis consistent with GAAP for all funds. According to Local Government Budget Law, the legal level of appropriations is at the total fund expenditures



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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level and lapse at year-end. During the year, the District's Board of Directors can modify the budget by line item within a fund's total appropriation without notification.

Upon meeting notification and publication requirements, supplemental amendments increasing appropriations may be passed by resolution of the Board of Directors. Budgeted amounts reported in the accompanying financial statements are as originally adopted and as amended by the Board of Directors.

### I. Property Taxes

Property taxes are levied by the District's Board of Directors. The levy is based on assessed valuations determined by the County Assessor generally as of January 1 of each year. The levy is normally set by December 15<sup>th</sup> by certification to the County Commissioners to put the tax lien on the individual properties as of January 1<sup>st</sup> of the following year. The County Treasurer collects the determined taxes during the ensuing calendar year. The taxes are payable by April or if in equal installments, at the taxpayer's election, in February and June. Delinquent taxpayers are notified in August and, generally, sale of the tax liens on delinquent properties are held in November or December. The County Treasurer remits the taxes collected monthly to the District. Property taxes, net of estimated uncollectible taxes, are recorded initially as deferred inflow of resources in the year they are levied and measurable. The unearned property tax revenues are recorded as revenue in the year they are available or collected.

### Note 2. Deposits and Investments

Cash and investments as of December 31, 2023, are classified in the accompanying financial statements as follows:

Restricted Assets- Cash and Cash Equivalents	<u>\$ 12,820,927</u>
Total	<u>\$ 12,820,927</u>

Cash and investments as of December 31, 2023, consist of the following:

Deposits With Corporate Trust Institutions	\$ 11,451,719
Title Company Escrow Deposits	<u>1,369,208</u>
Total	<u>\$ 12,820,927</u>

### Deposits

*Custodial Credit Risk.* Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the District would not be able to recover its deposits or would not be able to recover collateral securities that are in the possession of an outside party.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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The District's deposits with depository financial institutions are entirely covered by federal depository insurance (FDIC) or by collateral held under Colorado's Public Deposit Protection Act (PDPA). The FDIC insures the first \$250,000 of the District's deposits at each financial institution. Deposit balances over \$250,000 are collateralized as required by PDPA. PDPA requires that cash be deposited in eligible public depositories and that deposits in excess of federal insurance levels must be collateralized. The eligible collateral is determined by the PDPA. PDPA allows the institution to create a single collateral pool for all public funds with the District being a named participant in the single institution collateral pool. The minimum pledging requirement is 102% of the uninsured deposits. The Colorado State Banking Board verifies the market value at least monthly. Bank assets (usually securities) are required by PDPA to be delivered to a third-party institution for safekeeping and pledged to the Colorado Division of Banking. Based on the above, the Colorado State Auditor has concluded that there is no custodial risk for public deposits collateralized under PDPA.

In addition to deposits with depository financial institutions, other District deposits held at December 31, 2023, consisted of bond proceeds held with UMB Bank (UMB), a corporate bond trustee, and an escrow deposit with Land Title Guaranty Company pursuant to an Offsite Improvement and Escrow Agreement. A corporate bond trustee is a financial institution that is granted trust powers, such as a commercial bank or trust company. This entity, in turn, has a duty to the bond issuer to enforce the terms of a bond indenture. A trustee sees that bond interest payments and principal repayments are made as scheduled and protects the interests of the bondholders if the issuer defaults. UMB is a nationally recognized and ranked provider of corporate trust and escrow services.

### **Local Government Investment Pools**

Local government investment pools are trusts established for local government entities in Colorado to pool surplus funds. The State Securities Commissioner administers and enforces all State statutes governing the trusts. A designated custodial bank serves as custodian pursuant to a custodian agreement. The custodian acts as safekeeping agent for the trusts' investment portfolios and provides services as the depository in connection with direct investments and withdrawals. The custodian's internal records segregate investments owned by the trusts. The District participates in UMB's Corporate Trust FDIC Sweep program whereby the District has instructed UMB to nightly sweep its assets on deposit into the Colorado Local Government Liquid Asset Trust's COLOTRUST PLUS+ fund omnibus account. The PLUS+ fund may invest in U.S. Treasury securities and repurchase agreements collateralized by U.S. Treasury securities as well as in certain obligations of U.S. government agencies, highest rated commercial paper and repurchase agreements collateralized by certain obligations of U.S. government agencies. The PLUS+ fund is a stable \$1.00 net asset value (NAV) fund that offers daily liquidity.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

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## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

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### Investments

*Credit Risk.* Colorado State Statutes specify investment instruments meeting defined rating and risk criteria in which local government entities may invest. These investments include local government investment pools and certain obligations of the United States government. State law limits investments in commercial paper, corporate bonds, and money market mutual funds to the top two ratings issued by nationally recognized statistical rating organizations. The District has no investment policy that would further limit its investment choices. Additionally, the District is not subject to concentration risk or investment custodial risk disclosure requirements for investments that are in the possession of another party.

*Interest Rate Risk.* The District does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

*Concentration of Credit Risk.* The District places no limit on the amount it may invest in any one issuer.

*Fair Value of Investments.* The District measures and records its investments using fair value measurement guidelines established by generally accepted accounting principles. These guidelines recognize a three-tiered fair value hierarchy, as follows:

- Level 1: Quoted prices for identical investments in active markets;
- Level 2: Observable inputs other than quoted market prices; and,
- Level 3: Unobservable inputs.

At December 31, 2023, the District had no investments measured at fair value and there were no unrealized losses reflective of changes in the fair market value of investments.

### Note 3. Legal Compliance – Budgets

No later than October 15, the District Manager submits to the Board of Directors a proposed budget for the calendar year commencing the following January 1. The budget is prepared by fund and line item and includes information on the prior year, current year estimates and requested appropriations and estimated revenues for the upcoming year.

The Board of Directors holds public hearings and must adopt the budget by resolution prior to December 15. Once adopted, the Board may at any time, by resolution, amend the budget. The District had no supplemental appropriations during the year ended December 31, 2023.

Expenditures may not legally exceed budgeted appropriations at the fund level. Budgetary comparisons in the accompanying required supplemental information are presented with a higher level of detail than legally required in order to facilitate closer financial analysis. Debt Service Fund expenditures exceeded budgeted appropriations during 2023 which may be a violation of Colorado Budget Law.



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

### Note 4. Capital Assets

Capital asset activity for the year ended December 31, 2023, was as follows:

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
<b>Governmental Activities:</b>				
Capital Assets, Not Being Depreciated:				
Construction in Progress	\$ 900	\$ 230,687	\$ -	\$ 231,587
Total Capital Assets, Not Being Depreciated	900	230,687	-	231,587
Governmental Activities Capital Assets, Net	\$ 900	\$ 230,687	\$ -	\$ 231,587

No depreciation expense was charged in the Statement of Activities for the year ended December 31, 2023.

### Note 5. Long-term Debt

*General Obligation Bonds.* On June 3, 2022, the District issued its Series 2022A(3) Limited Tax General Obligation Bonds (2022A(3) Bonds), totaling \$12,913,000 with an interest rate of 7.25%. The 2022A(3) Bonds were issued to finance or reimburse a portion of the costs of designing, acquiring, constructing, and installing certain public infrastructure improvements within the District and paying the costs of issuing the bonds. The 2022A(3) Bonds are secured by and payable from Pledged Revenue as defined by the Indenture of Trust to mean: (a) the Required Mill Levy, net of fees of the County Treasurer and any tax refunds or abatements authorized by or on behalf of the County; (b) the portion of the Specific Ownership Tax which is collected as a result of imposition of the Required Mill Levy; (c) commencing in the First Tax Collection Year, the District No. 3 Debt Service Revenues; and (d) any other legally available moneys which the District determines, in its absolute discretion, to transfer to the Trustee for application as Pledged Revenue.

General obligation bonds currently outstanding at December 31, 2023, are as follows:

<u>Purpose</u>	<u>Interest Rate</u>	<u>Amount</u>
General Government – Public Improvements	7.25%	<u>\$12,913,000</u>

Annual debt service requirements to maturity for general obligation bonds outstanding at December 31, 2023, are as follows:



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

<u>Year Ending</u> <u>December 31</u>	<u>Principal</u>	<u>Interest</u>
2024	\$ -	\$ 936,192
2025	-	936,193
2026	-	936,192
2027	-	936,193
2028	-	936,192
2029-2033	-	4,680,963
2034-2038	-	4,680,962
2039-2043	-	4,680,963
2044-2048	-	4,680,962
2049-2052	<u>12,913,000</u>	<u>3,744,770</u>
Total	<u>\$ 12,913,000</u>	<u>\$ 27,149,582</u>

*Unpaid Debt Service.* The Series 2022A(3) Bonds were issued as “cash-flow” bonds, meaning that the general obligation bonds contain no scheduled principal payments prior to the final maturity date. Principal payments on the 2022A(3) Bonds are payable from, and solely to the extent of, Pledged Revenue, if any, remaining after the annual interest payment due on the 2022A(3) Bonds. Interest is payable on December 1 each year to the extent of Pledged Revenue is available therefor, commencing December 1, 2022. To the extent interest is not paid when due, such interest is compounding at the rate of 7.25% on each interest payment date. Remaining insufficiencies as of December 31, 2023 on the Series 2022A(3) Bonds are as follows:

<u>Application</u>	<u>Series 2022A(3)</u> <u>Bonds</u>	<u>Compound</u> <u>Interest</u>
December 1, 2022 Unpaid Interest	\$ 456,862	\$ -
December 1, 2023 Unpaid Interest	<u>936,192</u>	<u>33,123</u>
Total	<u>\$ 1,354,094</u>	<u>\$ 33,123</u>

*Optional Redemption.* The 2022A(3) Bonds are subject to redemption prior to maturity, at the option of the District, as a whole or in integral multiples of \$1,000, in any order of maturity and in whole or partial maturities, on December 1, 2026, and on any date thereafter, upon payment of par plus accrued interest thereon and a redemption premium equal to a percentage of the principal amount so redeemed, as follows:

<b>Date of Redemption</b>	<b>Redemption Premium</b>
December 1, 2026, to November 30, 2027	3.00%
December 1, 2027, to November 30, 2028	2.00%
December 1, 2028, to November 30, 2029	1.00%
December 1, 2029, and thereafter	0.00%

Notwithstanding any other provision provided in the indenture of Trust or the Pledge Agreement, the District shall not be required to impose the required mill levy for payment of the bonds after December, 2061 (for collection in 2062). In the event that any amount of principal of or interest on the 2022A(3) Bonds remains unpaid after the application of all



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023

Pledged Revenue available therefor on December 2, 2062, the 2022A(3) Bonds shall be deemed discharged.

*Authorized Debt.* At an election held on November 7, 2006, a majority of the qualified electors of the District authorized the issuance of general obligation indebtedness in an amount not to exceed \$70,000,000 for providing public improvements. As of December 31, 2022, \$57,087,000 of the Service Debt Authorization remains. In the future, the District may issue a portion or all of the remaining authorized but unissued general obligation debt for purposes of providing additional public improvements within the District's service area, if needed.

*Changes in Long-term Liabilities.* Long-term liability activity for the year ended December 31, 2023, was as follows:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Deletions</u>	<u>Ending Balance</u>	<u>Due Within One Year</u>
<i>Bonds Payable:</i>					
Series 2022A(3) GO Bonds	\$ 12,913,000	\$ -	\$ -	\$ 12,913,000	\$ -
Total Long-term Liabilities	\$ 12,913,000	\$ -	\$ -	\$ 12,913,000	\$ -

### Note 6. Risk Management

The District is exposed to various risks of loss related to torts; thefts of, damage to, or destruction of assets; errors or omissions; injuries to employees; or acts of God. The District maintains commercial insurance for significant insurable risks. The District is a member of the Colorado Special Districts Property and Liability Pool (Pool). The Pool is an organization created by intergovernmental agreement to provide property, liability, public officials' liability, boiler and machinery, and workers' compensation coverage to its members. Settled claims have not exceeded this coverage in any of the past three fiscal years.

The District pays annual premiums to the Pool for liability, property, and public officials' liability coverage. In the event aggregated losses incurred by the Pool exceed amounts recoverable from reinsurance contracts and funds accumulated by the Pool, the Pool may require additional contributions from the Pool members. Any excess funds which the Pool determines are not needed for purposes of the Pool may be returned to the members pursuant to a distribution formula.

### Note 7. Commitments, Contingencies and Agreements

*Facilities Acquisition Agreement.* On May 24, 2022, the District, Jewell Developers, Inc. (Jewell Developers) and Harvest & Jewell, LLC (HJ) entered into a Facilities Acquisition Agreement (FAA) whereby Jewell Developers is developing property within a project located in the City of Aurora, commonly known as Harvest Crossing (Property). Jewell Developers is under contract to acquire the Property from HJ. Pursuant to the authority granted by its Service Plan, the District is authorized to construct, acquire and install public improvements (Improvements) which benefit property within the District's boundaries and/or service area. The District desires to reimburse HJ on behalf of Jewell Developers for the acquisition of such



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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Improvements completed or caused to be completed by Jewell Developers. The District shall acquire the improvements upon the receipt, review and approval of applicable items including an executed bill of sale conveying the improvements to the District. Subject to their issuance, the District will reimburse HJ from the proceeds of the 2022A(3) Bonds for all of the construction related expenses plus simple interest accrued at a rate of eight percent (8%) per annum until paid. As of December 31, 2023, the District had no developer advances payable under the agreement.

*Operation Funding Agreement and First Amendment.* On May 24, 2022, the District and Jewell Developers entered into an Operation Funding Agreement (OFA) whereby Jewell Developers agreed to advance funds necessary to fund the District's operations, maintenance, and administrative expenses on a periodic basis as needed for the fiscal years 2022 through 2023 up to a shortfall amount of \$50,000. Such advances from the date of deposit into the District's account will accrue simple interest at the rate of 5.5% per annum. The obligation of the District to reimburse Jewell Developers expires on December 31, 2063. Any amount of principal and interest owed on or before December 31, 2063, shall be deemed to be forever discharged and satisfied in full. The OFA was subsequently amended on December 5, 2022, to extend the period to include the 2023 fiscal year and increase the shortfall amount to \$110,000.

*Tax, Spending and Debt Limitations.* Article X, Section 20 of the Colorado Constitution, commonly known as the Taxpayer's Bill of Rights (TABOR) contains tax, spending, revenue and debt limitations which apply to the State of Colorado and all local governments.

Spending and revenue limits are determined based on the prior year's Fiscal Year Spending adjusted for allowable increases based upon inflation and local growth. Fiscal Year Spending is generally defined as expenditures plus reserve increases with certain exceptions. Revenue in excess of the Fiscal Year Spending limit must be refunded unless the voters approve retention of such revenue.

TABOR requires local governments to establish Emergency Reserves. These reserves must be at least 3% of Fiscal Year Spending (excluding bonded debt service). Local governments are not allowed to use the emergency reserves to compensate for economic conditions, revenue shortfalls, or salary or benefit increases. The District has established an emergency reserve for the year ended December 31, 2023, in the amount of \$18,990.

The District's management believes it is in compliance with the provisions of TABOR. However, TABOR is complex and subject to interpretation. Many of the provisions, including interpretation of how to calculate Fiscal Year Spending limits may require judicial interpretation.



# **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4**

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## **NOTES TO THE FINANCIAL STATEMENTS DECEMBER 31, 2023**

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### **Note 8. Related Parties**

One or more of the Board of Directors are employees, owners or is otherwise associated with the developers of the property within the District and may have conflicts of interest in dealing with the District. Management believes that all potential conflicts, if any, have been disclosed to the Board.

### **Note 9. Deficit Net Position**

The District has a deficit net position of \$1,330,029 as of December 31, 2023. The District has incurred general obligation debt since inception for the construction of public improvements within the District. In addition, pledged revenues have not been sufficient to pay accrued interest on the District's debt.

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# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## DEBT SERVICE FUND

### SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES (BUDGETARY BASIS) - BUDGET AND ACTUAL FOR THE YEAR ENDED DECEMBER 31, 2023

	Budgeted Amounts Original and Final	Actual Amounts	Variance with Final Budget - Positive (Negative)
<b>Revenues</b>			
Taxes:			
General Property Taxes	\$ 135	\$ 132	(3)
Specific Ownership Tax	-	9	9
Developer Advances	60,000	-	(60,000)
Investment Earnings	360,000	-	(360,000)
Miscellaneous	-	428	428
<b>Total Revenues</b>	<u>420,135</u>	<u>569</u>	<u>(419,566)</u>
<b>Expenditures</b>			
Current:			
County Treasurer Fees	-	2	(2)
Legal	15,000	-	15,000
Miscellaneous	5,000	-	5,000
Emergency Reserve	12,604	-	12,604
Contingency	14,000	-	14,000
Debt Service:			
Interest: 2022(A) Bonds	-	969,315	(969,315)
Fiscal Agent Fees	6,000	-	6,000
<b>Total Expenditures</b>	<u>52,604</u>	<u>969,317</u>	<u>(916,713)</u>
<b>Excess (Deficiency) of Revenues Over (Under) Expenditures</b>	<u>367,531</u>	<u>(968,748)</u>	<u>(1,336,279)</u>
<b>Other Financial Sources (Uses)</b>			
Operating Transfers Out	<u>(12,867,898)</u>	<u>-</u>	<u>12,867,898</u>
<b>Net Change in Fund Balances</b>	<u>(12,500,367)</u>	<u>(968,748)</u>	<u>11,531,619</u>
<b>Fund Balances (Deficit), Beginning of Year</b>	<u>12,500,367</u>	<u>(463,421)</u>	<u>(12,963,788)</u>
<b>Fund Balances (Deficit), End of year</b>	<u>\$ -</u>	<u>\$ (1,432,169)</u>	<u>\$ (1,432,169)</u>



# HARVEST CROSSING METROPOLITAN DISTRICT NO. 4

## CAPITAL PROJECTS FUND

### SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES (BUDGETARY BASIS) - BUDGET AND ACTUAL FOR THE YEAR ENDED DECEMBER 31, 2023

	Budgeted Amounts Original and Final	Actual Amounts	Variance with Final Budget - Positive (Negative)
<b>Revenues</b>			
Investment Earnings	\$ -	\$ 632,551	\$ 632,551
Developer Advances	50,000	-	(50,000)
<b>Total Revenues</b>	50,000	632,551	582,551
<b>Expenditures</b>			
Capital Improvements	12,909,398	230,687	12,678,711
Debt Service:			
Fiscal Charges	-	30,139	(30,139)
Contingency	8,500	-	8,500
<b>Total Expenditures</b>	12,917,898	260,826	12,657,072
<b>Excess (Deficiency) of Revenues Over (Under) Expenditures</b>	(12,867,898)	371,725	13,239,623
<b>Other Financial Sources (Uses)</b>			
Operating Transfers In	12,867,898	-	(12,867,898)
<b>Net Change in Fund Balances</b>	-	371,725	371,725
<b>Fund Balances, Beginning of Year</b>	-	12,510,688	12,510,688
<b>Fund Balances, End of year</b>	\$ -	\$ 12,882,413	\$ 12,882,413



## Proposal

# ProSystems

PROFESSIONAL ELECTRICAL SYSTEMS, INC.

20100 East 32<sup>nd</sup> Parkway, Unit 120, Aurora, CO 80011

303-307-8110 Office 303-307-8244 Fax

Page 1

Date: 2/5/24

Rev: 6/3/24

Submitted to: Earnweald

Attention: Doug Richter

Phone: (303) 887-4047

Email: drichter@earnweald.com

Job Name: Harvest Crossing Metropolitan District #3

Attn: Jerry Richmond

7200 S. Alton Way, Suite C-400

Centennial, CO 80112

Job Location: Aurora CO, Arapahoe County

Project Description: Installation of both public street lighting and private street lighting. Plans dated July 22, 2022, by Studio Lighting.

### Public Street Lights

\$665,500.00

- 2 – Commercial electrical pedestal
- 38 – SL1 20' Cooper Streetworks Galleon fixture on a Aurora approved direct burial pole
- 15 – SL3 30' Cooper Streetworks Archeon fixture on a Aurora approved galvanized steel pole
- 15 – 7' Precast concrete bases for the SL3 poles
- 11,000' – Underground with 1 ½" conduit and wire sized for voltage drop
- 77 – Tear 15 Traffic rated ground boxes as needed
- 2 – Electrical permits
- 1 – Public works permit
- Stage and Store on materials until needed

### Private Street Lights

\$44,500.00

- 2 – Standard electrical pedestal services
- 2 – SP1 Cooper Invue private fixtures on a 12' pole one places at each mailboxes
- 2 – 6' Precast concrete bases
- 650' – Underground with 1" conduit and wire for voltage drop
- Traffic rated ground boxes as needed
- Addressing
- 2 – Electrical permits
- Stage and Store on materials until needed

### Add Alternate - Electrical engineering

\$6,500.00

Electrical layout and design

Voltage drop calculation for wire sizing

Electrical One-Line for service

### Exclusions:

- Landscape repairs if required
- City planning fees if required
- Surveying
- Wrap Insurance

Pro Systems proposes to: Perform the work as stated in accordance with the specifications and plans submitted.

Date 6/14/24 Signature Jerry B. Richmond

Acceptance of Proposal: The prices, specifications, terms, and conditions are hereby accepted as listed above. Pricing is valid for 30 days from time of Proposal

MATERIAL COST ESCALATION: If, during the performance of this contracted work, the cost of materials significantly increases, through no fault of Subcontractor, the price of this contract shall be equitably adjusted by an amount reasonably necessary to cover any such significant increase in the costs of materials. As used herein, a significant cost increase shall mean any increase in cost of materials exceeding 3% experienced by contractor from the date of the contract signing. Where the delivery of materials delayed, through no fault of the contractor, as a result of the shortage or unavailability of the materials, Subcontractor shall not be liable for any additional costs or damages associated with such delay(s).



# GENERAL CONDITIONS TABLE OF CONTENTS

	<b>Page</b>
Part 1	DEFINITIONS..... 1
Part 2	Preliminary Matters ..... 3
	2.01 Delivery of Bonds and Certificate Of Insurance..... 3
	2.02 Execution and Transmission of Documents ..... 3
	2.03 Copies of Documents ..... 4
	2.04 Commencement of Contract Time; Notice to Proceed ..... 4
	2.05 Starting the Project..... 4
	2.06 Before Starting Construction ..... 4
	2.07 Preconstruction Conference ..... 5
Part 3	Contract Documents: Intent and Reuse..... 5
	3.01 Intent ..... 5
	3.02 Reuse of Documents ..... 6
Part 4	Availability of Lands; Physical Conditions; Reference Points ..... 6
	4.01 Availability of Lands ..... 6
	4.02 Physical Conditions – Investigations and Reports..... 7
	4.03 Unforeseen Physical Conditions ..... 7
	4.04 Reference Points ..... 7
Part 5	Bonds and Insurance ..... 8
	5.01 Performance and Other Bonds ..... 8
	5.02 Contractor’s Insurance Requirements ..... 8
	5.03 Insurance Certificates/Policy ..... 12
	5.04 Additional Requirements ..... 13
	5.05 Indemnification ..... 14
Part 6	Contractor’s Responsibilities ..... 15
	6.01 Supervision and Superintendent ..... 15
	6.02 Labor, Materials, and Equipment..... 16
	6.03 Equivalent Materials and Equipment..... 19
	6.04 Concerning Subcontractors ..... 20



## TABLE OF CONTENTS

(continued)

	<b>Page</b>
<b>6.05</b> Patent Fees and Royalties .....	21
<b>6.06</b> Permits .....	22
<b>6.07</b> Laws And Regulations .....	22
<b>6.08</b> Taxes .....	23
<b>6.09</b> Use of Premises.....	23
<b>6.10</b> As-Built Documents.....	24
<b>6.11</b> Safety and Protection .....	25
<b>6.12</b> Emergencies .....	27
<b>6.13</b> Plans and Shop Drawings .....	28
<b>6.14</b> Construction Stakes .....	30
<b>6.15</b> Private Property And Excavation.....	31
Part 7 Coordination of Work .....	32
<b>7.01</b> Owner's Right to Perform.....	32
<b>7.02</b> Contractor to Coordinate.....	32
Part 8 Owner's Responsibilities .....	33
<b>8.01</b> CommunicatIONS.....	33
Part 9 Status of Engineer During Construction .....	33
<b>9.01</b> Duties of Engineer .....	33
<b>9.02</b> Visits to Site.....	33
<b>9.03</b> Clarifications and Interpretations.....	34
<b>9.04</b> Rejecting Defective Work.....	34
<b>9.05</b> Decisions on Disagreements .....	34
<b>9.06</b> Limitations on Engineer's and Owner's Responsibilities.....	35
Part 10 Changes in the Work.....	35
<b>10.01</b> Owner May Order Changes .....	35
Part 11 Agreement Price and Changes .....	36
<b>11.01</b> Agreement Price Changed Only by Change Order.....	36
<b>11.02</b> Cost of the Work.....	39



## TABLE OF CONTENTS

(continued)

	<b>Page</b>
<b>11.03</b> Contractor's Fee.....	42
Part 12    Contract Time and Changes.....	42
<b>12.01</b> Determination and Extension of Contract Time .....	42
<b>12.02</b> Contract Time Changed Only by Change Order.....	43
Part 13    Warranty and Guarantee; Tests and Inspections; Correction, Removal or Acceptance of Defective Work .....	44
<b>13.01</b> Warranty and Guarantee .....	44
<b>13.02</b> Access to Work .....	44
<b>13.03</b> Tests and Inspection.....	44
<b>13.04</b> Uncovering Work.....	45
<b>13.05</b> Owner May Stop the Work .....	46
<b>13.06</b> Correction or Removal of Defective and Unauthorized Work .....	46
<b>13.07</b> <b>Two Year</b> Correction Period .....	46
<b>13.08</b> Acceptance of Defective Work .....	47
<b>13.09</b> Owner May Correct Defective Work.....	47
Part 14    Construction Schedule, Payments to Contractors and Completion .....	48
<b>14.01</b> Schedules .....	48
<b>14.02</b> Application for Progress Payments.....	49
<b>14.03</b> Contractor's Warranty of Title.....	50
<b>14.04</b> Review of Applications for Progress Payment .....	50
<b>14.05</b> Substantial Completion.....	51
<b>14.06</b> Partial Utilization .....	52
<b>14.07</b> Final Inspection.....	53
<b>14.08</b> Final Application for Payment.....	53
<b>14.09</b> Final Payment and Acceptance.....	54
<b>14.10</b> Contractor's Continuing Obligation .....	55
Part 15    Suspension of Work and Termination .....	56
<b>15.01</b> Engineer or Owner May Suspend Work.....	56



## TABLE OF CONTENTS

(continued)

	<b>Page</b>
15.02 Owner May Terminate .....	57
15.03 Contractor May Stop Work or Terminate .....	58
15.04 Owner May Terminate for Convenience .....	59
Part 16 Miscellaneous .....	63
16.01 Giving Notice.....	63
16.02 Computation of Time.....	64
16.03 Correction Period .....	64
16.04 General .....	64
Part 17 Addresses .....	65
17.01 Owner.....	65
17.02 Engineer .....	65
17.03 Contractor/Surety .....	66
17.04 Change of Address .....	66
Part 18 Liquidated Damages .....	66
Part 19 Existing Underground Installations .....	67
Part 20 Streamlined Specifications.....	68
Part 21 Handling of Disputes .....	68
21.01 Disputes.....	68
Part 22 Duties, Responsibilities, and Limitations of the Authority of the Owner's Representative .....	69
22.01 Description .....	69
22.02 Duties and Responsibilities.....	69
22.03 Limitations of Authority .....	70
Part 23 SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE .....	71
23.01 Purpose and Applicability .....	71
23.02 Causes for Suspension .....	71
23.03 Causes for Debarment.....	71
23.04 Procedures for Suspension and Debarment .....	73



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>23.05</b> Decision on Debarment.....	73
<b>23.06</b> Settlement and Voluntary Exclusion .....	74
<b>23.07</b> Length of Debarment .....	74
<b>23.08</b> Scope of Debarment and Suspension.....	74



## PART 1 DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Addendum** – Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

**Agreement** – The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** – The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

**Application for Payment** – The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bid Form** – The offer or proposal of the Bidder attached to the Agreement as **Exhibit A**.

**Change Order** – A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** – As defined in the Agreement.

**Contract Time** – The number of days stated in the Agreement for the Completion of the Work.

**Contractor** – The person or entity with whom Owner has entered into the Agreement to perform field construction.

**Day** – A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** – An adjective which when modifying the word “**Work**” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.



**Effective Date of the Agreement** – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the parties to sign and deliver.

**Engineer** – The person or entity named as “**Engineer**” in the Agreement.

**Field Order** – A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

**Modification** – (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Agreement.

**Notice of Award** – The written notice by Owner to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** – A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** – Harvest Crossing Metropolitan District No. 3, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Project** – The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part.

**Part** – Section(s) of these General Conditions.

**Plans** – The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Shop Drawings** – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Site** – Any area or areas where Work is to be performed on the Project.



**Specifications** – Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

**Subcontractor** – A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

**Substantial Completion** – The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

**Supplementary Conditions** - The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “**Work**” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Project in accordance with the design intent conveyed in the Contractor Documents, and the carrying out of all duties and obligations imposed by the Contract Documents to achieve the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## **PART 2      PRELIMINARY MATTERS**

### **2.01            DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE**

A.      When Contractor delivers the executed Agreement to Owner’s Representative, Contractor shall also deliver to Owner’s Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

### **2.02            EXECUTION AND TRANSMISSION OF DOCUMENTS**

A.      At least four (4) copies of the Contract Documents will be prepared by Owner’s Representative. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance on ACORD Form 27 and copies of all applicable insurance policies, and submit all copies to Owner’s Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by



Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B. Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner's Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

## **2.03 COPIES OF DOCUMENTS**

A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

## **2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

## **2.05 STARTING THE PROJECT**

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

## **2.06 BEFORE STARTING CONSTRUCTION**

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.



## **2.07 PRECONSTRUCTION CONFERENCE**

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

## **PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE**

### **3.01 INTENT**

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or



employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Project Manual consists of Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplementary Conditions, if any, and Specifications. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein. Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

### **3.02 REUSE OF DOCUMENTS**

A. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall 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; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

## **PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.01 AVAILABILITY OF LANDS**

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the



acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### **4.02 PHYSICAL CONDITIONS – INVESTIGATIONS AND REPORTS**

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

#### **4.03 UNFORESEEN PHYSICAL CONDITIONS**

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

#### **4.04 REFERENCE POINTS**

A. Owner shall provide engineering surveys for construction to establish reference points which in its judgment are necessary to enable Contractor



to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by professionally qualified personnel.

## **PART 5 BONDS AND INSURANCE**

### **5.01 PERFORMANCE AND OTHER BONDS**

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall meet all requirements of C.R.S. 38-26-101, et. seq. The Bond shall remain in effect at least until **[one (1)] year** after the date when final payment becomes due, or until the **[two-year]** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. If the Surety on any bond furnished by Contractor is declared as bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

### **5.02 CONTRACTOR'S INSURANCE REQUIREMENTS**

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A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to



Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

1. Worker's Compensation and Employers' Liability

(a) State: Statutory

(b) Employers' Liability

\$500,000 Each Accident

\$500,000 Disease, Policy Limit

\$500,000 Disease, Each Employee

(c) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

2. General Liability (Occurrence Form):

(a) Combined Bodily Injury and Property Damage:

\$1,000,000 each occurrence

\$1,000,000 Personal and Advertising Injury

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations  
Aggregate

(b) The following coverages must be included:

(i) Premises Operations

(ii) Independent Contractor's Protective



- (iii) Explosion, Collapse
- (iv) Underground
- (v) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)
- (vi) Broad Form Property Damage
- (vii) Personal/Advertising Injury
- (viii) General Aggregate Limit (applies to each project)
- (ix) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.
- (x) Subcontractors shall comply with all provisions of this Part.
- (xi) A waiver of subrogation endorsement in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

3. Automobile Liability:

Combined Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 each Accident

The following coverages must be included:

Owned automobiles

Non-owned and hired automobiles

4. Umbrella Excess Liability



\$5,000,000 each Occurrence/\$5,000,000 Aggregate

5. Builders' "All-Risk" Insurance

D. Builder's Risk Insurance.

**NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)**

E. To the extent that Contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner's interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner's exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.

5.03

INSURANCE CERTIFICATES/POLICY

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner's Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to



maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

#### **5.04**      **ADDITIONAL REQUIREMENTS**

A.      No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than \$1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

B.      If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C.      The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D.      For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner, and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.

E.      Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F.      Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.



G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

## 5.05

### INDEMNIFICATION

A. To the maximum amount allowed by Colorado law, Contractor shall indemnify and hold harmless the Owner, the Owner's Representative, the Engineer, and all of their respective consultants, board members, directors, officers, agents and employees (hereinafter the "Indemnified Parties"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees) caused by either: (i) the Contractor's breach of this Agreement; or (ii) the negligent, criminal, or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors (at any tier) or any person for whom Contractor is legally responsible, in connection with the Project, this Agreement, or the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the existence and policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not negate or limit in any way the Contractor's obligation to indemnify the Indemnified Parties.

B. In any and all claims against the Indemnified Parties by any employee of Contractor, any Subcontractor, anyone directly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. In the event that any Subcontractor, laborer, supplier, or any other person for whom Contractor is responsible in connection with this Agreement records a mechanic's lien against the Project or the real property underlying the Project, any such lien rights being expressly waived pursuant to Part 6, Subparagraph C of this Agreement, then Contractor shall indemnify, save harmless, and defend the Owner and all of its consultants, directors, officers, agents and employees from and against any and all



claims, demands, losses, liens, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), to the extent arising directly or indirectly in any manner whatsoever out of such lien. In addition, the Owner may withhold from payment to Contractor a sum that the Owner, in its sole discretion, considers sufficient to defend, discharge, satisfy, or bond over any such liens pursuant to C.R.S. § 38-22-131, as Owner may decide in its sole discretion, plus the reasonable fees and costs (including attorney's fees) incurred by the Owner in the course of defending, discharging, satisfying, or bonding over such lien or lawsuit. The provisions of this Section 5.05(C) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **PART 6      CONTRACTOR'S RESPONSIBILITIES**

### **6.01      SUPERVISION AND SUPERINTENDENT**

A.      The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Neither Owner, Engineer, nor Owner's Representative shall be responsible for Contractor's means, methods, techniques, sequences or procedures of construction nor for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B.      Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

C.      Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and



shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner or Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner.. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

## **6.02**

### **LABOR, MATERIALS, AND EQUIPMENT**

A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except



as otherwise indicated in the Supplementary Conditions, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until



tests have been made and the material found to be acceptable. Only materials conforming to the requirements of these specifications and which have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.

F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless



otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

## **6.03 EQUIVALENT MATERIALS AND EQUIPMENT**

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected



by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

#### **6.04 CONCERNING SUBCONTRACTORS**

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly employed by them and of persons and organizations for whose acts any of them may be



liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

C. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.

## **6.05 PATENT FEES AND ROYALTIES**

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and



assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work. The provisions of this Section 6.05(A) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **6.06**

### **PERMITS**

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time. With respect to permits obtained by Contractor as necessary for the performance of the Work, Contractor shall be entitled to markup (representing overhead and profits) of not more than 1% thereon, and shall be entitled to no other markup, profit, or fee of any kind thereon.

## **6.07**

### **LAWS AND REGULATIONS**

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (the "applicable regulations"). If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Engineer or Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against



any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

B. Contractor shall comply with all applicable codes, laws, and ordinances pertaining to Small Business Enterprise (SBE), Small Business Enterprise Concession (SBEC), Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), Women Business Enterprise (WBE), Minority Business Enterprise (MBE), or Emerging Business Enterprise (EBE) in the location where the Work is being performed. Without limiting the foregoing, to the extent the Work is performed in the City and County of Denver, the Contractor shall comply with: (i) the MBE and WBE participation requirements set forth in Division 1 and Division 3 of Article III, Title 28, of the Denver Revised Municipal Code, as the same may be amended or recodified from time to time (the "DRMC"); (ii) SBE participation requirements set forth in Article VII, Title 28 of the DRMC; and (iii) any other ordinances that are currently, or may be subsequently, adopted by the City and County of Denver with respect to construction work or construction services.

C. Contractor shall comply with all applicable all applicable codes, laws, and ordinances pertaining to payment of prevailing wages in the location where the Work is being performed.

## **6.08 TAXES**

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

## **6.09 USE OF PREMISES**

A. Contractor shall confine construction, equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.



B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

C. Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the obstruction. All material found on the Site or removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.

F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

## **6.10 AS-BUILT DOCUMENTS**

A. Contractor shall keep one set of as-built records of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and

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samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

## 6.11 SAFETY AND PROTECTION

A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All employees on the Work or other persons who may be affected thereby.
2. All the Work and all materials or 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 and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for any reason and the security of all property located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable solely to the fault of Drawings or Specifications or to the



acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.

Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.



The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

## **6.12 EMERGENCIES**



A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

## 6.13

### PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the "**Plans**", the interpretation shall be the Plans as affected by all authorized alterations then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date



shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the



Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

## **6.14**

### **CONSTRUCTION STAKES**

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Engineer and Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Engineer and Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Engineer and Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer and the Owner. If the Contractor refuses to suspend operations on verbal order, the Engineer or Owner's Representative may issue a written order



giving the reason for shutting down the Work. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Engineer and Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice which the Engineer or Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract, nor as modifying the requirements of the Contract Documents.

## **6.15 PRIVATE PROPERTY AND EXCAVATION**

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or



equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

## **PART 7      COORDINATION OF WORK**

### **7.01      OWNER'S RIGHT TO PERFORM**

A.      Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

### **7.02      CONTRACTOR TO COORDINATE**

A.      If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B.      Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of



others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

## **PART 8 OWNER'S RESPONSIBILITIES**

### **8.01 COMMUNICATIONS**

A. Except as otherwise provided expressly herein, Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

B. Nothing herein or otherwise shall prevent Owner from communicating directly with Contractor's subcontractors (at any tier) concerning issues affecting the Work or payment for the Work.

## **PART 9 STATUS OF ENGINEER DURING CONSTRUCTION**

### **9.01 DUTIES OF ENGINEER**

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

### **9.02 VISITS TO SITE**

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer



will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

### **9.03 CLARIFICATIONS AND INTERPRETATIONS**

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

### **9.04 REJECTING DEFECTIVE WORK**

A. Engineer will have authority to disapprove or reject Work, which is defective, and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

### **9.05 DECISIONS ON DISAGREEMENTS**

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to



any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

## **9.06 LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES**

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirements, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

C. Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

D. Neither Engineer, nor Owner, nor Owner's Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.

## **PART 10 CHANGES IN THE WORK**

### **10.01 OWNER MAY ORDER CHANGES**

A. Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work



involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B. The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C. Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12.A.

D. If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E. If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.

## **PART 11 AGREEMENT PRICE AND CHANGES**

### **11.01 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER**

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities



and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C. The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer or Owner's Representative shall submit to the Contractor a "**Request for Proposal**" outlining the scope of Work contemplated for said construction changes.

2. The Contractor shall submit within fourteen (14) days of receipt of a "**Request for Proposal**" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.



E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;
2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);
3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
4. In any other manner agreed upon by the parties.

F. Notwithstanding anything in the Contract Documents to the contrary, markup (representing overhead and profits) on any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price, shall be limited in the following ways:

1. For Work performed by subcontractors and/or suppliers (of any tier), such subcontractors and/or suppliers may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim;
2. For Work performed by subcontractors and/or suppliers (of any tier), Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim;
3. For self-performed Work, Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim; and
4. Except as specifically permitted by Sections 1 thru 3 of this Part 11.01 (F), there shall be no other markup, profit, or fee of any kind on Work covered by a Change Order or any claim for an increase or decrease in the Agreement Price. Contractor and its subcontractors and/or suppliers shall provide reasonable documentation (including receipts or other supporting documentation) of the Cost of the Work covered by a Change Order or claim to ensure that markup has been applied appropriately in accordance with the Contract Documents.



## 11.02

## COST OF THE WORK

A. The term “**Cost of the Work**” means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll cost for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ or workmen’s compensation.

Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers’ field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a 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 shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including, but not limited to, engineers, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.

5. Supplementary costs include the following:

(a) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.

(b) Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

(c) Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.

(d) Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

(e) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and



approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.03.A.

(f) Cost of premiums for additional Bonds and insurance required because of changes in the Work.

(g) The proportion of necessary, transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

(h) The cost of utilities, fuel and sanitary facilities at the Site.

(i) Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

B. The term Cost of the Work shall not include any of the following:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.02.A.1—all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to



purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

### **11.03 CONTRACTOR'S FEE**

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:

(a) For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be 5 percent; and

(b) For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be 5%; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be 5% as set forth in Paragraph 11.03.A.1.a; and

(c) No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the next increase if any.

## **PART 12 CONTRACT TIME AND CHANGES**

### **12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME**

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar



days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

## **12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER**

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to abnormally inclement weather conditions, which allegedly cause unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost and/or an increase in the Agreement Price equal to the general conditions costs unavoidably incurred by Contractor; provided, however, that Contractor shall not be entitled to an increase in the Agreement Price to the extent that any of the delays described by this Part 12.02 (B) occur concurrently with any delays caused (in whole or in part) due to the fault of the Contractor or



those for whom Contractor is responsible. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

C. All the time limits stated in the Contract Documents are of the essence of the Agreement.

## **PART 13      WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01      WARRANTY AND GUARANTEE**

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

### **13.02      ACCESS TO WORK**

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

### **13.03      TESTS AND INSPECTION**

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or



Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

#### **13.04 UNCOVERING WORK**

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon uncover, expose or otherwise make available for observation, inspection or testing, as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is



defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

### **13.05 OWNER MAY STOP THE WORK**

A. If the Work is defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party.

### **13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the Site and replace it with non-defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

### **13.07 TWO YEAR CORRECTION PERIOD**

A. If within **two (2) years** after the date of final acceptance by Owner or another entity as might be appropriate, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the



Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

#### **13.08 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. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

#### **13.09 OWNER MAY CORRECT DEFECTIVE WORK**

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an



amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

B. If it becomes necessary for Owner to take over the completion of the Work, all of the amounts owing to Contractor, including the withheld retainage, shall be applied: (i) first, toward the cost of completion of the Work; (ii) second, toward performance of Owner's withholding requirement set forth in section 38-26-107, C.R.S.; (iii) third, to the surety furnishing bonds for the contract work, to the extent such surety has incurred liability or expense in completing the contract work or made payments pursuant to section 38-26-106, C.R.S.; then, (iv) to Contractor. Such retained amounts as may be due Contractor shall be due and payable at the expiration of thirty days from the date of final acceptance by Owner of the Work.

## **PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION**

### **14.01 SCHEDULES**

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.



B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.

## **14.02 APPLICATION FOR PROGRESS PAYMENTS**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as Owner's Representative may reasonably require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment. A waiver of claim for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants and/or observations in the field. These measurements will be taken according to



the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than \$1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

#### **14.03 CONTRACTOR'S WARRANTY OF TITLE**

A. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "**Claims**").

#### **14.04 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT**

A. Owner's Representative will, within ten (10) days after receipt of each Application for Payment either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the



Work has progressed to the point indicated; and that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation.) However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer's or Owner's opinion to protect Owner from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement,
2. Written claims have been made against Owner or claims have been filed in connection with the Work,
3. The Agreement Price has been reduced because of modifications,
4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A.,
5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
6. Of Contractor's failure to make payment to Subcontractors for labor, materials, or equipment.

#### **14.05 SUBSTANTIAL COMPLETION**

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A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

#### **14.06 PARTIAL UTILIZATION**

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.

2. In lieu of the provisions of Paragraph 14.06.A.1., Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such



takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

#### **14.07 FINAL INSPECTION**

A. Upon written notice from Contractor to the Engineer that the Work is complete and that all items on the punch list have been completed, Engineer will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

#### **14.08 FINAL APPLICATION FOR PAYMENT**

A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents—all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to



Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any claim.

#### **14.09 FINAL PAYMENT AND ACCEPTANCE**

A. If, on the basis of Engineer's observation of the Work, during construction and final inspection, and Owner's Representative's review of the final Application of Payment and accompanying documentation—all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. Otherwise, Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by



the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with the Owner a receipt in full or an order for withdrawal in writing from claimant.

B. If, through no fault of Contractor, final completion of the Work is significantly delayed and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Engineer and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **14.10 CONTRACTOR'S CONTINUING OBLIGATION**

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by Owner or another public entity as might be appropriate.

B. Notwithstanding the provisions of Paragraph 14.10.A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A., nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract



Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **PART 15      SUSPENSION OF WORK AND TERMINATION**

### **15.01      ENGINEER OR OWNER MAY SUSPEND WORK**

A.      The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B.      In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

C.      Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to the Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.



## 15.02

### OWNER MAY TERMINATE

A. Upon the occurrence of any one or more the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,
2. If Contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,
4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,
7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If Contractor disregards the authority of Engineer,
9. If Contractor fails to commence Work as prescribed in the Notice to Proceed,
10. If Owner secures substantial evidence that progress of the Work by the Contractor is insufficient to complete the Work within the Contract Time,
11. If Contractor repeatedly fails to observe any requirement of these Specifications,
12. If Contractor fails to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,
13. If Contractor fails to promptly disburse payment or retainage to subcontractors upon its receipt of such payment from Owner;



14. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or

15. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if efforts satisfactory to the Owner have not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until the Work is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.

C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

### **15.03**

#### **CONTRACTOR MAY STOP WORK OR TERMINATE**

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or



other public authority, or Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01.B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

#### **15.04 OWNER MAY TERMINATE FOR CONVENIENCE**

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any



or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner and deliver in the manner, at the times, and to the extent, if any directed by the Owner:

(a) The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(b) The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6., but the Contractor:

(a) shall not be required to extend credit to any purchaser; and

(b) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property



related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E.), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:



1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

(a) The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents, timekeepers, clerks, expeditors, watchmen, small tools, incidental job burdens and general office expenses.

(b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3. above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7. of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D. and the Owner utilizes this Paragraph 15.04.E., no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C. and has failed to request an extension of time, it shall have no such right of appeal. In any case, where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or



2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.

2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.

3. The agreed price for, or the proceeds of the sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

## **PART 16 MISCELLANEOUS**

### **16.01 GIVING NOTICE**

A. Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an



original to confirm the validity of a signature or other element of the document.

## **16.02 COMPUTATION OF TIME**

A. When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.

## **16.03 CORRECTION PERIOD**

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

## **16.04 GENERAL**

A. Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by Paragraphs 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall 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. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.



C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

## **PART 17 ADDRESSES**

### **17.01 OWNER**

A. Owner is the quasi-municipal corporation and political subdivision of the State of Colorado named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Harvest Crossing Metropolitan District No.  
3  
c/o Special District Management Services,  
Inc.  
141 E. Union Boulevard, Suite 151  
Lakewood, Colorado 80228  
Attn: David Solin  
Phone: 303-987-0835  
Email: dsolin@sdmsi.com

with a copy to: McGeedy Becher P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Phone: 303-592-4380  
Email:  
legalnotices@specialdistrictlaw.com  
Attn: Paula Williams

### **17.02 ENGINEER**



A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01.D. in the Agreement.

#### **17.03 CONTRACTOR/SURETY**

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

#### **17.04 CHANGE OF ADDRESS**

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

### **PART 18 LIQUIDATED DAMAGES**

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the



engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

## **PART 19 EXISTING UNDERGROUND INSTALLATIONS**

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.



## **PART 20      STREAMLINED SPECIFICATIONS**

A.      These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases "The Contractor shall," "in conformity therewith," "shall be," "as shown on the Drawings," "a," "an," "the," and "all" are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

## **PART 21      HANDLING OF DISPUTES**

### **21.01      DISPUTES**

A.      Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively "**Dispute**") shall be resolved as follows:

Owner and Contractor shall, upon either party's written request sent certified mail, attempt to resolve the Dispute by non-binding mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association ("**AAA**") subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator's fees and expenses and the AAA's fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. In addition to any other damages or relief due, the arbitrator shall



award to the prevailing party its reasonable attorney's fees, costs, and expenses payable by and from the non-prevailing party.

All mediation and arbitration proceedings shall be held in Arapahoe County, Colorado, or such other place as the Owner may designate, and shall be conducted, and final dispositions shall be made, in accord with the laws of the State of Colorado.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

## **PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE**

### **22.01 DESCRIPTION**

A. The Owner's Representative is the Owner's agent only for those purposes expressly authorized under the Contract Documents, and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. Owner shall provide Contractor with written notice of any change in the Owner's Representative.

### **22.02 DUTIES AND RESPONSIBILITIES**

#### **A. CONFERENCES:**

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.

#### **B. LIAISON:**



1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

C. MODIFICATIONS:

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

D. REPORTS:

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.

2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

E. PAYMENT REQUISITIONS:

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

## **22.03 LIMITATIONS OF AUTHORITY**

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.

2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.

3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.



## **PART 23      SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE**

### **23.01      PURPOSE AND APPLICABILITY**

- A.      The purpose of this Section is to set forth standards and procedures to be followed by the Owner for debarring or suspending persons or entities who are or may become a Bidder, Successful Bidder, or Contractor.
- B.      It shall be the responsibility of the Owner to administer the rules.
- C.      The rules shall govern the debarment or suspension of persons from performing any work for, submitting bids for, or otherwise in any manner participating in public projects under contract with the Owner.

### **23.02      CAUSES FOR SUSPENSION**

- A.      When the Owner has reasonable grounds to believe that the public health, safety, and welfare imperatively requires such action, the Owner may immediately suspend a Bidder, Successful Bidder, or Contractor prior to debarment proceedings from performing work or otherwise participating in public projects not already under contract and from submitting bids on public projects upon adequate evidence that a cause for debarment under Section 01200 may exist. Indictment on criminal charges shall constitute *per se* adequate evidence for purposes of suspension actions.

### **23.03      CAUSES FOR DEBARMENT**

- A.      Debarment may be imposed by the Owner for:
  - 1.      Conviction of or civil judgment for:
    - (a)      Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public project;
    - (b)      Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;
    - (c)      Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging or any other violation of federal or state antitrust laws that relates to the submission of bid or proposals; or



(d) Commission of any other offense indicating a lack of business integrity or honesty.

2. A serious violation of the terms of a contract on a public project, such as:

(a) A willful or material failure to perform in accordance with the terms of a contract on a public project;

(b) A history of substantial noncompliance with the terms of contracts on public projects; or

(c) A willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a public project.

3. Any of the following causes:

(a) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in Section 01200;

(b) Knowingly employing or doing business with a debarred, suspended or otherwise ineligible person, in connection with a public project;

(c) Conduct indicating a lack of business integrity or honesty in bidding or performing public projects;

(d) Submission of false or deceptive information or statements in connection with prequalification, bidding or performance of a public project;

(e) Failure to pay a substantial debt (including disallowed costs and overpayments) owed to any federal or state agency or instrumentality, but not including amounts owed under the Internal Revenue Code, provided the debt is uncontested by the debtor or, if contested, that the debtor's legal and administrative remedies have been exhausted;

(f) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action; or



- (g) Any other cause so serious in nature that Owner has reasonable grounds to believe that the public health, welfare, or safety imperatively requires debarment.

## **23.04 PROCEDURES FOR SUSPENSION AND DEBARMENT**

A. Anyone may contact the Owner, Owner's Representative, or Engineer concerning the existence of a cause for Debarment. If the Owner, Owner's Representative, or Engineer becomes aware of information warranting Suspension or Debarment, as set forth in this Section 01200, then Suspension or Debarment or both may be initiated by the Owner sending a Notice of intent to suspend or debar to the affected Bidder, Successful Bidder, or Contractor (upon such Notice, referred to as the "Respondent"). A Notice of intent to suspend or debar, or both, shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Suspension or proposed Debarment and inform the Respondent of the right of appeal to the Owner.

B. The Respondent may appeal the Notice of intent to suspend or debar, or both. Any such appeal must be written and must be received by the Owner within fourteen calendar days of the date the Respondent received the Notice. If no appeal is received as provided herein, the Respondent shall be suspended and/or debarred in accordance with the Notice.

C. A hearing before the Owner shall be commenced within thirty calendar days of receipt of an appeal. At the hearing the Respondent shall present any information it feels is sufficient to prevent Suspension or Debarment. The Owner shall consider this information and render a decision within ten (10) calendar days after the hearing, and such decision shall be final. The appeal procedures described in this Section are the exclusive procedures for determining the outcome and remedy of an appeal. The Administrative Procedure Act (Title 24, Article 4, C.R.S.) shall not apply to this Section 01200, including any protests, appeals, or hearings conducted thereunder.

## **23.05 DECISION ON DEBARMENT**

A. Following reasonable inquiry to determine whether a Respondent has engaged in activities which are cause for debarment, the Owner may debar the Respondent. A Respondent may be suspended or debarred for a period of time commensurate with the seriousness of the offense, subject to the limitations set forth under Sub-Section VII of Section 01200.



## **23.06 SETTLEMENT AND VOLUNTARY EXCLUSION**

A. A Respondent and the Owner may enter into a settlement of a Debarment action, pursuant to which Respondent may agree not to participate in public projects with the Owner for a stipulated period of time.

## **23.07 LENGTH OF DEBARMENT**

A. Debarment may be for a term of up to three (3) calendar years. Credit may be given for any periods of suspension. The following criteria may be considered in making any decision as to length of debarment:

1. Degree of culpability;
2. Seriousness of the offense or conduct;
3. Restitution of damages to the Owner;
4. Cooperation in the investigation of other bidding or performance violations;
5. Disassociation with those involved in bidding or performance violations;
6. Whether a lengthy debarment is required for the protection of the Owner.

B. If the Respondent submits no appeal, the debarment shall automatically be for three years.

## **23.08 SCOPE OF DEBARMENT AND SUSPENSION**

A. Suspension or debarment of a person constitutes suspension or debarment of all their divisions and other organizational elements from bidding or performing work on all public projects with the Owner unless the suspension or debarment decision is limited by its terms to one or more specifically identified individuals, organizational elements, or to specific types of public projects. The suspension or debarment may include any affiliate of the Respondent that is (1) specifically named, and (2) given Notice of the proposed debarment and an opportunity to respond.

B. For purposes of determining the scope of suspension or debarment, conduct may be imputed as follows:



1. Conduct imputed to a Respondent. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other Individual associated with a Respondent may be imputed to the Respondent when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Respondent, or with the Respondent's knowledge, approval, or acquiescence. The Respondent's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

2. Conduct imputed to individuals associated with the Respondent. The fraudulent, criminal, or other seriously improper conduct of a Respondent maybe imputed to any officer, director, shareholder, partner, employee, or other Individual associated with the Respondent who participated in, knew of, or had reason to know of the Respondent's conduct.

3. Conduct of one Respondent imputed to other members in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one Respondent in a joint venture or similar arrangement may be imputed to other members if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the members. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

## **END OF SECTION**

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## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado, located in the City of Aurora, County of Arapahoe, State of Colorado, hereinafter referred to as “**Owner**,” and **PROSYSTEMS, INC.**, a Colorado corporation, hereinafter referred to as “**Contractor**.”

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

### PART 1 CONTRACTOR’S AGREEMENT AND SCOPE OF WORK

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

### PART 2 CONTRACT DOCUMENTS

A. The “**Contract Documents**” which comprise the entire agreement and contract between Owner and Contractor and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Amendments thereto;
2. Performance Bond;
3. Labor and Materials Payment Bond;
4. Certificates of Insurance;
5. Notice of Award;
6. Notice to Proceed;
7. Drawings and specifications consisting of:
  - (a) Plans dated July 22, 2022 prepared by Studio Lighting
8. Specifications and Standards as follows:
  - (a) N/A – PER DRAWINGS AND SPECIFICATIONS
9. Addendums: N/A
10. General Conditions and Supplementary Conditions, if any;



11. Any Modifications, Change Orders, Field Orders or other such revisions properly authorized after execution hereof.
12. Documentation submitted by Contractor with Bid and prior to Notice of Award;
13. Contractor's Bid Form, which is attached hereto and incorporated herein by this reference as **Exhibit A**, (hereafter, "**Contractor's Bid**," the "**Bid**," or the "**Bid Form**");;
14. Contractor's Project Schedule, which is attached hereto and incorporated herein by this reference as **Exhibit B**, (hereafter, "**Project Schedule**");
15. Notice of Substantial Completion and Notice of Final Completion and Acceptance; and
16. All documents contained within the Contract Specifications for the Project.

B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions).

C. If, and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) any Modifications including, but not limited to Change Orders; (2) this Agreement; (3) the General Conditions; (4) the Supplementary Conditions (if any); (5) any exhibits attached to this Agreement; (6) Addenda, with those of later date having precedence over those of earlier date; (7) the Specifications; and (8) the Drawings.

D. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

### **PART 3 ENGINEER AND OWNER'S REPRESENTATIVE**

A. The Project has been designed by Studio Lighting (hereinafter called "**Engineer**"), who will assume all duties and responsibilities of Engineer, and who will have the rights and authority assigned to Engineer in the Contract Documents. Engineer will make itself reasonably available to perform the services required of Engineer under the Contract Documents.

B. JR Engineering (hereinafter called "**Owner's Representative**") will assume all duties and responsibilities of Owner's Representative, and will have the rights and authority assigned to Owner's Representative in the Contract Documents. Owner's Representative will make itself reasonably



available to perform the services required of Owner's Representative under the Contract Documents . Owner's Representative may, at the direction of Owner, undertake some duties and responsibilities assigned to Engineer.

C. If no person or entity is described in Part 3(b) above, then Owner shall assume all responsibilities for Owner's Representative hereunder.

#### **PART 4 AGREEMENT PRICE**

A. For the performance of all Work and completion of the Project as specified in the Contract Documents, Owner shall pay Contractor Seven Hundred Sixteen Thousand Five Hundred and 00/100ths Dollars (\$716,500.00), in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by Engineer. The Agreement Price expressly includes all labor, materials, equipment, and services required by, incidental to, or reasonably inferable from the Work required by this Agreement as necessary to achieve the Owner's intended use for the Project, except as may be noted on Contractor's Bid Form as exclusions.

#### **PART 5 CONTRACT TIME**

A. Contractor shall commence performance on the Project within ten (10) days after receipt of written Notice to Proceed. The Contractor will achieve Substantial Completion (as that term is defined in the General Conditions) of the entire Work by:

☐ The date of Substantial Completion indicated in the Project Schedule.

☐ \_\_\_\_\_ days from the Notice to Proceed.

X \_\_\_\_\_, 2024

B. Owner and Contractor recognize that TIME IS OF THE ESSENCE of this Agreement and that Owner will suffer financial loss if Project is not substantially completed within the time specified in Part 5 A., above, plus any extensions thereof granted by Owner in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if Project is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall be liable to Owner for liquidated damages until Substantial Completion



of the entire Work has been achieved, at the following rates: \$N/A per day. Unless otherwise agreed in writing by the Parties, Contractor shall achieve Final Completion of the entire Work within thirty (30) days of the date it achieves Substantial Completion.

C. Nothing herein or otherwise shall limit Owner's rights under the Contract Documents for any matter other than delay, including (but not limited to) Owner's rights in the event of termination, or Owner's right to pursue a claim for damages due to defective or non-conforming Work or for Contractor's breach of contract. For the avoidance of doubt, nothing herein shall impair or limit Owner's rights to indemnity and defense under the Contract Documents.

## **PART 6      PAYMENT PROCEDURES**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit an Application for Payment for the preceding month, in accordance with the General Conditions. Applications for Payment will be reviewed and processed by Engineer and Owner's Representative as provided in the General Conditions.

B. Subject in all events to the following retainage provisions and the other rights of the Owner to retain amounts, Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Owner's Representative, by the end of the following month (the "**Due Date**").

1. If, in the opinion of the Owner, the Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of completed Work, less the aggregate payments previously made. If, in the opinion of Owner, satisfactory progress is not being made on the Project, or if a claim is filed under Section 38-26-107, Colorado Revised Statutes, Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer's and attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. Subject to the foregoing, the withheld percentage of the Agreement Price may be retained until this Agreement is completed satisfactorily and the Project is finally accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of the Work.

2. Payments will be made for materials stored on-site in accordance with Part 14.01 B of the General Conditions.



3. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., Owner shall make final payment, including release of any retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S., within sixty (60) days.

C. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. ("**Contractor's Bonds and Lien on Funds**"), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. ("**General Mechanics' Liens**"). Nevertheless, to the extent that any portion of the Project, the underlying property, or the improvements thereon, is/are subject to the assertion of a mechanic's lien under the General Mechanic's Liens statute, then Contractor hereby forever waives and releases any and all rights, which may now or heretofore exist or accrue, to record a lien thereon for any work or services performed, materials or equipment furnished, or labor supplied, regardless of whether such services, work, materials, equipment, or labor were required by the Contract Documents, to the maximum extent allowable by law. Contractor further agrees that all debts owed by Contractor to any third party relating to the goods or services covered by this waiver of lien rights have been paid or will be timely paid. Apart from their right to timely and properly assert claims against the Performance Bond or Labor and Materials Payment Bond required hereunder or under C.R.S. § 38-26-106, the sole remedy of Contractor's subcontractors and suppliers, and any other person, as defined in section 2-4-401(8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor, as against the Owner, the Project, the underlying property, or the improvements thereon, shall be to file a verified statement of claim before the time of final settlement pursuant to C.R.S. § 38-26-107. No Subcontractor, laborer, supplier, nor any other person for whom Contractor is responsible in connection with this Agreement shall have the right to lien the Project or the real property underlying the Project, any such rights being expressly waived.

D. Contractor agrees to require each of its Subcontractors and suppliers (at all tiers) to expressly incorporate Part 6, Subparagraph C of this Agreement into their respective subcontracts and/or purchase orders, with the word "Contractor" being substituted for the name of such Subcontractor and/or supplier. This obligation shall represent a material term of this Agreement. Upon Owner's written request, Contractor shall provide copies of its subcontracts and/or purchase orders (whether executed or unexecuted) to Owner. Owner reserves the right (but not the obligation) to verify that such subcontracts and/or purchase orders expressly incorporate



the acknowledgments, waivers, and releases of Part 6, Subparagraph C of this Agreement.

E. Contractor shall defend, indemnify, and hold harmless the Owner, from and against any and all General Mechanics' Liens recorded by Contractor, or by any Subcontractors engaged by Contractor, directly or indirectly, for any work or services performed, materials or equipment supplied, or labor furnished in relation to or arising out of this Agreement.

## **PART 7      DEFAULT**

**7.01**      If any of the events or circumstances described in Section 7.02 occur, and the Contractor fails within a seven (7) calendar day period after receipt of notice from the Owner to commence and continue correction of such events or circumstances with diligence and promptness, the Owner may, without prejudice to other remedies in the Contract Documents, in equity, or at law, undertake any of the remedies described in Section 7.03.

**7.02**      Without limiting any other right, remedy, or term under the Contract or at law, any one or more of the following shall constitute a default or an event of default by the Contractor:

A.      The Contractor fails or refuses to comply with or perform, in whole or in part, any term, requirement, or condition of the Agreement or the Contract Documents;

B.      The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, other subtiers of any level, supervisory staff, or work force, or for any materials, labor, equipment, or other expenses incurred in the performance of the Work, when such payments are due and in accordance with the respective agreements requiring such payment and/or any and all applicable laws requiring the same, including (without limitation) C.R.S. § 24-91-103(2);

C.      The Contractor becomes insolvent, makes or attempts to make any assignment for the benefit of creditors, commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days of such commencement;

D.      The Contractor abandons any or all of the Work, or reduces its management, supervisory staff, or work force to a level that may not allow the Contractor to maintain the appropriate progression of the Work according to the Project Schedule and/or the otherwise appropriate provision of services or the Work for the timely and proper completion of the Project, as determined by the Owner (including services during pre-construction as well as during construction), and including without limitation Work being performed prior to Substantial Completion as well as



following Substantial Completion and until all Punch List items are complete and the Project achieves Final Completion;

E. The Contractor fails to achieve Final Completion of the Work (including, without limitation, the completion of all Punchlist Items) within thirty (30) calendar days from the date of Substantial Completion;

F. The Contractor fails to perform this Agreement or the Work in accordance with applicable laws, ordinances, codes, statutes, rules and regulations, or the lawful orders of any governmental authorities having jurisdiction over the Project; or

G. Contractor is otherwise in breach of any material term(s) of the Contract Documents.

### **7.03**

If the Contractor is ever in default or an event of default exists the Owner may, without limiting any other right, remedy, or term under the Contract or at law, elect to do any one or more of the following:

A. Issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, provided that the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity;

B. Direct the Contractor to comply with the terms of the Agreement and/or Contract Documents;

C. Direct the Contractor to remove any defective or hazardous material or Work which the Contractor controls, which the Contractor shall do at its sole cost;

D. Accept any non-conforming work or materials, in which event the Owner shall be entitled to a reduction in Agreement Price for the reduced value thereof;

E. Make payments directly to Subcontractors, other subtiers of any level, supervisory staff, or work force, to satisfy the Contractor's obligations for any materials, labor, equipment, or other expenses incurred in the performance of the Work;

F. Withhold any further payments to the Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner;

G. Terminate the Contract pursuant to Section 15.02 of the General Conditions;



H. Engage separate contractors to perform, repair, or complete the Work required by the Contract Documents, or to perform Contractor's warranty obligations under the Contract Documents; and/or

I. Exercise any other action or seek any other remedy to which the Owner may be entitled under the Contract Documents, at law, or in equity.

**7.04** The Owner's choice of a remedy under Section 7.03 hereof shall not be construed or interpreted as a waiver of any other rights or remedies provided to the Owner under the Contract Documents, at law, or in equity, against the Contractor, its surety, or any other party. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

**7.05** The Contractor shall pay, immediately upon demand, all costs, losses, damages, and expenses, including, without limitation, all administrative, management, overhead, and other costs and expenses, as well as all reasonable attorneys' fees, costs, and expenses (collectively, "Default Costs"), incurred by the Owner in connection with any default by the Contractor or exercise of any right or remedy upon the Contractor's default. Payment shall be due immediately upon Contractor's receipt of written demand, and interest shall accrue at a rate of 1.5% per month on any amounts not paid by Contractor within thirty (30) days. If the Contractor does not pay the Default Costs immediately, the Owner may deduct them from any unpaid portion of the Contract Sum and the Agreement Price, including (without limitation) any retainage.

## **PART 8 CONTRACTOR'S REPRESENTATIONS**

A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor is familiar with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.
2. Contractor has carefully studied the Site and has performed all necessary investigations, tests, and subsurface investigations to define the latent physical conditions of the construction Site affecting cost, progress, or performance of Project.
3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as Contractor deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in



accordance with the other terms and conditions of the Contract Documents.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer and Owner's Representative written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

## **PART 9 OWNER'S REPRESENTATIONS**

A. Owner makes the following representations:

1. This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

2. Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to Contractor that Contractor is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

## **PART 10 MISCELLANEOUS**

A. Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.

B. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not



in compliance with the terms hereof shall be null and void. 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 Documents.

C. The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

D. If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

E. No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

F. None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable in accordance with Part 21 of the General Conditions. The Contract Documents shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

G. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

H. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.

I. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

J. Unless otherwise expressly provided, any reference herein to "days" shall mean calendar days. All times stated in the Contract Documents are of the essence.



K. Contractor authorizes the Owner to provide to any person any pertinent information, personal or otherwise, regarding the Contractor's performance with respect to the Contract Documents and releases all parties from liability for any damage that may result from the Owner's furnishing such information to others.

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(Signatures appear on following pages)



PAGE \\* MERGEFORMAT 9



**CONTRACTOR:**

PROSYSTEMS, INC., a Colorado  
corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

CONTRACTOR'S LICENSE NO.: \_\_\_\_\_

AGENT FOR SERVICE OF  
PROCESS: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )  
\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**



## Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and firmly bound unto the \_\_\_\_\_ Metropolitan District, as Obligee, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment of which penal sum, well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed an Owner-Contractor Agreement dated \_\_\_\_\_, for the construction of the \_\_\_\_\_ (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform said Contract, including a \_\_\_\_\_ (\_\_\_\_) **year** warranty period described in the Contract Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives any notice of any alteration of the Contract or extension of the Contract Time, as stated in the Contract, as may be agreed upon by the Obligee and the Contractor and embodied in any written Change Order whether or not it increases the total price of the Project.

Whenever the Principal shall be in default under the Contract and is declared so by the Obligee and the Obligee has performed all obligations under the Contract, the Surety may (1) remedy the default, or (2) complete the Contract in accordance with its terms and conditions, or (3) obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest, qualified, responsive and responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest, qualified, responsive and responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) funds sufficient to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of **two (2) years** from the date final payment under the Contract is due. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgements, and save harmless the Obligee from all costs and damages



which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default, together with interest thereon at the rate of eight percent (8%) per annum from the date of judgment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(Signatures appear on following pages)



Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26,101 et seq., C.R.S. This bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute the Bond.



**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

(Power of Attorney Attached)



## Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and bound firm unto [\_\_\_\_\_] Metropolitan District, as Obligee, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), together with interest at the rate of eight percent (8%) per annum on all payments becoming due in accordance with the Contract (defined below) from the time such payments shall become due until such payment shall be made, for the payment of which sum well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed a Contract dated \_\_\_\_\_, for the construction of the \_\_\_\_\_ (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant shall be defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract; labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for sums as may be justly due claimant, together with interest at the rate of eight percent (8%) per annum, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default.
3. No suit or action shall be commenced hereunder by any claimant:



- a) Unless the claimant, other than one having a direct contract with the Principal, shall have given written notice to the Oblige and either the Principal or the Surety within six (6) months after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the Project is located, save that such service need not be made by a public officer.
- b) After the expiration of **one (1) year** following the date on which the Principal ceased work on the above-described Project, it being understood, however, that, if any limitation embodied in this Bond is prohibited by any law controlling construction hereof, such limitation shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county of the state in which the Project, or any part thereof, is situated, and not elsewhere.
- d) In addition, if the Principal or its subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Principal or its subcontractor in performance of the Contract or shall fail to duly pay any person who supplies laborers, rental machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at a rate of eight percent per annum.
- e) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of statutory claims which may be filed of record for the Project, whether or not the claim or the amount of such claim be presented under and against this Bond.



Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26-101 et. seq., C.R.S., and must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute Bond.



**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

(Power of Attorney Attached)

**END OF SECTION**



**NOTICE TO PROCEED**

\_\_\_\_\_, Colorado  
Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby authorized to proceed on \_\_\_\_\_, 20\_\_\_\_, or within ten (10) consecutive calendar days thereafter, with the Work as set forth in the Contract Documents.

You are to notify the Engineer forty-eight (48) hours before starting work.

**HARVEST CROSSING METROPOLITAN  
DISTRICT NO. 3**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:**

Receipt of the above Notice to Proceed is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**END OF SECTION**



## CHANGE ORDER

**Project:** \_\_\_\_\_ **Date of Issuance:** \_\_\_\_\_

**Owner:** HARVEST CROSSING METROPOLITAN DISTRICT NO. 3 **Change**  
**Order No.:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Owner's Representative:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

**Description:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Purpose of Change Order:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Attachments (List Documents Supporting Change):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$

Previous Change Orders:

No. \_\_\_\_ to No. \_\_\_\_

\$

Contract Price Prior to this Change Order:

\$

Net Increase of this Change Order:

\$

### CHANGE IN CONTRACT TIME:

Original Contract Time:

(days or dates)

Net Change from Previous Change Order:

(days)

Contract Time Prior to this Change Order:

(days or date)

Net Increase of this Change Order:

(days)



Net Decrease of this Change Order:

\$

Net Change of this Change Order:

\$

Contract Price with All Approved Change  
Orders:

\$

Net Decrease of this Change Order:

(days)

Net Change of this Change Order:

(days)

Contract Time with all Approved Change  
Orders:

(days or date)

---

---

RECOMMENDED:

BY: \_\_\_\_\_  
Engineer

APPROVED:

By: \_\_\_\_\_  
Owner

APPROVED:

By: \_\_\_\_\_  
Contractor

**END OF SECTION**



## CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PROGRESS PAYMENT

TO WHOM IT MAY CONCERN: \_\_\_\_\_ (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ (“**Project**”) located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of partial payment in the sum of \$\_\_\_\_\_ (the “**Partial Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the partial payment received. This waiver and release shall only be effective as of the date the Partial Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Progress Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## UNCONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PAYMENT RECEIVED

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ ("**Contractor**") has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ ("**Project**") located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a partial payment in the sum of \$\_\_\_\_\_ (the "**Partial Payment**"), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the Partial Payment.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys' fees, incurred as a result of claims that any of Contractor's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Partial Waiver of Claims for Payment Received. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR FINAL PAYMENT

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ ("**Contractor**") has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ ("**Project**") located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of final payment in the sum of \$\_\_\_\_\_ (the "**Final Payment**"), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the final payment received. This waiver and release shall only be effective as of the date the Final Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys' fees, incurred as a result of claims that any of Contractor's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## UNCONDITIONAL WAIVER OF CLAIMS FOR FINAL PAYMENT



TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ ("**Contractor**") has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ ("**Project**") located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a final payment in the sum of \$\_\_\_\_\_ (the "**Final Payment**"), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys' fees, incurred as a result of claims that any of Contractor's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Printed  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**



## NOTICE OF FINAL PAYMENT

**NOTICE** is hereby given that the \_\_\_\_\_ **METROPOLITAN DISTRICT** of \_\_\_\_\_ County, Colorado, will make final payment at \_\_\_\_\_, Colorado, on \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_.m. to \_\_\_\_\_ of \_\_\_\_\_, of \_\_\_\_\_, Colorado for all work done by said Contractor(s) in construction or work on ([project description], performed within \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to \_\_\_\_\_ Metropolitan District, \_\_\_\_\_ on or before the date and time hereinabove shown for final payment. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release \_\_\_\_\_ Metropolitan District, its directors, officers, agents, and employees, of and from any and all liability for such claim.

**BY ORDER OF THE BOARD OF DIRECTORS**  
\_\_\_\_\_ **METROPOLITAN DISTRICT**

By: /s/ \_\_\_\_\_  
Secretary

First Publication: \_\_\_\_\_, 20\_\_\_\_

Last Publication: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Name of Newspaper)

**END OF SECTION**



## **SUPPLEMENTARY CONDITIONS**

### **PART 2      SCHEDULES**

L.      Schedules required by Part 14.01 A may be handwritten, in graphic or text form.

### **WARRANTY START DATE**

The effective start date of the **two year** warranty period is the date that Owner or another public entity as may be appropriate finally accepts improvements for the required warranty period. (See General Conditions Part 14.10 A).

### **END OF SECTION**



## ADDENDA AND MODIFICATIONS

NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

### 1.01 GENERAL

The following changes, additions, and/or deletions are, by issuance of this Section 00900, made a part of the Project Manual for \_\_\_\_\_ Metropolitan District dated \_\_\_\_\_, 20\_\_\_\_, as if originally contained therein. Execution of the acknowledgement of receipt shall be the bidders acceptance of the conditions herein set forth. This Section 00900 shall be submitted with and attached to the submitted Bid Form. Failure to do so may result in rejection of the Bid.

1.02 Bidder shall complete Addendum No. 1 attached hereto regarding compliance with Section 8-17.5-102, C.R.S.

### 1.03 MODIFICATIONS TO SPECIFICATIONS

A. PAGE \_\_\_\_\_, SECTION \_\_\_\_\_ "\_\_\_\_\_", PART \_\_\_\_\_  
"\_\_\_\_\_", PARAGRAPH \_\_\_\_\_:

### 1.05 MODIFICATIONS TO SPECIFICATIONS

B. SHEET \_\_\_\_\_ OF \_\_\_\_\_  
"\_\_\_\_\_"

### ACKNOWLEDGEMENT OF RECEIPT

Receipt is acknowledged this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Title



## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado, located in the City of Aurora, County of Arapahoe, State of Colorado, hereinafter referred to as “**Owner**,” and **BRIGHTVIEW LANDSCAPE DEVELOPMENT, INC.**, a Colorado corporation, hereinafter referred to as “**Contractor**.”

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

### PART 1 CONTRACTOR’S AGREEMENT AND SCOPE OF WORK

A. Contractor agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all Work required for the construction of the Project in strict compliance with the Contract Documents as herein defined.

### PART 2 CONTRACT DOCUMENTS

A. The “**Contract Documents**” which comprise the entire agreement and contract between Owner and Contractor and which are attached to this Agreement and are incorporated herein by this reference, consist of:

1. This Agreement and any Amendments thereto;
2. Performance Bond;
3. Labor and Materials Payment Bond;
4. Certificates of Insurance;
5. Notice of Award;
6. Notice to Proceed;
7. Drawings and specifications consisting of:
  - (a) 100% CD Bid Set dated March 7, 2024 prepared by Planwest  
Landscape sheets: CV1.0, L0.1, L0.2, L1.0-L1.9, L2.0-L2.3  
Irrigation sheets: I.01-I.10
8. Specifications and Standards as follows:
  - (a) N/A – PER DRAWINGS AND SPECIFICATIONS



9. Addendum No. 1 to Specifications dated March 29, 2024;
10. General Conditions and Supplementary Conditions, if any;
11. Any Modifications, Change Orders, Field Orders or other such revisions properly authorized after execution hereof.
12. Documentation submitted by Contractor with Bid and prior to Notice of Award;
13. Contractor's Bid Form, which is attached hereto and incorporated herein by this reference as **Exhibit A**, (hereafter, "**Contractor's Bid**," the "**Bid**," or the "**Bid Form**");;
14. Contractor's Project Schedule, which is attached hereto and incorporated herein by this reference as **Exhibit B**, (hereafter, "**Project Schedule**");
15. Notice of Substantial Completion and Notice of Final Completion and Acceptance; and
16. All documents contained within the Contract Specifications for the Project.

B. There are no Contract Documents other than those listed above in this Part 2. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions).

C. If, and to the extent of any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) any Modifications including, but not limited to Change Orders; (2) this Agreement; (3) the General Conditions; (4) the Supplementary Conditions (if any); (5) any exhibits attached to this Agreement; (6) Addenda, with those of later date having precedence over those of earlier date; (7) the Specifications; and (8) the Drawings.

D. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

### **PART 3 ENGINEER AND OWNER'S REPRESENTATIVE**

A. The Project has been designed by Planwest (hereinafter called "**Engineer**"), who will assume all duties and responsibilities of Engineer, and who will have the rights and authority assigned to Engineer in the Contract Documents. Engineer will make itself reasonably available to perform the services required of Engineer under the Contract Documents.



B. JR Engineering (hereinafter called "**Owner's Representative**") will assume all duties and responsibilities of Owner's Representative, and will have the rights and authority assigned to Owner's Representative in the Contract Documents. Owner's Representative will make itself reasonably available to perform the services required of Owner's Representative under the Contract Documents. Owner's Representative may, at the direction of Owner, undertake some duties and responsibilities assigned to Engineer.

C. If no person or entity is described in Part 3(b) above, then Owner shall assume all responsibilities for Owner's Representative hereunder.

#### **PART 4 AGREEMENT PRICE**

A. For the performance of all Work and completion of the Project as specified in the Contract Documents, Owner shall pay Contractor One Million Eight Hundred Six Thousand Nine Hundred Ninety Eight and 50/100ths Dollars (\$1,806,998.50) PLUS one percent (1%) of such amount as payment and performance bonds are required, in accordance with the Contract Documents. The Agreement Price shall be subject to adjustment for changes in the Drawings and Specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the Bid Form, which shall be verified by Engineer. The Agreement Price expressly includes all labor, materials, equipment, and services required by, incidental to, or reasonably inferable from the Work required by this Agreement as necessary to achieve the Owner's intended use for the Project, except as may be noted on Contractor's Bid Form as exclusions.

#### **PART 5 CONTRACT TIME**

A. Contractor shall commence performance on the Project within ten (10) days after receipt of written Notice to Proceed. The Contractor will achieve Substantial Completion (as that term is defined in the General Conditions) of the entire Work by:

☐ The date of Substantial Completion indicated in the Project Schedule.

☐ \_\_\_\_\_ days from the Notice to Proceed.

X Phase I to be completed within 180 days following the mutual execution hereof. Phase II to be completed on or before August 15, 2025

B. Owner and Contractor recognize that TIME IS OF THE ESSENCE of this Agreement and that Owner will suffer financial loss if Project is not substantially completed within the time specified in Part 5 A., above, plus



any extensions thereof granted by Owner in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if Project is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall be liable to Owner for liquidated damages until Substantial Completion of the entire Work has been achieved, at the following rates: \$N/A per day. Unless otherwise agreed in writing by the Parties, Contractor shall achieve Final Completion of the entire Work within thirty (30) days of the date it achieves Substantial Completion.

C. Nothing herein or otherwise shall limit Owner's rights under the Contract Documents for any matter other than delay, including (but not limited to) Owner's rights in the event of termination, or Owner's right to pursue a claim for damages due to defective or non-conforming Work or for Contractor's breach of contract. For the avoidance of doubt, nothing herein shall impair or limit Owner's rights to indemnity and defense under the Contract Documents.

## **PART 6      PAYMENT PROCEDURES**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit an Application for Payment for the preceding month, in accordance with the General Conditions. Applications for Payment will be reviewed and processed by Engineer and Owner's Representative as provided in the General Conditions.

B. Subject in all events to the following retainage provisions and the other rights of the Owner to retain amounts, Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Owner's Representative, by the end of the following month (the "**Due Date**").

1. If, in the opinion of the Owner, the Contractor is satisfactorily performing this Agreement, progress payments shall be in an amount equal to ninety-five percent (95%) of the calculated value of completed Work, less the aggregate payments previously made. If, in the opinion of Owner, satisfactory progress is not being made on the Project, or if a claim is filed under Section 38-26-107, Colorado Revised Statutes, Owner may retain such additional amounts as may be deemed reasonably necessary by Owner to assure completion of the Work or to pay such claims and any engineer's and attorney's fees reasonably incurred or to be incurred by Owner in defending or handling such claims. Subject to the foregoing, the withheld percentage of the Agreement Price may be retained until this Agreement is completed satisfactorily and the Project is finally



accepted by Owner in accordance with the provisions of the Contract Documents. Progress payments shall not constitute final acceptance of the Work.

2. Payments will be made for materials stored on-site in accordance with Part 14.01 B of the General Conditions.

3. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., Owner shall make final payment, including release of any retainage, to Contractor as recommended by Engineer, and in accordance with the Contract Documents and Section 38-26-107, C.R.S., within sixty (60) days.

C. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. ("**Contractor's Bonds and Lien on Funds**"), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. ("**General Mechanics' Liens**"). Nevertheless, to the extent that any portion of the Project, the underlying property, or the improvements thereon, is/are subject to the assertion of a mechanic's lien under the General Mechanic's Liens statute, then Contractor hereby forever waives and releases any and all rights, which may now or heretofore exist or accrue, to record a lien thereon for any work or services performed, materials or equipment furnished, or labor supplied, regardless of whether such services, work, materials, equipment, or labor were required by the Contract Documents, to the maximum extent allowable by law. Contractor further agrees that all debts owed by Contractor to any third party relating to the goods or services covered by this waiver of lien rights have been paid or will be timely paid. Apart from their right to timely and properly assert claims against the Performance Bond or Labor and Materials Payment Bond required hereunder or under C.R.S. § 38-26-106, the sole remedy of Contractor's subcontractors and suppliers, and any other person, as defined in section 2-4-401(8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor, as against the Owner, the Project, the underlying property, or the improvements thereon, shall be to file a verified statement of claim before the time of final settlement pursuant to C.R.S. § 38-26-107. No Subcontractor, laborer, supplier, nor any other person for whom Contractor is responsible in connection with this Agreement shall have the right to lien the Project or the real property underlying the Project, any such rights being expressly waived.

D. Contractor agrees to require each of its Subcontractors and suppliers (at all tiers) to expressly incorporate Part 6, Subparagraph C of this



Agreement into their respective subcontracts and/or purchase orders, with the word "Contractor" being substituted for the name of such Subcontractor and/or supplier. This obligation shall represent a material term of this Agreement. Upon Owner's written request, Contractor shall provide copies of its subcontracts and/or purchase orders (whether executed or unexecuted) to Owner. Owner reserves the right (but not the obligation) to verify that such subcontracts and/or purchase orders expressly incorporate the acknowledgments, waivers, and releases of Part 6, Subparagraph C of this Agreement.

E. Contractor shall defend, indemnify, and hold harmless the Owner, from and against any and all General Mechanics' Liens recorded by Contractor, or by any Subcontractors engaged by Contractor, directly or indirectly, for any work or services performed, materials or equipment supplied, or labor furnished in relation to or arising out of this Agreement.

## **PART 7      DEFAULT**

**7.01**      If any of the events or circumstances described in Section 7.02 occur, and the Contractor fails within a seven (7) calendar day period after receipt of notice from the Owner to commence and continue correction of such events or circumstances with diligence and promptness, the Owner may, without prejudice to other remedies in the Contract Documents, in equity, or at law, undertake any of the remedies described in Section 7.03.

**7.02**      Without limiting any other right, remedy, or term under the Contract or at law, any one or more of the following shall constitute a default or an event of default by the Contractor:

A.      The Contractor fails or refuses to comply with or perform, in whole or in part, any term, requirement, or condition of the Agreement or the Contract Documents;

B.      The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, other subtiers of any level, supervisory staff, or work force, or for any materials, labor, equipment, or other expenses incurred in the performance of the Work, when such payments are due and in accordance with the respective agreements requiring such payment and/or any and all applicable laws requiring the same, including (without limitation) C.R.S. § 24-91-103(2);

C.      The Contractor becomes insolvent, makes or attempts to make any assignment for the benefit of creditors, commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days of such commencement;

D.      The Contractor abandons any or all of the Work, or reduces its management, supervisory staff, or work force to a level that may not allow



the Contractor to maintain the appropriate progression of the Work according to the Project Schedule and/or the otherwise appropriate provision of services or the Work for the timely and proper completion of the Project, as determined by the Owner (including services during pre-construction as well as during construction), and including without limitation Work being performed prior to Substantial Completion as well as following Substantial Completion and until all Punch List items are complete and the Project achieves Final Completion;

E. The Contractor fails to achieve Final Completion of the Work (including, without limitation, the completion of all Punchlist Items) within thirty (30) calendar days from the date of Substantial Completion;

F. The Contractor fails to perform this Agreement or the Work in accordance with applicable laws, ordinances, codes, statutes, rules and regulations, or the lawful orders of any governmental authorities having jurisdiction over the Project; or

G. Contractor is otherwise in breach of any material term(s) of the Contract Documents.

### **7.03**

If the Contractor is ever in default or an event of default exists the Owner may, without limiting any other right, remedy, or term under the Contract or at law, elect to do any one or more of the following:

A. Issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, provided that the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity;

B. Direct the Contractor to comply with the terms of the Agreement and/or Contract Documents;

C. Direct the Contractor to remove any defective or hazardous material or Work which the Contractor controls, which the Contractor shall do at its sole cost;

D. Accept any non-conforming work or materials, in which event the Owner shall be entitled to a reduction in Agreement Price for the reduced value thereof;

E. Make payments directly to Subcontractors, other subtiers of any level, supervisory staff, or work force, to satisfy the Contractor's obligations for any materials, labor, equipment, or other expenses incurred in the performance of the Work;



- F. Withhold any further payments to the Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner;
- G. Terminate the Contract pursuant to Section 15.02 of the General Conditions;
- H. Engage separate contractors to perform, repair, or complete the Work required by the Contract Documents, or to perform Contractor's warranty obligations under the Contract Documents; and/or
- I. Exercise any other action or seek any other remedy to which the Owner may be entitled under the Contract Documents, at law, or in equity.

**7.04** The Owner's choice of a remedy under Section 7.03 hereof shall not be construed or interpreted as a waiver of any other rights or remedies provided to the Owner under the Contract Documents, at law, or in equity, against the Contractor, its surety, or any other party. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

**7.05** The Contractor shall pay, immediately upon demand, all costs, losses, damages, and expenses, including, without limitation, all administrative, management, overhead, and other costs and expenses, as well as all reasonable attorneys' fees, costs, and expenses (collectively, "Default Costs"), incurred by the Owner in connection with any default by the Contractor or exercise of any right or remedy upon the Contractor's default. Payment shall be due immediately upon Contractor's receipt of written demand, and interest shall accrue at a rate of 1.5% per month on any amounts not paid by Contractor within thirty (30) days. If the Contractor does not pay the Default Costs immediately, the Owner may deduct them from any unpaid portion of the Contract Sum and the Agreement Price, including (without limitation) any retainage.

## **PART 8 CONTRACTOR'S REPRESENTATIONS**

A. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

1. Contractor is familiar with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of Project.
2. Contractor has carefully studied the Site and has performed all necessary investigations, tests, and subsurface investigations to



define the latent physical conditions of the construction Site affecting cost, progress, or performance of Project.

3. Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data as Contractor deems necessary for the performance of Project at the Agreement Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.

4. Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

5. Contractor has given Engineer and Owner's Representative written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

## **PART 9 OWNER'S REPRESENTATIONS**

A. Owner makes the following representations:

1. This Agreement is subject to the provisions of Section 24-91-103.6, C.R.S., as amended. Owner has appropriated money equal to or in excess of the Agreement Price. This Agreement is subject to annual appropriation by Owner.

2. Owner will not issue any Change Order or other form of order or directive by Owner requiring additional compensable work to be performed by Contractor, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement Price unless Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. By executing a Change Order which causes an increase in the Agreement Price, Owner represents to Contractor that Contractor is being given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made. Any claim for additional compensation shall be in full compliance with Section 24-91-103.6(4), C.R.S., as amended.

## **PART 10 MISCELLANEOUS**

A. Terms used in this Agreement which are defined in Part 1 of the General Conditions shall have the meanings indicated in the General Conditions.



B. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. 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 Documents.

C. The terms of this Agreement, and all covenants, agreements, and obligations contained in the Contract Documents shall inure to and be binding upon the partners, legal representatives, successors, heirs, and permitted assigns of the parties hereto.

D. If any term, section or other provision of the Contract Documents shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of the Contract Documents, and to this end, each term, section and provision of the Contract Documents shall be severable.

E. No waiver by either party of any right, term or condition of the Contract Documents shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Contract Documents.

F. None of the remedies provided to either party under the Contract Documents shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable in accordance with Part 21 of the General Conditions. The Contract Documents shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

G. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

H. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and superseded by, the Contract Documents.



I. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

J. Unless otherwise expressly provided, any reference herein to “days” shall mean calendar days. All times stated in the Contract Documents are of the essence.

K. Contractor authorizes the Owner to provide to any person any pertinent information, personal or otherwise, regarding the Contractor’s performance with respect to the Contract Documents and releases all parties from liability for any damage that may result from the Owner’s furnishing such information to others.

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(Signatures appear on following pages)



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**CONTRACTOR:**

BRIGHTVIEW LANDSCAPE  
DEVELOPMENT, INC., a Colorado  
corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

CONTRACTOR'S LICENSE NO.: \_\_\_\_\_  
AGENT FOR SERVICE OF  
PROCESS: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )  
\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**



## Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and firmly bound unto the \_\_\_\_\_ Metropolitan District, as Obligee, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment of which penal sum, well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed an Owner-Contractor Agreement dated \_\_\_\_\_, for the construction of the \_\_\_\_\_ (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform said Contract, including a \_\_\_\_\_ (\_\_\_\_) **year** warranty period described in the Contract Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives any notice of any alteration of the Contract or extension of the Contract Time, as stated in the Contract, as may be agreed upon by the Obligee and the Contractor and embodied in any written Change Order whether or not it increases the total price of the Project.

Whenever the Principal shall be in default under the Contract and is declared so by the Obligee and the Obligee has performed all obligations under the Contract, the Surety may (1) remedy the default, or (2) complete the Contract in accordance with its terms and conditions, or (3) obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest, qualified, responsive and responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest, qualified, responsive and responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) funds sufficient to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of **two (2) years** from the date final payment under the Contract is due. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgements, and save harmless the Obligee from all costs and damages



which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default, together with interest thereon at the rate of eight percent (8%) per annum from the date of judgment.

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(Signatures appear on following pages)



Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26,101 et seq., C.R.S. This bond must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute the Bond.



**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

(Power of Attorney Attached)



## Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That we, the undersigned, \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Principal, and \_\_\_\_\_, duly organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Colorado, as Surety, are hereby held and bound firm unto [\_\_\_\_\_] Metropolitan District, as Obligee, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), together with interest at the rate of eight percent (8%) per annum on all payments becoming due in accordance with the Contract (defined below) from the time such payments shall become due until such payment shall be made, for the payment of which sum well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-named Principal and Obligee have executed a Contract dated \_\_\_\_\_, for the construction of the \_\_\_\_\_ (hereinafter "**Contract**"), which is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant shall be defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract; labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant, as herein defined, who has not been paid in full before the expiration of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for sums as may be justly due claimant, together with interest at the rate of eight percent (8%) per annum, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit, and the Surety hereby agrees to pay and defend the Obligee against any claims brought under this Bond and indemnify the Obligee for any judgments, and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and in addition to such obligations, shall reimburse and repay the Obligee all outlay and expense including attorney fees and related costs which the Obligee may incur in making good any default.
3. No suit or action shall be commenced hereunder by any claimant:



- a) Unless the claimant, other than one having a direct contract with the Principal, shall have given written notice to the Oblige and either the Principal or the Surety within six (6) months after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the Project is located, save that such service need not be made by a public officer.
- b) After the expiration of **one (1) year** following the date on which the Principal ceased work on the above-described Project, it being understood, however, that, if any limitation embodied in this Bond is prohibited by any law controlling construction hereof, such limitation shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county of the state in which the Project, or any part thereof, is situated, and not elsewhere.
- d) In addition, if the Principal or its subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such Principal or its subcontractor in performance of the Contract or shall fail to duly pay any person who supplies laborers, rental machinery, tools or equipment in the prosecution of the Work, then the Surety shall pay the same in an amount not exceeding the sum specified in this Bond together with interest at a rate of eight percent per annum.
- e) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of statutory claims which may be filed of record for the Project, whether or not the claim or the amount of such claim be presented under and against this Bond.



Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Address)

**NOTE:** This Bond is given under and subject to the provisions of Section 38-26-101 et. seq., C.R.S., and must be accompanied by a Power of Attorney effectively dated. Date of Bond must not be prior to date of Agreement. If Principal is a partnership, all partners should execute Bond.



**IMPORTANT:** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

(Power of Attorney Attached)

**END OF SECTION**



## NOTICE TO PROCEED

\_\_\_\_\_, Colorado  
Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby authorized to proceed on \_\_\_\_\_, 20\_\_\_\_, or within ten (10) consecutive calendar days thereafter, with the Work as set forth in the Contract Documents.

You are to notify the Engineer forty-eight (48) hours before starting work.

### **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

### ACKNOWLEDGEMENT OF RECEIPT OF NOTICE TO PROCEED:

Receipt of the above Notice to Proceed is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**END OF SECTION**



## CHANGE ORDER

**Project:** \_\_\_\_\_ **Date of Issuance:** \_\_\_\_\_

**Owner:** HARVEST CROSSING METROPOLITAN DISTRICT NO. 3 **Change**  
**Order No.:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Owner's Representative:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
You are directed to make the following changes in the Contract Documents:

**Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Purpose of Change Order:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attachments (List Documents Supporting Change):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$

Previous Change Orders:

No. \_\_\_\_ to No. \_\_\_\_

\$

Contract Price Prior to this Change Order:

\$

Net Increase of this Change Order:

\$

### CHANGE IN CONTRACT TIME:

Original Contract Time:

(days or dates)

Net Change from Previous Change Order:

(days)

Contract Time Prior to this Change Order:

(days or date)

Net Increase of this Change Order:

(days)



Net Decrease of this Change Order:

\$

Net Change of this Change Order:

\$

Contract Price with All Approved Change Orders:

\$

Net Decrease of this Change Order:

(days)

Net Change of this Change Order:

(days)

Contract Time with all Approved Change Orders:

(days or date)

---

---

RECOMMENDED:

BY: \_\_\_\_\_  
Engineer

APPROVED:

By: \_\_\_\_\_  
Owner

APPROVED:

By: \_\_\_\_\_  
Contractor

**END OF SECTION**



## CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PROGRESS PAYMENT

TO WHOM IT MAY CONCERN: \_\_\_\_\_ (“**Contractor**”) has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ (“**Project**”) located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of partial payment in the sum of \$\_\_\_\_\_ (the “**Partial Payment**”), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the partial payment received. This waiver and release shall only be effective as of the date the Partial Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys’ fees, incurred as a result of claims that any of Contractor’s subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Progress Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## UNCONDITIONAL PARTIAL WAIVER OF CLAIMS FOR PAYMENT RECEIVED

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ ("**Contractor**") has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ ("**Project**") located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a partial payment in the sum of \$\_\_\_\_\_ (the "**Partial Payment**"), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the Partial Payment.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys' fees, incurred as a result of claims that any of Contractor's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Partial Waiver of Claims for Payment Received. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## CONDITIONAL PARTIAL WAIVER OF CLAIMS FOR FINAL PAYMENT

TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ ("**Contractor**") has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ ("**Project**") located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of the receipt of final payment in the sum of \$\_\_\_\_\_ (the "**Final Payment**"), the sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents, but only to the extent of the final payment received. This waiver and release shall only be effective as of the date the Final Payment is made to Contractor, and only to the extent of the monies so paid on such date.

In order to induce payment to be made, Contractor certifies that it has paid or will pay all of its subcontractors, suppliers, and employees for all items owed for work covered by payments which Contractor has received for the Project prior to the date hereof. Provided payments are made pursuant to the Contract Documents, Contractor will defend and indemnify the owner of the Project, its lenders and title company for and from all costs and expenses, including attorneys' fees, incurred as a result of claims that any of Contractor's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Conditional Partial Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## UNCONDITIONAL WAIVER OF CLAIMS FOR FINAL PAYMENT



TO WHOM IT MAY CONCERN: The undersigned \_\_\_\_\_ ("**Contractor**") has furnished certain labor, skills, materials and/or equipment to the \_\_\_\_\_ ("**Project**") located in \_\_\_\_\_ County, Colorado.

NOW, THEREFORE, Contractor, for and in consideration of a final payment in the sum of \$\_\_\_\_\_ (the "**Final Payment**"), the receipt and sufficiency of which is hereby acknowledged, does hereby waive, release, and relinquish any right it has to make a claim against a bond, and to any and all other claims of any kind for anything related to the Project against: (a) the real property where the Project is located; (b) the improvements and other property located thereon; and (c) the owner of the Project and its title company and lenders, and each of their respective employees, officers and agents.

In order to induce payment to be made, Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items owed for work covered by payments that Contractor has received for the Project prior to the date hereof. Contractor will defend and indemnify the owner of the Project, its lenders and title company for all costs and expenses, including attorneys' fees, incurred as a result of claims that any of Contractor's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this Unconditional Waiver of Claims for Final Payment. Contractor has executed this waiver voluntarily and with full knowledge of its rights under the law.

Contractor: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Printed  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.

My commission  
expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**END OF SECTION**



## NOTICE OF FINAL PAYMENT

**NOTICE** is hereby given that the \_\_\_\_\_ **METROPOLITAN DISTRICT** of \_\_\_\_\_ County, Colorado, will make final payment at \_\_\_\_\_, Colorado, on \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_.m. to \_\_\_\_\_ of \_\_\_\_\_, of \_\_\_\_\_, Colorado for all work done by said Contractor(s) in construction or work on ([project description], performed within \_\_\_\_\_, County of \_\_\_\_\_, State of Colorado.

Any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractors or their subcontractors, in or about the performance of the work contracted to be done or that supplies rental machinery, tools, or equipment to the extent used in the prosecution of the work, and whose claim therefor has not been paid by the contractors or their subcontractors, at any time up to and including the time of final settlement for the work contracted to be done, is required to file a verified statement of the amount due and unpaid, and an account of such claim, to \_\_\_\_\_ Metropolitan District, \_\_\_\_\_ on or before the date and time hereinabove shown for final payment. Failure on the part of any claimant to file such verified statement of claim prior to such final settlement will release \_\_\_\_\_ Metropolitan District, its directors, officers, agents, and employees, of and from any and all liability for such claim.

**BY ORDER OF THE BOARD OF DIRECTORS**  
\_\_\_\_\_ **METROPOLITAN DISTRICT**

By: /s/ \_\_\_\_\_  
Secretary

First Publication: \_\_\_\_\_, 20\_\_\_\_

Last Publication: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Name of Newspaper)

**END OF SECTION**



## **SUPPLEMENTARY CONDITIONS**

### **PART 2      SCHEDULES**

L.        Schedules required by Part 14.01 A may be handwritten, in graphic or text form.

### **WARRANTY START DATE**

The effective start date of the **two year** warranty period is the date that Owner or another public entity as may be appropriate finally accepts improvements for the required warranty period. (See General Conditions Part 14.10 A).

### **END OF SECTION**



## ADDENDA AND MODIFICATIONS

NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

### 1.01 GENERAL

The following changes, additions, and/or deletions are, by issuance of this Section 00900, made a part of the Project Manual for \_\_\_\_\_ Metropolitan District dated \_\_\_\_\_, 20\_\_\_\_, as if originally contained therein. Execution of the acknowledgement of receipt shall be the bidders acceptance of the conditions herein set forth. This Section 00900 shall be submitted with and attached to the submitted Bid Form. Failure to do so may result in rejection of the Bid.

1.02 Bidder shall complete Addendum No. 1 attached hereto regarding compliance with Section 8-17.5-102, C.R.S.

### 1.03 MODIFICATIONS TO SPECIFICATIONS

A. PAGE \_\_\_\_\_, SECTION \_\_\_\_\_ "\_\_\_\_\_", PART \_\_\_\_\_  
"\_\_\_\_\_", PARAGRAPH \_\_\_\_\_:

### 1.05 MODIFICATIONS TO SPECIFICATIONS

B. SHEET \_\_\_\_\_ OF \_\_\_\_\_  
"\_\_\_\_\_"

### ACKNOWLEDGEMENT OF RECEIPT

Receipt is acknowledged this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Title



# GENERAL CONDITIONS TABLE OF CONTENTS

	<b>Page</b>
Part 1	DEFINITIONS..... 1
Part 2	Preliminary Matters ..... 3
	2.01 Delivery of Bonds and Certificate Of Insurance..... 3
	2.02 Execution and Transmission of Documents ..... 3
	2.03 Copies of Documents ..... 4
	2.04 Commencement of Contract Time; Notice to Proceed ..... 4
	2.05 Starting the Project..... 4
	2.06 Before Starting Construction ..... 4
	2.07 Preconstruction Conference ..... 5
Part 3	Contract Documents: Intent and Reuse..... 5
	3.01 Intent ..... 5
	3.02 Reuse of Documents ..... 6
Part 4	Availability of Lands; Physical Conditions; Reference Points ..... 6
	4.01 Availability of Lands ..... 6
	4.02 Physical Conditions – Investigations and Reports..... 7
	4.03 Unforeseen Physical Conditions ..... 7
	4.04 Reference Points ..... 7
Part 5	Bonds and Insurance ..... 8
	5.01 Performance and Other Bonds ..... 8
	5.02 Contractor’s Insurance Requirements ..... 8
	5.03 Insurance Certificates/Policy ..... 12
	5.04 Additional Requirements ..... 13
	5.05 Indemnification ..... 14
Part 6	Contractor’s Responsibilities ..... 15
	6.01 Supervision and Superintendent ..... 15
	6.02 Labor, Materials, and Equipment..... 16
	6.03 Equivalent Materials and Equipment..... 19
	6.04 Concerning Subcontractors ..... 20



## TABLE OF CONTENTS

(continued)

	<b>Page</b>
<b>6.05</b> Patent Fees and Royalties .....	22
<b>6.06</b> Permits .....	22
<b>6.07</b> Laws And Regulations .....	22
<b>6.08</b> Taxes .....	23
<b>6.09</b> Use of Premises.....	24
<b>6.10</b> As-Built Documents.....	25
<b>6.11</b> Safety and Protection .....	25
<b>6.12</b> Emergencies .....	28
<b>6.13</b> Plans and Shop Drawings .....	28
<b>6.14</b> Construction Stakes .....	30
<b>6.15</b> Private Property And Excavation.....	31
Part 7 Coordination of Work .....	32
<b>7.01</b> Owner's Right to Perform.....	32
<b>7.02</b> Contractor to Coordinate.....	32
Part 8 Owner's Responsibilities .....	33
<b>8.01</b> CommunicatIONS.....	33
Part 9 Status of Engineer During Construction .....	33
<b>9.01</b> Duties of Engineer .....	33
<b>9.02</b> Visits to Site.....	33
<b>9.03</b> Clarifications and Interpretations.....	34
<b>9.04</b> Rejecting Defective Work.....	34
<b>9.05</b> Decisions on Disagreements .....	34
<b>9.06</b> Limitations on Engineer's and Owner's Responsibilities.....	35
Part 10 Changes in the Work.....	36
<b>10.01</b> Owner May Order Changes .....	36
Part 11 Agreement Price and Changes .....	37
<b>11.01</b> Agreement Price Changed Only by Change Order.....	37
<b>11.02</b> Cost of the Work.....	39



## TABLE OF CONTENTS

(continued)

	Page
11.03 Contractor's Fee.....	42
Part 12 Contract Time and Changes.....	43
12.01 Determination and Extension of Contract Time .....	43
12.02 Contract Time Changed Only by Change Order.....	43
Part 13 Warranty and Guarantee; Tests and Inspections; Correction, Removal or Acceptance of Defective Work .....	44
13.01 Warranty and Guarantee .....	44
13.02 Access to Work .....	44
13.03 Tests and Inspection.....	44
13.04 Uncovering Work.....	45
13.05 Owner May Stop the Work .....	46
13.06 Correction or Removal of Defective and Unauthorized Work .....	46
13.07 Two Year Correction Period .....	47
13.08 Acceptance of Defective Work .....	47
13.09 Owner May Correct Defective Work.....	47
Part 14 Construction Schedule, Payments to Contractors and Completion .....	48
14.01 Schedules .....	48
14.02 Application for Progress Payments.....	49
14.03 Contractor's Warranty of Title.....	50
14.04 Review of Applications for Progress Payment .....	50
14.05 Substantial Completion.....	52
14.06 Partial Utilization .....	52
14.07 Final Inspection.....	53
14.08 Final Application for Payment.....	53
14.09 Final Payment and Acceptance.....	54
14.10 Contractor's Continuing Obligation .....	55
Part 15 Suspension of Work and Termination .....	56
15.01 Engineer or Owner May Suspend Work.....	56



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
15.02 Owner May Terminate .....	57
15.03 Contractor May Stop Work or Terminate .....	59
15.04 Owner May Terminate for Convenience .....	59
Part 16 Miscellaneous .....	63
16.01 Giving Notice.....	63
16.02 Computation of Time.....	64
16.03 Correction Period .....	64
16.04 General .....	64
Part 17 Addresses .....	65
17.01 Owner.....	65
17.02 Engineer .....	66
17.03 Contractor/Surety .....	66
17.04 Change of Address .....	66
Part 18 Liquidated Damages .....	66
Part 19 Existing Underground Installations .....	67
Part 20 Streamlined Specifications.....	68
Part 21 Handling of Disputes .....	68
21.01 Disputes.....	68
Part 22 Duties, Responsibilities, and Limitations of the Authority of the Owner's Representative .....	69
22.01 Description .....	69
22.02 Duties and Responsibilities.....	69
22.03 Limitations of Authority .....	70
Part 23 SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE .....	71
23.01 Purpose and Applicability .....	71
23.02 Causes for Suspension .....	71
23.03 Causes for Debarment.....	71
23.04 Procedures for Suspension and Debarment .....	73



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>23.05</b> Decision on Debarment.....	73
<b>23.06</b> Settlement and Voluntary Exclusion .....	74
<b>23.07</b> Length of Debarment .....	74
<b>23.08</b> Scope of Debarment and Suspension.....	74



## **PART 1      DEFINITIONS**

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Addendum** – Written or graphic instrument which clarifies, corrects or changes the bidding documents or the Contract Documents.

**Agreement** – The written agreement between Owner and Contractor covering the Work to be performed.

**Agreement Price** – The moneys payable by Owner to Contractor under the Contract Documents as stated in the Agreement for the Work or discrete portions thereof.

**Application for Payment** – The form designated by Engineer which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bid Form** – The offer or proposal of the Bidder attached to the Agreement as **Exhibit A**.

**Change Order** – A written order to Contractor signed by Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time issued after the effective date of the Agreement.

**Contract Documents** – As defined in the Agreement.

**Contract Time** – The number of days stated in the Agreement for the Completion of the Work.

**Contractor** – The person or entity with whom Owner has entered into the Agreement to perform field construction.

**Day** – A calendar day of twenty-four hours measured from midnight to the next midnight.

**Defective** – An adjective which when modifying the word “**Work**” refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer’s recommendation for final payment.

**Drawings** – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.



**Effective Date of the Agreement** – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the parties to sign and deliver.

**Engineer** – The person or entity named as “**Engineer**” in the Agreement.

**Field Order** – A written order issued by Engineer which orders minor changes in the Work in accordance with Paragraph 10.01.B but which does not involve a change in the Agreement Price or the Contract Time.

**Modification** – (a) a written amendment of the Contract Documents signed by both parties, (b) a Change Order, or (c) a Field Order. A modification may only be issued after the effective date of the Agreement.

**Notice of Award** – The written notice by Owner to the apparent Successful Bidder stating that upon compliance by the apparent Successful Bidder with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.

**Notice to Proceed** – A written notice given by the Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

**Owner** – Harvest Crossing Metropolitan District No. 3, with whom Contractor has entered into the Agreement and for whom the Work is to be provided.

**Project** – The total construction required under the Contract Documents, of which the Work to be provided under the Contract Documents may be the whole or part.

**Part** – Section(s) of these General Conditions.

**Plans** – The official plans, working drawings, or supplemental drawings or exact reproductions thereof, prepared by or approved in concept by the Engineer which show the location, character, dimensions, and details of the Work to be done and which are to be considered as part of the Contract Documents, supplemental to these Specifications.

**Shop Drawings** – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

**Site** – Any area or areas where Work is to be performed on the Project.



**Specifications** – Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

**Subcontractor** – A person or entity, including a supplier, having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

**Substantial Completion** – The date when Work has progressed to the point where, in the opinion of Engineer as evidenced by its definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended and it is ready for punch listing.

**Supplementary Conditions** - The specific clauses setting forth conditions or requirements peculiar to the Project, covering work or materials involved in the Bid which are not thoroughly or satisfactorily stipulated in the General Conditions or Specifications.

**Work** – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. The term “**Work**” shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Project in accordance with the design intent conveyed in the Contractor Documents, and the carrying out of all duties and obligations imposed by the Contract Documents to achieve the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## **PART 2      PRELIMINARY MATTERS**

### **2.01              DELIVERY OF BONDS AND CERTIFICATE OF INSURANCE**

A.      When Contractor delivers the executed Agreement to Owner’s Representative, Contractor shall also deliver to Owner’s Representative the Performance Bond, Labor and Materials Payment Bond, Certificates of Insurance on ACORD Form 27 and copies of applicable insurance policies.

### **2.02              EXECUTION AND TRANSMISSION OF DOCUMENTS**

A.      At least four (4) copies of the Contract Documents will be prepared by Owner’s Representative. All copies will be submitted to Contractor and Contractor shall execute the Agreement, insert all Certificates of Insurance on ACORD Form 27 and copies of all applicable insurance policies, and submit all copies to Owner’s Representative within ten days of Notice of Award. The date on the Agreement shall be left blank for completion by



Owner. The date on the Bonds and the certification date on the Power of Attorney must not be prior to the date of the Agreement.

B. Owner will execute all copies, insert the date on the Agreement and Bond forms and the Certification Date on the Power of Attorney, and transmit all copies to Owner's Representative within ten (10) days for review and distribution. Distribution of signed copies will be one copy each to Owner, Contractor, and Engineer. Contractor shall be responsible for distribution of copies to the Surety.

## **2.03 COPIES OF DOCUMENTS**

A. Owner shall furnish to Contractor three (3) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.

## **2.04 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

A. The Contract Time shall commence to run on the day indicated in the Notice to Proceed.

## **2.05 STARTING THE PROJECT**

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

## **2.06 BEFORE STARTING CONSTRUCTION**

A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.

Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

B. If not delivered previously, before any Work under this Agreement is started, Contractor shall deliver to Owner's Representative, with a copy to Engineer, certificates of insurance on ACORD Form 27 and copies of the applicable insurance policies (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Part 5.



## **2.07 PRECONSTRUCTION CONFERENCE**

A. Within ten (10) days after the effective date of the Agreement, but before Contractor starts the Work at the Site, a conference will be held for review and acceptance of the schedules referred to in Paragraph 6.13 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

## **PART 3 CONTRACT DOCUMENTS: INTENT AND REUSE**

### **3.01 INTENT**

A. The Contract Documents comprise the entire Agreement between Owner and Contractor concerning the Work. They may be altered only by a Modification.

B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall report it to Engineer as a request for information in writing at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless Contractor had actual knowledge thereof or should reasonably have known thereof.

C. It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or



employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided for in Paragraph 9.03.A.

D. The Contract Documents have been made, executed, and delivered in the State of Colorado and shall be governed and construed for all purposes under and in accordance with the laws of the State of Colorado.

E. The Project Manual consists of Bid Form, Agreement, Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplementary Conditions, if any, and Specifications. Should any construction or conditions which are not thoroughly or satisfactorily stipulated or set forth by the Specifications be anticipated on any proposed project, Supplementary Conditions for such Work may be prepared and attached to the Bid Proposal Form and Agreement, and shall be considered as part of the Specifications, the same as though contained fully therein. Should any Supplementary Condition conflict with the General Conditions, the Supplementary Condition will govern.

### **3.02 REUSE OF DOCUMENTS**

A. Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall 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; and they shall not reuse any of them on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

## **PART 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.01 AVAILABILITY OF LANDS**

A. Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise provided in the Contract Documents. In acquiring easements or rights-of-way, the Owner shall proceed as expeditiously as possible, but in the event all easements or rights-of-way are not acquired prior to the beginning of construction, the Contractor shall begin Work on such easements and rights-of-way that have been acquired. In the event a delay in the



acquisition of rights-of-way causes unavoidable delay in Contractor's prosecution of the Work, then Contractor may make a claim for an extension of Contract Time, as provided in Part 12.

Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### **4.02 PHYSICAL CONDITIONS – INVESTIGATIONS AND REPORTS**

A. Owner shall identify and make available to Contractor, upon request by Contractor, copies of those reports of investigations and tests of subsurface and latent physical conditions at the Site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness.

#### **4.03 UNFORESEEN PHYSICAL CONDITIONS**

A. Contractor shall promptly notify Owner and Engineer in writing of any latent physical conditions at the Site or in an existing structure differing materially from those indicated or referred to in the Contract Documents which could not have been discovered upon a reasonable inspection of the Site, or conditions of an unusual nature which differ materially from those ordinarily found to exist and recognized in an area such as the Site. Engineer will promptly review those conditions and advise Owner in writing if further investigation or tests are necessary. Promptly thereafter, Owner shall obtain the necessary additional investigations and tests and furnish copies to Engineer and Contractor. If Engineer finds that the results of such investigations or tests indicate that there are latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

B. In addition to the exceptions set forth in the above paragraph, rock encountered during excavation, and dewatering of soils, shall not constitute unforeseen physical conditions pursuant to Paragraph 4.03.A. Contractor shall not be entitled to a Change Order for expense and delay resulting from greater than anticipated rock excavation or dewatering.

#### **4.04 REFERENCE POINTS**

A. Owner shall provide engineering surveys for construction to establish reference points which in its judgment are necessary to enable Contractor



to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by professionally qualified personnel.

## **PART 5 BONDS AND INSURANCE**

### **5.01 PERFORMANCE AND OTHER BONDS**

A. Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond in an amount at least equal to the Agreement Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bond shall meet all requirements of C.R.S. 38-26-101, et. seq. The Bond shall remain in effect at least until **[one (1)] year** after the date when final payment becomes due, or until the **[two-year]** correction period in Paragraph 13.07 is over, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required herein by the Supplementary Conditions. All Bonds shall be on the forms prescribed by the Contract Documents and be executed by such Sureties authorized to do business in the State of Colorado as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond.

B. If the Surety on any bond furnished by Contractor is declared as bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.A Contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to Owner.

C. The Performance Bond and Labor and Materials Payment Bond shall be in an amount equal to one hundred percent (100%) of the Agreement Price, as indicated by Change Orders and all Modifications, as security for payment of all wages and bills contracted for materials, supplies, and equipment used in the performance of the contract.

### **5.02 CONTRACTOR'S INSURANCE REQUIREMENTS**

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A. Contractor shall purchase and maintain during the entire term of this Agreement, including any extensions of the Contract Time through Change Orders, and as provided in Paragraph 5.02.B., such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (i) by any person directly or indirectly resulting from the employment of such person by Contractor, or (ii) by any person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
7. Claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required of Contractor shall include the specific coverages and corresponding limits of liability provided in Paragraph 5.02.C., or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to Owner. All such insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to



Owner and Engineer. All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with Paragraph 13.07.A. In addition, Contractor shall maintain the Products/Completed Operations insurance as shown in Paragraph 5.02.C for at least **two (2) years** after final payment and furnish Owner with evidence of continuation of such insurance at final payment and **one (1) year** thereafter.

C. Contractor shall obtain and maintain insurance coverage as provided herein, including the following:

1. Worker's Compensation and Employers' Liability

(a) State: Statutory

(b) Employers' Liability

\$500,000 Each Accident

\$500,000 Disease, Policy Limit

\$500,000 Disease, Each Employee

(c) A Waiver of Subrogation in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

2. General Liability (Occurrence Form):

(a) Combined Bodily Injury and Property Damage:

\$1,000,000 each occurrence

\$1,000,000 Personal and Advertising Injury

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations  
Aggregate

(b) The following coverages must be included:

(i) Premises Operations

(ii) Independent Contractor's Protective



- (iii) Explosion, Collapse
- (iv) Underground
- (v) Contractual (including the contract obligations specified in Paragraphs 5.05, 6.05, 6.07, 6.11B, 6.11D, 13.01A, 13.06A, 13.07A, and 14.03A)
- (vi) Broad Form Property Damage
- (vii) Personal/Advertising Injury
- (viii) General Aggregate Limit (applies to each project)
- (ix) Products and Completed Operations Insurance shall be maintained by the Contractor for a minimum of **2 years** after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.
- (x) Subcontractors shall comply with all provisions of this Part.
- (xi) A waiver of subrogation endorsement in favor of the Owner, its directors, officers and employees shall be attached to the policy as a separate endorsement.

3. Automobile Liability:

Combined Bodily Injury and Property Damage:

\$1,000,000 per person

\$1,000,000 each Accident

The following coverages must be included:

Owned automobiles

Non-owned and hired automobiles

4. Umbrella Excess Liability



\$5,000,000 each Occurrence/\$5,000,000 Aggregate

5. Builders' "All-Risk" Insurance

D. Builder's Risk Insurance. **[OMIT IF OWNER IS CARRYING THE BUILDER'S RISK POLICY]**

1. **Builder's Risk Insurance will not be required to be provided by the Contractor and will be supplied by the Owner.**

**NOTE: (THE SPECIFIED LIMITS FOR THE LIABILITY POLICIES CAN BE SATISFIED THROUGH THE COMBINATION OF PRIMARY POLICIES AND EXCESS OR UMBRELLA LIABILITY POLICIES.)**

E. To the extent that Contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

F. Insured losses under policies of insurance which include Owner's interests shall be adjusted with Owner and made payable to Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause, and any direction by arbitrators. Owner as trustee shall have the right to adjust and settle losses with the insurers unless one of the parties in interest shall object in writing within 5 days after the occurrence of loss to Owner's exercise of this power and, if such objection be made, arbitrators shall be chosen as provided in the General Conditions. Owner as trustee shall, in that case, make settlement with the insurers in accordance with the direction of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution. Owner waives all rights against Contractor and Engineer for damage caused by fire or other perils but only to the extent that such damage is covered by insurance and only to the extent that such damage does not fall within the indemnification given by Contractor in Paragraph 5.05. Owner shall have no liability for damages caused by fire or other perils.

**5.03 INSURANCE CERTIFICATES/POLICY**

A. Prior to the commencement of any Work under these Contract Documents, the Contractor shall furnish to the Owner's Representative certificates of insurance on ACORD Form 27, copies of the applicable insurance policies and policy endorsements to prove that all required



insurance is in force. Insurance obtained by the Contractor shall be subject to approval by the Owner for adequacy of protection. Neither approval by the Owner of any insurance supplied by Contractor, nor failure to disapprove such insurance shall relieve the Contractor of its obligation to maintain in full force during the life of the Contract Documents all required insurance as set forth herein.

#### **5.04**           **ADDITIONAL REQUIREMENTS**

A.     No insurance coverages required to be obtained by Contractor pursuant to this Part 5 shall have a deductible greater than \$1,000 or as reasonably approved by Owner. The Contractor is solely responsible for the payment of any deductible(s).

B.     If any policy required under this Part 5 is a claims made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than **one year**. The Contractor agrees to purchase such an extended reporting period. The Contractor's failure to purchase such an extended reporting period as required by this Paragraph 5.04 shall not relieve it of any liability under this Agreement. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the Parties hereto.

C.     The Owner and its directors, officers, agents and employees and the Owner's Representative shall be designated as additional insureds on the Contractor's commercial general liability insurance and the automobile liability insurance and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with the requirements of this Part 5.

D.     For any claims related to the provision of services by the Contractor, Contractor's insurance shall be primary insurance with respect to the Owner, and its directors, officers, employees and agents. Any insurance maintained by the Owner (or its directors, officers, employees and agents) shall be excess of Contractor's insurance and shall not contribute with it.

E.     Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.



F. Each commercial general liability policy and, though not a general liability policy, any worker's compensation policy, shall waive any right of subrogation against the Owner and its directors, officers, employees and agents through a separate policy endorsement.

G. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the Owner and its directors, officers, employees and agents. If the Contractor fails to obtain or maintain the required coverage, the Owner may obtain such coverage. The Contractor shall be liable to the Owner for any costs associated in procuring and maintaining in force any such insurance coverage.

## 5.05

### INDEMNIFICATION

A. To the maximum amount allowed by Colorado law, Contractor shall indemnify and hold harmless the Owner, the Owner's Representative, the Engineer, and all of their respective consultants, board members, directors, officers, agents and employees (hereinafter the "Indemnified Parties"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees) caused by either: (i) the Contractor's breach of this Agreement; or (ii) the negligent, criminal, or tortious act or omission of the Contractor or any of its employees, agents, Subcontractors (at any tier) or any person for whom Contractor is legally responsible, in connection with the Project, this Agreement, or the scope of services hereunder, whether any such negligence or any criminal or tortious act or omission is within or beyond the scope of its duties or authority. Contractor agrees that the existence and policy limits of the coverage which the Contractor is required to maintain pursuant to the Contract Documents, including property damage insurance and excess coverages, shall not negate or limit in any way the Contractor's obligation to indemnify the Indemnified Parties.

B. In any and all claims against the Indemnified Parties by any employee of Contractor, any Subcontractor, anyone directly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.05.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. In the event that any Subcontractor, laborer, supplier, or any other person for whom Contractor is responsible in connection with this



Agreement records a mechanic's lien against the Project or the real property underlying the Project, any such lien rights being expressly waived pursuant to Part 6, Subparagraph C of this Agreement, then Contractor shall indemnify, save harmless, and defend the Owner and all of its consultants, directors, officers, agents and employees from and against any and all claims, demands, losses, liens, liabilities, actions, lawsuits and expenses (including reasonable attorney's fees), to the extent arising directly or indirectly in any manner whatsoever out of such lien. In addition, the Owner may withhold from payment to Contractor a sum that the Owner, in its sole discretion, considers sufficient to defend, discharge, satisfy, or bond over any such liens pursuant to C.R.S. § 38-22-131, as Owner may decide in its sole discretion, plus the reasonable fees and costs (including attorney's fees) incurred by the Owner in the course of defending, discharging, satisfying, or bonding over such lien or lawsuit. The provisions of this Section 5.05(C) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **PART 6      CONTRACTOR'S RESPONSIBILITIES**

### **6.01      SUPERVISION AND SUPERINTENDENT**

A.      The Contractor is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Contractor or any of its employees, agents, Subcontractors or suppliers as employees of the Owner. The Work to be performed by the Contractor shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the Owner, except the payments to be made by the Owner to the Contractor for the Work performed as provided herein. Neither Owner, Engineer, nor Owner's Representative shall be responsible for Contractor's means, methods, techniques, sequences or procedures of construction nor for safety precautions and programs incident thereto. **The Contractor is not entitled to worker's compensation benefits and the Contractor is obligated to pay federal and state income taxes on moneys earned pursuant to this Contract.**

B.      Contractor shall supervise and direct the Work competently and efficiently giving the Work the constant attention necessary to facilitate its progress and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.



C. Contractor shall employ at all times during its work progress a competent resident superintendent, who shall not be replaced without written notice to Owner or Owner's Representative except under extraordinary circumstances. Such superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions, suggestions and communications from the Engineer, or its authorized representative. The superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, plant equipment and labor as may be required to perform such Work. Such superintendent shall be furnished irrespective of the amount of Work sublet. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

D. The Contractor shall employ such superintendent and foremen, as are careful and competent, and the Owner or Owner's Representative may request the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who is incompetent or negligent in the proper performance of its or their duties, or neglects or refuses to comply with the Contract Documents given or whose conduct is inappropriate and such person or persons shall not be employed again thereon without the written consent of the Owner.. Should the Contractor continue to employ, or again employ, such person or persons, the Engineer may withhold all pay estimates which are or may become due, or the Engineer may suspend the Work until such orders are complied with.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. The Contractor shall notify the Owner's Representative at least forty-eight (48) hours in advance of the time it intends to start Work on the Site. The Contractor shall operate at such points as the Owner through the Owner's Representative may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limit set forth in the Agreement. Should the prosecution of Work for any reason be discontinued by the Contractor, it shall notify the Owner's Representative at least forty-eight (48) hours in advance of resuming operations.

## **6.02 LABOR, MATERIALS, AND EQUIPMENT**



A. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Owner's written consent given after prior written notice to Owner's Representative.

B. Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no damage to the Work, roadways, adjacent property, or other objects will result from its use. The Agreement may be terminated if the Contractor fails to provide adequate equipment for the Work.

C. The source of supply of each of the materials required shall be reviewed and accepted by the Engineer before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or of the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable material from other sources acceptable to Engineer.

Samples of all materials for testing upon which is to be based the acceptance or rejection, shall be taken by the Engineer or its authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction.



All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Engineer or its representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials confirming to the requirements of these specifications and which have been accepted by the Engineer or its authorized agents shall be used in the Work. Any material which, after acceptance, has for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Engineer shall be subject to the procedures and responsibilities set forth in Paragraph 6.13 as it pertains to samples.

Except as otherwise provided herein, sampling and testing of all materials, and the laboratory methods and testing equipment required under these Specifications, shall be in accordance with the most current edition of the standards set forth in Technical Specifications. The testing of all samples shall be done at the expense of the Contractor at an independent laboratory accepted by the Engineer. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Engineer of the placing of orders for materials to permit testing.

D. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

E. Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected when requested by the Engineer. Stored materials shall be located so as to facilitate prompt inspection. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the Site, and for protection of the Project and shall hold Owner and Owner's authorized representative harmless for any damages or loss incurred thereto.



F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Site by Contractor without the prior written approval of Owner's Representative.

G. All materials not conforming to the requirements of these Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Engineer or Owner's Representative made under the provisions of this article, the Engineer or Owner's Representative shall have authority to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

### 6.03

#### EQUIVALENT MATERIALS AND EQUIPMENT

A. Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that a substitution is not permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Engineer will be as set forth in Paragraphs 6.03.A.1 and 6.03.A.2 below as supplemented in the other Contract Documents.

1. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee



or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Engineer in evaluating the proposed substitute. Engineer will be the sole judge of acceptability, and no substitute will be ordered or installed without Engineer's prior written acceptance. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other Surety with respect to any substitute.

2. Engineer will record time required by Engineer and Engineer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Drawings or Specifications occasioned thereby. Whether or not Engineer accepts a proposed substitute, Contractor shall reimburse Owner for the charges of Engineer and Engineer's consultants for evaluating any proposed substitute.

3. In case of a difference in price, the Owner shall receive all benefit of the difference for any substitutions, and the Agreement Price shall be altered by Change Order to credit the Owner with any savings so obtained.

#### **6.04 CONCERNING SUBCONTRACTORS**

A. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner or Engineer may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner and Engineer by Contractor prior to the Notice of Award and not objected to in writing by Owner or Engineer prior to the Notice of Award will be deemed acceptable to Owner and Engineer. Acceptance of any Subcontractor, other person or organization by Owner or Engineer shall not constitute a waiver of any right of Owner or Engineer to reject defective Work. If Owner or Engineer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Agreement Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued.



Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any Subcontractor or other person or organization having a direct contact with Contractor, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

C. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

D. All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer and contains waiver provisions as required by the Contract Documents. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to the Contract Documents.

E. Contractor shall fully cooperate with Owner and such other contractors or Subcontractors as may be performing work or supplying materials in connection with the Project and shall carefully fit its work in with that of all such other persons or entities. Contractor shall neither commit nor permit any act which will interfere with the performance of the Project by any such person or entity.

F. Contractor shall promptly pay in full for any and all damages caused to the Site or the Project by Contractor or by any Subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions the Contractor is responsible hereunder.



## **6.05 PATENT FEES AND ROYALTIES**

A. If the Contractor is required or desires to use any design, device, invention, product, materials, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incident to said use in performance of the Work or incorporation of the Work. The Contractor and the surety shall indemnify and hold harmless the Owner and Engineer from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the Work agreed to be performed under this contract, and shall indemnify the Owner and Engineer for any costs, expense, and damages, including attorney's fees, which they may be obliged to pay for reason of any such infringement at any time during the prosecution, or after the completion of the Work. The provisions of this Section 6.05(A) are intended to comply with the provisions of Section 13-50.5-102(8), C.R.S., and remain subject to the limitations set forth therein.

## **6.06 PERMITS**

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Owner and Engineer shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all charges of utility service companies for connections to the Work, and Owner shall pay all charges of such companies for capital costs related thereto. A copy of all permits and licenses procured by Contractor shall be supplied to Engineer within a reasonable period of time. With respect to permits obtained by Contractor as necessary for the performance of the Work, Contractor shall be entitled to markup (representing overhead and profits) of not more than 1% thereon, and shall be entitled to no other markup, profit, or fee of any kind thereon.

## **6.07 LAWS AND REGULATIONS**

A. Contractor shall be familiar with all federal, state and local laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the Work or the material or equipment used in or on the Site, or in any way affect the conduct of the Work, including rules and regulations that Owner may promulgate at any time for the safe, orderly and efficient conduct of all Work on the Project (the "applicable regulations"). If Contractor observes that the Specifications or Drawings



are at variance therewith, Contractor shall give Engineer or Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. The Contractor, at all times, shall observe and comply with all applicable regulations and the Contract Documents and its surety shall indemnify and hold harmless the Owner, the Engineer and their consultants, agents and employees, against any claim or liability arising from or based on the violation of any applicable regulations, by anyone for whom Contractor is responsible.

B. Contractor shall comply with all applicable codes, laws, and ordinances pertaining to Small Business Enterprise (SBE), Small Business Enterprise Concession (SBEC), Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), Women Business Enterprise (WBE), Minority Business Enterprise (MBE), or Emerging Business Enterprise (EBE) in the location where the Work is being performed. Without limiting the foregoing, to the extent the Work is performed in the City and County of Denver, the Contractor shall comply with: (i) the MBE and WBE participation requirements set forth in Division 1 and Division 3 of Article III, Title 28, of the Denver Revised Municipal Code, as the same may be amended or recodified from time to time (the "DRMC"); (ii) SBE participation requirements set forth in Article VII, Title 28 of the DRMC; and (iii) any other ordinances that are currently, or may be subsequently, adopted by the City and County of Denver with respect to construction work or construction services.

C. Contractor shall comply with all applicable all applicable codes, laws, and ordinances pertaining to payment of prevailing wages in the location where the Work is being performed.

## **6.08 TAXES**

A. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it.

B. Owner is exempt from Colorado State sales and use taxes. Accordingly, taxes from which Owner is exempt shall not be included in the Agreement Price. Owner shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and Subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase the materials tax free. Pursuant to Subsection 39-26-114(1)(a)(XIX)(A), C.R.S., Contractor and Subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.



## 6.09

### USE OF PREMISES

A. Contractor shall confine construction, equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits and the requirements of the Contract Documents.

B. During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, temporary structures, stumps or portions of trees and surplus materials, and shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. Materials cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

C. Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

D. All structures or obstructions found on the Site and shown on the Contract Drawings which are not to remain in place or which are not to be used in the new construction shall be removed to the satisfaction of the Engineer. Unless specified in the Bid Proposal, this Work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the obstruction. All material found on the Site or removed therefrom shall remain the property of the Owner unless otherwise indicated.

E. The Contractor, with the consent of the Engineer, may use in the proposed construction any stone, sand, or gravel found on the Site. The Contractor will not be paid for such excavation unless specifically stated in the Bid Proposal, and it shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Engineer and indicated in the Specifications that any or all of the material so excavated and used was to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate outside of the proposed slope and grade lines as indicated on the Drawings, without prior consent by the Engineer.



F. Contractor shall protect all existing erosion control measures installed by others and shall promptly replace all items disturbed during his work.

## **6.10 AS-BUILT DOCUMENTS**

A. Contractor shall keep one set of as-built records of all Plans, Specifications, drawings, Addenda, Modifications, Shop Drawings and samples at the Site, in good order and annotated and updated weekly to show all changes made during the construction process. These shall not be used for construction purposes, shall be available to Engineer or Owner's Representative at all times for examination and shall be delivered to Engineer or Owner's Representative for Owner upon completion of the Work. All changes or drawings from the original drawings shall be neatly marked thereon in brightly contrasting color.

## **6.11 SAFETY AND PROTECTION**

A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All employees on the Work or other persons who may be affected thereby.
2. All the Work and all materials or 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 and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall be required to assume sole and complete responsibility for Site conditions during the course of construction of the project, including the safety of all persons who may enter on the Site for any reason and the security of all property located on the Site. This requirement shall apply at all times during the course of the contract and not only to normal work hours.

B. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and



shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Paragraphs 6.11.A.2 or 6.11.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable solely to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

C. Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

D. Contractor has the affirmative duty of ensuring compliance with all Occupational Safety and Health Administration (OSHA) regulations, of designating a representative who is a competent person for purposes of identifying existing or predictable hazards at the Site, of providing required safety instruction for Contractor's Subcontractors and employees, and of immediately taking precautionary measures when necessary and remedying all identified OSHA violations. Daily, and other, inspections of the Site, including of excavations, adjacent areas and protective systems, shall be the sole responsibility of Contractor. Contractor's obligation to indemnify Owner pursuant to Paragraph 5.05 shall include failure of Contractor to effect full compliance with OSHA regulations.

E. The Contractor shall at all times conduct the Work in such manner as will incur the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Engineer or Owner's Representative. Each item of Work shall be prosecuted to completion without delay and in no instance will the Contractor be permitted to transfer its forces from uncompleted Work to new Work without prior written notification of the Contractor to the Engineer or Owner's Representative. Except as otherwise required by Owner or Engineer, the Contractor shall not open up Work to the prejudice of Work already started.



Unless the Contract Documents specifically provide for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highway. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the Work to be done under this Contract, and of constructing and maintaining such approaches, crossing, intersections and any necessary features without direct compensation, except as otherwise provided.

The Contractor shall not close any road to the public except by express permission of the appropriate engineering authority. When the road under construction is being used by the traveling public, special attention shall be paid to keeping the subgrade and surfacing in such condition that the public can travel over same in comfort and safety. The Contractor shall cooperate with the appropriate officials in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

The Contractor shall provide, erect and maintain all necessary barricades, signs, danger signals and lights to protect the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable Traffic Safety Manuals which may be published by a governmental entity having jurisdiction over the project area. All barricades, signs and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer or Owner's Representative may order the damaged portion immediately removed and replaced by the Contractor without cost to the Owner if, in its opinion, such action is justified. The Contractor's responsibility for necessary barricades, signs and lights shall not cease until the Project shall have been accepted.

F. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

G. When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall



be reduced. The Contractor shall notify the proper representative of any public service corporation, any company, or any individual, at least 8 hours in advance of any blasting which may damage its or their property, on, along, or adjacent to the Site. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES," and shall be in care of competent watchmen at all times.

## 6.12 EMERGENCIES

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Engineer or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

## 6.13 PLANS AND SHOP DRAWINGS

A. The approved Plans will show details of all structures; lines and grade of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panels and other Work.

B. Drawings and Specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on Drawings are as accurate as planning can determine, but accuracy is not guaranteed. As such, Contractor shall not rely upon such data. Instead, Contractor shall perform field verification of all dimensions, locations, levels, etc., to suit field conditions. The Contractor shall review all structural and mechanical plans and adjust all Work to conform to all conditions shown therein. The mechanical Drawings shall take precedence over all other Drawings.

C. Discrepancies between different Plans, or between Plans and Specifications, or regulations and codes governing the installation shall be brought to the attention of the Engineer in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Engineer is not so notified, the Engineer shall reserve the right to exercise sole authority in making final decisions in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the Engineer. When at any time reference is made to the "**Plans**", the interpretation shall be the Plans as affected by all authorized alterations



then in effect. Plans will be supplemented by such Shop Drawings to be prepared by Contractor as are necessary to adequately control the Work.

D. After checking and verifying all field measurements and approving of Shop Drawings, Contractor shall submit to Engineer for review, in accordance with the accepted schedule of Shop Drawing submissions, six copies (unless otherwise specified in the Supplementary Conditions) of all Shop Drawings, which shall have been checked by and stamped with the approval of Contractor and identified as Engineer may require. The date shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Engineer to review the information as required.

E. At the time of each submission, Contractor shall in writing call Engineer's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

F. Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction or to satisfy precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Engineer's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved in writing by the Engineer.

H. Engineer's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written



concurrence and approval to the specific deviation, nor shall any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

I. The cost of furnishing all Shop Drawings shall be borne by the Contractor.

J. Finished surfaces in all cases shall conform with lines, grade, cross-sections and dimensions shown on the Plans. Any deviations from the Plans and working Drawings, as may be required by the demands of construction, will in all cases be determined by the Engineer and authorized in writing.

K. The Plan and Specifications, and all supplementary plans and documents, are essential parts of the Contract, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Plans or Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, it shall immediately submit a written request for information to the Engineer for its interpretation and the Engineer's decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

## 6.14

### CONSTRUCTION STAKES

A. Unless otherwise directed in the Supplementary Conditions, the Owner will furnish and set construction stakes establishing all lines, grades, and measurements necessary for the proper execution of the Work contracted for under these Specifications. The Contractor shall request that Engineer provide engineering surveys and placement of construction stakes no less than 48 hours prior to the time such service is needed. The Contractor shall satisfy itself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors which may have been made in laying out the Work. The Contractor shall be held responsible for the proper preservation of all marks and stakes. Stakes provided by the Owner, which must be reset after initial placement, will be replaced at Contractor's expense at the current billable rate for a three-person survey crew unless the stakes were removed or destroyed by causes beyond the Contractor's control. Said cost may be deducted from any funds due the Contractor.

B. The Engineer and Owner's Representative shall be authorized to inspect Work done and material furnished. Such observation may extend



to any part of the Work and to preparation, fabrication, or manufacture of the materials to be used. The Engineer and Owner's Representative is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The Engineer and Owner's Representative shall have the authority to reject materials or suspend the Work not conforming to Contract Documents until any questions at issue can be referred to and decided between the Engineer and the Owner. If the Contractor refuses to suspend operations on verbal order, the Engineer or Owner's Representative may issue a written order giving the reason for shutting down the Work. Work done during such a suspension will not be accepted nor paid for. A subsequent written order from the Owner or Owner's Representative is necessary to release a written suspension order. The Engineer and Owner's Representative shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice which the Engineer or Owner's Representative may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract, nor as modifying the requirements of the Contract Documents.

## **6.15**

### **PRIVATE PROPERTY AND EXCAVATION**

A. The Contractor shall not enter upon private property for any purpose without first obtaining permission, and it shall be responsible for the preservation of all public and private property, trees, fences, monuments, underground structures, etc., on and adjacent to the Site and shall use every precaution necessary to prevent damage or injury thereto. It shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. It shall be responsible for all damage or injury to property or any character resulting from any act, omission, neglect or misconduct in its or any Subcontractor's manner, or method of executing said Work, or due to its or any Subcontractor's non-execution of said Work, or at any time due to defective Work or materials, and said responsibility shall not be released until the Work has been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph and power lines, water lines, sewer lines, gas lines, railroad tracks, and other overhead and underground utilities. Before any excavation is begun in the vicinity of water lines, railroad tracks or structures, sewer lines, gas lines, or telephone conduits, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized



representative of the utility company concerned is on the ground and has designated the location of their facilities. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or it shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Engineer or Owner's Representative may, upon forty-eight (48) hours' notice, proceed to direct the repair, rebuilding of or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted for any moneys due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under these Contract Documents shall be included in the original Agreement Prices for the Project.

## **PART 7 COORDINATION OF WORK**

### **7.01 OWNER'S RIGHT TO PERFORM**

A. Owner may perform additional Work related to the Project by itself, or have additional Work performed by utility service companies, or let other direct contracts therefor which shall contain general conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or Owner, if Owner is performing the additional Work with Owner's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs, and shall conduct its operations as to minimize the interference with theirs, as directed by Engineer.

### **7.02 CONTRACTOR TO COORDINATE**

A. If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility service company (or Owner), Contractor shall inspect and promptly report to Engineer in writing any patent or apparent defects or deficiencies in such work that renders it unsuitable for such proper execution and results. Contractor's



failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work. Such acceptance by Contractor shall render him responsible for subsequent correction of any such work.

B. Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected.

C. If the performance of additional work by other contractors or utility service companies or Owner was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work. If the performance of such additional work not noted in the Contract Documents causes unavoidable additional expense to Contractor or causes unavoidable delay in Contractor's prosecution of the Work, Contractor may make a claim therefore as provided in Parts 11 and 12 respectively.

## **PART 8 OWNER'S RESPONSIBILITIES**

### **8.01 COMMUNICATIONS**

A. Except as otherwise provided expressly herein, Owner shall issue all communications to Contractor through Engineer or the Owner's Representative.

B. Nothing herein or otherwise shall prevent Owner from communicating directly with Contractor's subcontractors (at any tier) concerning issues affecting the Work or payment for the Work.

## **PART 9 STATUS OF ENGINEER DURING CONSTRUCTION**

### **9.01 DUTIES OF ENGINEER**

A. The duties and responsibilities and the limitations of authority of Engineer during construction are set forth in the Contract Documents and shall not be extended without written consent of Owner and Engineer.

### **9.02 VISITS TO SITE**



A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work.

#### **9.03 CLARIFICATIONS AND INTERPRETATIONS**

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

#### **9.04 REJECTING DEFECTIVE WORK**

A. Engineer will have authority to disapprove or reject Work, which is defective, and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04.B, whether or not the Work is fabricated, installed or completed.

#### **9.05 DECISIONS ON DISAGREEMENTS**

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render in writing within a reasonable time. Written Notice of each such claim, dispute and other matter shall be delivered by the claimant to Engineer and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within forty-five (45) days of such occurrence unless Engineer allows an additional period of time to ascertain more accurate data. In its capacity as interpreter and judge Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any



interpretation or decision rendered in good faith and in accord with professional standards in such capacity.

B. Notwithstanding Paragraph E of Part 10 of the Owner-Contractor Agreement, the rendering of a decision by Engineer pursuant to Paragraph 9.06.A with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.11.A) or the determination by Engineer that it shall not render a decision with respect thereto, will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under Part 21 hereof.

## **9.06**

### **LIMITATIONS ON ENGINEER'S AND OWNER'S RESPONSIBILITIES**

A. Neither Engineer's nor Owner's authority to act under this Part 9 or elsewhere in the Contract Documents nor any decision made by Engineer or Owner in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer or Owner to Contractor, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees or any other person performing any of the Work.

B. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirements, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that Engineer shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs 9.07.C or 9.07.D.

C. Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

D. Neither Engineer, nor Owner, nor Owner's Representative will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the Site or otherwise performing any of the Work.



## **PART 10      CHANGES IN THE WORK**

### **10.01      OWNER MAY ORDER CHANGES**

A.      Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Change Orders. Upon receipt of a Field Order or Change Order, Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Agreement Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Part 11 or Part 12. Only changes authorized by a Change Order or Field Order shall be binding on the Owner.

B.      The Engineer, by Field Order only, may authorize minor changes in the Work which do not require an adjustment in the Agreement Price or the Contract Time and which are consistent with the overall intent of the Contract Documents. The Contractor shall perform changes authorized by a Field Order in a timely fashion and as specified in the Field Order.

C.      Additional Work performed without authorization of a Change Order will not entitle Contractor to an increase in the Agreement Price or an extension of the Contract Time, except in the case of an emergency, as provided in Paragraph 6.12.A.

D.      If Notice of any change affecting the general scope of the Work or change in the Agreement Price is required by the provisions of any Bond to be given to the Surety, it will be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner.

E.      If Owner and Contractor are unable to agree to an adjustment in the Agreement Price or Contract Time of a Change Order, as provided in Parts 11 and 12 herein, the Owner may issue the Change Order without an adjustment and the Parties may proceed to Dispute Resolution pursuant to Part 21. The Contractor shall promptly perform any such Change Order. Alternatively, the Owner reserves the right to perform the Work described in the Change Order directly or to hire other contractor(s) to perform said Work. In this case, the Contractor shall not be entitled to any increase in the Agreement Price, nor to any additional cost or fees, nor to any extension of the Contract Time, and the Contractor shall permit free access to the Site by the Owner or any other contractor engaged by Owner to perform said Work.



## PART 11 AGREEMENT PRICE AND CHANGES

### 11.01 AGREEMENT PRICE CHANGED ONLY BY CHANGE ORDER

A. The Agreement Price constitutes the total compensation (subject to authorized adjustments by Change Order) payable to Contractor for performing the Work and is based on unit prices. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Agreement Price.

B. The Agreement Price may only be changed by a Change Order signed and approved by Contractor and Owner. When Contractor and Owner agree upon a price for extra or changed Work by way of a Change Order, Contractor and Owner agree that the price set forth in the Change Order shall be based on unit prices set forth in the Agreement, unless the parties otherwise agree.

C. The Owner, through the Engineer or Owner's Representative, may request changes to the Agreement for additional Work or a reduction in the Work or in response to claims by Contractor not quantifiable by unit prices set forth in the Agreement. In such case, Change Order pricing and time extension analysis shall be in accordance with the following:

1. The Engineer or Owner's Representative shall submit to the Contractor a "**Request for Proposal**" outlining the scope of Work contemplated for said construction changes.

2. The Contractor shall submit within fourteen (14) days of receipt of a "**Request for Proposal**" (or within such shorter period of time as may be reasonably designated by the Owner) a complete cost and fee and time extension analysis for the proposed change which shall include detailed supporting documentation to the satisfaction of the Owner and Engineer.

D. If the Contractor believes extra compensation is due for Work or materials not clearly covered in the Agreement, or not ordered in writing by the Owner or Engineer, it must, prior to beginning the Work on which it bases the claim, submit in writing to the Engineer and the Owner its intention to make a claim for such extra compensation and must afford the Engineer every facility for keeping track of the actual cost of the Work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by Contractor and the keeping account of costs by the Engineer



shall not in any way be construed to prove the validity of the claim. When such Work has been completed, the Contractor shall within fifteen days file its claim for extra compensation with the Engineer, including an itemization of all items for which extra compensation is requested and documentation reasonably satisfactory to Owner. Engineer shall present the claim to Owner with Engineer's recommendations.

E. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price shall be determined in one of the following ways:

1. On a unit price basis stated in the Contract Documents and subsequently agreed upon;
2. On the basis of the estimated Cost of the Work (determined as provided in Paragraph 11.02) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 11.03.B);
3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
4. In any other manner agreed upon by the parties.

F. Notwithstanding anything in the Contract Documents to the contrary, markup (representing overhead and profits) on any Work covered by a Change Order or of any claim for an increase or decrease in the Agreement Price, shall be limited in the following ways:

1. For Work performed by subcontractors and/or suppliers (of any tier), such subcontractors and/or suppliers may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim;
2. For Work performed by subcontractors and/or suppliers (of any tier), Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim;
3. For self-performed Work, Contractor may apply markup of not more than 5% of the Cost of the Work covered by a Change Order or claim; and
4. Except as specifically permitted by Sections 1 thru 3 of this Part 11.01 (F), there shall be no other markup, profit, or fee of any



kind on Work covered by a Change Order or any claim for an increase or decrease in the Agreement Price. Contractor and its subcontractors and/or suppliers shall provide reasonable documentation (including receipts or other supporting documentation) of the Cost of the Work covered by a Change Order or claim to ensure that markup has been applied appropriately in accordance with the Contract Documents.

## 11.02 COST OF THE WORK

A. The term “**Cost of the Work**” means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.02.B. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.02.A and 11.02.B, Contractor will submit in form acceptable to Engineer an itemized cost breakdown together with supporting data.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll cost for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers’ or workmen’s compensation.

Such employees shall include superintendents and foremen at the Site. The expenses of performing Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers’ field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained.



3. Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Owner who will then determine, with the advice of Engineer, which bids will be accepted. If a 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 shall be determined in the same manner as Contractor's Cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
4. Costs of special consultants (including, but not limited to, engineers, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.
5. Supplementary costs include the following:
  - (a) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of Contractor.
  - (b) Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
  - (c) Any sales, use or similar taxes related to the Work, if applicable, and for which Contractor is liable, imposed by any governmental authority.
  - (d) Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.



(e) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor or in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Paragraph 11.03.A.

(f) Cost of premiums for additional Bonds and insurance required because of changes in the Work.

(g) The proportion of necessary, transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

(h) The cost of utilities, fuel and sanitary facilities at the Site.

(i) Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

B. The term Cost of the Work shall not include any of the following:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.02.A.1—all of which are to be considered administrative costs covered by the Contractor's Fee as defined in Paragraph 11.03.



2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly employed by any of them, or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02.A.

### **11.03 CONTRACTOR'S FEE**

A. The Contractor's Fee allowed to Contractor for overhead and profit shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:
  - (a) For costs incurred under Paragraphs 11.02.A.1 and 11.02.A.2, the Contractor's Fee shall be 5 percent; and
  - (b) For costs incurred under Paragraph 11.02.A.3, the Contractor's Fee shall be 5%; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be 5% as set forth in Paragraph 11.03.A.1.a; and
  - (c) No fee shall be payable on the basis of costs itemized under Paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B.

B. The amount of credit to be allowed by Contractor to Owner for any such change which results in a net decrease in cost will be the amount of



the actual net decrease. When both additions and credits are involved in any one change, the combined fee shall be figured on the basis of the next increase if any.

## **PART 12 CONTRACT TIME AND CHANGES**

### **12.01 DETERMINATION AND EXTENSION OF CONTRACT TIME**

A. The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor in accordance with the Notice to Proceed. If the Contractor does not begin the Work within the limit designated in the Notice to Proceed, the calendar days shall start on the first calendar day after the last permissible starting date as set forth in the Notice to Proceed. If the satisfactory execution and completion of the Work shall require Work or materials in greater amounts or quantities than those set forth in the Contract Documents, then the Contract Time may be increased as negotiated between Contractor and Engineer or Owner's Representative and accepted by Owner as set forth in a Change Order. In general, extensions to the completion period for the Contract Documents will not be approved, regardless of cause for claim.

No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor.

### **12.02 CONTRACT TIME CHANGED ONLY BY CHANGE ORDER**

A. The Contract Time may only be changed by a Change Order. If Contractor desires to make any claim for an extension in the Contract Time, as a result of any alleged delays, it shall give immediate verbal notification to Engineer followed by written notice delivered to Owner's Representative and Engineer within five days of the occurrence of the event giving rise to the Claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of such occurrence unless Engineer or Owner's Representative allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by Engineer if Owner and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

B. Where, due to delays beyond the control of Contractor, such as acts or omissions of the Owner or others performing work as contemplated by Part 7 or to fires, floods, labor disputes, epidemics, acts of God, or to



abnormally inclement weather conditions, which allegedly cause unavoidable delay to the Contractor's prosecution of the Work and the Contractor is prevented from completing any part of the Work within the Contract Time or within scheduled milestones, Contractor may be entitled to request an extension of time equal to the time unavoidably lost and/or an increase in the Agreement Price equal to the general conditions costs unavoidably incurred by Contractor; provided, however, that Contractor shall not be entitled to an increase in the Agreement Price to the extent that any of the delays described by this Part 12.02 (B) occur concurrently with any delays caused (in whole or in part) due to the fault of the Contractor or those for whom Contractor is responsible. Weather conditions shall only be considered abnormally inclement if there was greater than normal inclement weather considering the term of the contract and the ten-year average of accumulated record mean values from data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale of the Work.

C. All the time limits stated in the Contract Documents are of the essence of the Agreement.

## **PART 13      WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **13.01      WARRANTY AND GUARANTEE**

A. Contractor warrants and guarantees to Owner and Engineer that, without exception, all Work will be in accordance with the Contract Documents and will not be defective. Four copies of all manufacturer's guaranties or certificates that are required by the Contract Documents shall be submitted to Owner through Engineer prior to acceptance of the Work. No exceptions to Contract Documents and guarantee or warranty requirements are permitted. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Part 13.

### **13.02      ACCESS TO WORK**

A. Engineer and Engineer's representatives, other representatives of Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

### **13.03      TESTS AND INSPECTION**

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A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

B. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) specifically to be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by Owner (unless otherwise specified), except that the cost of re-testing of materials and equipment as a direct result of a failure to pass a specified test shall be paid by Contractor.

C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to Owner and Contractor (or by Engineer, if so specified).

D. If any Work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

E. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

F. Any Work outside the normal five (5) day, forty (40) hour week may require that the Engineer be on the job. All inspection so required shall be done at the Engineer's expense at the Engineer's current billable rates and the cost thereof shall be deducted from any funds due Contractor. The Contractor shall notify the Engineer at least 24 hours in advance of starting any such overtime Work.

#### **13.04 UNCOVERING WORK**



A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Engineer shall issue a Field Order so directing and Contractor shall thereupon uncover, expose or otherwise make available for observation, inspection or testing, as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing, and all expenses for satisfactory correction or reconstruction of the defective Work, including, for all of the foregoing tasks, compensation for additional professional services required. Contractor shall not request payment for, nor shall Contractor be entitled to compensation for such expenses. If the Work is found not to be defective, Contractor shall be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, for any expense or delay directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided that Contractor submits a verified claim as provided in Parts 11 and 12 within 20 days of performing any such tasks.

#### **13.05 OWNER MAY STOP THE WORK**

A. If the Work is defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party.

#### **13.06 CORRECTION OR REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK**

A. If required by Engineer, Contractor shall promptly, without cost to Owner and as specified by Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the Site and replace it with non-defective Work. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and



will be considered unauthorized and, at the option of the Engineer, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

### **13.07** **TWO YEAR** CORRECTION PERIOD

A. If within **two (2) years** after the date of final acceptance by Owner or another entity as might be appropriate, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions within seven (7) days after Owner's issuance of written instructions, correct the defective Work at Contractor's cost. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other Work, other property or persons which occurred as a result of the defective Work within the correction period.

### **13.08** 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. In such case, if acceptance occurs prior to Engineer's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Agreement Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to Owner.

### **13.09** OWNER MAY CORRECT DEFECTIVE WORK

A. If Contractor fails within a reasonable time after written notice to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer or Owner's Representative in accordance with Paragraph 13.06.A, or in accordance with Paragraph 13.07.A, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), Owner may, after seven days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this paragraph Owner shall proceed expeditiously. To the extent necessary to complete



corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees such access to the Site as may be necessary to enable Owner to exercise its rights under this paragraph. All direct and indirect costs of Owner in exercising such rights shall be charged against Contractor in an amount verified by Engineer, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Agreement Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights hereunder.

B. If it becomes necessary for Owner to take over the completion of the Work, all of the amounts owing to Contractor, including the withheld retainage, shall be applied: (i) first, toward the cost of completion of the Work; (ii) second, toward performance of Owner's withholding requirement set forth in section 38-26-107, C.R.S.; (iii) third, to the surety furnishing bonds for the contract work, to the extent such surety has incurred liability or expense in completing the contract work or made payments pursuant to section 38-26-106, C.R.S.; then, (iv) to Contractor. Such retained amounts as may be due Contractor shall be due and payable at the expiration of thirty days from the date of final acceptance by Owner of the Work.

## **PART 14 CONSTRUCTION SCHEDULE, PAYMENTS TO CONTRACTORS AND COMPLETION**

### **14.01 SCHEDULES**

A. Within ten (10) days after issuance of the Notice to Proceed and at least ten days prior to submitting the first application for a progress payment, the Contractor shall prepare and submit to Owner the progress schedule listing all Work tasks required, duration of tasks, sequence of Work, significant milestone events; and a schedule for Shop Drawing submission. These schedules shall be satisfactory in form and substance to the Owner and the Engineer and shall employ the CPM or PERT method if so directed in the Supplementary Conditions. The progress schedule shall



be an accurate reflection of the Work to be performed by Contractor. The progress schedule shall be subject to the review and concurrence of Owner, but Owner's concurrence shall not constitute any guarantee or warranty by Owner that the Work can be performed as scheduled. Notwithstanding Owner's review and concurrence of the progress schedule, Contractor shall be paid only according to its completion of the items contained in the Bid Form and not according to the progress schedule. The Contractor shall provide updated written progress reports to Owner on a weekly basis.

B. The schedules contained in the Bid Form shall be incorporated into the form for Application for Payment. The Contractor shall revise the schedule contained in the Bid Form if requested by Owner. The Contractor may include on its Application for Payment, payment for materials stored at the Site, provided that title to such materials will pass to the Owner at the time of payment free and clear of all claims, security interests and encumbrances, are insured and properly stored and protected.

#### **14.02 APPLICATION FOR PROGRESS PAYMENTS**

A. On or before the twenty-fifth (25<sup>th</sup>) day of each month, Contractor shall submit to Engineer and Owner's Representative for review an Application for Payment for the previous month, completed and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as Owner's Representative may reasonably require. Each subsequent Application for Payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment. A waiver of claim for partial payments also will be required to be executed by Contractor prior to payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor



under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. The determination of quantities of Work acceptable completed under the terms of the Contract Documents, will be made by the Engineer and based on measurements taken by Engineer or its assistants and/or observations in the field. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

C. No progress payment except final payment will be made for a sum of less than \$1,000.00. The estimates will be approximate only, and all partial or monthly estimates and payments shall be subject to correction in the estimate rendered following discovery of an error in any previous estimates. Should any defective Work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the Work completed previous to the final payment, there will be deducted from the first estimate rendered after the discovery of such Work an amount equal in value to the defective or questioned Work, and this Work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

#### **14.03 CONTRACTOR'S WARRANTY OF TITLE**

A. Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner at the time of payment free and clear of all claims, security interests and encumbrances (hereafter in these General Conditions referred to as "**Claims**").

#### **14.04 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT**

A. Owner's Representative will, within ten (10) days after receipt of each Application for Payment either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Owner's Representative reasons for refusing



to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

B. Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative to Owner, based on Owner's Representative's on-site observations of the Work in progress as an experienced and qualified design professional, and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; and that, to the best of Owner's Representative's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation.) However, by recommending any such payment, Owner's Representative will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Agreement Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Claims.

C. Owner's Representative may refuse to recommend, and Owner may refuse to pay, the whole or any part of any payment if, in their opinion, it would be incorrect to make such payment. They may also refuse to recommend to make any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer's or Owner's opinion to protect Owner from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement,
2. Written claims have been made against Owner or claims have been filed in connection with the Work,
3. The Agreement Price has been reduced because of modifications,



4. Owner has been required to correct defective Work or complete the Work in accordance with Paragraph 13.09.A.,
5. Of Contractor's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
6. Of Contractor's failure to make payment to Subcontractors for labor, materials, or equipment.

#### **14.05 SUBSTANTIAL COMPLETION**

A. When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Engineer, certify that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving its reasons therefor. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Owner a tentative certificate of Substantial Completion. There shall be attached to the certificate a punch list of items to be completed or corrected before Project completion and final payment.

#### **14.06 PARTIAL UTILIZATION**

A. Use by Owner of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use any part of the Work which Owner believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to Owner and Engineer that said part of the Work is substantially complete. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of that part of the Work to determine its status of completion. Prior to Owner's use, Engineer will deliver to Owner and Contractor a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance and correction periods for that part of the Work which is binding upon Owner and Contractor as to that



part of the Work, unless Owner and Contractor shall have otherwise agreed in writing or shall object to the Engineer in writing within (15) days of receiving Engineer's recommendations. Owner shall have the right to exclude Contractor from any part of the Work which Owner uses, but Owner shall allow Contractor reasonable access to complete or correct items on the punchlist.

2. In lieu of the provisions of Paragraph 14.06.A.1., Owner may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, Owner and Contractor have agreed as to the division of responsibilities between Owner and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

3. No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

#### **14.07 FINAL INSPECTION**

A. Upon written notice from Contractor to the Engineer that the Work is complete and that all items on the punch list have been completed, Engineer will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

#### **14.08 FINAL APPLICATION FOR PAYMENT**

A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents—all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions of Paragraph 14.11.A), Contractor may make application for final payment following the procedure for progress



payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Engineer may reasonably require, together with complete and legally effective releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work. Contractor acknowledges that the Project is a public project that is subject to 38-26-101 et seq., C.R.S. (Contractor's Bonds and Lien on Funds), and therefore, Contractor acknowledges that the Project is not subject to 38-22-101 et seq., C.R.S. (General Mechanics' Liens). Contractor shall provide to the Owner written claim waivers for all Work in a form approved by the Owner. Until Contractor provides such claim waivers, the Owner may withhold from payment to Contractor a sum that the Owner considers sufficient to pay any unpaid claims for Work performed, as set forth in Section 38-26-107, C.R.S. The Owner is not obligated to pay any of Contractor's unpaid bills, but after giving notice to Contractor, Owner may pay Contractor's unpaid bills and any such payment shall be considered as a payment made to Contractor under the Contract Documents. Upon the resolution of all claims, if any, filed pursuant to Section 38-26-107, C.R.S., the Owner shall make final payment, including release of any retainage, to Contractor, in accordance with Section 38-26-107, C.R.S.

B. In lieu thereof and as approved by Owner, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any claim.

#### **14.09 FINAL PAYMENT AND ACCEPTANCE**

A. If, on the basis of Engineer's observation of the Work, during construction and final inspection, and Owner's Representative's review of the final Application of Payment and accompanying documentation—all as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, Owner's Representative will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon, Engineer will give written



notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.10.A. Otherwise, Engineer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and acceptable to Owner, Owner shall, within thirty (30) days after receipt thereof, cause publication to commence of Notice of Final Settlement in accordance with statutory requirements applicable to Owner. In the event no claims are made against Contractor in response to said publication, Owner shall pay Contractor the amount of final payment recommended by the engineer in accordance with the Notice of Final Settlement. In the event any claim(s) is made against Contractor, Owner shall withhold from all payments to such contractor sufficient funds to insure the payment of said claims until the same have been paid or withdrawn, such payment to be evidenced by filing with the Owner a receipt in full or an order for withdrawal in writing from claimant.

B. If, through no fault of Contractor, final completion of the Work is significantly delayed and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Engineer and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **14.10 CONTRACTOR'S CONTINUING OBLIGATION**

A. The Contract Documents will be considered complete when all Work has been finished, the final inspection made and the Work finally accepted by the Engineer, all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled by the Contractor or its Surety and final payment has been made by Owner. The Surety Bond executed from performance of the Contract Documents shall be in full effect for a period equal to the warranty correction period following the date of initial acceptance by Owner or another public entity as might be appropriate.



B. Notwithstanding the provisions of Paragraph 14.10.A., Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor the issuance of a Notice of Acceptability by Engineer pursuant to Paragraph 14.09.A., nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **PART 15      SUSPENSION OF WORK AND TERMINATION**

### **15.01      ENGINEER OR OWNER MAY SUSPEND WORK**

A. The Engineer, in consultation with Owner when time permits, shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or Work. The Contractor shall not suspend the Work without written authority from Owner or Engineer. Prior to resuming Work, Contractor shall give the Engineer adequate notice to afford opportunity to re-establish observation and inspection of Work being performed.

B. In the event the Contractor is ordered by the Engineer, in writing, to suspend Work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in the written order for Work to cease until the date of the order for Work to resume. Claims for such reimbursement shall be filed with the Engineer within ten (10) days after date of the order to resume Work or such claims will not be considered. The Contractor shall submit with its claims, substantiating papers covering the entire amount shown on the claim. After receiving relevant information from the Engineer, the Owner shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made



at the request of the Contractor, or for any other delay provided for in the Specifications.

C. Owner may at any time suspend the Work or any portion thereof without cause for a period of not more than ninety (90) days by notice in writing to the Contractor and Engineer which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Agreement Price or an extension of the Contract Time, or both, directly attributable to such suspension if it makes a claim therefor as provided in Parts 11 and 12.

## **15.02 OWNER MAY TERMINATE**

A. Upon the occurrence of any one or more the following events, Owner may terminate the Agreement:

1. If Contractor is adjudged a bankrupt or insolvent,
2. If Contractor makes a general assignment for the benefit of creditors,
3. If a trustee or receiver is appointed for Contractor or for any of Contractor's property,
4. If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
5. If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment,
6. If Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials or equipment,
7. If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,
8. If Contractor disregards the authority of Engineer,
9. If Contractor fails to commence Work as prescribed in the Notice to Proceed,
10. If Owner secures substantial evidence that progress of the Work by the Contractor is insufficient to complete the Work within the Contract Time,



11. If Contractor repeatedly fails to observe any requirement of these Specifications,
12. If Contractor fails to promptly make good any defects in materials or Work or any defects of any other nature, the correction of which has been directed in writing by the Engineer,
13. If Contractor fails to promptly disburse payment or retainage to subcontractors upon its receipt of such payment from Owner;
14. If Contractor fails to remedy any default under the Contract Documents within seven (7) days of receipt of Notice of such default from Owner, or
15. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

B. Before the Agreement is terminated, the Contractor and its Surety will first be notified in writing by the Engineer of the conditions which make termination of the Agreement imminent. Seven (7) days after this notice is given, if efforts satisfactory to the Owner have not been made by the Contractor or its Surety to correct the conditions, the Owner may declare the Agreement terminated and notify the Contractor and its Surety accordingly. Upon receipt of notice from the Owner that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The Owner may then proceed with the Work in any lawful manner that it may elect until the Work is finally completed. Owner may exclude Contractor from the Site and take possession of the Work and all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Agreement Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, including but not limited to fees and charges of engineers and attorneys and any court or arbitration costs, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Engineer and incorporated in a Change Order, but in finishing the Work, Owner shall not be required to obtain the lowest figure for the Work performed.



C. Where Contractor's services have been so terminated by Owner, the termination shall not affect any rights of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

#### **15.03 CONTRACTOR MAY STOP WORK OR TERMINATE**

A. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or Owner fails for forty-five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner and Engineer, terminate the Agreement and recover from Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if Engineer has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve Contractor of its obligations under Paragraph 21.01.B. to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with Owner.

#### **15.04 OWNER MAY TERMINATE FOR CONVENIENCE**

A. The Owner may terminate the performance of Work under the Contract Documents in accordance with this section without cause and in the Owner's sole and absolute discretion. Such termination may be in whole, or from time to time, in part. Any such termination shall be effected by delivery of a written notice of termination to the Contractor specifying the extent to which performance of Work under the Contract Documents is terminated and the date upon which termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract Documents on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract Documents which is not terminated.



3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.

4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent it may require. Its approval or ratification shall be final for all purposes of this clause.

6. Transfer to the Owner and deliver in the manner, at the times, and to the extent, if any directed by the Owner:

(a) The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

(b) The completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the Owner.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the Owner directs or authorizes, any property of the types referred to in Paragraph 15.04.B.6., but the Contractor:

(a) shall not be required to extend credit to any purchaser; and

(b) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract Documents or shall otherwise be credited to the Agreement Price or cost of



the Work covered by the Contract Documents or paid in such other manner as the Owner may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Project which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

C. After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim (calculated in accordance with the provisions of paragraph 15.04.E.), in the form and with the certification the Owner prescribes. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension. However, if the Owner determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such sixty (60) day period or extension. If the Contractor fails to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to Owner, the amount, if any, due to Contractor because of the termination. The Owner shall then pay to the Contractor the amount so determined.

D. Subject to the provisions of this paragraph, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of Work under this subsection. The amount or amounts may include a reasonable allowance for profit on Work done if acceptable to Owner. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of the portion of the Work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in this paragraph prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor because of termination of Work under this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.



E. If the Contractor and the Owner fail to agree on the whole amount to be paid to the Contractor because of the termination of Work under this section, the Owner shall determine, on the basis of information available to Owner, the amount, if any, due to the Contractor by reason of the termination and shall pay the Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination the total (without duplication of any items) of:

(a) The reasonable costs actually incurred by Contractor for work performed prior to termination. Reasonable costs shall not include any overhead expenses, including but not limited to, rent, insurance, supervision, superintendents, timekeepers, clerks, expeditors, watchmen, small tools, incidental job burdens and general office expenses.

(b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as Paragraph 15.04.B.3. above provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made.

2. The total sum to be paid to the Contractor shall not exceed the total Agreement Price as reduced by the amount of payments otherwise made and as further reduced by the Agreement Price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Owner, of property to the extent that it is undeliverable to the Owner, or to a buyer under Paragraph 15.04.B.7. of this Part 15. **If the parties do not reach agreement under Paragraph 15.04.D. and the Owner utilizes this Paragraph 15.04.E., no allowance for profit shall be included in the calculation of the sum to be paid to Contractor.**

F. The Contractor shall have the right to dispute under the Disputes provision hereof any determination the Owner makes under this Part 15. But, if the Contractor has failed to calculate and submit its claim according to the provisions provided in Paragraph 15.04.C. and has failed to request



an extension of time, it shall have no such right of appeal. In any case, where the Owner has determined the amount due, the Owner shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been made, the amounts so determined by the Owner; or
2. If a dispute proceeding is initiated, the amount finally determined in such dispute proceeding.

G. In arriving at the amount due to the Contractor under this clause there shall be deducted:

1. All unliquidated advance or other payments on account therefor made to the Contractor, applicable to the terminated portion of the Work.
2. Any claim which the Owner may have against the Contractor in connection with the Contract Documents.
3. The agreed price for, or the proceeds of the sale of, any materials, supplies or other things kept by the Contractor or sold, under the provisions of this section, and not otherwise recovered by or credited to the Owner.

H. If the termination hereunder is partial, before the settlement of the terminated portion of the Contract Documents, the Contractor may file with the Owner or request in writing for an equitable adjustment of the price or prices specified in the Contract Documents relating to the continuing portion of the Work (the portion not terminated by the Notice of Termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Work when the Contract Documents do not contain an established price for the continued portion.

## **PART 16 MISCELLANEOUS**

### **16.01 GIVING NOTICE**

A. Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an



officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Notice may also be given by facsimile, providing the notice is also immediately sent by first class mail, except in those cases which require an original to confirm the validity of a signature or other element of the document.

## **16.02 COMPUTATION OF TIME**

A. When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.

## **16.03 CORRECTION PERIOD**

A. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time period relates only to the specific obligations under the Contract Documents which may be sought to be enforced, not to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

## **16.04 GENERAL**

A. Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is responsible, the injured party shall notify the other party within a reasonable time of the first observance of such injury or damage.

B. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by Paragraphs 5.05, 6.05, 6.07, 6.11.B, 6.11D, 13.01.A, 13.06.A, 13.07.A, and 14.03.A and all of the rights and remedies available to Owner and Engineer under the Contract Documents, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any of or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee,



or by other provisions of the Contract Documents, and the provisions of this paragraph shall 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. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

C. Should Owner determine that Contractor is performing in such a fashion that Contractor will not complete the Project timely, Owner shall give Contractor notice of Owner's determination and Contractor shall have fifteen (15) days from the issuance of Owner's notice within which to correct its performance and to furnish evidence satisfactory to Owner that the Project will be completed timely. In the event that Contractor does not within said fifteen (15) days correct its performance and furnish evidence satisfactory to Owner that the Project will be completed timely, Owner shall have the right to remove the Contractor and retain a replacement contractor to complete the Project. Owner may thereupon withhold all payments to Contractor until the replacement contractor has completed the Project and then determine what amounts, if any, are due Contractor.

## **PART 17 ADDRESSES**

### **17.01 OWNER**

A. Owner is the quasi-municipal corporation and political subdivision of the State of Colorado named in the Agreement acting through its duly authorized agents. All notices, letters and communications directed to Owner shall be addressed and delivered to Owner, with one (1) copy to Engineer, at the addresses listed below:

Owner Address: Harvest Crossing Metropolitan District No.  
3  
c/o Special District Management Services,  
Inc.  
141 E. Union Boulevard, Suite 151  
Lakewood, Colorado 80228  
Attn: David Solin  
Phone: 303-987-0835  
Email: dsolin@sdmsi.com

with a copy to: McGeedy Becher P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Phone: 303-592-4380

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Email:  
legalnotices@specialdistrictlaw.com  
Attn: Paula Williams

**17.02 ENGINEER**

A. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by the Engineer named in the Agreement and its duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Engineer at the address set forth in Paragraph 17.01.D. in the Agreement.

**17.03 CONTRACTOR/SURETY**

A. The business addresses of Contractor given in the Bid Form and Contractor's office at the Site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered. The business address of the Sureties as stated on the Bid Bond, the Performance Bond, and the Labor and Materials Payment Bond are hereby designated as the places to which all notices, letters, and other communications to such Sureties will be delivered.

**17.04 CHANGE OF ADDRESS**

A. Either Owner, Contractor, Engineer, or Surety may change its address at any time by an instrument in writing delivered to the other parties.

**PART 18 LIQUIDATED DAMAGES**

A. Time is an essential condition of the Contract. In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Contract Documents within the specified time limits set forth in Part 5 of the Agreement for such performance and completion or within such further time as, in accordance with the provisions of this Contract, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the Owner for each and every day of the additional time in excess of the specified time limits and any granted extension thereof, the sum set forth in Part 5 of the Agreement as liquidated damages and not as a penalty. The parties agree that Owner will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The Owner shall recover said damages by



deducting the amount thereof out of any moneys which may be due or become due to the Contractor, or in manner set forth in Paragraph 21.01 or by either or both of these methods. Should the entire completion and final acceptance of the Work herein embraced, together with any modifications or additions, be delayed beyond the time herein set, it is understood and agreed that aside from any other penalty or damage, all costs of the engineering, observation and inspection on behalf of the Owner which are incurred after the specified time limits have elapsed may be charged to the Contractor and be deducted from any estimate or payment otherwise due and payable to him.

B. In case of joint responsibility for delay in the final completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor for the delay shall be determined by, and in the judgment of, Engineer.

## **PART 19 EXISTING UNDERGROUND INSTALLATIONS**

A. Existing underground installations such as water lines, gas lines, sewers, telephone lines, power lines, or similar concealed structures in the vicinity of the Work are indicated on the Drawings only to the extent such information was made available to or discovered by Engineer in preparing the Drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. The Contractor acknowledges the inherent risk associated with the location of such installations, and it shall not seek to hold the Owner or Engineer responsible for any damages or delays in the event of any discrepancies associated with such installations. Generally, service connections are not indicated on the Drawings.

B. Contractor shall be solely responsible for locating all existing underground installations, including service connections, in advance of excavating or trenching, by contacting the Owners thereof and prospecting. Contractor shall use its own information and shall not rely upon any information indicated on the Drawings concerning existing underground installations. Any person who intends to excavate shall notify the Utility Notification Center of Colorado pursuant to Section 9-1.5-103, C.R.S., prior to commencing any excavation activity.

C. The General Conditions provisions regarding Unforeseen Physical Conditions do not apply to the existing underground installations indicated in the preceding paragraphs. Any delay, additional Work, or extra cost to



Contractor caused by underground existing installations shall not constitute a claim for extra Work, additional payment, or damages.

## **PART 20      STREAMLINED SPECIFICATIONS**

A.      These Specifications are written in the streamlined or declarative style, utilizing incomplete sentences. Omissions of such words and phrases "The Contractor shall," "in conformity therewith," "shall be," "as shown on the Drawings," "a," "an," "the," and "all" are intentional in streamlined sections. Omitted words shall be supplied by inference in the same manner as when a note appears on the Drawings. The omission of such words shall not relieve the Contractor from providing all items and work described herein or indicated on the Drawings.

## **PART 21      HANDLING OF DISPUTES**

### **21.01      DISPUTES**

A.      Unless otherwise mutually agreed in writing by Owner and the Contractor, all claims, disputes and controversies arising out of or relating to this Owner-Contractor Agreement or the breach thereof (collectively "**Dispute**") shall be resolved as follows:

Owner and Contractor shall, upon either party's written request sent certified mail, attempt to resolve the Dispute by non-binding mediation which will be conducted in accordance with the then effective Construction Industry Mediation Rules of the American Arbitration Association ("**AAA**") subject to modifications set forth herein. The parties shall jointly appoint a mutually acceptable mediator, but if they have not so appointed a mediator within ten (10) days after the written request for mediation is received by the recipient party, the AAA shall, upon written request of either party, appoint the mediator. The parties shall share equally in the costs of the mediator's fees and expenses and the AAA's fees and expenses.

In the event the Dispute is not resolved by such mediation within thirty (30) days after the date the written request for mediation is received by the recipient party, the Dispute shall be decided by arbitration in accordance within the then effective Construction Industry Arbitration Rules of the AAA, subject to the modifications set forth herein. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of limitation. Any arbitration arising out of or relating to this Owner-Contractor Agreement, the Project, the Work, the Contract Documents, or the breach thereof may include by consolidation, joinder or in any other



manner, at the Owner's option, any other entities or persons whom the Owner believes to be substantially involved in a common question of fact or law. In addition to any other damages or relief due, the arbitrator shall award to the prevailing party its reasonable attorney's fees, costs, and expenses payable by and from the non-prevailing party.

All mediation and arbitration proceedings shall be held in Arapahoe County, Colorado, or such other place as the Owner may designate, and shall be conducted, and final dispositions shall be made, in accord with the laws of the State of Colorado.

B. The Contractor shall continue to perform the Work and adhere to the Contractor's construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

C. Engineer shall not be deemed or considered a third party beneficiary of the Agreement or Contract Documents, nor a party thereto.

## **PART 22 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF THE AUTHORITY OF THE OWNER'S REPRESENTATIVE**

### **22.01 DESCRIPTION**

A. The Owner's Representative is the Owner's agent only for those purposes expressly authorized under the Contract Documents, and shall act as directed by and under the supervision of Owner. It shall confer with Owner regarding its actions. Its dealings in matters pertaining to the on-site work will in general be only with Engineer and Contractor. Its dealings with Subcontractors will only be through Contractor or its superintendent.

B. Owner shall provide Contractor with written notice of any change in the Owner's Representative.

### **22.02 DUTIES AND RESPONSIBILITIES**

#### **A. CONFERENCES:**

1. Attend Preconstruction Conferences and regular project meetings. Arrange a schedule of progress meetings and other job conferences as required and notify in advance those expected to attend. Conduct meetings and maintain and circulate copies of minutes thereof.



B. LIAISON:

1. Serve as Owner's liaison with Contractor and Engineer, working to help expedite the project to assure the scheduling requirements are met.

C. MODIFICATIONS:

1. Consider Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.

D. REPORTS:

1. Furnish Owner with periodic reports of progress of work and of Contractor's compliance with the approved progress schedule, schedule of Shop Drawing submissions, and other schedules.
2. Consult with Owner in advance of scheduled major tests, inspections, or start of important phases of work.

E. PAYMENT REQUISITIONS:

1. In cooperation with Engineer, review Application for Payment with the Contractor for compliance with the established procedure for its submission and forward it with recommendation to the Owner for payment.

**22.03** LIMITATIONS OF AUTHORITY

A. Owner's Representative shall be limited in authority except upon written instructions of Owner as follows:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment, modifications or Change Orders.
2. Shall not undertake any of the responsibilities of Contractor, Subcontractor or Contractor's superintendent.
3. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.



## **PART 23      SECTION 01200 SUSPENSION AND DEBARMENT PROCEDURE**

### **23.01      PURPOSE AND APPLICABILITY**

A.      The purpose of this Section is to set forth standards and procedures to be followed by the Owner for debarring or suspending persons or entities who are or may become a Bidder, Successful Bidder, or Contractor.

B.      It shall be the responsibility of the Owner to administer the rules.

C.      The rules shall govern the debarment or suspension of persons from performing any work for, submitting bids for, or otherwise in any manner participating in public projects under contract with the Owner.

### **23.02      CAUSES FOR SUSPENSION**

A.      When the Owner has reasonable grounds to believe that the public health, safety, and welfare imperatively requires such action, the Owner may immediately suspend a Bidder, Successful Bidder, or Contractor prior to debarment proceedings from performing work or otherwise participating in public projects not already under contract and from submitting bids on public projects upon adequate evidence that a cause for debarment under Section 01200 may exist. Indictment on criminal charges shall constitute *per se* adequate evidence for purposes of suspension actions.

### **23.03      CAUSES FOR DEBARMENT**

A.      Debarment may be imposed by the Owner for:

1.      Conviction of or civil judgment for:

(a)      Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public project;

(b)      Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft;

(c)      Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging or any other violation of federal or state antitrust laws that relates to the submission of bid or proposals; or



(d) Commission of any other offense indicating a lack of business integrity or honesty.

2. A serious violation of the terms of a contract on a public project, such as:

(a) A willful or material failure to perform in accordance with the terms of a contract on a public project;

(b) A history of substantial noncompliance with the terms of contracts on public projects; or

(c) A willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a public project.

3. Any of the following causes:

(a) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for in Section 01200;

(b) Knowingly employing or doing business with a debarred, suspended or otherwise ineligible person, in connection with a public project;

(c) Conduct indicating a lack of business integrity or honesty in bidding or performing public projects;

(d) Submission of false or deceptive information or statements in connection with prequalification, bidding or performance of a public project;

(e) Failure to pay a substantial debt (including disallowed costs and overpayments) owed to any federal or state agency or instrumentality, but not including amounts owed under the Internal Revenue Code, provided the debt is uncontested by the debtor or, if contested, that the debtor's legal and administrative remedies have been exhausted;

(f) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action; or



- (g) Any other cause so serious in nature that Owner has reasonable grounds to believe that the public health, welfare, or safety imperatively requires debarment.

## **23.04 PROCEDURES FOR SUSPENSION AND DEBARMENT**

A. Anyone may contact the Owner, Owner's Representative, or Engineer concerning the existence of a cause for Debarment. If the Owner, Owner's Representative, or Engineer becomes aware of information warranting Suspension or Debarment, as set forth in this Section 01200, then Suspension or Debarment or both may be initiated by the Owner sending a Notice of intent to suspend or debar to the affected Bidder, Successful Bidder, or Contractor (upon such Notice, referred to as the "Respondent"). A Notice of intent to suspend or debar, or both, shall be sent to the Respondent by certified mail, return receipt requested. The Notice shall include a written statement of reasons for and the effect of the Suspension or proposed Debarment and inform the Respondent of the right of appeal to the Owner.

B. The Respondent may appeal the Notice of intent to suspend or debar, or both. Any such appeal must be written and must be received by the Owner within fourteen calendar days of the date the Respondent received the Notice. If no appeal is received as provided herein, the Respondent shall be suspended and/or debarred in accordance with the Notice.

C. A hearing before the Owner shall be commenced within thirty calendar days of receipt of an appeal. At the hearing the Respondent shall present any information it feels is sufficient to prevent Suspension or Debarment. The Owner shall consider this information and render a decision within ten (10) calendar days after the hearing, and such decision shall be final. The appeal procedures described in this Section are the exclusive procedures for determining the outcome and remedy of an appeal. The Administrative Procedure Act (Title 24, Article 4, C.R.S.) shall not apply to this Section 01200, including any protests, appeals, or hearings conducted thereunder.

## **23.05 DECISION ON DEBARMENT**

A. Following reasonable inquiry to determine whether a Respondent has engaged in activities which are cause for debarment, the Owner may debar the Respondent. A Respondent may be suspended or debarred for a period of time commensurate with the seriousness of the offense, subject to the limitations set forth under Sub-Section VII of Section 01200.



## **23.06 SETTLEMENT AND VOLUNTARY EXCLUSION**

A. A Respondent and the Owner may enter into a settlement of a Debarment action, pursuant to which Respondent may agree not to participate in public projects with the Owner for a stipulated period of time.

## **23.07 LENGTH OF DEBARMENT**

A. Debarment may be for a term of up to three (3) calendar years. Credit may be given for any periods of suspension. The following criteria may be considered in making any decision as to length of debarment:

1. Degree of culpability;
2. Seriousness of the offense or conduct;
3. Restitution of damages to the Owner;
4. Cooperation in the investigation of other bidding or performance violations;
5. Disassociation with those involved in bidding or performance violations;
6. Whether a lengthy debarment is required for the protection of the Owner.

B. If the Respondent submits no appeal, the debarment shall automatically be for three years.

## **23.08 SCOPE OF DEBARMENT AND SUSPENSION**

A. Suspension or debarment of a person constitutes suspension or debarment of all their divisions and other organizational elements from bidding or performing work on all public projects with the Owner unless the suspension or debarment decision is limited by its terms to one or more specifically identified individuals, organizational elements, or to specific types of public projects. The suspension or debarment may include any affiliate of the Respondent that is (1) specifically named, and (2) given Notice of the proposed debarment and an opportunity to respond.

B. For purposes of determining the scope of suspension or debarment, conduct may be imputed as follows:



1. Conduct imputed to a Respondent. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other Individual associated with a Respondent may be imputed to the Respondent when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Respondent, or with the Respondent's knowledge, approval, or acquiescence. The Respondent's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

2. Conduct imputed to individuals associated with the Respondent. The fraudulent, criminal, or other seriously improper conduct of a Respondent maybe imputed to any officer, director, shareholder, partner, employee, or other Individual associated with the Respondent who participated in, knew of, or had reason to know of the Respondent's conduct.

3. Conduct of one Respondent imputed to other members in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one Respondent in a joint venture or similar arrangement may be imputed to other members if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the members. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

## **END OF SECTION**

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# LANDSCAPE & IRRIGATION PROPOSAL

Scope:

Landscape and Irrigation Installation

Project:

**Harvest Crossing Filing No. 1 – Landscape  
Improvements**

Aurora, CO

Presented to:

Harvest Crossing Metropolitan District No.3



.....  
April 11, 2024

Doug Richter  
JR Engineering  
7000 South Alton Way, Suite C400  
Centennial, CO 80112

RE: Request for Proposal for Harvest Crossing Filing No. 1 – Landscape Improvements

Dear Mr. Richter:

BrightView Landscape Development (BVLD) is pleased to submit our response based on:

**Plans:**

- Plan Title, 100% CD Bid Set dated March 07, 2024
  - Landscape sheets: CV1.0, L0.1, L0.2, L1.0-L1.9, L2.0-L2.3
  - Irrigation sheets: I.01-I.10

**Specification sections:**

- Per plans

**Prepared by:**

- Planwest

**Addendum:**

- Addendum #1 dated March 29, 2024

**The following scope of work is included:**

- See attached breakdown

**Enclosed are the following exhibits:**

- On-Screen Takeoff

**Please note these exclusions and qualifications:**

- Please note that due to current market volatility this cost estimate is valid for fifteen (15) days.
- Performance and payment bond is not included. Please add 1% to final contract value, if required.
- Wrap-Up insurance (OCIP/CCIP) credits/considerations are not included unless insurance manual and documents are provided at time of bid.
- If project requires phased construction, additional general conditions and mobilization costs may be incurred.
- BrightView will make every effort to protect existing landscape and/or hardscape. However, we are not responsible for repair or payment of repairs should any damage occur resulting from our operations.

[ 2 of 5 ]

.....  
**BrightView Landscape Development, Inc.**



- 
- This submittal **excludes** the following items:
    - Survey/Construction Staking
    - Permit Fees
    - Traffic/Pedestrian Control
    - Construction Fence
    - Demolition, Removal & Clear and Grub
    - Erosion Control/BMP Installation, Maintenance and/or Removal
    - Tree Protection or Repair
    - Topsoil Import, Export or Spreading
    - Drainage

### **Landscape**

- Due to current product availability BrightView reserves the right to substitute plant material size and species where necessary with approval from the Landscape Architect.
- All areas are to be received by BrightView Landscape Development at subgrade plus or minus one tenth of one foot, in clean condition with areas to drain.
- Soil conditioner is included as Class 1 Compost incorporated at a rate of:
  - 3CY/1,000sf for Planting Bed Areas
  - 4CY/1,000sf for Turf Areas
  - 4CY/1,000sf for Native Seed Areas
- BVLD will conduct soils analysis for the site upon completion of rough grading and prior to soil preparation. Soils tests shall determine necessary amendments and application required in addition to organic amendments. Soils analysis and acceptance will be required to validate warranty term.
- Furnishing pricing assumes standard powder-coat colors and finishes. Premium RAL colors and/or finishes may incur additional charges.
- Engineered Wood Fiber Play Surfacing is included at a 12" compacted depth installed with drainage tiles. Daylight or connection to storm drainage is assumed by others.
- Connection of drainage system from play area is assumed by others.
- Shade structures are included as (Icon)with an allowance for recommended footings. Pricing is subject to change based on final design and engineering requirements.
- Boulders are included as (Granite) with an average size of 30-48" and a maximum weight of 2-ton per boulder. Saw-cut or snap-cut operations are not included. Pricing is subject to change based on quantity and total weight of boulders selected by Landscape Architect.
- Native seed mix schedule is included in the documents, but plans state 'low grow' native seed. Included seed per the specified native seed mix.
- 12 GA edging is not available in roll top as it is too thick. Included 12 GA straight edging.

### **Native Seed**

- Due to market and environmental conditions BrightView reserves the right to substitute seed mix type and application rate with the approval from the Landscape Architect. To achieve optimal establishment and coverage, BrightView recommends seeding operations while soil temperatures remain between 55 degrees – 65 degrees (typically between Mother's Day and Labor Day.) Seeding outside of this window may result in native seed not establishing and nullification of warranty.



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• Irrigated Native Seed

- Pricing includes (2) seedings. First for initial acceptance, Second for season 2 over-seeding. All other seedings outside of specified window will be at additional charge.
- Seeding window is from June 1<sup>st</sup> – August 15<sup>th</sup>. All seeding outside of this window will be void of warranty.

**Concrete**

- Concrete unit prices assume installation on compacted native subgrade.
- Reinforcement requirements determined by soils report or structural engineer, if applicable, have not been considered.
- Unit prices assume adequate access for concrete trucks; pricing does not include hand transport of material or concrete pumping.
- Unit prices assume onsite concrete washout, water source, and wastewater disposal provided by others.
- Cold weather surcharges, winter protection and temperature additives are not included.
- Due to the variability of materials comprising concrete, BrightView cannot guarantee exact matches between individual pours.
- Staking is assumed the responsibility of others and will be required for curbs at radius points, the beginning and ending of curbs, 25 feet on-center for long radius runs, 50 feet on-center for long straight runs, for flatwork at all buildings, corners, ridge lines, flow lines, and on a 50 foot grid for all other flatwork.
- Minor cracking, scaling, and spalling is inherent with concrete and considered a normal part of the curing process. Warranty replacement will be considered when cracks greater than ¼" and in excess of 30% of total joint length, spalling or scaling in excess of 15% of total surface area, and more than 50 pop-outs per 100 sf.

**Irrigation**

- Water tap, tap development fees, meter, and booster pump (if required) are to be installed by others.
- Electrical supply (120 volt) to the location and final connection of the automatic irrigation controller is assumed by others.
- Sleeves are assumed to be installed prior to all hardscape (asphalt, concrete, pavers, etc.) Boring and/or cut-and-patch are not included in this proposal.
- Temporary irrigation of any non-irrigated native seed areas, by hand-watering, water truck, etc. is not included.



**Proposal Amount:**

Landscape and Irrigation	See attached breakdown
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*Unit pricing in this proposal assumes all qualifications to be incorporated, as noted above, into final contract. If not incorporated into contract BrightView reserves the right to revise and reprice items accordingly.*

Upon review of this document, please do not hesitate to contact me for any additional information or clarification you require.

Sincerely,



Kassia Armenta  
BrightView Landscape Development, Inc.  
8888 Motsenbocker Road  
Parker, CO 80134  
720-369-5078



## Harvest Crossing Metro District No. 3

## Harvest Crossing

April 11, 2024

DESCRIPTION	QUANTITY		UNIT PRICE	TOTAL PRICE
Mobilization, General Conditions & Supervision	1	LS	\$41,644.00	\$41,644.00
<b>Sub-Total</b>				<b>\$41,644.00</b>
<b>Landscape Improvements</b>				
Deciduous Trees : 2.5" Caliper	169	EA	\$750.00	\$126,750.00
Ornamental Trees: 2" Caliper	19	EA	\$710.00	\$13,490.00
Evergreen Trees: 8' Height	57	EA	\$775.00	\$44,175.00
Deciduous Shrubs: 5 Gallon	1,768	EA	\$65.00	\$114,920.00
Ornamental Grasses: 5 Gallon	473	EA	\$60.00	\$28,380.00
Perennials: 1 Gallon	63	EA	\$25.00	\$1,575.00
4" Depth, 2-4" Dia, River Rock Mulch	47,756	SF	\$2.75	\$131,329.00
4" Depth, 4-6" Dia, River Cobble Mulch	20,150	SF	\$3.25	\$65,487.50
Fibar Mulch - 12" Depth Fibar System 30	3,020	SF	\$8.50	\$25,670.00
Low Grow Seed Mix	87,820	SF	\$0.40	\$35,128.00
RTF Turf - Irrigated Sod	54,890	SF	\$1.25	\$68,612.50
Wetland Seed Mix	67,550	SF	\$0.45	\$30,397.50
Landscape Boulder, Gray/Tan Granite 30"-48"	22	EA	\$550.00	\$12,100.00
Steel Edging	5,320	LF	\$8.50	\$45,220.00
<b>Sub-Total</b>				<b>\$743,234.50</b>
<b>Site Furnishings &amp; Amenities</b>				
6' Bench	6	EA	\$3,450.00	\$20,700.00
BBQ Grill	2	EA	\$2,750.00	\$5,500.00
Bike Rack	1	EA	\$1,100.00	\$1,100.00
Coal Bin	1	EA	\$2,750.00	\$2,750.00
Mailbox Cluster	5	EA	\$4,850.00	\$24,250.00
Park Rules Sign	1	EA	\$13,100.00	\$13,100.00
Pavilion	1	EA	\$127,500.00	\$127,500.00
Pet Waste Station	3	EA	\$1,950.00	\$5,850.00
Picnic Table Set	5	EA	\$6,750.00	\$33,750.00
Waste Receptacle	1	EA	\$3,250.00	\$3,250.00
Playground Equipment - Type 1 Tractor	1	EA	\$29,500.00	\$29,500.00
Playground Equipment - Type 2	1	EA	\$77,500.00	\$77,500.00
Concrete Flatwork, 6" Thick <i>**Includes Excavation, Waste Soil Onsite, Grading &amp; Compaction</i>	7,730	SF	\$12.50	\$96,625.00
Playground Curb	246	LF	\$95.00	\$23,370.00
Playground ADA Ramp	1	EA	\$4,500.00	\$4,500.00
Pedestrian Lighting	7	EA	\$11,275.00	\$78,925.00
<b>Sub-Total</b>				<b>\$548,170.00</b>
<b>Irrigation System</b>				
Complete Irrigation System	1	LS	\$385,750.00	\$385,750.00
<b>Sub-Total</b>				<b>\$385,750.00</b>



**Maintenance**

Landscape & Irrigation Maintenance (18 Months)	1	LS	\$88,200.00	\$88,200.00
<b>Sub-Total</b>				<b>\$88,200.00</b>
			<b>TOTAL</b>	<b>\$1,806,998.50</b>





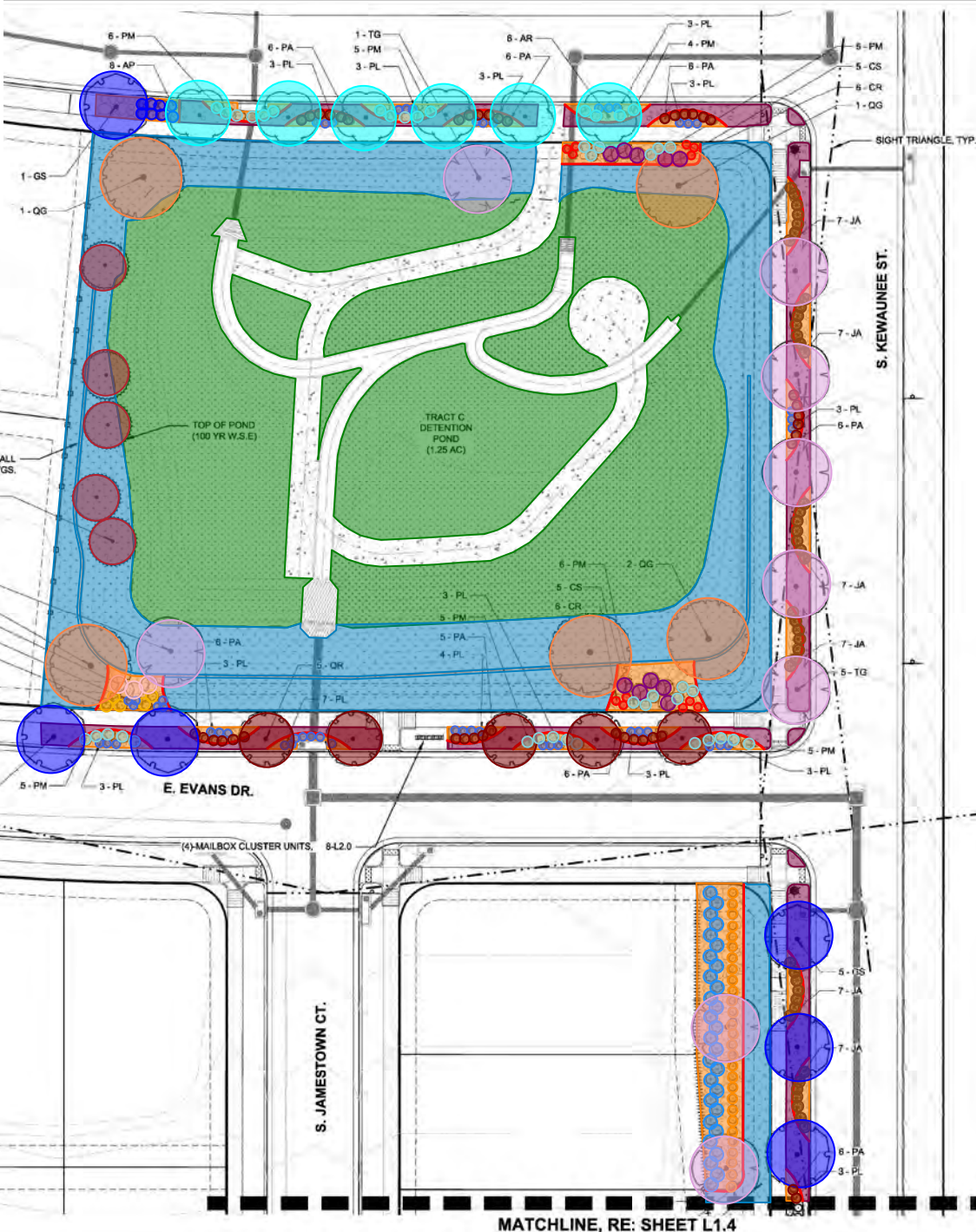




1



AR 2.5" Cal Acer rubrum - Q1 6 EA  
 GS 2.5" Cal Glehdsia tricanthos 'Skyline' - Q1 6 EA  
 QG 2.5" Cal Quercus x macdanieli 'Clemens' TM - Q1 5 EA  
 QR 2.5" Cal Quercus rubra - Q1 5 EA  
 TG 2.5" Cal Tilia cordata 'Greenspire' - Q1 9 EA  
 PP 5 Gal Picea pungens - Q1 5 EA  
 AP 5 Gal Aristotaphylos 'Panchito' - Q1 9 EA  
 CB 5 Gal Cornus sericea 'Bailey' - Q1 3 EA  
 CR 5 Gal Chrysothamnus nauseosus - Q1 12 EA  
 CS 5 Gal Cytisus purgans 'Spanish Gold' - Q1 10 EA  
 JA 5 Gal Juniperus sabinia 'Arcadia' - Q1 42 EA  
 PA 5 Gal Perovskia atriplicifolia - Q1 43 EA  
 PL 5 Gal Philadelphus microphyllus - Q1 50 EA  
 PM 5 Gal Physocarpus monogynus - Q1 42 EA  
 RC 5 Gal Ribes cereum - Q1 5 EA  
 RD 5 Gal Rosa x 'Radtkepink' TM - Q1 28 EA  
 SW 5 Gal Sporobolus wrightii - Q1 29 EA  
 4" Depth, 2-4" Dia, River Rock Mulch - Q1 5,852 SF  
 4" Depth, 4-6" Dia, River Cobble Mulch - Q1 3,839 SF  
 Low Grow Seed Mix - Q1 19,403 SF  
 Wetland Seed Mix - Q1 27,250 SF  
 Steel Edging - Perforated, 4", 16 GA (3L2.2) - Q1 931 LF



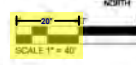
# SHEET KEY MAP



## PLANT LIST

TREES	COMMON NAME
AR	RED MAPLE
GS	SKYLINE HONEY LOCUST
QR	RED OAK
QG	HERITAGE OAK
TG	GREENSPICE LINDEN
EVERGREEN TREES	COMMON NAME
PP	COLORADO SPRUCE
PH	BOSNIAN PINE
PN	AUSTRIAN BLACK PINE
ORNAMENTAL TREES	COMMON NAME
MS	SPRING SNOW CRABAPPLE
PA2	AUTUMN BLAZE GALLERY PEAR
SHRUBS	COMMON NAME
AN	FALSE INDIGO
AP	PANCHITO MANZANITA
CS	GLOBE THORN
CM	DESERT SWEET
CR	RUBBER RAUBERFISH
CR	RED TWIG DOGWOOD
CS	SPANISH GOLD BROOM
IB	EMERALD Y GOLD WINTERHOLM
IB	SUNSHINE HYDRANGEA
JA	ARCADIA JUNIPER
PL	RUSSIAN SAGE
PL	LITTLELEAF MOCKINGBIRD
PM	MOUNTAIN KNEEBARK
PM	SHRUBBY CROCUS
PG	GOLD STAR BUSH CINCQUEFOIL
PC	PAWNEE BUTTE SAND CHERRY
RC	GOLD-LEAF FRAGRANT SUMAC
RU	WAX CURRANT
RU	PINK DOUBLE KNOCK OUT ROSE
RU	FLOWER CARPET RED GROUND COVER ROSE
ORNAMENTAL GRASSES	COMMON NAME
ON	FEATHER REED GRASS
PP	LITTLE SUNNY FOUNTAIN GRASS
SW	BIG SACATON
PERENNIALS	COMMON NAME
CV	RED VALERIAN
IC	FLYING DUTCHMAN
SM	MAY NIGHT SAGE
GROUND COVERS	COMMON NAME
	4-6" RIVER COBBLE - NATURAL COLOR
	2-4" RIVER ROCK - NATURAL COLOR
SEED	COMMON NAME
	LOW GROW SEED MIX
	WETLAND SEED MIX
TURF	COMMON NAME
	KIT TURF

Scale 1" = 20'-0"  
 Please Confirm



LANDSCAPE CONSTRUCTION DOCUMENTS  
 HARVEST CROSSING FILING NO. 1  
 TRACTS A, B, C, D & STREETScape  
 AURORA, CO

ISSUE RECORD	DATE	BY
100% CD BID SET	10/15/24	JM
100% CD BID SET	10/17/24	JM

PROJECT INFORMATION	DATE	BY
PROJECT #	201527	JM
DRAWN BY	JM	JM
CHECKED BY	JM	JM

LANDSCAPE PLAN  
 L1.3  
 7 OF 30

PLANWEST  
 707 Ames Drive  
 Suite 200  
 Westminster, CO 80504  
 303.421.4204  
 planwest.com









**OWNER / CLIENT**  
INTEGRITY AND VENTURES  
4200 S. ALTON WAY  
DENVER, CO 80112  
303-297-6250

**ENGINEER**  
JULIA ENGINEERING  
7765 W. 12<sup>TH</sup> AVE., STE. 300  
WESTMINSTER, CO 80054

LANDSCAPE CONSTRUCTION DOCUMENTS  
**HARVEST CROSSING FILING NO. 1**  
TRACTS A, B, C, D & STREETSCAPE

AURORA, CO

ISSUE RECORD	
100% CO BID SET	01.16.24
100% CO BID SET	02.07.24
100% CO BID SET	07.28.2021
100% CO BID SET	02.20.2021
100% CO BID SET	10.06.2021
100% CO BID SET	02.18.2021

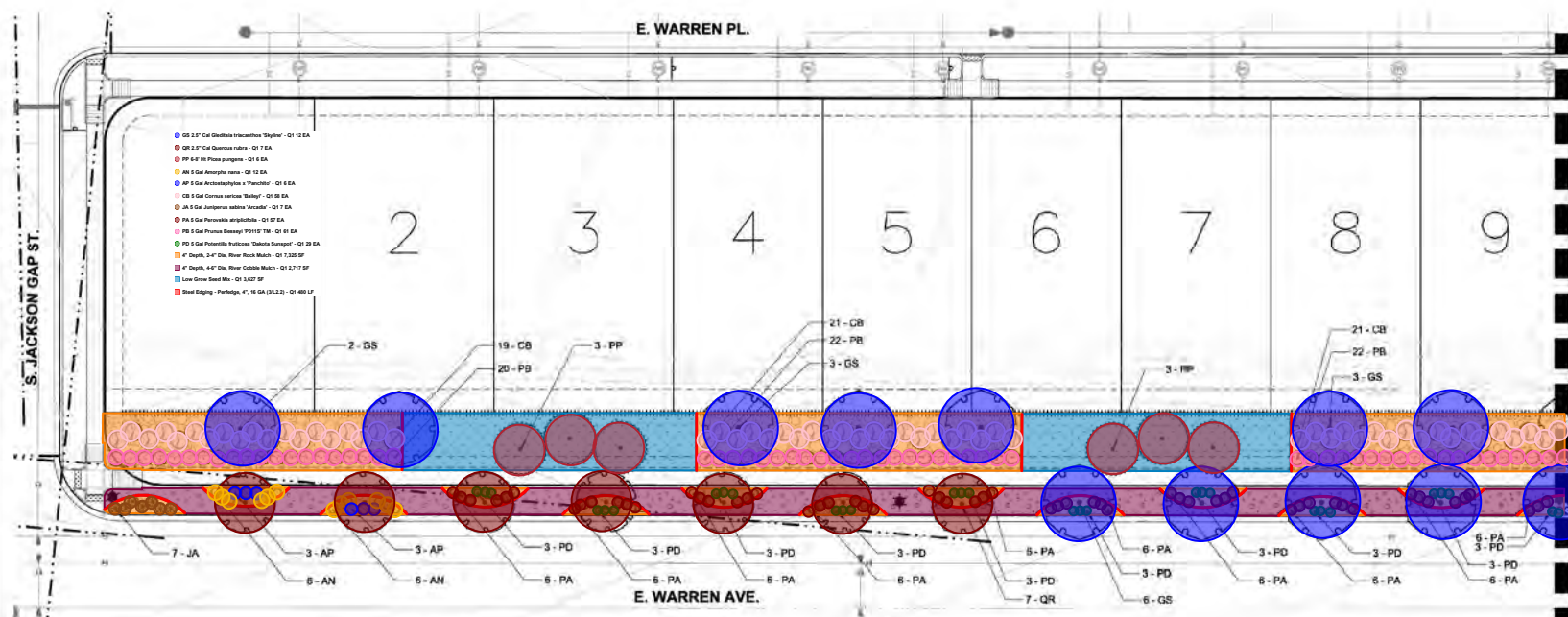
PROJECT INFORMATION	2018-27	JL	AH
PROJECT #:			
DRAWN BY:			
CHECKED BY:			

LANDSCAPE PLAN

L1.5

8 OF 3

A detailed map of the L1.1 to L1.6 area. The map shows a grid of streets and lots. The streets are labeled: HARVEST RD. on the left, E. PACIFIC AVE. on the top right, and WARREN AVE. on the bottom. The lots are numbered: L1.1, L1.2, L1.3, L1.4, L1.5, and L1.6. The map shows the layout of the streets and the location of the lots relative to each other.



TIRES	COMMON NAME
TR	RED MAPLE
GS	SKYLINE HOME YOCUST
CR	RED OAK
OG	HERITAGE OAK
TO	GREENSPICE LINDEN
EVERGREEN TREES	COMMON NAME
PF	COLORADO SPRUCE
PH	BOSNIAN PINE
PM	AUSTRIAN BLACKPINE
ORNAMENTAL TREES	COMMON NAME
ME	SPRING SNOW CRABAPPLE
PAZ	AUTUMN BLACK CALLEARY PEAR
SHRUBS	COMMON NAME
AN	FALSE INDIGO
AP	PANCHITO MANZANITA
Q	GLORIE PEABIRUS
CM	DESERT SWEET
CR	RUSSIAN RABBITBUSH
CH	RED TWO DOGWOOD
CS	SPANISH GOLD BROOM
ES	BACCALDI N SOLY WINTERCREEPER
HS	SUNSHINE HYDRANGEA
JE	ARCADIA JUMPER
JA	RUSKIAN SAGE
PL	LEUCILEAF MOCKORANGE
PL	MOUNTAIN NINEWAX
PO	SHRUBBY CROCODON
PO	GOLD STAIR BUS CINCQUEFOIL
PI	PAWNEE BUTTE SAND CHERRY
PI	GROUND FRAGRANT SUMAC
RC	WAX CURRANT
RD	PRK DOUBLE KNOCK OUT ROSE
RF	FLOWER CAMPETREE GROUND COVER ROSE
ORNAMENTAL GRASSES	COMMON NAME
RF	FEATHER REED GRASS
RF	LITTLE BUNNY FOUNTAIN GRASS
RF	BIG SACATON
PERENNIALS	COMMON NAME
CV	RED VALERIAN
IC	EVERGREEN CANDY TUFT
IC	MAY NIGHT SAGE
GROUND COVERS	COMMON NAME
IC	4-6" RIVER COBBLE - NATURAL COLOR
IC	2-4" RIVER ROCK - NATURAL COLOR
SEED	COMMON NAME
IC	LOW GROW SEED MIX
IC	WETLAND SEED MIX
TURF	COMMON NAME
IC	RTF TURF

**Scale 1" = 20'-0"**  
**Please Confirm**





- AR 2.5" Cal Acer rubrum - Q1 6 EA
- TG 2.5" Cal Tilia cordata 'Greenspire' - Q1 31 EA
- MS 2" Cal Malus x 'Spring Snow' - Q1 10 EA
- PA2 2" Cal Pyrus calleryana 'Autumn Blaze' - Q1 6 EA
- PH 6-8" Ht Pinus heldreichii - Q1 5 EA
- PN 6-8" Ht Pinus nigra - Q1 8 EA
- PP 6-8" Ht Picea pungens - Q1 4 EA
- AP 5 Gal Arctostaphylos x 'Panchito' - Q1 22 EA
- CB 5 Gal Cornus sericea 'Bailey' - Q1 10 EA
- CG 5 Gal Caragana arborescens 'Globoosa' - Q1 27 EA
- CM 5 Gal Chamaebatia millefolium - Q1 39 EA
- CS 5 Gal Cytisus purgans 'Spanish Gold' - Q1 13 EA
- EG 5 Gal Eucymus fortunei 'Emerald N Gold' - Q1 36 EA
- HF 5 Gal Hypericum frondosum 'Sunburst' - Q1 15 EA
- PA 5 Gal Perovskia atriplicifolia - Q1 91 EA
- PB 5 Gal Prunus Besseyi 'P0115' TM - Q1 23 EA
- PD 5 Gal Potentilla fruticosa 'Dakota Sunset' - Q1 27 EA
- PL 5 Gal Philadelphus microphyllus - Q1 36 EA
- PM 5 Gal Physocarpus monogynus - Q1 13 EA
- RD 5 Gal Rosa x 'Radikopink' TM - Q1 34 EA
- RF 5 Gal Rosa x 'Noan' TM - Q1 20 EA
- RG 5 Gal Rhus artemisia 'Gro-Low' - Q1 9 EA
- CK 5 Gal Calamagrostis x acutiflora 'Karl Foerster' - Q1 79 EA
- PF 5 Gal Pennisetum alopecuroides 'Little Bunny' - Q1 14 EA
- SW 5 Gal Sporobolus wrightii - Q1 28 EA
- CV 5 Gal Conoclinium ruber - Q1 16 EA
- IC 5 Gal Iberis sempervirens - Q1 14 EA
- SM 5 Gal Salvia x sylvestris 'May Night' - Q1 34 EA
- 4" Depth, 2-4" Dia, River Rock Mulch - Q1 5,605 SF
- 4" Depth, 4-6" Dia, River Cobble Mulch - Q1 2,195 SF
- Low Grow Seed Mix - Q1 11,856 SF
- RTF Turf - Irrigated Sod - Q1 54,890 SF
- Steel Edging - Perforated, 4", 16 GA (3/2.2) - Q1 1,076 LF



# SHEET KEY MAP



## PLANT LIST

TREES	COMMON NAME
AR	RED MAPLE
OG	SKYLINE HONEY LOCUST
QR	RED OAK
QZ	HERITAGE OAK
TG	GREENSPIRE LINZEN
EVERGREEN TREES	COMMON NAME
PP	COLORADO SPRUCE
PH	ROSIKIAN PINE
PN	AUSTRIAN BLACK PINE
ORNAMENTAL TREES	COMMON NAME
MS	SPRING SNOW CRABAPPLE
PA2	AUTUMN BLAZE GALLERY PEAR
SHRUBS	COMMON NAME
AN	FALSE INDIGO
AP	PANCHITO MANZANITA
CG	GLOBE PEASHRUB
CM	DESERT SWEET
CR	RUBBER RABBITRUB
CS	RED TWIG DOGWOOD
CS	SPANISH GOLD BROOM
EG	EMERALD N GOLD WHITEWHEATEL
HF	SUNBURST HYPERICUM
JA	ARCADIA JUNIPER
PA	RUSSIAN SAGE
PL	LITTLELEAF MOONORANGE
PM	MOUNTAIN NINEBARK
PD	SHRUBBY CINQUOIL
PG	GOLD STAR BUSH CINQUEFOIL
PB	PAWNEE BUTTES SAND CHERRY
RG	GRO-LOW FRAGRANT SUMAC
RC	WAX CURRANT
RD	PINK DOUBLE KNOCK OUT ROSE
RF	FLOWER CARPET RED GROUNDCOVER ROSE
ORNAMENTAL GRASSES	COMMON NAME
CK	FEATHER REED GRASS
PF	LITTLE BUNNY FOUNTAIN GRASS
BN	BIG SACATON
PERENNIALS	COMMON NAME
CV	RED VALERIAN
IC	LIVINGSTONE CANARYTULIP
SM	MAY NIGHT SAGE
GROUND COVERS	COMMON NAME
	4-6" RIVER COBBLE - NATURAL COLOR
	2-4" RIVER ROCK - NATURAL COLOR
SEED	COMMON NAME
	LEWIS GROW SEED MIX
	WETLAND SEED MIX
TURF	COMMON NAME
	RTF TURF

## LANDSCAPE CONSTRUCTION DOCUMENTS HARVEST CROSSING FILING NO. 1 TRACTS A, B, C, D & STREETScape

AURORA, CO

ISSUE RECORD	DATE	BY
100% CD MTD SET	01.18.24	JM
TOTAL CD MTD SET	01.07.24	JM

PROJECT INFORMATION	DATE	BY
PROJECT 46	2019-07	JM
DRAWN BY		JM
CHECKED BY		JM

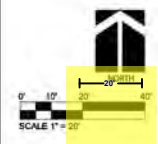
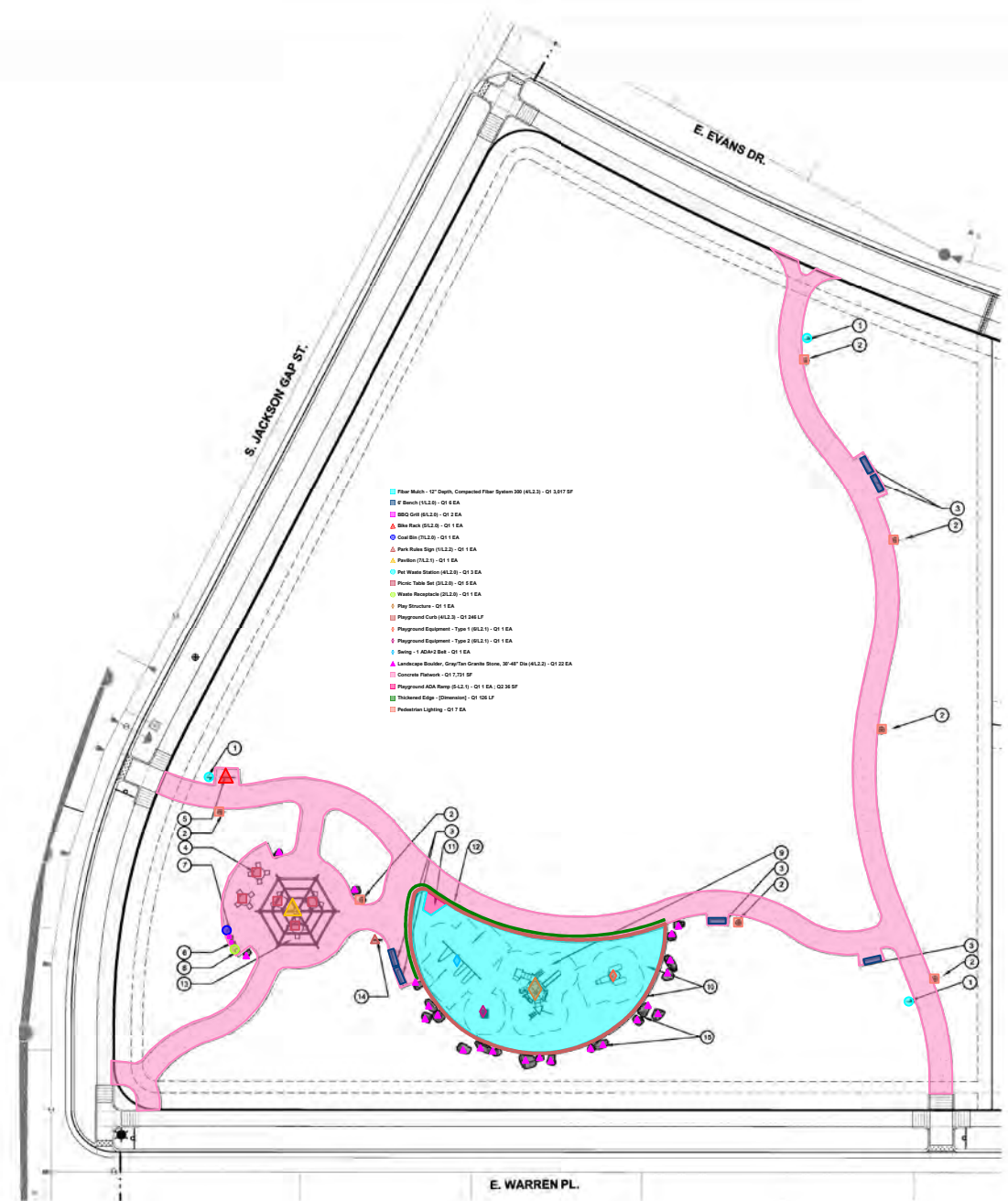
PARK LANDSCAPE PLAN  
**L1.6**

10 OF 30



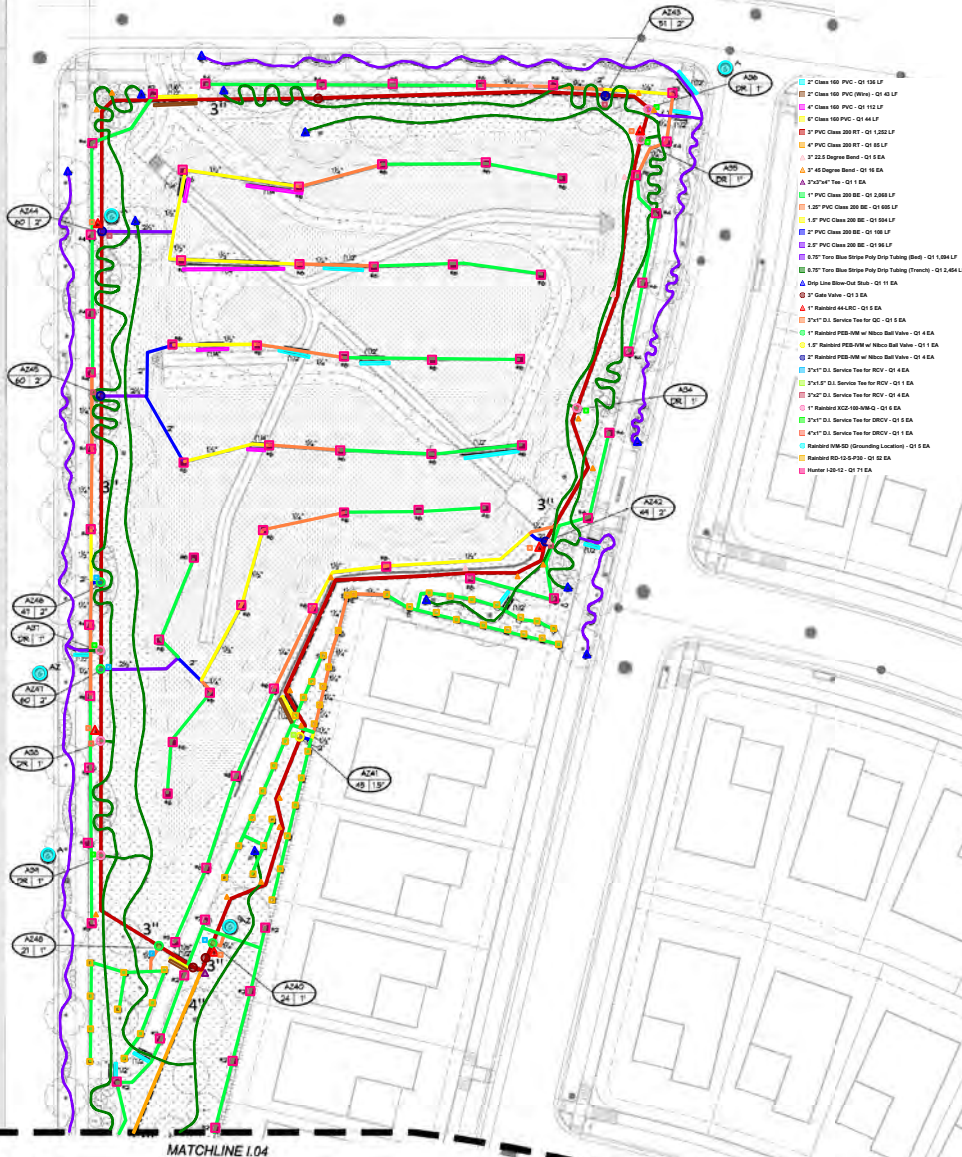


PARK AMENITY TABLE			
LABEL	ITEM	QTY	DETAIL/SHEET NO.
1	PET STATION	3	4-L2.0
2		7	RE: PHOTOM & ELEC. PLANS
3	6" BENCH	8	1-L2.0
4	PICNIC TABLE SET	5	3-L2.0
5	BIKE RACK	1	5-L2.0
6	GRILL STATION	2	6-L2.0
7	COAL BIN	1	7-L2.0
8	WASTE RECEPTACLE	1	2-L2.0
9	PLAYGROUND EQUIPMENT	n/a	4-L2.2
10	PLAYGROUND CURB & DRAINAGE	n/a	4-L3.3
11	PLAYGROUND RAMP	1	5-L2.1
12	THICKENING WALK EDGE	n/a	6-L3.3
13	PAVILION	1	6-L2.2
14	PARK RULES SIGN	1	1-L2.2
15	LANDSCAPE BOULDERS	18	4-L3.2



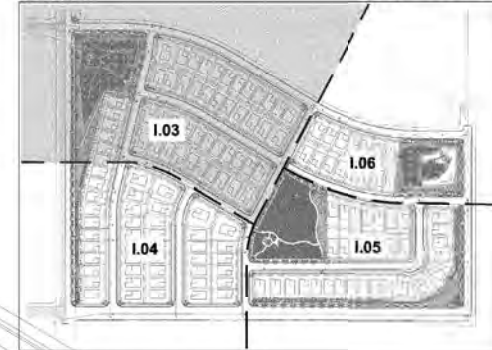


UNINCORPORATED  
ARAPAHOE COUNTY



- 2" Class 150 PVC - Q1 108 LF
- 2" Class 150 PVC (WV) - Q1 40 LF
- 4" Class 150 PVC - Q1 102 LF
- 4" Class 150 PVC - Q1 161 LF
- 2" PVC Class 200 RT - Q1 1,323 LF
- 4" PVC Class 200 RT - Q1 85 LF
- 1" 22.5 Degree Bend - Q1 5 EA
- 1" 45 Degree Bend - Q1 16 EA
- 1" 90 Degree Tee - Q1 1 EA
- 1" PVC Class 200 SE - Q1 2,888 LF
- 1.315" PVC Class 200 SE - Q1 888 LF
- 1.5" PVC Class 200 SE - Q1 584 LF
- 2" PVC Class 200 SE - Q1 188 LF
- 2.5" PVC Class 200 SE - Q1 161 LF
- 6.75" Turb Blue Stripe Poly Drop Tubing (Bolt) - Q1 1,084 LF
- 6.75" Turb Blue Stripe Poly Drop Tubing (Frenchie) - Q1 2,464 LF
- Drop Line Blow-Out Stub - Q1 11 EA
- 2" Gate Valve - Q1 1 EA
- 1" Random M-B-G - Q1 5 EA
- 2"x1/2" D.I. Service Tee for GC - Q1 5 EA
- 1" Random PDS-WB w/ Micro Ball Valve - Q1 4 EA
- 1.5" Random PDS-WB w/ Micro Ball Valve - Q1 1 EA
- 2" Random PDS-WB w/ Micro Ball Valve - Q1 4 EA
- 2"x1/2" D.I. Service Tee for RCV - Q1 4 EA
- 2"x1/2" D.I. Service Tee for RCV - Q1 1 EA
- 1" Random M-B-G - Q1 5 EA
- 2"x1/2" D.I. Service Tee for RCV - Q1 4 EA
- 4"x1/2" D.I. Service Tee for RCV - Q1 1 EA
- Random M-B-G (Circumventing Location) - Q1 5 EA
- Random M-B-G (P-10) - Q1 52 EA
- Random M-B-G (P-10) - Q1 11 EA

KEYMAP:



DIRECTORY	
IRRIGATION SCHEDULE	1.01
IRRIGATION NOTES	1.01
IRRIGATION OVERALL PLAN	1.02
IRRIGATION PLANS	1.03 - 1.06
IRRIGATION DETAILS	1.07 - 1.09
IRRIGATION CHARTS	1.10



ISSUE RECORD  
DATE CD REV SET 11.05.24

PROJECT INFORMATION  
PROJECT # 2018-07  
DRAWN BY EWP  
CHECKED BY HO

IRRIGATION PLAN  
1.03  
20 OF 30

OWNER/CLIENT  
INTEGRITY LAND VENTURES  
4900 E. ALTON WAY  
DENVER, CO 80231  
303.297.4805

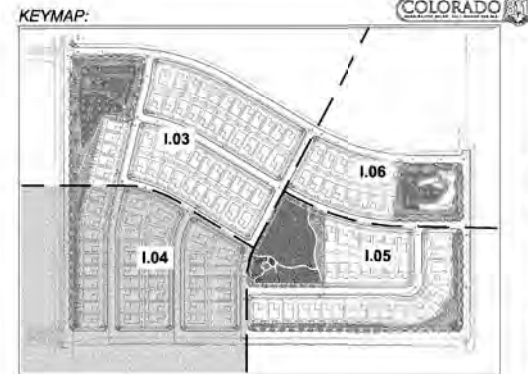
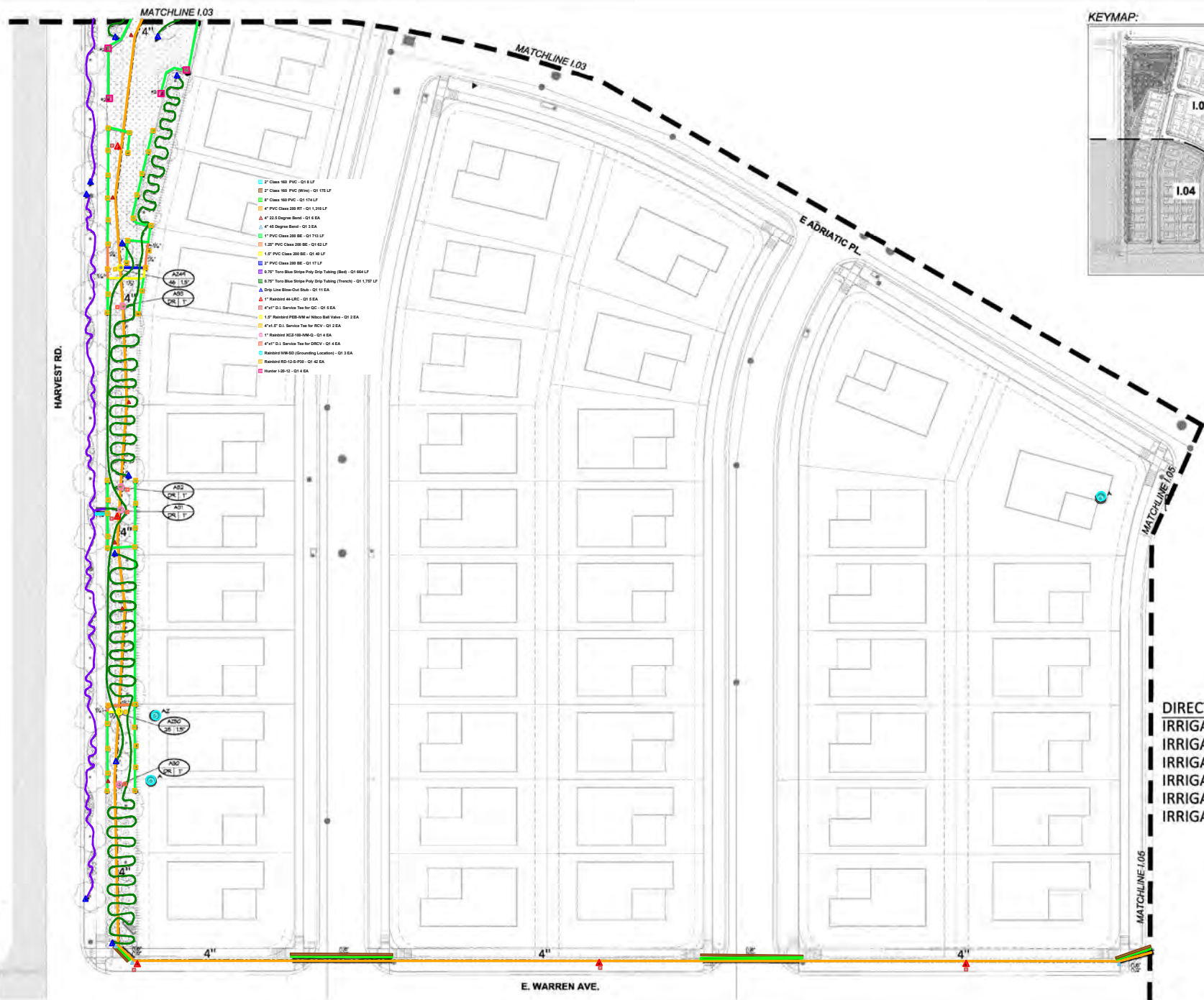
ENGINEER  
J.A. ENGINEERING  
1708 W. 121ST AVE, STE. 300  
DENVER, CO 80224  
303.421.4224

PLANNING  
J.A. ENGINEERING  
1708 W. 121ST AVE, STE. 300  
DENVER, CO 80224  
303.421.4224

LANDSCAPE ARCHITECTURE  
J.A. ENGINEERING  
1708 W. 121ST AVE, STE. 300  
DENVER, CO 80224  
303.421.4224




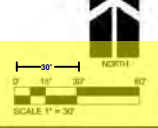




DIRECTORY	
IRRIGATION SCHEDULE	1.01
IRRIGATION NOTES	1.01
IRRIGATION OVERALL PLAN	1.02
IRRIGATION PLANS	1.03 - 1.06
IRRIGATION DETAILS	1.07 - 1.09
IRRIGATION CHARTS	1.10

**HydroSystems**  
Irrigation Consulting & Water Management  
13649 W. Colfax Ave., Suite 280, Littleton, Colorado 80401  
P: 303.943.3227 F: 303.943.3228

**811**  
Know what's below.  
Call before you dig.  
Call a member of the 811 network to locate underground utilities before you dig. Call 811 or visit 811.org.



0' 10' 20' 30'

SCALE: 1" = 30'

**PLANWEST**  
251 Santa Fe Drive  
Suite 100  
Boulder, CO 80501  
303.441.3411  
planwest.com

OWNER / CLIENT  
INTEGRITY LAND MANAGEMENT  
4700 E. ALTON WAY  
DENVER, CO 80231  
303.277.4555  
ENGINEER  
JLA ENGINEERING  
1785 W. 121ST AVE, STE. 200  
AURORA, CO 80014  
303.471.4224

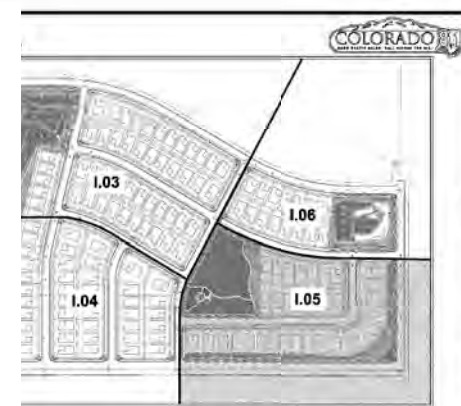
IRRIGATION CONSTRUCTION DOCUMENTS  
**HARVEST CROSSING FILING NO. 1**  
TRACTS A, B, C, D & STREETSCAPE  
AURORA, CO

ISSUE RECORD  
DATE  
BY  
1.01  
1.02  
1.03  
1.04  
1.05  
1.06  
1.07  
1.08  
1.09  
1.10

PROJECT INFORMATION  
PROJECT #  
DRAWN BY  
CHECKED BY  
2018-27  
RWP  
JLC

IRRIGATION PLAN  
**1.04**  
21 OF 30



[illegible]

**PEAK FLOW REQUIREMENT: 62 GPM. REQUIRED STATIC PRESSURE: 70 PSI**

CONTRACTOR SHALL: 1) **UNTO 2) GOTTEN SLIP-OUT DOWNSTREAM OF METER PIT AT 54" DEPTH** 3) **THIS ANCHOR SHALL BE 1" DIA. STEEL ROD WITH 1/2" DIA. STUD TO THE** 4) **CONNECTION IS BY CIVIL. INSTALL 1" DIA. 2" METER PIPK CITY OF MINNAPCA SPECIFICATIONS** 5) **STANDARDS. CONNECT TO STUD AND EXTEND 2' 6) 7) 8) 9) 10) 11) 12) 13) 14) 15) 16) 17) 18) 19) 20) 21) 22) 23) 24) 25) 26) 27) 28) 29) 30) 31) 32) 33) 34) 35) 36) 37) 38) 39) 40) 41) 42) 43) 44) 45) 46) 47) 48) 49) 50) 51) 52) 53) 54) 55) 56) 57) 58) 59) 60) 61) 62) 63) 64) 65) 66) 67) 68) 69) 70) 71) 72) 73) 74) 75) 76) 77) 78) 79) 80) 81) 82) 83) 84) 85) 86) 87) 88) 89) 90) 91) 92) 93) 94) 95) 96) 97) 98) 99) 100) 101) 102) 103) 104) 105) 106) 107) 108) 109) 110) 111) 112) 113) 114) 115) 116) 117) 118) 119) 120) 121) 122) 123) 124) 125) 126) 127) 128) 129) 130) 131) 132) 133) 134) 135) 136) 137) 138) 139) 140) 141) 142) 143) 144) 145) 146) 147) 148) 149) 150) 151) 152) 153) 154) 155) 156) 157) 158) 159) 160) 161) 162) 163) 164) 165) 166) 167) 168) 169) 170) 171) 172) 173) 174) 175) 176) 177) 178) 179) 180) 181) 182) 183) 184) 185) 186) 187) 188) 189) 190) 191) 192) 193) 194) 195) 196) 197) 198) 199) 200) 201) 202) 203) 204) 205) 206) 207) 208) 209) 210) 211) 212) 213) 214) 215) 216) 217) 218) 219) 220) 221) 222) 223) 224) 225) 226) 227) 228) 229) 230) 231) 232) 233) 234) 235) 236) 237) 238) 239) 240) 241) 242) 243) 244) 245) 246) 247) 248) 249) 250) 251) 252) 253) 254) 255) 256) 257) 258) 259) 260) 261) 262) 263) 264) 265) 266) 267) 268) 269) 270) 271) 272) 273) 274) 275) 276) 277) 278) 279) 280) 281) 282) 283) 284) 285) 286) 287) 288) 289) 290) 291) 292) 293) 294) 295) 296) 297) 298) 299) 300) 301) 302) 303) 304) 305) 306) 307) 308) 309) 310) 311) 312) 313) 314) 315) 316) 317) 318) 319) 320) 321) 322) 323) 324) 325) 326) 327) 328) 329) 330) 331) 332) 333) 334) 335) 336) 337) 338) 339) 340) 341) 342) 343) 344) 345) 346) 347) 348) 349) 350) 351) 352) 353) 354) 355) 356) 357) 358) 359) 360) 361) 362) 363) 364) 365) 366) 367) 368) 369) 370) 371) 372) 373) 374) 375) 376) 377) 378) 379) 380) 381) 382) 383) 384) 385) 386) 387) 388) 389) 390) 391) 392) 393) 394) 395) 396) 397) 398) 399) 400) 401) 402) 403) 404) 405) 406) 407) 408) 409) 410) 411) 412) 413) 414) 415) 416) 417) 418) 419) 420) 421) 422) 423) 424) 425) 426) 427) 428) 429) 430) 431) 432) 433) 434) 435) 436) 437) 438) 439) 440) 441) 442) 443) 444) 445) 446) 447) 448) 449) 450) 451) 452) 453) 454) 455) 456) 457) 458) 459) 460) 461) 462) 463) 464) 465) 466) 467) 468) 469) 470) 471) 472) 473) 474) 475) 476) 477) 478) 479) 480) 481) 482) 483) 484) 485) 486) 487) 488) 489) 490) 491) 492) 493) 494) 495) 496) 497) 498) 499) 500) 501) 502) 503) 504) 505) 506) 507) 508) 509) 510) 511) 512) 513) 514) 515) 516) 517) 518) 519) 520) 521) 522) 523) 524) 525) 526) 527) 528) 529) 530) 531) 532) 533) 534) 535) 536) 537) 538) 539) 540) 541) 542) 543) 544) 545) 546) 547) 548) 549) 550) 551) 552) 553) 554) 555) 556) 557) 558) 559) 560) 561) 562) 563) 564) 565) 566) 567) 568) 569) 570) 571) 572) 573) 574) 575) 576) 577) 578) 579) 580) 581) 582) 583) 584) 585) 586) 587) 588) 589) 590) 591) 592) 593) 594) 595) 596) 597) 598) 599) 600) 601) 602) 603) 604) 605) 606) 607) 608) 609) 610) 611) 612) 613) 614) 615) 616) 617) 618) 619) 620) 621) 622) 623) 624) 625) 626) 627) 628) 629) 630) 631) 632) 633) 634) 635) 636) 637) 638) 639) 640) 641) 642) 643) 644) 645) 646) 647) 648) 649) 650) 651) 652) 653) 654) 655) 656) 657) 658) 659) 660) 661) 662) 663) 664) 665) 666) 667) 668) 669) 670) 671) 672) 673) 674) 675) 676) 677) 678) 679) 680) 681) 682) 683) 684) 685) 686) 687) 688) 689) 690) 691) 692) 693) 694) 695) 696) 697) 698) 699) 700) 701) 702) 703) 704) 705) 706) 707) 708) 709) 710) 711) 712) 713) 714) 715) 716) 717) 718) 719) 720) 721) 722) 723) 724) 725) 726) 727) 728) 729) 730) 731) 732) 733) 734) 735) 736) 737) 738) 739) 740) 741) 742) 743) 744) 745) 746) 747) 748) 749) 750) 751) 752) 753) 754) 755) 756) 757) 758) 759) 760) 761) 762) 763) 764) 765) 766) 767) 768) 769) 770) 771) 772) 773) 774) 775) 776) 777) 778) 779) 780) 781) 782) 783) 784) 785) 786) 787) 788) 789) 790) 791) 792) 793) 794) 795) 796) 797) 798) 799) 800) 801) 802) 803) 804) 805) 806) 807) 808) 809) 810) 811)**

"FEDERAL MOUNT ONE CONTRACTOR (REFER TO SCHEDULE FOR MODEL 1 STATION COUNCIL) REDUCE READY AT INDICATED LOCATION 120 VOLT POWER IS AVAILABLE WITHIN 50 FT. OF CONTRACTOR. CONTRACTOR TO TRANSFORMER FEDERALIST, BY OTHERS. ELECTRICITY TO CONTRACTOR. HANG GROUND STEP-DOWN TRANSFORMER TO 120 VOLT. POWER CONNECTION TO CONTRACTOR IS BY SITE CONTRACTOR WITH WORK CONFORMING TO LOCAL CODES. FEES AND PERMITS ASSOCIATED WITH WORK ARE TO BE OBTAINED AND PAID BY CONTRACTOR. FINAL CONTRACTOR LOCATION SHALL BE DETERMINED BY OTHERS. OTHERS REPRESENTATIVE TO BE INSTALLED AT MOUNT ONE WEATHER SENSOR ON POLE NINE THERE IS 20 FT. OF CLEARANCE FROM ANY OVERHANG OR OBSTRUCTING TO RUN.

"CONTRACTOR TO FLAT TWO SEPARATE 2-INCH ELEC PATHS, BLUE FOR PERMANENT VALVES AND TAN FOR TEMPORARY. 2-INCH ELEC CABLE FOR 200 AMP. TAN CABLE SHALL BE RESEQUENCED WITHIN ONE YEAR OF CONTRACTOR. AFTER THE 3 YEARS ESTIMATED PERIOD TO AVOID PAYING CAPITAL RECOVERY FEES.

1.05

22 OF 30







## Harvest Crossing Metro District No. 3

## Harvest Crossing

July 12, 2024

Brightview

## DESCRIPTION

## QUANTITY

## UNIT PRICE

Mobilization, General Conditions &amp; Supervision

1

LS

\$41,644.00

## Sub-Total

## Landscape Improvements

Deciduous Trees : 2.5" Caliper

169

EA

\$750.00

Ornamental Trees: 2.0" Caliper

19

EA

\$710.00

Evergreen Trees: 8' Height

57

EA

\$775.00

Deciduous Shrubs: 5 Gallon

1,768

EA

\$65.00

Ornamental Grasses: 5 Gallon

473

EA

\$60.00

Perennials: 1 Gallon

63

EA

\$25.00

Planting Bed Prep / Mulch / Fabric

4" Depth, 2-4" Dia, River Rock Mulch

47,756

SF

\$2.75

4" Depth, 4-6" Dia, River Cobble Mulch

20,150

SF

\$3.25

Fibar Mulch - 12" Depth Fibar System 30

3,020

SF

\$8.50

Low Grow Seed Mix

87,820

SF

\$0.40

Soil Prep for Sod

RTF Turf - Irrigated Sod

54,890

SF

\$1.25

Native Seed / Prep / fine grade

Wetland Seed Mix

67,550

SF

\$0.45

Landscape Boulder, Gray/Tan Granite 30"-48"

22

EA

\$550.00

Steel Edging

5,320

LF

\$8.50

Playground Excavation

Trail Excavation

Soil Prep - 3 CY Per 100 SF

Soil Prep - 4 CY Per 100 SF

Shredded Cedar Mulch

## Sub-Total

## Site Furnishings &amp; Amenities

Site Furnishings

6' Bench

6

EA

\$3,450.00

BBQ Grill

2

EA

\$2,750.00

Bike Rack

1

EA

\$1,100.00

Coal Bin

1

EA

\$2,750.00

Mailbox Cluster

5

EA

\$4,850.00

Park Rules Sign

1

EA

\$13,100.00

Pavilion

1

EA

\$127,500.00

Pet Waste Station

3

EA

\$1,950.00



Picnic Table Set	5	EA	\$6,750.00
Waste Receptacle	1	EA	\$3,250.00
Play Equipment			
Playground Equipment - Type 1 Tractor	1	EA	\$29,500.00
Playground Equipment - Type 2	1	EA	\$77,500.00
Concrete Flatwork, 6" Thick	7,730	SF	\$12.50
Thickened Walk Edge			
Playground Curb	246	LF	\$95.00
Playground Drainage System			
Playground ADA Ramp	1	EA	\$4,500.00
Pedestrian Lighting	7	EA	\$11,275.00

**Sub-Total**

**Irrigation System**

Complete Irrigation System	1	LS	\$385,750.00
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**Sub-Total**

**Maintenance**

Landscape & Irrigation Maintenance (18 Months)	1	LS	\$88,200.00
--	---	----	-------------

**Sub-Total**

**TOTAL**



APE DEVELOPMENT

.....



**TOTAL PRICE**  
\$41,644.00  
**\$41,644.00**

\$126,750.00  
\$13,490.00  
\$44,175.00

\$114,920.00  
\$28,380.00  
\$1,575.00

\$131,329.00  
\$65,487.50  
\$25,670.00  
\$35,128.00

\$68,612.50

\$30,397.50  
\$12,100.00  
\$45,220.00

**\$743,234.50**

\$20,700.00  
\$5,500.00  
\$1,100.00  
\$2,750.00  
\$24,250.00  
\$13,100.00  
\$127,500.00  
\$5,850.00



\$33,750.00

\$3,250.00

\$29,500.00

\$77,500.00

\$96,625.00

\$23,370.00

\$4,500.00

\$78,925.00

**\$548,170.00**

\$385,750.00

**\$385,750.00**

\$88,200.00

**\$88,200.00**

**\$1,806,998.50**