



**MONUMENT TOWN COUNCIL
REGULAR MEETING AGENDA
MONDAY, DECEMBER 16, 2024 – 6:30 PM**

Monument Town Hall - Council Chambers
645 Beacon Lite Road - Monument, CO 80132

[Participate Via Microsoft Teams](#)

Or Via Telephone 719-300-6099 Mtg. ID 844 891 481#

Or Visit TownofMonument.org/260/Town-Council

1. Call to Order, Pledge of Allegiance, Roll Call:

2. Disclosures of Conflicts of Interest:

- a. Disclosures of Potential Conflicts of Interest - *(Town Attorney)*
- b. Vote on Excluding Council Members With Potential Conflicts of Interest From Consideration, Discussion and Voting on Identified Matters - *(Town Attorney)*

3. Approval of the Consent Agenda:

- a. Agenda - December 16, 2024
- b. Meeting Minutes - December 02, 2024
- c. Invoices Over \$25K
- d. Resolution No. 54-2024 - A Resolution Adopting a Town of Monument Employee Handbook - *(Emily Trujillo)*
- e. Resolution No. 61-2024 - A Resolution Approving an Agreement With Elite Surface Infrastructure for the ARPA Stormwater Improvement Project - *(Thomas Tharnish)*
- f. Resolution No. 62-2024 - A Resolution Approving an Agreement With Barnard Constructors Inc. for the Distribution System Upgrades Project - *(Thomas Tharnish)*

4. Ordinances: *Public Hearings Required*

- a. Ordinance No. 24-2024 - An Ordinance Amending Section 18.03.380 and Adding Article 5 to Chapter 18.04 of the Monument Municipal Code Concerning the Regulation of Natural Medicine Businesses - *(Town Attorney)*
- b. Ordinance No. 25-2024 - An Ordinance Authorizing the Execution and Delivery of a Lease Purchase Agreement and Other Documents Related Thereto in Connection With the Completing of Energy Performance Improvements for Town of Monument Facilities - *(Madeline VanDenHoek)*
- c. Ordinance No. 26-2024 - An Ordinance Authorizing the Mayor or Interim Town Manager to Sign All Documents Related to a Real Property Transfer With I-25 Properties and Comcast of Colorado/Pennsylvania/West Virginia, LLC., Related to the Town's Water Tank Located on Beacon Lite Road, El Paso County - *(Thomas Tharnish)*

5. Resolutions:

- a. PUBLIC HEARING on Resolution No. 55-2024 - A Resolution Approving the Preliminary and Final Plat Subdivision for Jackson Creek North PMD Filing No. 1 - *(Dan Ungerleider)*

b. Resolution No. 63-2024 - A Resolution Approving an Energy Performance Contract With Veregy West, LLC - *(Madeline VanDenHoek)*

6. Public Comments For Items Not on the Agenda: *Individuals attending in person may raise their hand to indicate their desire to comment. Individuals attending via Teams may "raise their hand" digitally to comment via connected devices. Please lower your hand when finished with your comments. Comments are limited to 3 minutes.*

7. Future Agenda Item Authorization:

8. Council Comments:

9. Executive Session:

a. Executive Session Pursuant to 24-6-402(4)(b), C.R.S. for a Conference with the Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Regarding Pending Legal Projects - *(Town Attorney)*

b. Executive Session Pursuant to 24-6-402(4)(b), C.R.S. for a Conference with the Town Attorney for the Purpose of Receiving Legal Advice Regarding Town Employment Practices - *(Town Attorney)*

10. Adjournment:

**MONUMENT TOWN COUNCIL
REGULAR MEETING MINUTES**

Monday December 2, 2024 – 6:30 PM

Monument Town Hall – 645 Beacon Lite Rd., Monument CO 80132

Hybrid Meeting – Remote Participation Via Teams

- 1. Call to Order, Pledge of Allegiance, Roll Call:** Mayor LaKind called to order the regular meeting of the Monument Town Council and led those assembled in the Pledge of Allegiance. Proper notice of the meeting was posted for more than 24 hours in the designated posting locations. The following Council members were present for the meeting:

TOWN COUNCIL	TOWN STAFF
PRESENT: Mayor Mitch LaKind Mayor Pro Tem Steve King Councilmember Sana Abbott Councilmember Laura Kronick Councilmember Kenneth Kimple Councilmember Jim Romanello Councilmember Marco Fiorito	Madeline VanDenHoek, Interim Town Manager Patrick Regan, Police Chief Tina Erickson, Town Clerk Bob Cole, Town Attorney Will Williams, Director of IT Thomas Tharnish, Director of Public Works Jennifer Phillips, Director of Finance Laura Hogan, Director of Administration Dan Ungerleider, Director of Planning
ATTENDED REMOTELY:	
ABSENT WITH PRIOR NOTICE:	
ABSENT WITHOUT PRIOR NOTICE:	

2. Disclosures of Conflicts of Interest:

- a. Disclosures of Potential Conflicts of Interest
- b. Vote on Excluding Council Members with Potential Conflicts of Interest from Consideration, Discussions and Voting on Identified Matters.
 - None were submitted.

3. Approval of the Consent Agenda:

- a. Agenda – December 2, 2024.
- b. Meeting Minutes – November 18, 2024.

Fiorito moved to approve the consent agenda as presented. Romanello seconded the motion. Roll call vote was taken, and the motion passed 7 to 0.

4. Recognitions:

- a. VanDenHoek and Tharnish gave appreciation and recognition to the plow personnel staff.

5. Resolution(s):

- a. Resolution No. 55-2024 – A Resolution Approving the Preliminary and Final Plat Subdivision for Jackson Creek North PMD Filing No 1. Ungerleider presented resolution 55-2024 as included in the council packet. The council discussed the need for a road design, the property lines with the location of the roundabout. The Council asked for Tri-view to present to the council with an update on the road design. King recommended to continue the resolution until there is a road design to approve the plat. Rob Oldach with CSI Development spoke on an easement he has seen on construction drawings, has been told the plans have been with the town, complete set of drawings, clarified Triview is responsible to design and construct the roads. Steve Mullican Attorney, representing the

applicant gave appreciation to Ungerleider and his assistance and professionalism. Mullican spoke providing the timeline of initial submittals starting in 2022, recording a plat would provide the land to the town, all technical aspects have been completed and asked that the resolution be passed. Mullican stated they would be okay with a conditional approval to revisit right of way issue should it come up because the final design. LaKind opened the public hearing, none were received. LaKind closed the public hearing. The Council requested that staff contact Triview and Jacobs Engineering to provide a road design demonstrating the changes required to approve the plat. Cole clarified that a road design is needed to move forward. Brett Benkey with CSI spoke saying Kimley Horn engineers and Jacobs Engineering have had conversations which include the dates the town was provided a complete set of plans. King moved to continue Resolution No. 55-2024 to December 16, 2024. Romanello seconded the motion. Roll call vote was taken and the motion to continue passed 7 to 0.

- b. Resolution No. 56-2024 – A Resolution Adopting a Restated Budget for the Purpose Set Forth Below for the Town of Monument, Colorado, Beginning on the First Day of January 2024 and Ending on the Last day of December 2024. Phillips presented resolution 56-2024 as included in the council packet. LaKind opened the public hearing, none were received. LaKind closed the public hearing. Fiorito moved to approve Resolution No. 56-2024. Kronick seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
- c. Resolution No. 57-2024 – A Resolution Appropriating Sums of Money to the Various Funds in the Amounts Set Forth Below for the Town of Monument, Colorado, Beginning on the First day of January 2024 and Ending on the Last Day of December 2024. Phillips presented resolution 57-2024 as included in the council packet. Fiorito moved to approve Resolution No. 57-2024. Kronick seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
- d. Resolution No. 58-2024 – A Resolution Adopting a Budget for the Purpose Set Forth Below for the Town of Monument, Colorado, Beginning on the First Day of January 2025 and Ending on the Last day of December 2025. Phillips presented resolution 58-2024 as included in the council packet. LaKind opened the public hearing, none were received. LaKind closed the public hearing. Kronick moved to approve Resolution No. 58-2024 as modified. Romanello seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
- e. Resolution No. 59-2024 – A Resolution Appropriating Sums of Money to the Various Funds in the Amounts Set Forth Below for the Town of Monument, Colorado, Beginning on the First day of January 2025 and Ending on the Last Day of December 2025. Phillips presented resolution 59-2024 as included in the council packet. Romanello moved to approve Resolution No. 59-2024. Kronick seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
- f. Resolution No. 60-2024 – A Resolution to Authorize the Certification of the Property Yax Mill Levy to the El Paso County Assessor for the Budget Year 2025 Beginning on the First Day of January 2025, and Ending on the Last Day of December 2025. Phillips presented resolution 60-2024 as included in the council packet. Kronick moved to approve Resolution No. 60-2024. Romanello seconded the motion. Roll call vote was taken and the motion passed 7 to 0.

6. Discussion Items:

- a. Drafting an ordinance regulating time, place and manner of natural medicine administration. Cole explained the areas where the places can be located, they cannot be prohibited. The Council gave direction to draft the ordinance and for hours of operation to include Monday – Friday 9am-5pm.

7. Public Comment for Items Not on the Agenda:

- a. Michael Spencer gave appreciation to council for attending events and all council has done.
- b. Terri Hayes with Tri Lake Chamber of Commerce spoke on multiple events coming up in the Downtown area for Christmas and reminded council of the business afterhours on the second Tuesday of the month at Community Banks from 5-8pm.
- c. Haily Chapin with Tri-Lakes Cares gave appreciation for annual support, there was a 25% increase above last year.

8. Future Agenda Item Authorization(s):

- a. Setting a date for strategic planning session II- Madeline will report back with date chosen.

9. Council Comment(s):

- a. Erickson asked councilmembers to participate in CivicPlus board portal on 12/16 at 5:30pm.
- b. Fiorito questioned how the Cemetery book signing fared.

10. Executive Session:

- a. Romanello moved to enter into executive session pursuant to 24-6-402 (4)(b), C.R.S. for a conference with the Town Attorney to receive legal advice concerning the procedures for municipal annexation. Kronick seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
- b. Fiorito moved to enter into executive session pursuant to 24-6-402 (4)(a) and (b), C.R.S. for a conference with the Town Attorney to receive legal advice concerning the purchase, acquisition, lease, transfer, or sale of real property related to comcast- I 25 land swap for Monument hill tank site. Kronick seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
- c. LaKind moved to enter into executive session pursuant to 24-6-402 (4)(b), C.R.S. for a conference with the Town Attorney to receive legal advice concerning town employment practices. Kronick seconded the motion. Roll call vote was taken and the motion passed 7 to 0.
The Council asked citizens and staff to leave the council chambers, took a 5–10 minute recess.
 - The Council entered executive session at 8:38pm.
 - The Council concluded executive session at 10:24 pm.
 - The council resumed the regular meeting at 10:26pm.The Council resumed the regular meeting with no action to take.

11. Adjournment:

- a. LaKind moved to adjourn the meeting, the motion passed unanimously, the meeting was adjourned at 10:27 pm.

Respectfully Submitted,

Tina Erickson, Town Clerk



Statement of Account

Collins Cole Winn & Ulmer, PLLC
165 S. Union Blvd, Suite 785
Lakewood, CO 80228

Town of Monument
645 Beacon Lite Road
Monument, Colorado 80132

Date: 12/11/2024
Matter: Town of Monument-General-20028-0001
Responsible Attorney: Split Attorney

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #7035 Balance: \$28,908.00						
12/11/2024	Invoice #7035	01/10/2025	\$28,908.00			\$28,908.00
Totals:			\$28,908.00	\$0.00	\$0.00	\$28,908.00

Matter: Town of Monument-Water-20028-0002
Responsible Attorney: Robert Cole

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #7035 Balance: \$8,705.00						
12/11/2024	Invoice #7035	01/10/2025	\$8,705.00			\$8,705.00
Totals:			\$8,705.00	\$0.00	\$0.00	\$8,705.00
Totals for all Client Matters:			\$37,613.00	\$0.00	\$0.00	\$37,613.00

**TOWN OF MONUMENT
RESOLUTION NO. 54-2024**

A RESOLUTION ADOPTING A TOWN OF MONUMENT EMPLOYEE HANDBOOK

WHEREAS, the Town of Monument (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town’s Home Rule Charter approved by the electors on November 8, 2022 (“Charter”); and

WHEREAS, the Town of Monument adopted a Personnel Manual in 2017, and

WHEREAS, there is a need to update and revise the previously adopted guidelines due to employment conditions and changes to applicable law, and

WHEREAS, the Town Council believes that it is in the best interests of the Town and its employees to adopt and revised personnel manual.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF MONUMENT, COLORADO THAT:**

Section 1. The Employee Handbook attached is hereto hereby adopted.

Section 2. The Employee Handbook hereto referenced shall be effective as of December 30th , 2024, The herein identified Employee Handbook shall replace and supersede all previous personnel policies and handbooks effective December 30th 2024.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 16th day of December 2024 by a vote of ____ for and ____ against.

ATTEST:

TOWN OF MONUMENT:

Tina Erickson, Town Clerk

Mitch LaKind, Mayor



TOWN OF MONUMENT EMPLOYEE HANDBOOK



Welcome to the Town of Monument! We are delighted that you have chosen to join our organization and hope that you will enjoy a long and successful career with us. As you become familiar with our culture and mission, we hope you will take advantage of the opportunities to enhance your career and further yours and the Town's goals.

You are joining an organization that has a reputation for outstanding leadership, innovation, and expertise. Our employees use their creativity and talent to invent new solutions, meet new demands, and offer the most effective services for our community. With your active involvement, creativity, and support, the Town will continue to achieve its goals. We sincerely hope you will take pride in being an important part of the Town's success.

Please take time to review the policies contained in this handbook. If you have questions, feel free to ask your supervisor or contact Human Resources.

We would like to personally extend our best wishes to you on your future success with the Town.

Our Best Regards,

Town of Monument

TOWN OF MONUMENT, COLORADO
EMPLOYEE HANDBOOK
LEGAL STATEMENT AND DISCLAIMER

IMPORTANT NOTICE

THIS HANDBOOK IS DESIGNED TO ACQUAINT YOU WITH THE TOWN OF MONUMENT ("TOWN") AND PROVIDE YOU WITH A SUMMARY OF THE POLICIES, PROCEDURES, AND BENEFITS THAT ARE APPLICABLE TO YOUR EMPLOYMENT.

EMPLOYMENT WITH THE TOWN IS **AT-WILL**. ANY EMPLOYEE MAY BE TERMINATED WITH OR WITHOUT ADVANCED NOTICE AND WITHOUT EXPLANATION, JUST AS ANY EMPLOYEE MAY RESIGN AT ANY TIME FOR ANY REASON. NOTHING IN THIS HANDBOOK IS INTENDED TO MODIFY THE TOWN'S **AT-WILL** EMPLOYMENT POLICY.

THE POLICIES AND PROCEDURES CONTAINED IN THIS HANDBOOK AND ANY VERBAL STATEMENTS MADE BY SUPERVISORY PERSONNEL SHALL NOT CONSTITUTE A CONTRACT OF EMPLOYMENT EITHER EXPRESSED OR IMPLIED, NOR ARE THEY A GUARANTEE OF EMPLOYMENT FOR A SPECIFIC PERIOD OF TIME.

THE HANDBOOK IS NOT INTENDED TO BE ALL-INCLUSIVE. SHOULD AN EMPLOYEE HAVE QUESTIONS CONCERNING THE HANDBOOK OR THEIR EMPLOYMENT, THEY SHOULD CONSULT WITH THEIR SUPERVISOR, DEPARTMENT DIRECTOR, OR HUMAN RESOURCES.

NOTHING IN THIS HANDBOOK IS INTENDED TO PROHIBIT OR RESTRICT EMPLOYEES FROM DISCUSSING TERMS AND CONDITIONS OF EMPLOYMENT.

THIS EDITION SUPERSEDES AND REPLACES ALL PREVIOUSLY ISSUED EDITIONS AND ANY AMENDMENTS THEREOF.

NO REPRESENTATIVE OF THE TOWN, OTHER THAN THE TOWN MANAGER OR TOWN COUNCIL, HAS THE AUTHORITY TO ENTER INTO AN AGREEMENT OF EMPLOYMENT FOR ANY SPECIFIED PERIOD AND SUCH AGREEMENT MUST BE IN WRITING, SIGNED BY THE TOWN MANAGER OR TOWN COUNCIL AND THE EMPLOYEE.

THE TOWN RESERVES THE RIGHT TO MODIFY, REVOKE, RESCIND, SUSPEND, TERMINATE, INTERPRET, OR CHANGE ANY OR ALL OF THE POLICIES MENTIONED, IN WHOLE OR IN PART, AT ANY TIME, WITH OR WITHOUT NOTICE.

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INTRODUCTION

Town of Monument Mission Statement: Our mission is to provide leadership that will deliver municipal services responsibly, while working to inspire public confidence to achieve our vision of the future. The Town of Monument ("Town") is focused on meeting the community's needs with the utmost integrity, obligation of service, and responsibility. In doing so, the Town will be held accountable and respect the diversity and values of our constituents.

Town of Monument Vision Statement: The Town's Strategic Vision is more than maintaining infrastructure or keeping pace with demographic and economic change; it is about developing a safe community where people:

- Have a sense of belonging; and,
- Are encouraged to participate in the community and process of government; and,
- Have confidence in their leaders to support the basic needs while respecting the dignity and individuality of the residents; and,
- Can expect a transparent and innovative government.

Introductory Statement: This Employee Handbook is designed to acquaint you with the Town and provide you with information about working conditions, employee benefits, and some of the policies affecting your employment. You should read, understand, and comply with all provisions of the Employee Handbook as it describes many of your responsibilities as an employee and outlines the programs developed by the Town to benefit employees. One of our objectives is to provide a work environment conducive to personal and professional growth.

Commitment to Diversity: The Town is committed to creating and maintaining a workplace where all employees have an opportunity to participate and contribute to the Town's success and are valued for their skills, experience, and perspectives. This commitment is embodied in the Town policy and the way it conducts business and is an essential principle of sound management.

Equal Employment Opportunity: The Town is an equal employment opportunity employer. The policies in this Handbook are to be applied without regard to race, color, creed, ancestry, national origin, citizenship, sex or gender (including pregnancy, childbirth, and pregnancy-related conditions), gender identity or expression (including transgender status), sexual orientation, marital status, religion, age, disability, genetic information, military service, or any other characteristic protected by applicable federal, state, or local laws and Town ordinances (each, a "Protected Class"), subject to such reasonable requirements of the Town as may be permitted by law. The Town will attempt to make reasonable accommodation for an otherwise qualified applicant or employee related to an individual's physical or mental disability, religious beliefs and practices, and any other reason required by applicable law unless doing so would impose an undue hardship upon the Town.

Any employee with questions or concerns about equal employment opportunities in the workplace must immediately bring them to the attention of Human Resources. Complaints of discrimination or retaliation must be filed according to the procedures described in the Harassment Complaint Procedure below.

Harassment: The Town prohibits harassment based on a Protected Class. Harassment entails unwelcome and offensive physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group because of that individual's or group's membership in, or perceived membership in, a Protected Class. The Town takes prompt and reasonable action to stop any form of harassment, to prevent its recurrence and, as appropriate, to remedy

its effects. The Town expects its employees to conduct themselves in a professional, respectful manner at all times. Inappropriate conduct that could lead to a claim of harassment is expressly prohibited by this policy. This policy applies to employees, non-employees, such as constituents, vendors, consultants, and the Town Council.

Sexual Harassment: While all the described forms of harassment are prohibited, sexual harassment requires special definition. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, written, or physical conduct of a sexual nature when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment.
- Submission to or rejection of such conduct by an individual is used as the basis for any adverse employment decisions affecting that individual; or
- Such conduct has the purpose or effect of substantially interfering with an individual's job performance or creating an intimidating, hostile or offensive employment environment.

Sexual harassment may include but is not limited to:

- Promises of benefits in exchange for sexual favors of any kind.
- Threats of reprisal for refusal to engage in social or sexual relations.
- Offensive cartoons, posters, calendars, notes, letters, e-mail, etc.
- Offensive comments, jokes, foul or obscene language of a sexual nature, gossiping or questions about another's sex life, repeated unwanted requests for dates, etc.
- Sexually charged physical gestures and other non-verbal behavior.
- Unwelcome touching such as grabbing, fondling, kissing, massages, brushing up against another's body, etc.

Harassment Reporting Procedure¹: Employees who believe a violation of this policy has occurred must promptly notify their supervisor, Human Resources, or the Town Manager. However, if the matter involves the Town Manager, the employee may notify any Council member with whom the employee feels comfortable. In order to assist the Town in investigating the complaint, all employees are encouraged to submit a written complaint to the individual they are reporting the violation to, detailing the nature of the violation, and identifying the alleged harasser(s).

If a supervisor or Human Resources receives a report of a harassment claim, they shall immediately report it to the Town Manager unless the matter involves the Town Manager, in which case the supervisor must report it immediately to the Town Council.

It is the Town's policy to investigate every harassment complaint promptly and thoroughly, be it in writing or verbal. If it is determined that a violation of this policy has occurred, the Town will take prompt and reasonable remedial action, which may include disciplinary action, up to and including termination of employment. An employee may appeal the Town Manager's determination by submitting a written complaint to the Town Council.

Investigations of reported harassment will be kept confidential to the extent possible.

¹ This procedure is included to preserve an employee's ability to assert a statutory affirmative defense against an employee's unlawful harassment claim.

Anti-Retaliation Policy: No hardship, loss, benefit, or penalty may be imposed on an employee in response to:

- Filing, responding to, or assisting with a bona fide complaint of discrimination, harassment, or other violation of Town policy;
- Appearing as a witness in the investigation of a complaint; or
- Serving as an investigator of a complaint.

Filing a bona fide complaint will not be used against the employee or adversely impact the individual's employment status. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation. Filing a groundless or malicious complaint may lead disciplinary action, up to and including termination.

Employees who believe they have been retaliated against must promptly notify their supervisor, Human Resources, or the Town Manager, in writing. Investigations of reported retaliation will be kept confidential to the extent possible.

Workplace Violence: The Town is committed to a workplace free from violence, threats, intimidation, and disruptive behavior. Employees must avoid physical confrontation and are prohibited from engaging in threatening or violent acts, including bodily harm, intimidation, property damage, violent jokes or threats (direct, indirect, or conditional), physical abuse, vandalism, unauthorized weapon possession, or any other act deemed harmful to the workplace. Individuals engaging in such behavior may face removal, disciplinary action, or criminal penalties.

All employees are responsible for maintaining a safe work environment. Employees who witness or experience threatening behavior must report it promptly to a supervisor, Department Director, or Human Resources. The Town will investigate all reports and, if necessary, take corrective action, which may include termination.

Employees are encouraged to seek assistance from supervisors or Human Resources to resolve disputes before they escalate. The Town supports conflict resolution efforts and will not discipline employees for raising concerns.

Employees must immediately call 911 if they believe there is an imminent threat to the safety and health of employees, visitors, or property.

Town Standards of Conduct: The successful business operation and reputation of the Town is built upon the ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity, honesty, and accountability.

The continued success of the Town is dependent upon our customers' and citizens' trust, and we are dedicated to preserving that trust. Employees owe a duty to the Town and its customers and citizens to act in a way that will merit the continued trust and confidence of the public.

The Town will comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

Town employees must at all times comply with the Standards of Conduct adopted by the Town. [Standards of Conduct](#)

Confidential Information: Protecting confidential information is essential to the Town's success. "Confidential information" includes any non-public information about Town operations learned through employment.

Authorized employees must limit access to confidential information to those with a “need to know.” Unauthorized access, use, or disclosure of confidential information may result in disciplinary action, up to termination. All incidents and any resulting actions will be documented and reported to the Town Manager.

Inspections, Searches, and Employee Privacy: The Town reserves the right to conduct reasonable searches and inspections of any employee, which may include Town-owned property and the employee’s personal belongings, with or without notice. Any employee who refuses to submit to such a search may be subject to disciplinary action up to and including termination.

Employees do not have a reasonable expectation of privacy in Town-owned property, including work areas, computers, phones, email, files and filing cabinets, desks, lockers, and Town vehicles.

If the Town finds an employee to be using or in the possession of illegal or unauthorized items, the employee may be subject to disciplinary action up to and including termination.

Video Surveillance: As part of its security measures and to help ensure a safe workplace, the Town has positioned video cameras to monitor various areas in and outside of the Towns’ facilities. Video cameras are not in areas where employees have reasonable privacy expectations, such as restrooms, lockers, and dressing rooms. Camera maintenance and access requests must be submitted for approval through the Town Manager. Any tampering, misuse or removal of Town video cameras can lead to disciplinary action up to termination.

Health Insurance Portability and Accountability Act (HIPAA): The Town complies with the requirements of HIPAA and its privacy rules. Human Resources will be acting as the Privacy Officer who has instituted Protected Health Information (PHI) safeguards and has taken other reasonable steps to ensure that an employee’s PHI is treated per HIPAA privacy rules. Questions or complaints about HIPAA and how an employee’s PHI is treated should be addressed with Human Resources.

Americans with Disabilities Act (ADA): The Town is committed to the fair and equal employment of individuals with disabilities under the ADA. It is the Town’s policy to provide reasonable accommodation to qualified individuals with disabilities unless the accommodation imposes an undue hardship on the Town. The Town prohibits harassment of, or discriminatory treatment of, employees or applicants based on a disability or because an employee has requested reasonable accommodation.

Under the ADA, reasonable accommodation will be provided to qualified individuals with disabilities to enable them to perform the essential functions of their jobs or to enjoy equal benefits and privileges of employment. An employee or applicant with a disability may request accommodation from Human Resources and should specify what accommodation is needed to perform the job and submit supporting documentation explaining the basis for the requested accommodation to the extent permitted under applicable law. The Town will review and analyze the request, including engaging in an interactive process with the employee or applicant, to identify if such accommodation can be arranged or if any other reasonable accommodation is appropriate. If requested, the employee is responsible for providing medical documentation regarding the disability and possible accommodation. All information obtained concerning the medical condition or history of an applicant or employee will be treated as confidential, maintained in a separate medical file, and disclosed only as permitted by law.

It is the policy of the Town to prohibit harassment or discrimination based on disability or because an employee has requested reasonable accommodation. The Town prohibits retaliation against employees for exercising their rights under

the ADA or other applicable civil rights laws. Employees should use the procedures described in the Harassment Complaint Procedure to report any harassment, discrimination, or retaliation they have experienced or witnessed concerning one's rights under the ADA.

This policy is neither exhaustive nor exclusive. The Town is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and all other applicable federal, state, and local laws.

Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor or Human Resources.

Post offer medical examinations are required only for those positions in which there is a bona fide job-related physical requirement. They are given to all persons entering the position only after conditional job offers.

Pregnancy Accommodation Policy: The Town will provide reasonable accommodation to perform the essential functions of the job to an applicant for employment or an employee for health conditions related to pregnancy or the physical recovery from childbirth, if the applicant or employee requests the reasonable accommodation, and unless the accommodation would impose an undue hardship on the Town.

Upon an applicant or employee's request for an accommodation to the Town Manager, the Town and the applicant or employee will engage in a timely, interactive process to determine effective, reasonable accommodations for conditions related to pregnancy, physical recovery from childbirth, or a related condition. Additional applicable items and policies specific to the jobs and functions of sworn employees of the Monument Police Department are found in the Monument Police Department's Lexipol Knowledge Management System (KMS) Policy Manual.

For purposes of this policy, "reasonable accommodations" may include, without limitation, the provision of more frequent or longer break periods; more frequent restroom, food, and water breaks; acquisition or modification of equipment or seating; limitations on lifting; temporary transfer to a less strenuous or hazardous position, if available, with return to the current position after pregnancy; job restructuring; light duty, if available; assistance with manual labor; or, under certain circumstances, modified work schedules.

The Town will require an employee or applicant to provide a note stating the necessity of reasonable accommodation from a licensed health care provider and may communicate with the health care provider to assess the appropriateness of any suggested accommodation, before providing reasonable accommodation.

The Town will not take adverse action against an employee who requests or uses reasonable accommodation related to pregnancy, physical recovery from childbirth, or a related condition.

If an employee believes there has been a violation of this policy, they must report the matter, in writing, to her direct supervisor or Human Resources personnel with whom the employee feels comfortable. The Town expects employees to make a timely complaint, in writing, to enable the Town to investigate and correct any actions that may be in violation of this policy. The person receiving the complaint will be responsible for ensuring that an appropriate investigation occurs.

DEPARTMENT PROCEDURES

Department Directors have the authority to establish procedures for the administration of their department. All such procedures will be in writing, kept on file in the department, and be developed in collaboration with Human Resources

and the Town Manager to be consistent and compatible with the Employee Handbook, Town's personnel policies, ordinances, and resolutions.

EMPLOYMENT CLASSIFICATION

To determine eligibility for benefits and overtime status and to ensure compliance with federal and state laws and regulations employees will be classified as exempt or non-exempt.

An employee's exempt or non-exempt classification may be changed only upon written notification and approval by Human Resources.

Introductory Period: An introductory period of six (6) months after the date of hire is given to new, rehired, promoted, and transferred employees allowing them the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. Sworn employees have an introductory period of one (1) year from their date of hire. The employee's Director and Human Resources use this period to evaluate employee skills, work habits, and overall performance. Upon satisfactory completion of the introductory period, employees enter the "regular" employment classification by a Personnel Action Notice (PAN) executed by their Director.

During the introductory period, new employees are eligible for benefits required by law, such as workers' compensation insurance and Social Security. They may also be eligible for other Town of Monument-provided benefits, subject to the terms and conditions of each benefits program. Employees should read the information for each specific benefits program for the details on eligibility requirements.

The introductory period is not intended to modify the Town's at-will employment policy.

Regular, full-time: Full-time employees work a minimum of thirty-two (32) hours weekly and maintain continuous employment status. These employees are eligible for the Town's benefits package subject to their terms, conditions, and limitations.

Regular, part-time: Part-time employees are regularly scheduled to work less than thirty-two (32) hours weekly but at least twenty (20) hours weekly and who maintain continuous employment status. Part-time employees are not eligible for Town benefits.

Temporary Assignment: Employees may be asked to assume a temporary role or additional duties due to staffing shortages, emergencies, and leave periods. During this temporary period, the employee may be granted a minimum of a temporary 5% pay increase, an amount above 5% can be granted upon approval. The increase will last for the duration of the temporary assignment or additional duties and no further.

This temporary increase is based upon budgetary constraints, scope of the assignment/work and approval of the Department Director, Human Resources, and in conjunction with the Town Manager.

Upon completion of the temporary assignment/work, the employees' pay will return to the original rate held prior to the assignment. Any pay increases given during the temporary assignment will be adjusted and based upon the original pay rate.

Temporary, full-time/part-time: Temporary employees are those who are hired as interim replacements to supplement the workforce temporarily or to assist in the completion of a specific project and who are temporarily scheduled to work the Town's full-time/part-time schedule for a limited duration. Temporary employees will remain employed for ninety (90) days per calendar year. Employees in this classification are not eligible for Town benefits. Any time worked as a temporary appointment may be counted as time in service at the discretion of the Town Manager and when there is no break between temporary service and the employee's attainment of regular employment status.

Seasonal: Seasonal employees are designated to work during a defined season. A seasonal employee may be employed during annually recurring periods of work. A seasonal employee may only be employed for up to 180 days or twenty-six (26) weeks during a season, they must not work for forty-five (45) days between seasons. While seasonal employees receive all legally mandated benefits (such as workers' compensation insurance and Social Security), they are ineligible for all the Town's other benefit programs.

Volunteer: Volunteers perform services for the Town without compensation. Volunteers serve at the Town's discretion and are subject to all applicable rules and policies of the Town. Completion of select training courses will be required and a volunteer waiver must be completed and turned into Human Resources prior to volunteering.

Emergency Appointment: To prevent undue delay or serious interference with the provision of necessary public services, a Department Director, with Town Manager approval, may make an emergency appointment not exceeding ninety (90) calendar days. Emergency appointments may be made without regard to this Handbook's formal selection provisions. Emergency-appointed employees are not eligible for Town benefits.

Lateral Transfer: A position may be filled by transferring an employee from a position of one job title to a position of a similar title, with the same basic qualifications and at the same rate of pay. The Town Manager and the affected Department Director must approve interdepartmental lateral transfers. A transferred employee retains their original hire date.

The Department Director may initiate a transfer of an employee within their department if the Department Director deems it to be in the Town's best interest. The employee will be informed of this transfer. Human Resources and the Town Manager must approve the transfer.

The Town Manager may initiate the interdepartmental transfer of an employee if the Town Manager and Department Director deem it to be in the Town's best interest. Such a transfer would precede other procedures set forth in this Handbook and is not subject to posting requirements.

The Town Manager may change reporting relationships between departments at any time.

EMPLOYMENT APPLICATIONS

The Town relies on the accuracy of information in the employment application and other data presented throughout the hiring process and employment. Any misrepresentations, falsifications, or material omissions in any of this information or data may result in the exclusion of the individual from further consideration for employment or, if the person has been hired, termination of employment.

In processing employment applications, the Town may obtain a consumer credit report for employment purposes only concerning credit worthiness, credit standing, and credit capacity. If the Town takes an adverse employment action based

on the consumer credit report, a copy of the report and a summary of the applicant's rights under the Fair Credit Reporting Act will be provided, as well as any other documents required by law. Credit reports are only done for the following positions:

- All police department positions
- All finance positions; and
- Positions requiring the handling of money

The Town reserves the right to obtain a consumer credit report for other positions provided proper notification is made to the applicant and written authorization from the applicant has been obtained.

To ensure that individuals who join the Town are well-qualified and have a strong potential to be productive and successful, it is the policy of the Town to complete a formal background investigation of all applicants. Background investigations are conducted by the Police Department or through a third-party service. Background investigation results may or may not be considered as an applicant's disqualification. Individualized assessments will be conducted on applicants to determine such factors such as: the nature of any conviction, if there is a direct relationship between any conviction and the position's duties, age of crime, age of applicant at the time of the crime, number of offenses, has similar work been performed post-conviction, rehabilitation efforts, etc.

The background will include a Motor Vehicle Registration (MVR) check of any job applicant when driving is an essential job function or when a Town car may be needed for business travel purposes. The MVR will include a review of all states listed on the individual's employment application and resume for the last 7 years (or the maximum allowed by State).

If the applicant does not have a valid driver's license, or has a driving record that falls below acceptable the applicant will not be hired for positions where driving is an essential job function. If the applicant's driving record meets the probationary status criteria, they will be placed into that status upon hire with further periodic review.

This standard also applies to internal and/or lateral transfer positions. For existing employees, the Town will perform an MVR check annually for all current employees with driving responsibilities or those who use cars for Town travel purposes. Any covered employee without a valid driver's license will not be allowed to operate a Town owned vehicle or drive on Town business. If driving is an essential job function and the employee cannot be reasonably accommodated, employment may be terminated.

Monument Police Department employees have additional policies and requirements in addition to this Handbook. Monument Police Department Lexipol KMS Policy should be reviewed for all Monument Sworn Employees.

Job Posting and Employee Referrals: The Town provides employees with an opportunity to indicate their interest in open positions and advancements within the organization according to their skills and experience. Notices of all regular full-time and regular part-time job openings are posted on the Town's website and in accordance with applicable laws and regulations. Internal means of communication are a way to inform employees of openings and to identify qualified and interested applicants who might not otherwise be known to the hiring authority. Other recruiting sources may also be used to fill open positions in the best interest of the Town.

Each job posting notice will include the dates of the posting period, job title, department, status (exempt/non-exempt), job summary, essential duties, salary range, and qualifications.

To be eligible for a posted job employees must have performed competently in their current position for at least 180 calendar days. This requirement may be waived with approval from the affected Directors, and the Town Manager.

Employees that have received disciplinary action in the previous six (6) months or have been suspended are not eligible. The Town Manager, with the agreement of the Director, may waive this requirement at their discretion.

To show interest and apply for an open position, employees must communicate with their current Director or supervisor and contact Human Resources. The employee must submit a resume and application as done by all applicants. An applicant's supervisor may be contacted to verify performance, skills, and attendance. Staffing limitations or other circumstances that might affect a prospective transfer may also be discussed.

Postings for job opportunities will be available for viewing by all current employees on the same calendar day. Such postings will include, at a minimum, the following information: job title, the expected compensation (or a range), a general description of benefits, the means by which the employee may apply for the position, and the deadline for applying.

Within thirty (30) calendar days of a candidate starting a new position, the department Director will notify employees who will regularly work with the candidate. This notification will include the candidate's name, former job title (if internal), new job title, and information on how employees can express interest in similar opportunities in the future.

Internal Job Posting and Advancement Policy: The Town encourages employees to apply for open positions aligned with their skills and experience. Job openings for regular full-time and part-time positions are posted on the Town's website and communicated internally to inform employees of opportunities and identify qualified candidates. Additional recruiting sources may be used as needed.

Each job posting includes posting dates, job title, department, status (exempt/non-exempt), job summary, duties, salary range, and qualifications. Employees are eligible to apply if they have performed competently in their current role for at least 180 days unless this requirement is waived by the Department Director and Town Manager. Employees with recent disciplinary action or suspension within six (6) months are ineligible unless a waiver is granted.

To apply, employees should inform their Director or supervisor and contact Human Resources, submitting a resume and application. Supervisors may be consulted on performance, skills, and attendance, and staffing needs or other factors affecting a transfer may be considered.

Job postings are accessible to all employees on the same calendar day. Postings will list the job title, expected compensation (or range), benefits summary, application instructions, and deadline. Within thirty (30) days of a candidate's selection, the department director will notify relevant employees of the new hire's name, job title, and, if applicable, previous position, along with information on future job opportunities.

FLSA EMPLOYMENT CLASSIFICATIONS

Employees of the Town are classified as either exempt or non-exempt under federal wage and hour laws, and are further classified for administrative purposes, such as the administration of benefits, paid vacation, and paid holidays.

For the purpose of determining compensatory time and overtime, the following definitions apply:

Exempt Employees: Exempt employees are employees whose job assignments meet specific tasks established by the Fair Labor Standards Act (FLSA) and who are exempt from overtime pay requirements. Exempt employees may be required to work over forty (40) hours in a week based on the Town's needs. The Town recognizes the value of work/life balance; flexible work schedules are approved by the designated departments director.

Non-Exempt Employees: Non-exempt employees are employees whose jobs are not exempt from the overtime requirements of the FLSA. Non-exempt employees are required to receive overtime pay for hours worked over forty (40) hours in a given workweek; sworn law enforcement personnel will receive overtime pay after forty (40) hours of work in a given work week.

PAY PRACTICES, BENEFITS AND PERFORMANCE EVALUATIONS

Salary/Wage Administration: The salary/wage administration program at the Town was created to achieve consistent pay practices, comply with federal and state laws, mirror our commitment to Equal Employment Opportunity, and offer competitive salaries within our labor market. Compensation is determined by job analysis, evaluation, the essential duties/responsibilities, and salary survey data. Pay for Performance adjustments may be awarded in conjunction with superior employee performance through the performance evaluation process.

Market Analysis: To remain competitive in the labor market, the Town endeavors to annually conduct a pay plan review and market analysis. The market consists of neighboring and similar-sized communities within a specified distance radius. An adjustment to the Town's pay schedule and any associated pay increases will be determined by this analysis. Any adjustment is subject to Town Council.

Pay Corrections: Employees should bring their pay-related questions concerning common pay discrepancies or regarding pay fairness and equality to the attention of their supervisor or Human Resources. Employees wishing to appeal any final decision in salary administration, once speaking with their Director or correct chain of command, may do so by speaking to the Town Manager through the open-door policy.

Equal Pay for Equal Work Act: The Town will not discriminate against employees on the basis of sex, including paying an employee of one sex a wage less than a wage paid to an employee of a different sex, for substantially similar work.

Paychecks: The Town paydays are biweekly on Friday. Employees will receive their paycheck on the preceding workday if the payday falls on a holiday. Employees may authorize in writing the direct deposit of their net earnings with a designated financial institution.

Compensation Changes: A wage increase is given to an employee to recognize increased effectiveness or above-average performance or productivity. A wage increase is at the Town's discretion and based on measured performance.

Classification Review: The Department Director may request a classification review of a position if duties change significantly enough to warrant reassignment to another pay grade. Subject to the approval of the Town Manager, Human Resources will review all classification review requests and provide a final recommendation.

An employee's evaluation date may or may not change following a classification review and consideration of:

- Proximity of the classification review in relation to the existing review date, in which case a pay increase may only be given at the time of the classification review or at the time of the current review date; and
- The updated tasks/duties of the reclassified position.

Longevity Pay: The Town offers Longevity Pay to show gratitude for employees with tenure. Only full-time employees are eligible for longevity pay. If an employee moves from part-time or seasonal to full-time, their full-time status start date will be used for eligibility. Eligible Employees must have completed continuous employment within the increments to receive a longevity payout.

When an employee is eligible for longevity pay, the award amount will be added to their paycheck for the pay period in which their anniversary falls. The table below outlines the time periods for when the eligible employee would receive their longevity payout. All longevity pay occurs in five-year increments. The final Longevity pay will be received at the 25-year mark.

LENGTH OF CONTINUOUS SERVICE	PAY
5 Years	\$500.00
10 Years	\$1,000.00
15 Years	\$1,500.00
20 Years	\$2,000.00
25+ years	\$2,500.00

Performance Evaluations: Communication between employees and supervisors is essential. Discussions regarding job performance should be ongoing and informal. Employees should initiate conversations with their supervisors if they need additional feedback.

The Town will conduct performance reviews for all employees at the six-month mark and an annual evaluation on the employee's date of hire. Six-month reviews include a face-to-face conversation between the employee and their supervisor to review performance notes, discuss job performance, and provide coaching to increase performance in areas requiring additional attention. Six-month reviews will be documented in the Towns' current performance software. An employee's initial six-month review will be used to determine if the employee will conclude their probationary period. Annual evaluations include a formal, written performance evaluation that will be reviewed by the chain of command and shared with each employee. Annual performance evaluations will include expectations for the following year as well as coaching and mentoring insight to guide an employee's growth. Lastly, annual performance evaluations will be used to determine Pay-for-Performance (PFP) raises, when applicable.

Pay For Performance (PFP): PFP is a recognition program that provides compensation to individuals who achieve or exceed specified quality benchmarks. An employee's PFP is intended to enhance the employee's overall job performance. For budget cycles where PFP is approved as part of the annual budget, eligible employees will be nominated by their immediate supervisor. Final approval will be made by the Town Manager after review of all submitted materials for the nominated employee.

Step-in-Grade (SIG): SIG increases are financial compensation made to line-level sworn officers on their anniversary date. SIG increases occur years one through five. Additional information may be found in Monument Police Department Lexipol KMS Policy.

Police Department Performance Evaluations: Communication between employees and supervisors is essential. Discussions regarding job performance should be ongoing, formal and informal. Employees should take initiative to initiate conversations with their supervisors if they need additional feedback.

Work Week: The Town's official work week consists of a seven (7) day period beginning at 12:00 a.m. on Monday and ending at 11:59 p.m. on Sunday. The regular work week shall be forty (40) hours for all employees not designated as exempt.

Hours of Work: Work schedules vary by department. Directors will schedule employees based on staffing and operational needs.

Standard hours for locations are as follows, however, they are subject to change:

- Town Hall administrative employees is 8:00 am- 5:00 pm, one (1) hour lunch break
- Public Works 6:30 am- 3:00 pm, thirty (30) minute lunch break
- Water Department 6:30 am- 3:00 pm, thirty (30) minute lunch break
- Sworn employees, rotational scheduling set by the Police Department and the Chief of Police

Lunch breaks are subject to approval by each employee's supervisor. Supervisors may require minor variations in break times day-to-day based on individual work requirements.

Time Records: All employees must record accurate hours worked on the Town's electronic timekeeping system. This web-based system can be accessed online and can require the activation of their GPS system. Time worked includes all hours spent on the job performing assigned duties. Employees are expected to clock in and be ready to work at their scheduled shift time. Employees are responsible for recording their time worked and must submit their time records to certify the accuracy of all time recorded. Supervisors will review and approve the time record before submitting it for payroll processing.

Falsification of time entries on electronic timesheets may lead to an appropriate level of corrective action up to and including termination.

If corrections or modifications are made to the time record, both the employee and the supervisor must verify the accuracy of the changes by submitting and approving the time record.

Flextime/Flex scheduling may be available to certain employees under certain circumstances at the discretion of the Department Director and Human Resources. Flex scheduling may be appropriate for some employees and jobs but not for others. If flex scheduling meets the needs of Town, it may be approved by the Department Director and Human Resources. The option of flextime is seen as a privilege; it can be revoked by the employees' Director if not used properly, no longer meets the needs of the Town, or for performance-based reasons.

Overtime: Non-exempt employees may be required to work overtime. Overtime is defined as actual hours worked more than forty (40) hours in a single work week.

Non-exempt employees will be paid overtime compensation at one and one-half their regular pay rate for working overtime. Paid leave, such as holiday, vacation leave, sick leave, bereavement leave, military leave, emergency closure time, and jury duty, do not count towards hours worked for overtime calculations.

Employees must add comments to hours that are overtime, including the reasons for the overtime and any associated project or task. All overtime shall be approved by an employee's supervisor or Department Director in advance. Failure to work mandatory overtime, or overtime worked without the supervisor's authorization, may result in corrective or disciplinary action up to and including termination of employment.

CDL drivers must comply with all overtime rules in compliance with CDOT.

Example of Computation of Overtime for Non-Sworn Employee:

If the employee's regular schedule is:					And the employee works:				
<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thu</u>	<u>Fri</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thu</u>	<u>Fri</u>
8	8	8	8	8	8	12	10	10	2

In this example, the employee would receive overtime pay for two (2) hours since the total number of hours worked for the week is forty-two (42).

Mandatory Overtime: Mandatory overtime is when employees are required by their supervisor to attend planned events, cover emergencies, provide staffing coverage, or work special events that have the employee work beyond a 40-hour work week.

Sworn Employees*:

- Patrol coverage to meet mandatory minimum staffing requirements
- Call-Ins with less than 24 hours' notice
- Necessary patrol holdovers (arrests, mandatory paperwork, etc.)
- Court outside of regular work hours
- Mandatory training where schedules cannot be flexed
- Reimbursed overtime (DUI grants, training backfill grant, VNI, etc.)

*Monument Police Department employees should reference Monument Police Department Lexipol KMS Policy manual for further information and requirements.

Additional Paid Leave for Exempt Employees: Exempt employees asked to work significant excess hours in an emergency may be allowed additional paid time off as determined by the Town Manager. This paid time off will not be on an hour-for-hour basis. There is no cash value or accrual of this time off for exempt employees.

On-Call Time: Certain employees may be required to be available to respond to emergency callout from their off-duty status. For this requirement, they may need to respond within a certain amount of time and in a condition to work immediately upon responding to the worksite. For this partial limitation of personal freedoms, compensation will be paid.

Conditions of on-call:

- The employee will have general use of his/her off-duty time; and,
- The employee must respond within 30 minutes of being called to respond; and,
- The employee must not have any alcohol, drugs, prescription narcotics in his/her blood system; and,
- The employee must be ready to work in proper work attire; and,
- The employee must carry the assigned radio, cell phone, or pager to be able to receive a work call.

The employee may trade all or split a portion of the on-call time with another approved employee(s) with advanced notice and approval of their supervisor.

For regular non-holiday days, the employee will receive \$25.00 per day for being on-call and \$50.00 per day for holidays. If an employee is called back into work, the non-exempt employee will receive "call-out pay." Call out pay is defined as one and a half times the regular rate of pay.

The employee will be paid for a minimum of two (2) hours for any situation where they are called back to work after being released. After the first two (2) hours of time worked, the employee will be paid for the exact time worked as determined by entries in the time clock system. The Department Director or authorized designee will make the judgement call as to enacting a call back status for employees.

This policy applies to all Departments except the Town Police Department.

Failure to comply with on-call requirements will result in on-call pay being withheld for that shift and possible disciplinary action.

Callout: A callout is considered an emergency that requires an employee to perform work outside of regular work hours usually due to a situation that requires immediate mitigation. Failure to comply with on-call requirements will result in on-call pay being withheld for that shift and possible disciplinary action. This policy applies to all departments except the Town Police Department.

- Call-out time begins when the employee leaves their home.
- The employee must be ready to work in proper work attire, carry assigned radio, cell phone, or pager to be able to receive a work call.
- Response to a call-out must be responded to within thirty (30) minutes.
- Employees required to respond to a call-out will receive two (2) hours of call-out time for their response and all hours worked.
- Employees who work a call-out, return home, are called out again, and leave the job site within two (2) hours of the initial response, shall only receive two (2) hours of call-out time. If the employee leaves and is called out again, they will receive an additional two (2) hours of call-out time.
- After the first two (2) hours of time worked, the employee will be paid for the exact time worked as determined by entries in the Electronic Time Management System (ETM).
- Employees on call must comply with the Town's drug and alcohol policies. Discretion is therefore required of employees who can foresee a call-out situation, such as when snow is forecasted. Employees not in compliance with the Town's drug and alcohol policies when called out must inform their supervisor of their condition and stay at home.
- Call-out time ends when the employee leaves the job site.
- Work shifts may be altered at the supervisor's discretion when severe weather is anticipated. In such instances, call-out pay will not apply.
- Call-out time is considered hours worked for overtime pay.

DEDUCTIONS FROM PAY/SAFE HARBOR EXEMPT EMPLOYEES:

Permitted Deductions: The FLSA limits the types of deductions that may be made from an exempt employee's pay. Deductions that are permitted include:

- Deductions that are required by law, i.e., income taxes.
- Deductions for employee benefits when authorized by the employee.
- Absence from work for one (1) or more full days for personal reasons other than sickness or disability.
- Absence from work for one (1) or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for salary lost due to illness.
- Offset for amounts received as a witness or jury member or for military pay.
- Unpaid disciplinary suspensions of one (1) or more full days imposed for workplace conduct rule infractions; and
- Any full workweek in which the employee does not perform any work.

During the week an exempt employee begins work for the Town or during the last week of employment, the employee will only be paid for actual hours worked.

Improper Deductions: If an employee classified as exempt believes that an improper deduction has been taken from the employee's pay, the employee should immediately report the deduction to the Finance Department. The report will be promptly investigated, and if it is found that an improper deduction has been made, the Town will reimburse the employee for the improper deduction.

Insurance Benefits: Following any qualifying period required by the insurer, all regular full-time employees are eligible to receive group insurance benefits. Any insurance plan offered by the Town and the allocation of costs are subject to change from time to time at the discretion of the Town. Information is available from Human Resources, or their designee, about available options, coverage dates, and scope of coverage for insurance benefits.

Health and Dental Insurance: The Town currently offers and pays a portion for health and dental insurance for regular full-time employees and their spouse and dependent children.

Life Insurance: The Town currently offers group life insurance benefits for regular full-time employees within the terms of the plan adopted by the Town, up to a maximum amount determined by the Town. To obtain this coverage, eligible employees are required to complete the appropriate paperwork designating the employee's beneficiary to whom any such insurance proceeds shall be payable.

Long-Term Disability Insurance: The Town currently offers long-term disability insurance benefits for regular full-time employees within the terms of the plan adopted by the Town, up to a maximum amount determined by the Town.

Retirement Benefits: The Town currently offers retirement benefits to regular employees who are not sworn personnel through the Colorado Retirement Association. Sworn personnel receive retirement benefits through the Colorado Retirement Association and the Fire and Police Pension Association of Colorado. All non-sworn eligible employees are to be enrolled in the Town's 401(a) program. The eligibility requirements for retirement benefits may be obtained from Human Resources. As with all employee benefits, the Town reserves the right to terminate or modify the above-described retirement benefits at any time.

WORKPLACE GUIDELINES

Appearance: An employee's appearance should be consistent with good hygiene, safety, and appropriate attire based on the requirements of their position. Without unduly restricting individual tastes, the following personal appearance guidelines shall be followed:

- Offensive body odor and poor personal hygiene are not acceptable.
- Tattoos/brands visible on the body that are obscene or that advocate unlawful discrimination are prohibited.
- Perfume, cologne, and aftershave lotion should be used moderately, as some individuals may be sensitive to strong fragrances.

These are guidelines only and are not intended to be all inclusive. In instances where an employee and their supervisor are not in agreement, the Town Manager shall have discretion as to what is acceptable based on the position and the Town's business needs.

Dress Code: The following guidelines are intended to assist in complying with the Town's Dress Code Policy. If this policy causes concern due to religious beliefs, medical conditions, or any other Protected Class, please contact Human Resources to discuss options for reasonable accommodation.

Administrative employees: Business casual attire is permissible in the workplace and must be properly fitting in size and shape, neat, clean, and in conformance with safety standards. Items worn to a gym, beach, or yard work are not considered appropriate for the workplace. In determining proper attire, it is important to keep daily schedules in mind. When attending a Town meeting, Board/Commission meeting or meeting with external customers or contacts, more formal business attire may be appropriate. All footwear is expected to be appropriate to the employee's position. Shoes are to be neat, clean, and in good repair.

Business casual can be defined as, but not limited to:

- An informal style of dress that still maintains a professional appearance.
- Slacks, capris/cropped pants, khakis, neat jeans, skirts, dresses.
- Collared shirts, blazer/sport coat, knit golf shirts, polo shirts, Town logo shirts, blouses.
- Conservative athletic or walking shoes, loafers, clogs, boots, flats, leather type deck shoes, dress shoes.

Inappropriate clothing and dress for all employees:

- Shirts deemed as "undershirts."
- Fitness clothing.
- Hats (If your position is at Town Hall or Administrative).
- Shorts.
- Short skirts. Short skirts are defined as more than two fingers width above the knee-cap.
- Flip-Flops.
- Clothing with inappropriate advertising or slogans.
- Clothing not properly laundered or not in good condition.
- Spaghetti straps/halter tops/ tank tops.
- Sheer or mesh garments.

Sworn employees: Sworn Town of Monument employees are required to follow the dress code and uniform regulations as outlined by the Monument Police Department Policy via Lexipol.

Parks & Public Works employees: The following guidelines apply to all Public Works (Water, Fleet, Street, Parks, & Facilities) employees who are essential for daily field operations, in a position that may come in direct contact with community customers or may be required to approach a business or residential property and occupant.

It is the policy of the Public Works Department to project a business-like image to customers, clients, vendors, visitors, and coworkers. The department requires that employees dress appropriately in clothing that:

- Is suited for their job responsibilities and work environment.
- Meets the requirements established for safety reasons.
- is in good, clean, and orderly condition suitable for representation.
- Complies with the respective Town wide requirements that have been established.

Employees required to wear a uniform while on the job shall be furnished by the Public Works Department and therefore, it is a condition of employment and must be worn to be considered fit for duty, without exception. The department Director may provide exceptions and will be determined individually.

All uniform and PPE items provided and paid for by the Town are considered Town property and shall not be used or worn for personal use. Upon separation of employment, all items must be returned to the Town pursuant to the Exit Procedure policy.

For more information, reference the policy for Uniform and Clothing below.

If an employee has questions about a particular dress or clothing choice, they are to ask their Department Director for approval before wearing the clothing to work. If you report to work in inappropriate attire, you may be sent home to change into appropriate attire. Continued violations of this policy may result in disciplinary action, up to and including termination.

Uniform and Clothing: Uniforms serve multiple purposes like promoting official Town representation, professionalism, dress attire consistency, and ensuring employee safety. Personal Protective Equipment (PPE) may be necessary for certain employment positions or job duties. PPE must meet, as applicable, Town, industry, State, and Federal standards specific to the employment position or job duties.

All uniform and PPE items provided and paid for by the Town are considered Town property and shall not be used or worn for personal use. Upon separation of employment, all items must be returned to the Town pursuant to the Exit Procedure policy.

Full-time Public Works employees (Water, Fleet, Street, Parks, and Facilities) performing essential daily field operations must wear designated uniforms that meet Town standards to ensure safety during fieldwork. Employees will receive Town-issued tops and a fixed dollar amount upon hire, as well as at the start of each fiscal year, to purchase Town-approved uniform items, including pants, safety boots, department-specific tops, and personal protective equipment, from an approved vendor.

Uniform:

- Employees must always wear uniform shirts issued by the Town when engaged in fieldwork.
- Employees will maintain uniform shirts in a clean, functional, and orderly fashion.
- Employees may be required to pay more costs above their department-approved allotment for uniform shirts due to neglect, abuse, or loss on the employee's behalf.

Employees will return uniform shirts upon separation of employment pursuant to the Exit Procedure policy.

Employees must always wear approved uniform pants when engaged in fieldwork.

Safety Work Boots:

- All safety boots must meet the requirements of steel or composite toe, ANSI approved, ankle high work boot, slip resistant soles, "boot" type.
- Employees shall wear approved safety boots at all times when engaged in fieldwork.
- Employees will maintain boots in a functional, good, orderly fashion.
- Employees will attend Risk Managements safety advisement class for wearing and maintaining safety boots.

- Employees will return safety boots upon separation of employment pursuant to the Exit Procedure policy.

Public Works employees can wear self-purchased pants and work boots if they meet the safety guidelines outlined in this section. For the detailed Town procedure regarding Uniform and Clothing allowance, reference the Uniform and Dress Attire expectations memo in the Public Works procedural guidelines.

Attendance: Employees are to arrive at work on time, ready to work when their shift begins, and remain in attendance during work hours. Non-exempt employees should not arrive at their designated work site prior to their scheduled work time and should leave the site at the end of their workday. Employees are required to keep accurate daily records of their attendance and hours worked.

If unable to arrive at work on time, or if absent, the employee must contact their supervisor as soon as possible. Excessive absenteeism or tardiness may result in disciplinary action up to and including termination.

Failure to show up or call in for a scheduled shift without prior notice and/or approval may also result in disciplinary action, including termination.

If an employee fails to report to work or call to advise their supervisor of their absence for three (3) consecutive days or more, that employee will be deemed to have voluntarily resigned their employment.

Tobacco Use: Tobacco use is prohibited in all Town facilities, vehicles, and equipment or within twenty-five (25) feet of any Town building entrance. Smoking is not allowed inside Town buildings or work areas at any time. This includes any tobacco products (including chewing tobacco), electronic smoking devices, and e-cigarettes.

Smoking is permitted during regularly scheduled breaks and lunch periods in outdoor areas at least twenty-five (25) feet away from a Town building entrance. Employees taking a break for this purpose are expected to dispose of any smoking debris safely and adequately. The duration and number of breaks from work cannot be extended to use tobacco products.

Meal and Rest Breaks:² Employees are entitled to an unpaid meal break each workday exceeding five (5) hours. The length of the lunch break varies based on the work location and is set forth under “Hours of Work” in this Handbook. Any non-exempt employee required to work through a meal break will be paid for such time. The employee’s Director or supervisor must be notified in writing of such circumstances.

Employees may take one 15-minute rest period per every four (4) hours worked, depending on the workload that day. An employee’s supervisor may schedule meals and rest breaks. All full-time employees, excluding sworn police officers, are provided with one meal period each workday. Supervisors can schedule meal periods to accommodate operating requirements. Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

Rest periods should be taken away from the employee’s workstation. However, since this time is counted and paid as time worked, employees must not be absent from their workstations beyond the allotted rest period time. Rest breaks do not

² Pursuant to the FLSA, if a non-exempt employee is not completely relieved from duty during the entirety of the break, the time is considered hours worked.

accumulate if they are not taken and may not be used to reduce or shorten an employee's regular workday; however, discretion is given to Department Directors to regulate this policy in conjunction with the needs of each Department.

Employees classified as exempt under the FLSA are not subject to this policy.

Nursing Employees: Employees who are nursing will be provided with reasonable breaks to express breast milk as frequently as needed for up to two (2) years after the birth of a child. An employee's two allotted 15-minute breaks can be used for this purpose. Compensation for additional breaks will be determined by the Department Director in collaboration with the Human Resources Department. The Town will provide a place for the break, other than a bathroom, which is shielded from view and free from intrusion.

Modified Assignment Program: The Modified Assignment Program (MAP) provides temporary full-time or part-time assignments for employees with health restrictions during recovery from work-related or non-work-related injuries, illnesses, or conditions. MAP enables injured employees to remain productive during recuperation, supporting a prompt return to full duties. The Town will strive to accommodate employees in MAP, although not all positions may be suitable for modified duty. Participation decisions are made on a case-by-case basis.

Conditions for MAP Assignments

- **Temporary Duty:** MAP is intended for employees temporarily unable to perform regular duties, with assignments typically less physically or mentally demanding.
- **Approval:** MAP assignments require approval from the employee's treating physician, Department Director, and Human Resources.
- **Duration:** MAP assignments are limited to ninety (90) calendar days and are strictly temporary, with no permanent modified duty assignments available.
- **ADA Compliance:** If an employee cannot return to regular duties after ninety (90) days, the situation will be reviewed for reasonable accommodations under the Americans with Disabilities Act (ADA).
- **Assignment Refusal:** Refusal to accept a MAP assignment, except under a physician's written advice, may result in termination.
- **Pay Rate:** The Town may adjust the employee's pay rate based on the MAP assignment.

TELECOMMUTING

Telecommuting allows employees to work remotely for all or part of their workweek. This flexible option is available when both the employee and job are suited to remote work, but it is neither an entitlement nor a change to the employment terms with the Town. Telecommuting is evaluated on a case-by-case basis, prioritizing the Town's business needs. All telecommuting requests must be submitted by the Department Director to Human Resources and the Town Manager for approval.

Telecommuting may be informal (a short-term project from home) or formal, with a set remote schedule. Both the employee and the Town may initiate telecommuting arrangements, which can be modified or terminated by either party at any time. Telecommuters will be evaluated under the same performance standards as on-site employees.

Equipment and Workspace

Equipment needs for telecommuting are determined individually, based on job requirements. The Town will supply and maintain Town-owned equipment, while employees maintain their own equipment, if used. Town-provided equipment is for business use only, and employees are responsible for its safekeeping. Upon termination, all Town property must be returned in its original condition, with reasonable wear and tear.

Employees are expected to establish a suitable home work environment, with all set-up and maintenance costs being the employee's responsibility.

Confidentiality

Telecommuting employees must ensure the protection of confidential Town information accessed from their home office. This includes using secure passwords, approved VPNs, and other necessary security measures.

Timekeeping and Overtime

Non-exempt telecommuters must record all hours worked according to the Town's timekeeping procedures. Any hours exceeding forty (40) per week require prior supervisor approval. Non-compliance may result in immediate termination of the telecommuting arrangement and/or disciplinary action.

Temporary Telecommuting

Temporary telecommuting may be approved for specific circumstances on an as-needed basis, with no expectation of continuation. These requests require approval from the Department Director and Human Resources.

LEAVE TIME/ PAID TIME OFF

Vacation: Full-time and introductory employees scheduled to work at least thirty-two (32) hours per week are eligible for vacation leave. Part-time employees working less than thirty-two (32) hours per week receive prorated vacation accrual based on hours worked. Vacation can be used for any purpose. Accrued vacation transfers with employees who move to different departments within the Town.

Accrual: Vacation leave accrues only in pay periods in which employees receive pay, excluding long-term disability, FMLA, or disciplinary suspension periods. Accrual follows a per pay period schedule, stopping once the maximum accrual based on service years is reached. Accrual resumes after the balance drops below the maximum.

Eligible service is calculated from the original hire date. A benefit year may be extended for any leave over thirty (30) days, except military leave, which doesn't impact the benefit year.

LENGTH OF CONTINUOUS SERVICE	HOURS ACCRUED PER PAY PERIOD	MAX HOURS ACCRUED
0-3 Years	3.69	96
4-5 Years	5.54	180
6-10 Years	6.46	300
11+ Years	7.38	360

Use of Vacation: Employees must submit vacation requests to their supervisor for approval before taking leave. Vacation can be used in quarter-hour increments. Approval depends on business needs and staffing requirements. Leave requests exceeding fifteen (15) consecutive days require Director approval, with appeals handled by the Town Manager.

Employees are encouraged to take at least five (5) consecutive days of vacation annually.

Miscellaneous Provisions:

Upon separation, accrued, unused vacation leave is paid at the employee's base rate. Vacation leave cannot be borrowed or paid out before separation. The policy is "use it or lose it" based on maximum accrual limits by tenure.

Vacation hours are not considered work hours for overtime. Employees must follow Town policies for requesting and documenting vacation leave.

The Town reserves the right to adjust accrual rates (effective the pay period after an employee's anniversary date).

SICK LEAVE

All employees begin accruing sick leave upon hire. Full-time employees earn increasing sick leave annually based on tenure, per the accrual schedule. Part-time employees accrue proportionally, based on hours worked relative to a forty (40) hour week. Sick leave transfers with employees moving between Town departments.

Sick leave is paid at the employee's base pay rate at the time sick leave is used. It does not include overtime or any special forms of compensation such as incentives, bonuses, or shift differentials. If an employee transfers from one department to another within the Town, their accrued sick leave will transfer with them.

Sick Leave time is to be used for the events of³:

- Temporary absence due to illnesses or injuries
- Inability to work due to mental or physical illness, injury, or health condition.
- Obtaining preventative medical care (including vaccinations) or medical diagnosis/care/treatment.
- Needs due to domestic abuse, sexual assault, or criminal harassment including medical attention, mental health care or other counseling, legal or other victim services or relocation.
- Bereavement, to grieve, attend funeral services or a memorial, or financial/ legal needs after death of a family member.
- If an employee must evacuate their residence or care for a family member whose school or place of care was closed due to inclement weather, power/heat/water loss or another unexpected event.
- In the event of a declared PHE (Public Health Emergency), and a public official closed the employee's workplace, school, or place of care of the employee's child.

Usage: If the leave need is foreseeable (a doctor's appointment), employees must request it from their supervisor in advance, ideally two (2) weeks ahead. Absences lasting four (4) or more consecutive workdays require documentation

³ Events for which sick leave may be used is designated by statute.

verifying the qualifying reason. Returning from absences of two (2) weeks or more may require medical clearance to ensure safe return to work.

Employees must notify their direct supervisor (via phone, text, email, or Teams) before their scheduled start time if they are unable to report to work. Failure to provide notification will be considered a "no call, no show" and may result in disciplinary action. Employees must ensure their notification is confirmed as received. If the direct supervisor is unavailable, the acting supervisor must be notified instead.

Employees can request use of sick leave only after it is earned. No advanced sick leave will be given to any employee. Paid sick leave is used in quarter hour increments.

Accrual:

LENGTH OF CONTINUOUS SERVICE	HOURS ACCRUED PER PAY PERIOD	MAX HOURS ACCRUED
0-4 Years	3.69	320
5+ Years	5.54	320

Length of eligible service is calculated based on date of hire as described in the Vacation Leave policy above.

Employees shall accrue sick leave during periods of leave with pay, excluding periods when an employee is on Long Term Disability (LTD), Family Medical Leave Act (FMLA) leave, or on disciplinary suspension.

Miscellaneous Provisions:

Sick leave is paid at the employee's base rate, excluding overtime or bonuses. Sick leave is used in 15-minute increments. Accrued sick leave is payable upon separation for employees in good standing, up to a 120-hour maximum. Sick leave is a "use it or lose it" benefit, capped per tenure limits, and designed to assist with waiting periods for Long-Term Disability (LTD) benefits.

Sick leave hours do not count toward overtime.

All employees are required to use sick leave responsibly, adhering to Town policies, procedures, and documentation requirements.

Public Health Emergency Leave: If a public health emergency is declared, the Town will supplement each employee's sick leave accruals as necessary to ensure that each full-time employee may take at least eighty (80) hours of paid leave and each part-time employee may take the greater of either the amount of time the employee is scheduled to work in a fourteen (14) day period, or the amount of time the employee actually works on average in a fourteen (14) day period. An employee's unused, accrued vacation leave, sick leave, and/or compensatory time off will be counted towards such supplemental public health emergency leave.

For example, if a full-time employee has twenty (20) hours of unused, accrued sick leave, twenty (20) hours of unused, accrued vacation leave, and ten (10) hours of unused, accrued personal leave on the date a public health emergency is declared, the Town will provide that employee with an additional thirty (30) hours of public health emergency leave. In contrast, a full-time employee who has seventy (70) hours of unused, accrued vacation leave and ten (10) hours of unused,

accrued sick leave at the time a public health emergency is declared would be granted no supplemental public health emergency leave.

Use of Public Health Emergency Leave: Public health emergency leave may be used only for the following purposes:

- A. For the employee to:
 - i. Self-isolate when diagnosed with a communicable illness related to a public health emergency.
 - ii. Self-isolate when experiencing symptoms of a communicable illness that is the cause of a public health emergency.
 - iii. Seek medical care, diagnosis, or treatment when experiencing symptoms of a communicable illness that is the cause of the public health emergency; or
 - iv. Seek preventative care concerning a communicable illness that is the cause of the public health emergency.
- B. For the employee to care for a family member who:
 - i. Is self-isolating when diagnosed with a communicable illness that is the cause of a public health emergency.
 - ii. Is self-isolating when experiencing symptoms of a communicable illness that is the cause of a public health emergency; or
 - iii. Needs medical care, diagnosis or treatment when experiencing symptoms of a communicable illness that is the cause of the public health emergency.
- C. If the employee or the employee's family member's presence on the job or in the community would jeopardize the health of others because of exposure to the communicable illness or because of symptoms of the communicable illness, regardless of whether the employee or the employee's family member has been diagnosed with such illness.
- D. To care for a child or other family member when the childcare provider is unavailable or if the school or place of care is closed due to the public health emergency (even if remote instruction is being provided); or
- E. If the employee is unable to work because of a health condition that may increase susceptibility to communicable illness that is the cause of the public health emergency.

Employees may use public health emergency leave until four (4) weeks after the official termination or suspension of the emergency. Employees are eligible to receive supplemental public health emergency leave once during the entirety of a public health emergency, even if the emergency is extended, restated, or prolonged.

Approval and Scheduling of Public Health Emergency Leave: When the need to use public health emergency leave is probable, employees are to notify their supervisor as soon as practicable of the need to use it.

Upon separation of employment from the Town for any reason, an employee's unused, supplemental public health emergency leave time will not be paid to the employee.

COMPENSATORY (COMP) TIME

Non-exempt full-time and part-time employees may receive comp time in lieu of wages to pay for any overtime hours worked. Compensatory time off is accrued at 1.5 hours for each hour of overtime worked. If the employee desires comp time, the employee must speak to their supervisor for approval. Comp time is to be granted at the discretion of the supervisor on a voluntary basis. Employees must indicate the use of comp time hours on their timesheets and indicate the actual number of hours worked.

Comp time maximum accrual is forty (40) hours per calendar year. Employees are advised to use any accrued comp time prior to using any vacation leave accruals. If an employee has accrued the maximum number of comp time hours, all subsequent overtime hours will be compensated in overtime pay. Any compensatory time that is not used will be paid out to the employee in their paycheck that contains the last day of that current year. Earned comp time is not to be used in the same week that it was accrued unless there are existing hours in the employee's comp time bank.

Upon transfer to an exempt position or separation of employment, unused comp time will be paid at the pay rate before their transition/separation.

Any department, group, or individual may be precluded from accumulating comp time if the use of comp time is not feasible or is not in the best interest of the Town. In these cases, overtime pay will automatically be paid to the employee for all eligible hours.

Temporary or seasonal employees are not eligible to accrue comp time.

HOLIDAYS AND LEAVE

Holidays currently observed by the Town:

Official Holiday	Observed Holiday
New Year's Day	January 1
Martin Luther King Day	Third Monday of January
President's Day	Third Monday of February
Memorial Day	Last Monday of May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday of September
Columbus Day	Second Monday of October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday of November
Day after Thanksgiving	Fourth Friday of November
Christmas Eve Day	Twenty-fourth Day of December
Christmas Day	Twenty-fifth Day of December
New Year's Eve	December 31
Personal day (1)	8 hours, use by November 30th of each year, or forfeited.

Holidays that fall on a Saturday are “observed” on the preceding Friday. Holidays falling on Sunday will be “observed” on the following Monday. Holidays are subject to evaluation by the Town Manager and may be revised at any time.

Holiday time is eight (8) hours for all employees. Non-exempt employees who are eligible for paid holidays and who are required to work on the official holiday, will receive compensation at one and one-half (1 ½) times their hourly rate of pay for hours worked. Additionally, if non-exempt employees work on an official holiday, they will receive their holiday time (not included in calculating overtime) in addition to their hours worked at 1.5x pay.

If a recognized holiday falls during an eligible employee's paid absence (such as vacation or sick leave), holiday pay will be provided instead of the paid time off.

If an employee is scheduled off on the “official” holiday, the employee will receive eight (8) hours of holiday benefit pay. Holiday hours are not payable upon separation of employment.

Sworn police officers will receive a Holiday Bank of 112 hours each year. There is no accrual rate for holiday time off or any personal day. All unused time will be forfeited. The Town will grant paid holiday time off to all eligible employees immediately upon assignment to an eligible employment classification. Holiday pay will be calculated based on the employee's straight time pay rate (as of the date of the holiday) times the number of hours the employee would otherwise have worked on that day.

Paid time for holidays will not be counted as time worked in the calculation of overtime.

Voting Time⁴: Any employee whose work schedule effectively prevents voting before or after work shall be permitted up to two (2) hours of paid leave for the purpose of voting. Voting leave must be requested and approved by the employee’s supervisor no later than the day before Election Day. The Town may specify the hours during which the employee may be absent, but the hours shall be at the beginning or end of the work shift, if the employee so requests.

Bereavement Leave: Employees who request to take time off due to the death of an immediate family member should notify their Director as soon as possible. Full-time employees are eligible for Bereavement Leave in the event of a death in their immediate family. For purposes of this policy, immediate family members are defined as an employee’s spouse, domestic partner, parent, parent-in-law, guardian, child, stepchild, son/daughter-in-law, sibling, sibling-in-law, grandparent, grandparent-in-law, or grandchild.

For each occurrence, employees may be authorized up to five (5) days or forty (40) hours of Bereavement Leave to attend family matters and the funeral. Bereavement pay is calculated based on the base pay rate at the time of absence and will not include any special forms of compensation, such as incentives, bonuses, or shift differentials. Employees needing additional time off beyond forty (40) hours may use accrued vacation, sick, or personal day with approval from their supervisor.

Workers’ Compensation Leave: The Town provides a comprehensive workers' compensation insurance program at no cost to employees. This program covers any injury or illness sustained during employment that requires

⁴ This is a statutory requirement.

medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers' compensation insurance provides benefits after a short waiting period or, if the employee is hospitalized, immediately.

If an employee sustains a job-related injury or illness, they must notify their supervisor and Human Resources. Such report shall be made immediately or at the earliest practicable time, but no later than ten (10) days after the accident.

Employees shall cooperate promptly with written reports, forms, and other requests required by the supervisor, the Council or its agents, insurance companies, or other authorities.

The Town has designated locations for treatment of Worker's Compensation injury or illness claims as prescribed by the Colorado Workers' Compensation Act. These addresses are given to employees upon hire and can be found in their Human Resource Informational System file section. In case of emergency medical attention or after hours' care, employees should go to any physician or medical facility that can provide care.

Any employee who becomes incapable of performing his or her normal work duties because of injury or illness incurred within the scope of employment will be deemed to be on work-related absence until the employee is medically released to resume normal work duties or temporary modified work duties, as may be allowed. Town employees who sustain a work-related injury or illnesses may receive benefits pursuant to the Colorado Worker's Compensation Act, C.R.S. 8-40-101, et. seq.

Employees may return to full or temporary modified duty when they have been released by their designated provider to do so. Employees must provide Human Resources with written documentation verifying the employee's release information from their physician. A physician's release authorizing the employee to return to full regular duty shall be required before the employee may be returned to the employee's regular position.

Workers' Compensation benefits will run concurrently with FMLA leave. Employees receiving Workers' Compensation payments will continue to accrue vacation leave. The Town will pay the employer's portion of the employee's health insurance premiums, if any, during Workers' Compensation leave, and the employee is responsible for their premium portion. If an employee is unable to return to work due to their injury, they will be eligible to continue medical benefits under COBRA at the employee's sole cost.

Employee pension contributions to Fire & Police Pension Association (FPPA) will continue at the specified percentage of wages as long as the employee is receiving compensation for time worked from the Town. For employees participating in the FPPA, employee contributions must continue while on leave.

Jury Duty Leave:⁵ The Town recognizes and encourages employees to perform their civic duty. Employees must provide a copy of the jury summons to Human Resources within three (3) days of returning to work to be compensated while serving as a juror. If selected to serve, the Town will reimburse the employee at their regular rate of pay up to three (3) days. An employee excused from jury duty must return to work immediately following their release.

If an employee is subpoenaed as a witness in an official capacity as a Town employee, they will be compensated up to three (3) days of paid leave or direct the employee to use their available paid time off such as vacation, sick, or personal

⁵ All regular employees must be paid regular wages (at least fifty dollars per day) for the first three days of juror service. Section 13-71-126, C.R.S. Regular employment includes part-time and casual employment so long as the hours can be determined by a schedule, custom, or practice established during the 3-month period preceding the juror's term of service.

day. If employees are required to serve jury duty beyond the period of paid jury duty leave, they may use any available paid time such as vacation, sick, personal day, or may request an unpaid jury duty leave of absence for a period not to exceed two (2) weeks.

Jury duty pay is not considered “time worked” in the calculation of overtime.

Court Appearance Leave:⁶ If an employee is the victim of a crime, or a member of a crime victim’s family, the employee may request time off to attend those court proceedings. This includes cases of domestic violence, sexual assault and stalking, and other crimes for which judicial proceedings are called. Family members include the employee’s spouse, child, or parent.

Uncharged leave will be granted for court appearances for the above reasons. The amount of granted leave for this scenario will be dependent on the length of court appearance.

The employee requesting court appearance leave must request their need for leave to Human Resources and provide documentation verifying the need for the leave. Acceptable documentation includes:

- A police report indicating that the employee or a member of the employee’s family was a victim of a crime; or,
- A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee has appeared in court; or,
- Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical, mental injuries, or abuse resulting in victimization from an act of domestic violence, sexual assault, or other crime.

Court appearance leave may be requested to:

- Prepare for and attend court proceedings; or,
- Receive medical treatment or attend to medical treatment for a victim who is the employee's spouse, child, or parent; or,
- Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault, stalking, or any other crime.

The Town will make every attempt to maintain the confidentiality of any information provided as certification of the need for court appearance leave.

Court appearance leave is not considered time worked in the calculation of overtime.

Active-Duty Training: An employee who is a member of the National Guard or the Military Reserve Forces of the United States is allowed up to 168 hours for military training leave, without loss of pay and benefits, each calendar year. This time is granted as paid leave and does not count toward accrued vacation or sick time. If an employee is inducted into a branch of the U.S. Armed Forces for an extended period, upon returning to the Town after separation from military service, the employee may be re-employed in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA)

⁶ This is a statutory requirement.

The employee will retain military and Town salaries in full for the allowed military leave. Seniority, job status, vacation/sick leave accruals, and other Town benefits will continue. Employees taking military leave beyond allowed military leave will not be paid by Town of Monument for such additional days unless the employee uses accrued leave time.

Employees taking part in military service or training will not be required to work on scheduled downtime from military service.

Military leave is not considered time worked in the calculation of overtime.

Leave of Absence Without Pay: In special circumstances, a personal, non-medical or medical leave of absence without pay may be granted, subject to the approval of the Town Manager, for extended absences. During the employee's absence, the Town may elect to fill the position with temporary personnel.

Requests for leave without pay will be evaluated based on several factors including, but not limited to:

- Anticipated workload requirements.
- Staffing considerations during the proposed period of absence.
- Employee's attendance and performance history.

To be eligible for leave without pay, the employee must first use all accrued forms of paid leave and not conflict with the requirements or operations of work. The employee must submit a written request with the dates that the employee expects to be on leave without pay. The employee's Department Director may approve an absence of five (5) days or less; Human Resources and the Town Manager must approve absences exceeding one (1) week.

Requests for leave without pay must be approved as follows:

- Supervisor approves/denies request based on operational needs.
- Department Director reviews request and submits them to Human Resources.
- Human Resources approval is needed for requests greater than 5 (five) days.

Employees may appeal a leave without pay denial. All appeals are to be submitted to Human Resources.

If leave without pay exceeds thirty (30) calendar days, the employee will be responsible for payment of the Town's full insurance premiums beginning on the 31st day. If the leave without pay exceeds sixty (60) days, the Town does not guarantee that the employee's position will be available upon the employee's return.

If an employee is on an unpaid leave of absence when a holiday occurs, the employee will not be paid for that holiday benefit.

All forms of leave time and holidays shall cease to accrue while employees are on leave without pay.

Emergency Leave and Attendance: This policy will only become effective upon the declaration of a State of Emergency from the President of the United States, the Governor of Colorado, or Mayor of the Town.

In the event of a situation that invokes this policy, the following applies:

- Non-emergency personnel are not required to come to work. Employees may use any available paid leave until the official State of Emergency is lifted. Should an employee exhaust their available paid leave, they will be on a leave without pay status until the State of Emergency is lifted.

- Non-exempt emergency personnel who are required to come to work will be paid at the rate of 1.5x their base rate (1 ½) for all hours worked during the State of Emergency.
- Exempt personnel who are required to work will be paid their regular salary and may be eligible for additional compensation as determined by the Town Manager on a case-by-case basis.
- All employees are responsible for returning to work when the State of Emergency has been lifted.
- During an emergency and in the interest of public and/or employee safety, the Town Manager may waive operational rules and regulations.

Domestic Abuse Leave: Employees are granted up to three (3) working days of paid leave from work during any twelve (12) month period to protect themselves from domestic abuse, stalking, sexual assault, or any other crime related to domestic abuse. Employees shall exhaust all accrued vacation and sick leave prior to taking Domestic Abuse Leave.

Employees may take leave to seek a civil protection order to prevent domestic abuse; obtain medical care and mental health counseling for themselves or their children; make their home secure from the perpetrator or to seek new housing; or seek legal assistance to address issues arising from domestic abuse, stalking, sexual assault, or any other crime related to domestic abuse and attending or preparing for related court proceedings. Except in cases of imminent danger, the employee shall provide their supervisor with appropriate advanced notice of such leave and such documentation as may be required by the Town.

All information related to an employee's Domestic Abuse Leave shall be kept as confidential as possible.

Administrative Leave: At the request of the Department Director and Human Resources, an employee may be removed from the workplace with pay and benefits. Administrative leave is granted to conduct an investigation or other inquiry into allegations or charges of wrongdoing or violation of any law, rule, or policy or where necessary for the safety and welfare of any employee or the efficient operation of the department. Leave under this policy will be without pay if the circumstances undermine the integrity of the Town and its operations or present a threat or risk to other employees or the public; however, the employee may utilize any accrued vacation leave when placed on unpaid administrative leave.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

FMLA requires employers to grant unpaid leaves of absence to qualified workers for certain medical and family-related reasons.

Employee Eligibility: FMLA defines eligible employees as employees who have worked for the Town for at least twelve (12) months and worked for the Town for at least 1,250 hours in the preceding twelve (12) months. The 12-month period is measured backward from the first day of an employee's leave.

Please note there are many requirements, qualifications, and exceptions under FMLA, and each employee's situation is different. An employee must contact Human Resources to discuss options for leave.

FMLA requires all public agencies with fifty (50) or more employees, including state, local, and federal employers to provide eligible employees up to twelve (12) weeks of unpaid, job-protected leave in a 12-month period for certain family and medical reasons. The 12-month period is a rolling period measured backward from the date an employee uses any FMLA leave, except for leaves to care for a covered service member with a serious illness or injury. For those leaves, the leave entitlement is twenty-six (26) weeks in a single 12-month period measured backward from the date an employee first takes that type of leave.

Leave Entitlement: FMLA requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- Incapacity due to pregnancy, prenatal medical care, or childbirth.
- Care of a child after birth or placement for adoption or foster care.
- Care of an employee's spouse, child, or parent who has a serious health condition; or serious health condition that makes the employee unable to work.

Military Family Leave Entitlements: Eligible employees with a spouse, child, or parent on active duty or called to active-duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include addressing issues that arise from:

- Attending certain military events and related activities.
- Arranging childcare and school activities.
- Addressing certain financial and legal arrangements.
- Attending certain counseling sessions; or
- Attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to twenty-six (26) weeks of leave to care for a covered service member during a single 12-month period.

A covered service member is a current member of the armed forces, including a member of the National Guard or reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform the duties of their service office, grade, rank, or rating and for which the service member is undergoing medical treatment, recuperation, or therapy; is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections During FMLA Leave: An employee on FMLA will remain on the Town's health plans, the same as an active employee, except that the employee must make arrangements with the Finance Department for payment of the employee portion of the insurance premiums. If the employee is on paid leave, appropriate deductions for health insurance will be made from the employee's paycheck. If the employee is able but does not return to work after the leave's expiration, they will be required to reimburse the Town for payment of insurance premiums during leave. As with other types of unpaid leave, the employee will not accrue any employee benefits during the period of unpaid leave.

Definition of a Serious Health Condition: A serious health condition is an illness, an injury, an impairment, or a physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a healthcare provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school, work, or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two (2) visits to a healthcare provider, one (1) visit and a regimen of continuing treatment, incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of "continuing treatment."

Use of Leave: The maximum time allowed for FMLA Leave is either twelve (12) weeks in a 12-month period or twenty-six (26) weeks for the care of a military member. The Town uses the twelve (12) months measured backward from the first day of an employee's leave. If both spouses are employed by the Town, each spouse is entitled to a leave of absence of twelve (12) weeks when the leave is taken for the care of a healthy newborn, placement for adoption or foster care of a healthy child or to care for an employee's parent or spouse with a serious health condition. When the leave is taken to care for a covered service member, the spouses are limited to twenty-six (26) weeks of leave in total during twelve (12) months.

Reduced Work Schedule/Intermittent Leave: An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the Town's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Employees eligible for family leave to care for the employee's healthy child after birth, or placement for adoption or foster care of a healthy child may be eligible for a reduced or intermittent schedule. Requests will be considered on an individual basis. Intermittent family leave will not be granted beyond twelve (12) months following the birth or placement of the child.

Employees taking intermittent or reduced schedule leave based on planned medical treatment and those taking intermittent or reduced schedule family leave may be required to temporarily transfer to another job with equivalent pay and benefits that better accommodates such leave. The Town may consider the employee's length of service, number of requests, duties, workload, and employee's job performance in making such decisions.

Use of Accruals: The Town requires employees to use their accrued paid leave time while taking FMLA leave. Family or medical leave will consist of a combination of accruals, vacation leave, sick leave, Compensatory (Comp) time, and Worker's Compensation (WC), as applicable. After paid leave is exhausted, any balance of the FMLA leave period will be unpaid.

Employee Responsibilities: Employees must provide thirty (30) days' advance notice of the need to take FMLA leave when the need is foreseeable. When thirty (30) days notice is not possible, employees must provide notice as soon as practicable and generally must comply with the Town's normal call-in procedures.

Employees must provide sufficient information for the Town to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a healthcare provider, or circumstances supporting the need for military family leave. Employees also must inform the Town if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees are also required to provide a certification and periodic recertification supporting the need for leave. The Town also may require a second and, if necessary, a third opinion (at the Town's expense) and, when the leave is a result of the employee's serious health condition, a fitness-for-duty report must be provided before returning to work. The Town also may delay or deny approval of FMLA leave for lack of proper medical certification.

Employer Responsibilities: The Town will inform an employee requesting leave whether they are eligible under FMLA. If they are, the notice will specify any additional information required, as well as the employee's rights and responsibilities. If employees are not eligible, the Town will notify the employee and provide a reason for their ineligibility.

The Town will inform employees if leave will be designated as FMLA, and the amount of leave counted against the employee's FMLA leave entitlement.

FAMLI (Family and Medical Leave Insurance)

FAMLI is Colorado's Family and Medical Leave Insurance (FAMLI) program that provides covered employees who have qualifying medical conditions paid leave benefits for up to twelve (12) weeks a year or sixteen (16) weeks a year for those with serious health conditions caused by pregnancy complications or childbirth complications.

Commencing January 2024, an employee enrolled in FAMLI may be paid between 37% and 90% of their wages up to a maximum of \$1,100 per week.

As the Town declined to participate in FAMLI, employees seeking to enroll in FAMLI must submit an application to the FAMLI Division at [CDLE FAMLI info@state.co.us](mailto:CDLE_FAMLI_info@state.co.us). Any employee opting in must do so for an initial term of at least three (3) years and is required to make payment of the premiums, which are currently 0.45% of an employee's annual wages directly to the State.

Information on the FAMLI Program may be found at <https://famli.colorado.gov/>. The FAMLI Division can be reached at:

Colorado Department of Labor and Employment
FAMLI Division
633 17th Street, Suite 201
Denver, Colorado 80202-3660
(303) 318-8000

The Town is not responsible for paying an employee's salary/wage while on FAMLI leave. Employees may use accrued vacation and sick leave to supplement their FAMLI compensation.

EMPLOYEE CONDUCT

Personal Conduct: The Town expects employees to act in the best interest of the Town and members of the public served by the Town. It is the responsibility of all employees to observe all rules, policies, operating procedures, and directives of the Town.

The following list, while not exhaustive, provides examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

- Theft or inappropriate removal or possession of property.
- Falsification of timekeeping records.
- Working under the influence of alcohol or illegal drugs.
- Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, while on duty, or while operating employer-owned vehicles or equipment.
- Fighting or threatening violence in the workplace.
- Negligence or improper conduct leading to damage of property.
- Insubordination or other disrespectful conduct.
- Violation of safety or health rules.
- Use of tobacco products that does not align with Town policies.
- Sexual or other unlawful or unwelcome harassment.
- Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.
- Excessive absenteeism or any absence without notice.

- Unauthorized use of technology systems such as telephones, mail systems, or other employer-owned equipment.
- Unauthorized disclosure of confidential information, which shall not include discussion/expression of views regarding public employee representation/workplace issues or organizing/joining an employee organization.
- Violation of personnel policies.
- Unsatisfactory performance or conduct.

Exceptions to the policy will be permitted if any of the above material is involved and being handled in conjunction with an officially sanctioned law enforcement investigation.

These examples are not all inclusive. The Town Manager and Human Resources shall have discretion as to what may be considered infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment based on a “reasonable person” standard.

Employees will treat each other and members of the public with courtesy and respect regardless of how difficult the circumstance. The Town strives to make every effort to be receptive to citizen comments and concerns and to provide any reasonable amount of information or explanation upon request. When dealing with complaints, employees should remember that the matter is important to the citizen and deserves a prompt and courteous response.

Outside Employment: Employees are generally permitted to obtain outside employment if it does not interfere with their job performance or is a conflict of interest. All employees must notify their supervisor before undertaking any outside employment activity. Police Department personnel must get permission from the Chief of Police before obtaining outside employment.

Employees with outside secondary employment are expected to work their assigned schedules. Outside employment will not be considered an acceptable excuse for poor job performance, absenteeism, tardiness, leaving early, or refusal to work overtime or different hours. If outside employment causes or contributes to job-related problems, it must be discontinued, or the employee may be subject to disciplinary action up to and including termination.

Outside employment that constitutes a conflict of interest is prohibited. Employees may not receive any income or material gain from individuals outside the Town for materials produced or services rendered while performing their jobs with the Town. Employees shall not obtain and/or use confidential information from the Town in the scope of their outside employment.

Outside employment performed by a sworn police officer, like their regular duties as a police officer, i.e., security or that is based on their qualifications as a sworn police officer, will remain under the direction, supervision, and authority of the Town Police Department. Agencies who contract sworn officers from the Monument Police Department will reimburse the Town for services rendered.

Political Activity: Political activity means publicizing, supporting, opposing, campaigning for or otherwise participating in a candidacy for political office or any political or ballot issue, cause, or initiative, whether at the local, county, regional, state, or federal level, unless such activity is undertaken as part of the employee’s authorized job responsibilities.

Town of Monument employees are free to participate in political activities as citizens on their own time and away from the workplace. However, employees may not undertake political activity while at work or while engaged in Town business outside of the workplace. Employees are also prohibited from undertaking any political activity within or upon Town

offices or facilities, irrespective of whether the employee is on or off duty. Prohibited political activity includes, but is not limited to:

- Circulating any candidate or issue petitions or literature, or displaying in the workplace campaign literature, buttons, placards, or similar material identifying, advancing, or opposing a candidate or political issue; or
- Using Town-owned or supported supplies, equipment, facilities, or instruments, including vehicles, credit cards, copy machines, printers, faxes, telephones, mobile phones, computers, internet or wireless connection or network for or in support of any political activity.

In addition, employees will refrain from any political activity that would give the impression that the activity has the endorsement of the Town, such as the use of the Town logo, seal, or brand, or wearing Town or department-issued uniforms.

Any employee who is subjected to any political activity while at work or pressured or coerced to participate in a campaign or ballot issue will report the incident to his or her Department Director, the Town Manager, or to Human Resources immediately. Each reported incident will be investigated.

Any employee found to be in violation of any provision of this policy may be subject to disciplinary action, up to and including termination.

Personal Relationships in the Workplace / Nepotism: The employment of relatives or individuals involved in a personal relationship within the same department of the Town may cause conflicts, perceived favoritism, and decreased employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried over into day-to-day working relationships.

For purposes of this policy, “personal relationships” are defined as, but not limited to:

- Family Members
- Friendships
- Romantic Partners
- Roommates
- Business Partners

This policy applies to all employees. Employees in personal relationships cannot work within the same supervisory chain, access each other's confidential records, or handle funds managed by a related employee. The Town reserves the right to take action, including termination, if a conflict of interest arises from personal relationships at any level within the same authority line that could affect employment decisions.

If a personal relationship develops between employees in a reporting or departmental relationship, those involved must notify Human Resources. Human Resources and the Department Director will seek, if possible, alternative assignments for the employees involved.

When a conflict or potential conflict arises between employees in personal relationships, even without direct reporting lines, reassignment or termination may be considered. Employees in close personal relationships should avoid public displays of affection or excessive personal conversations in the workplace.

Employment of Relatives and Domestic Partners: Relatives and domestic partners may be hired by the Town if (1) the persons involved will not work in a direct supervisory relationship, and (2) the employment will not

pose difficulties for supervision, security, safety, or morale. For the purposes of this policy, “relatives” are defined as spouse, child(ren), siblings, parents, or grandparents. A “domestic partnership” is defined as a committed relationship between two individuals who are sharing a home or living arrangements.

Current employees who marry each other or become involved in a domestic partnership will be permitted to continue employment with the Town provided they do not work in a direct supervisory relationship with each other or otherwise pose concerns as mentioned above. If employees who marry or live together do work in a direct supervisory relationship with each other, the Town will attempt to reassign one of the employees to another position for which the employee is qualified if such a position is available. If no such position is available, the employees will be permitted to determine which one of them will resign from the Town.

Reporting Criminal Charges and Convictions: Employees must notify Human Resources and their supervisor in writing of any conviction for a violation of a criminal statute not later than five (5) calendar days after such conviction. Reporting of deferred adjudications or a plea of nolo contendere must be reported as well.

Any criminal, traffic, or drug charges filed against Police Department personnel must be reported within one (1) business day to the Town Manager, the Human Resources Director, and the Police Chief or their authorized designees.

COMPUTERS, INTERNET, EMAIL & OTHER RESOURCES

Information Technology: The Town’s computers and technology systems are managed by and are the property of the Town. The Town establishes access to the network and software programs, including setting up, issuing passwords, and monitoring on Town devices. The following policies apply to all employees with computer access, including the use of laptop computers.

This policy is designed to:

- Reinforce that existing standards and policies regarding professional conduct apply to the usage of the Town’s computers and information technology.
- Ensure that Town employees use information technology resources efficiently and effectively; and,
- Protect Town data and computer systems from misuse.

Users shall:

- Use technology resources to assist them in performing their assigned jobs.
- Comply with all general personnel policies governing employee behavior while using computers and computer systems (as applicable).
- Only use approved and properly licensed software.
- Ensure that equipment, systems, and data are stored securely.
- Utilize computers, computer systems and cell phones to further work goals.
- Avoid practices that are wasteful of storage or processing capacity.
- Understand that any information stored on a Town computer or device is Town property and may be reviewed by Town personnel; and
- Refrain from excessive use of Town equipment for non-business-related purposes. It is generally accepted that occasional personal communications, such as phone calls or emails, are carried out. Excessive use, as determined by the Town, is not permitted.

Users shall not:

- Download or install software on devices provided by the Town, including shareware, without permission of the Information Technology staff.
- Introduce data into the system that does not serve a legitimate business purpose; or
- Use Town computers, cell phones or systems in any way that is: illegal, disruptive, threatening, harassing, demeaning, obscene, profane, or otherwise offensive.

The Town maintains confidential employee and customer records. Privacy must be fully protected when records with personal identifiable information are accessed for Town purposes. Software and access rights intended to protect confidentiality must not be modified by unauthorized staff.

Users shall:

- Use passwords, which are regularly changed, to protect data and system integrity properly.
- Only access or change systems and data as authorized; and
- Only acquire, use, alter or dispose of data with proper authorization.

Users shall not:

- Use another individual's user ID.
- Violate the confidentiality of data or systems.
- Use software or hardware that jeopardizes the security or integrity of the network or Town data.
- Retain messages or files that do not have a business purpose (as defined by the appropriate record retention schedule); or
- Store information in a manner that burdens a computer or the network.

Employees using Town computers and technology systems must understand that all information, files, email, etc., placed on the computer/system by the employee may be subject to disclosure under the Colorado Open Records Law. Employees should not expect the right to privacy regarding information placed on the Town's computers or technology systems.

Inter-office communications marked as confidential must be treated as such and shall not be disseminated outside of the Town organization without authorization from the Town Manager or Department Director.

The Town may determine when an employee spends excessive time on the internet for non-business-related items or sends a disproportionate amount of non-business/personal emails while working. If the behavior continues, the employee will receive corrective and/or disciplinary action.

Employees are permitted to use computers for personal use during meal breaks and rest periods in accordance with Internet Usage guidelines.

All information regarding access to the Town's computer resources, such as user identifications, access codes, and passwords, is confidential and may not be disclosed to non-Town personnel.

Employees should notify their immediate supervisor or Human Resources upon learning of violations of this policy. Employees who violate this policy will be subject to disciplinary action, up to and including termination of employment.

Software and Copyright: The Town licenses and does not own the software it utilizes. Therefore, the use of the software must be in accordance with the applicable software agreements or as directed by the Town's designated IT Manager. Only

when authorized does the Town or employees have the right to reproduce software on more than one device. Employees must not use the Town's technology resources to copy, retrieve, forward, or send copyrighted materials unless the employee has the author's permission.

Internet Use: Employees use the internet for work-related data and must make sure to use the internet for this purpose. Data composed, transmitted, or received is treated as part of the official records of the Town and is expected to be accurate, appropriate, ethical, and lawful.

Unauthorized Internet Use: Employees are not permitted to use Town systems in a way that is deemed by supervisory personnel as inappropriate or in violation of other Town guidelines. The Town does not tolerate unacceptable content being shared via Town devices or data sharing platforms, this is aligned with the standards of a safe workplace and follows anti-harassment guidelines. Violation of these guidelines can result in disciplinary action up to termination. The Town determines when an employee is misusing the Town communication systems.

Exceptions will only be permitted if any of the above material is involved with or being handled in conjunction with an officially sanctioned law enforcement investigation.

Email: Town email is used only for business purposes. Email may not be used to solicit others for commercial ventures, religious or political causes, outside organizations, or other non-business matters. Working time does not include breaks or meal periods. Supervisory personnel may monitor email from time to time. Employees should use discretion when sending emails. It is recommended that employees do not write anything in an email message that cannot be communicated face-to-face.

Voicemail: Employees are responsible for ensuring their voicemail messages are reviewed promptly. When an employee is out of the office for an extended period, they should change their greeting, indicating when they will be returning messages and who will be the alternative contact during their absence.

Telephone/Cell Phones/Mobile Devices: Telephone calls, including those made with cell phones and mobile devices, shall not interfere with an employee's job performance. The Town provides certain personnel with these devices to aid in the performance of their job duties. The Town prohibits all non-work calls/texts for which additional charges may be incurred. For safety reasons, employees shall not use cell phones while driving.

Cell Phone Usage: Department Directors will determine if an employee uses a Town leased phone. The employee is responsible for ensuring issued cellular devices are properly maintained and serviceable. Repeated broken devices may result in replacement charges for the employee. Cell phone invoices will be regularly monitored.

Unauthorized Telephone/Cell Phone/ Mobile Device Use: Employees are not permitted to use Town systems in a way that is deemed by supervisory personnel as inappropriate or in violation of other Town guidelines. The Town does not tolerate unacceptable content being shared via Town devices or data sharing platforms; this is aligned with the standards

of a safe workplace and follows anti-harassment guidelines. Violation of these guidelines can result in disciplinary action up to termination. The Town determines when an employee is misusing the Town communication systems.

Mail System Usage: The use of the Town-paid postage for personal correspondence is not permitted.

Media Relations/Releases: Dissemination of accurate information is a priority. Only authorized spokespersons may give information to the media. Department Directors may respond to queries at the direction of the Town Manager. When a media representative contacts them, employees shall contact their Department Director or Town Manager. The employee must inform the visitor/caller that the employer's spokesperson will return the call or email. Staff should never release the home or cell phone number of any other staff member, including supervisory staff. Staff shall not use their official title or imply the response is on behalf of the Town.

Social Media: This policy is intended to minimize the risk of propagation of slanderous or unprofessional content that could impair the Town's reputation or lead to legal claims. It is not intended to restrict communications protected by state or federal law.

While personal off-duty use of social media is generally not of concern to the Town, employees are reminded to use common sense when using social media. Any posts made on your personal time in a personal account with content that does not relate to the Town or any person or entity with whom the Town does business is up to your discretion. The Town's Equal Employment Opportunity and Non-Harassment policies extend to social media.

Employees are prohibited from doing any of the following on social media unless otherwise protected by state or federal law:

- Disclosing confidential information regarding the Town, its constituents, or other members of the public.
- Making defamatory comments about the Town, Town Council members, employees, constituents, or other members of the public; and
- Making comments or discriminatory references that would violate Town policy if made in the workplace (comments that violate the non-Harassment policy).

Employees may not use social media for personal purposes during paid working time. At no time may employees use the Town's computers, servers, Wi-Fi network, and other equipment for personal social media purposes.

Using Personal Devices; Personal Communications During Workday: Employees shall not use their personal electronic devices for work purposes unless specifically authorized in writing, in advance, by the Town Manager or designee. Personal electronic devices include personally owned cell phones, tablets, laptops, and computers. Personal devices should be set to silent or vibrate mode where incoming calls may disrupt normal workflow. Employees whose personal devices have camera, video or recording capability are restricted from using those functions at Town facilities.

Excessive personal calls, emails, or text messaging during the workday, regardless of the device used, can interfere with employee productivity and be distracting to others. Employees must handle personal matters during non-work time and ensure that friends and family members are aware of the policy. Exceptions may be made for emergency situations and as approved in advance by the Town Manager or designee.

AT-WILL EMPLOYMENT AND DISCIPLINE

Progressive Discipline and Coaching Guidelines: Employment with the Town is on an at-will basis. Employees may be terminated with or without notice and without reason, and similarly, employees may resign at any time. This Handbook does not modify the Town's At-Will Employment Policy.

The Town follows a progressive disciplinary approach. All employees are expected to comply with Handbook policies and perform their duties professionally. When conduct or performance does not meet expectations, the Town may take corrective or disciplinary actions to address issues, prevent recurrence, and prepare the employee for future success.

Supervisors and Directors are responsible for the behavior and performance of employees under their supervision. They have the authority and responsibility to discipline employees for violations of Town policies or departmental guidelines, subject to review by the Town Manager.

The discipline policy aims to maintain high performance standards, foster positive work relationships, and provide the Town's citizens with quality service. Discipline is largely "self-discipline," where employees are expected to adhere to Town and departmental policies. If self-discipline does not meet standards, supervisors may take corrective actions to address the issue.

An employee is subject to disciplinary action if:

- The employee violates the personnel policies and guidelines, or any written guidelines or procedures applicable to the department in which the employee works.
- The employee's conduct reflects discredit to the Town or hinders the effectiveness of Town operations.
- The employee has performed an act of misconduct, or has failed to perform an act, resulting in misconduct.

Management reserves the right to "Coach" employees before issuing discipline. Coaching involves a discussion with the employee about the violation and steps to prevent recurrence. Coaching documentation is kept by the supervisor or department head and is not placed in the employee's personnel file.

Actions taken in one case do not set a precedent for others. The Town has full discretion to determine and impose corrective actions as deemed appropriate, without establishing an expectation of specific disciplinary steps.

The Town Manager, Department Director or Human Resources may recommend and administer a means of corrective action or discipline determined to be appropriate with the type and severity of the cause for the action. The action taken may affect an employee's current pay, status, or terms of employment as follows:

Corrective Action:

- **Verbal Counseling:** Supervisory personnel may verbally counsel an employee regarding their work or performance.
- **Written Reprimand:** A written document issued by a supervisor indicating the specific reason for the reprimand and the steps and measures that must be taken to correct the conduct or performance issue.
- **Performance Improvement Plan (PIP):** A plan that identifies performance issues and provides key measures with attainable goals allowing an employee to meet identified expectations.

Disciplinary Action:

- **Unpaid suspension:** An involuntary removal from the work site for a specified period without pay.
- **Demotion:** Removal of an employee from a position and employing them in a position with decreased duties, responsibilities, and pay.
- **Termination:** Separation from employment with the Town.

If an employee does not agree with the application of corrective or disciplinary action, they must follow the Grievance Resolution guidelines. Note: Grievance Resolution procedure does not apply to Termination.

PROBLEM-SOLVING

To the extent that problems or disputes arise, the employee is encouraged to promptly seek assistance from their immediate supervisor. Interference with or discrimination against any employee who, in good faith, files a complaint will not be tolerated.

The Town strongly encourages the use of non-adversarial dispute resolution techniques to resolve problems in a manner that is satisfactory to all affected parties. Supervisory and administrative personnel are strongly advised to seek the advice and support of Human Resources at the earliest possible time after learning of a problem, to develop a means to cooperatively resolve the issues. Employees are also encouraged to suggest alternative means of resolving disputes.

Grievance Resolution: The Town is committed to providing the best possible working conditions for its employees. Part of this commitment is to encourage an open and frank atmosphere in which any problem, complaint, suggestion, or question receives a timely response from the Town supervisors and management.

The Town strives to ensure fair and honest treatment of all employees. Supervisors, managers, and employees are expected to treat each other with mutual respect. Employees are encouraged to offer positive and constructive criticism.

Excluding termination, if employees disagree with established rules of conduct, policies, or practices, they can express their concern through the grievance resolution procedure. No employee will be penalized, formally or informally, for voicing a complaint with the Town in a reasonable, business-like manner, or for using the grievance resolution procedure.

Excluding termination, if a situation occurs when employees believe that a condition of employment or a decision affecting them is unjust or inequitable, they are encouraged to make use of the following steps. The employee may discontinue the procedure at any step.

1. Employee presents written grievance to immediate supervisor after incident or issue occurs. If the grievance concerns the employee's immediate supervisor, the grievance should be submitted to the Human Resources Manager.

If the employee's grievance concerns the Town Manager, the employee should submit the grievance directly to the Town Council. If the employee's grievance concerns a member of the Town Council, the employee should submit the grievance directly to the Mayor, who will provide notice of the grievance to the Town attorney. If the employee's grievance concerns the Mayor, the employee should submit the grievance directly to the Mayor Pro-Tempore, who will provide notice of the grievance to the Town attorney. In the event of a grievance as outlined in this paragraph, the employee will disregard steps 2-6 of this grievance resolution procedure.

2. The supervisor, or Human Resources Manager (as applicable), shall provide an answer to the employee within seven (7) working days of the receipt of the grievance. If the grievance concerns any form of harassment, the supervisor

or Human Resources Manager (as applicable), shall immediately report the grievance to the Town Manager (unless the matter involves the Town Manager, in which case the supervisor/Human Resources Manager must report the grievance to the Town Council) and follow all procedures outlined in the Harassment Reporting Procedure.

3. If the employee is unsatisfied with the response received from the supervisor or Human Resources Manager (as applicable), the employee may forward their written complaint, along with the answer provided by the supervisor or Human Resources Manager, to their Department Director.
4. Human Resources will discuss the matter with the Department Director and the Director shall provide a written response to the employee within fourteen (14) working days of receipt of the grievance. In the event the grievance concerns the Human Resources Manager, or the Human Resources Manager provided a response to the employee (pursuant to Step 2 of this procedure), the Department Director shall discuss the matter with the Town Manager and provide a written response to the employee within fourteen working days of receipt of this grievance.

If the grievance concerns the Department Director, the employee may skip this Step and move to Step 5 of the grievance resolution procedure.

5. If the employee is unsatisfied with the response received by their Department Director, the employee may submit the grievance and responses to the Town Manager who will provide a written response within fourteen (14) days of receiving the grievance.
6. Within fourteen (14) days of receiving the Town Manager's response, the employee may appeal the Town Manager's decision by submitting their written grievance and responses to the Town Council. In such a case, the Town Council will provide a written response to the employee within sixty (60) days of receiving the employee's complaint.
7. Determinations made by Town Council shall be final. In the event the grievance concerns a member of Town Council, determinations shall be made by a quorum of Town Council members not involved in the grievance.

If the grievance leads to an investigation, the investigation process will be followed.

Sworn employees please refer to Monument Police Department Lexipol Policy # 1008, Personnel Complaints for additional information.

Investigation Process: Human Resources will investigate violation reports, grievances, and complaints under the direction and advice of the Town's Attorney or their designee and all shall be addressed and resolved as promptly as practicable. It is the responsibility of Human Resources to determine the most appropriate means for addressing the submission in coordination and with the advice of the Town's Attorney. During an investigation, an employee may or may not be placed on administrative leave with pay. All records of claims, reports, and investigations shall be considered confidential, attorney work-product, and shall not be disclosed publicly except to the extent required by law.

Employee Training and Development: This policy applies to all regular, full-time, or part-time, employees of the Town. Employees with temporary/short-term contracts might attend training at their supervisor's discretion.

Employees, managers, and Human Resources should all collaborate to build a continuous professional development culture. It is an employee's responsibility to seek new learning opportunities. It is a manager's responsibility to coach their teams and identify employee development needs. It is Human Resources' responsibility to facilitate any staff development activities and processes.

Each department may have their own specific training program requirements.

EMPLOYEE DRUG AND ALCOHOL TESTING

Drug and Alcohol-Free Workplace: It is the policy of the Town to maintain a drug and alcohol-free work environment that is safe and productive for employees and others doing business with the Town.

The unlawful use, possession, manufacture, purchase, sale, or distribution of, or being under the influence of, any illegal drug or substance while on Town premises or work sites, in Town vehicles, at Town activities, while on-duty or while performing services for the Town is strictly prohibited and may subject the employee to disciplinary action up to and including termination.

For the purposes of this policy, the following terms shall be defined as follows:

Alcohol Impairment: Any employee who is tested and found to having two one-hundredths (0.02) or more grams of alcohol per one hundred (100) milliliters of urine, per one hundred (100) milliliters of blood, or per two hundred ten (210) liters of breath, will be deemed impaired by alcohol.

Illegal Drug or Substance: Any substance that is illegal in the United States under any federal or Colorado law, or any substance defined as a controlled substance in Colorado Revised Statutes § 18-18-201, *et seq.*, or the Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, both as amended from time to time. Medical and recreational marijuana and psilocybin mushrooms are controlled substances and illegal under federal law and are included within this definition of illegal drug or substance.

As required by the Drug-Free Workplace Act, each employee engaged in the performance of any federal contract or grant, as a condition of employment, must:

- Abide by the terms of this policy; and,
- Notify Human Resources and the employee's supervisor in writing of their conviction for a violation of a criminal drug statute not later than five calendar days after such conviction.
- Reporting of deferred adjudications or a plea of *nolo contendere* must be reported as well. The Town shall take necessary actions as set forth the enforcement of the Drug-Free Workplace Act and Regulations.

Consumption of Alcohol in Town Facilities: The consumption of any type of alcoholic beverages by employees and others is prohibited in all Town facilities, Town vehicles, or in personal vehicles while on Town business as well as any Town property unless specifically authorized by the Town Manager.

Prescription Drugs: Employees are expected to use prescription or legal over-the-counter drugs in an appropriate manner and dosage and are expected to know whether the appropriate use of such drugs may impair their ability to perform their jobs safely and competently. If such impairment becomes known to an employee, the employee must

immediately notify their supervisor and shall cease performing Town functions until they can safely perform their duties. The employee may be temporarily reassigned to other duties, where appropriate, or placed on leave.

Any employee who reports or continues to work while impaired by illegal drugs or substances or alcohol in violation of this policy may be immediately relieved of their duties and may be subject to further disciplinary action, up to and including termination.

Refusal to Submit to Testing: An employee who refuses to submit to drug and alcohol testing required by this policy shall be deemed to have tested positive for illegal drugs or to be impaired by alcohol on the job or refusal of condition of employment. Refusal to submit to testing includes any of the following:

- Refusal to appear, or the test.
- Inability to provide sufficient breath or urine to be tested within four (4) hours of the request, without a valid medical explanation.
- Tampering with or attempting to tamper with or adulterate the specimen or collection procedure.
- Failure to comply
- Ingesting alcohol after the employee undergoes a post-accident alcohol test.
- Not reporting to the designated testing site at the scheduled time.
- Refusal to provide the necessary authorization for obtaining hospital reports and other documents as required under this policy.

Results of Drug and Alcohol Use: Any employee found to be impaired by alcohol on the job, using illegal drugs, or testing positive for illegal drugs may be subject to disciplinary action up to and including termination of employment.

In appropriate circumstances and at the Town's sole discretion, disciplinary sanctions may include the completion of an approved drug or alcohol abuse assistance or rehabilitation program. Any such program shall be at the employee's expense. However, the Town is not required to offer rehabilitation in lieu of termination or other discipline to any employee who has violated this policy.

After investigation, the Town Manager may reinstate an employee who has been suspended if it appears to be in the best interests of the Town.

Failure to report an employee being under the influence can result in disciplinary action. A summary of the incident in question will be requested and presented to the employee's supervisor, Human Resources, and the Town Manager.

Reasons for Testing:

Pre-Employment: All Town employees are required to successfully pass a pre-employment drug screening from the Town's designated testing partner. After a conditional offer of employment, prospective employees will complete a drug screening at the expense of the Town by a chosen health care professional.

Reasonable Suspicion: If reasonable suspicion exists to believe that an employee, while on the job, is impaired by alcohol or illegal drugs, a supervisor, the Department Director, Human Resources, or the Town Manager may require the employee to submit to testing. Reasonable suspicion may be based on the following or other facts and circumstances:

- Witnessed by at least one supervisor and corroborated by another supervisor or manager, if available, of the employee's unusual demeanor, appearance or conduct, or irrational behavior (slurred speech, lack of balance, excessive aggressiveness, docility, or drowsiness), the odor of alcohol or illegal drugs; or
- Difficulty in performing or inability to perform regular job functions.

An employee who is suspected of drug or alcohol use shall not be left alone while reporting the incident and shall not be allowed to return to work while awaiting the results of a substance test. If the employee holds a CDL license, the employee may not drive a commercial vehicle until results are received and confirmed negative.

Post-Accident: The term "motor vehicle accident" includes an accident that involves either a Town of Monument vehicle or a personal vehicle during performing one's job duties and results in:

- A fatality or bodily injury to anyone
- A citation, tow away or injury-related accident
- A moving violation

If an employee's actions contributed to a motor vehicle accident the employee shall be tested for drugs and alcohol as soon as practicable during the two (2) hours following the accident or citation.

An employee must immediately contact a supervisor in the employee's chain of command to report any accident or police citation.

Safety-Sensitive Positions:

- **CDL employees:** shall be subject to drug and alcohol testing in conjunction with the medical examinations required for a commercial driver license.
- **Sworn Employees:** Screening will be required in events such as, but not limited to, accidents and officer-involved shootings.
- **Random Testing:** Sworn employees, employees holding a CDL, and employees in other safety-sensitive positions shall be subject to random drug and alcohol testing by the Town's selected designated medical providers.
- **Follow-up:** Employees holding a CDL and in safety-sensitive positions may be subject to follow-up tests for drugs and/or alcohol.

Test Results: An employee's test results shall be held in confidence by Human Resources and shall only be disclosed to the employee tested and any personnel involved in supervisory or disciplinary capacities.

Any employee violating this policy is subject to discipline, up to and including termination.

EMPLOYEE SAFETY

Safety: All employees and visitors have the opportunity and responsibility to contribute to a safe work environment. Employees should immediately bring unsafe working conditions, practices, or procedures to the attention of their supervisor. Violations of safety standards, causing hazardous or dangerous situations, or those who fail to report situations, where appropriate, may be subject to disciplinary action, up to and including termination of employment. All Town employees will receive periodic safety training covering safety, health hazards, safe work practices, and procedures to mitigate risks.

Seat Belt Use: All Town of Monument employees, contractors working directly for the Town, and passengers in Town-owned vehicles, Town-owned construction equipment, or privately-owned vehicles used for Town business must use the vehicle's seat belt restraint system as provided by the manufacturer. Lap belts and/or shoulder harnesses must be used according to the manufacturer's intended design. Restraint systems, including lap belts, shoulder harnesses, or similar devices, must be securely fastened before operating the vehicle or equipment and remain fastened throughout its use.

Certain exceptions will be made for sworn officers in the interest of officer safety. Sworn officers should refer to Monument Police Department Lexipol KMS Policy for further information.

SEPARATION FROM EMPLOYMENT

An employee may separate from employment by disciplinary termination, layoff, discharge, resignation, retirement, or death.

Disciplinary Termination: Employees terminated for disciplinary reasons are not eligible for re-employment.

Layoff: The Town reserves the right to lay off employees for reasons of efficiency, economy, lack of work, or for such other reason as the Town deems sufficient. Employees who are laid off may be eligible for re-employment but shall not have preferential rights to re-employment.

Resignation: An employee who resigns in good standing may be eligible for re-employment with the Town but shall have no preferential rights to re-employment. An employee resigns in good standing if the employee does not resign under threat of termination, gives the Town at least two weeks' notice, and completes necessary exit forms.

Retirement: Employees who retire may be eligible for re-employment but shall have no preferential rights to re-employment.

Death of Employee: Upon the death of an employee, the final paycheck and accrued vacation leave will be paid directly to the beneficiary designated on the employee's Town paid life insurance designation forms. Proceeds from eligible benefit plans will also be paid as designated on the employee's beneficiary forms.

Exit Procedure: Employees who are laid off, resign, or retire shall provide all information required for separation from the Town and make any arrangements for continuation of benefits as allowed by law and by the benefits plans. A final paycheck will be issued for the remainder of all pay and allowances (minus deductions) at the end of the next regularly scheduled pay period. Employees are responsible for updating their address with Human Resources before their separation from employment with the Town.

Employees must return all Town property on or before their last day of employment. Employees who are issued Town property, including uniforms, keys, lanyards, computers, tablets, mobile phones, or any other incidentals upon employment with the Town, must return issued property at the end of their employment, and will be charged a reasonable fee, including a re-keying fee in the case of Town keys, if the property is not returned. Any such fee may be deducted from the employee's final paycheck, subject to applicable law.

MISCELLANEOUS PROVISIONS

Town Property: Town employees shall not use or permit the use of Town-owned or leased property, facilities, vehicles, uniforms, equipment, materials, Town personnel, or Town contractors for personal use. The appropriate Department Director may approve use of equipment by employees to improve occupational skills. Systems, procedures, reports, equipment, and information created by or for the Town, whether by its employees or others, are the exclusive property of the Town. These materials cannot be given, loaned, or shared with any individual, company, or organization without the written consent of the Department Director.

The Town strictly prohibits employee theft, abuse, misuse, damage, waste, or destruction of Town property or the property of others. Employees are responsible for any loss or damage to property in their possession for personal use. If the property is already in disrepair when taken, employees must document the issues with management to avoid being held accountable upon its return.

Each employee is responsible for ensuring proper use and maintenance of Town property. Should any employee know about any misuse or damage, they must notify their supervisor immediately after the incident. Normal wear and tear is expected, but any employee found to neglect or misuse Town property may be subject to discipline, up to and including termination.

Items that are for individual employee use, such as an ID and access card, uniforms, technology equipment (cell phones, laptops, iPads, tablets, charging devices), keys, and similar items, must be returned upon the employee's separation of employment, as provided above under Exit Procedure.

Town Vehicles and Usage: Any automobile, motorcycle, or licensed vehicle including trailers registered to the Town.

Town employees who drive for their job must maintain a valid driver license, or Commercial Driver License (CDL), and a record of such will be maintained in each personnel file managed by Human Resources. Employees must report any changes to the status of their driver's license immediately to their supervisor.

Take-Home Vehicles: Some employees may be authorized to take a Town vehicle to their home during off-duty hours. Take-home vehicles will be granted based on a need for that individual to respond to Town emergencies or other frequent needs during off-duty hours. When such a privilege is granted, the vehicle will be used for transportation to and from Town business only. Authorized use of any Town vehicle is permitted as determined by the Department Director and Town Manager. The Town will equip all Town vehicles with GPS devices; employees are prohibited from removing these devices without prior approval from the Town Manager.

Justification for taking home vehicles must be made by the Directors to the Town Manager. Situations and guidelines are as follows:

- The employee is frequently requested to respond to a special assignment or emergency situations in the Town after normal work hours.
- The vehicle carries necessary equipment and tools to implement appropriate action in emergency situations.
- When it is cost-effective and in the best interest of the Town, the employee must report directly to a location for duties such as work, meetings, or training.

- Upon approval of the Town Manager, the list of authorized take-home vehicles will be provided to the Fleet Maintenance Division, Human Resources Department, and Finance Department.
- Approval from the Town Manager is required for all take-home vehicles.

Town Business: Any work or task that is to be performed on behalf of the Town or its departments, including but not limited to, travel to and from Town business, official meetings, training seminars, workshops, etc., including obtaining meals during the assigned working hours. Driving to a restaurant during travel status or while performing work at a field site is considered an appropriate vehicle use while on Town business.

Unauthorized Use: Personal use of Town vehicles for unauthorized purposes or misuse of Town equipment that results in damage may make the employee liable for repayment to the Town for such misuse or unauthorized use.

Only Town employees, or authorized volunteers, may drive Town vehicles. Employees may not allow anyone other than a Town employee to drive a Town vehicle, unless in emergency circumstances where the Town employee cannot drive a Town vehicle due to incapacitation. A gas card may be issued for Town vehicles. Employees issued a gas card for a vehicle must sign the gas card policy, with a copy of the signed policy retained in their Human Resources file. All vehicles shall be kept clean and operated to conform with existing traffic regulations and not bring discredit to the Town. All department and Town routine maintenance schedules and operations guidelines shall also apply to take-home vehicles. Employees with an authorized take-home vehicle may be subject to appropriate IRS regulations concerning the tax implications of this benefit.

Any employee operating a Town vehicle while on Town business must maintain a valid Colorado Driver's License with the appropriate vehicle class designation required by the employee's department. Motor Vehicle and/or applicable criminal records will be periodically reviewed by the Town. Employees who have a history of violations under the motor vehicle statute, traffic code, or any other applicable criminal law may be prohibited from driving a Town vehicle on Town business. Employees must obey all traffic laws while using courteous and safe driving practices. The Town may investigate complaints about an employee's improper use of a Town vehicle and take appropriate disciplinary action.

Employees must not operate any vehicles when conducting Town business if they are using prescription drugs that may affect their ability to safely operate the vehicle. A licensed physician must determine if an employee using prescription drugs is safe to operate vehicles on Town business. Employees will not operate any vehicle when conducting Town business if they are under the influence of alcohol. The use of any tobacco product in Town vehicles is prohibited.

Employee Record Retention Policy: During employment, the Town will collect certain information that is classified as Personal Identifiable Information (PII) under applicable laws. Such information may include, but is not limited to the following:

- Employee's first and last name or initials,
- Username(s) and password(s),
- Social security number,
- Driver's license or other identification card numbers, and
- Medical documentation and biometric data.

The Town may keep these records in paper and/or electronic format. When such documentation is no longer needed, pursuant to records retention requirements and best practices, the Town will either (a) destroy the records or (b) arrange

for their destruction by shredding, erasing, or otherwise modifying the PII in such a manner as to render it unreadable or indecipherable through any means.

Professional Certifications: Many positions require specific certifications or licenses; employees in such positions must comply with any such requirement. A record of such will be maintained in each employee's personnel file. Employees must report any changes to these certifications immediately to their supervisor. Loss of required certification(s) may result in demotion or termination.

Employee Identification and Access Cards: Each Town employee is provided with an official Town identification card and building access card, issued on the first day of employment. Employees are required to wear their badge for access to Town-owned facilities and for citizen identification of employment.

If an employee's ID badge is lost or stolen, they are to immediately report this to their supervisor. Excessive lost or stolen ID badges can result in disciplinary action up to termination. Upon separation of employment, IDs must be returned to Human Resources.

Interns, temporary, and seasonal staff can receive an ID badge upon Director approval. Return of the ID badge is mandatory at the end of their assignment.

No ID badges will be provided to visitors. Visitors must be escorted by a Town employee.

Access to Personnel Records: An employee's personnel file is maintained by and is the property of the Town and its Human Resources Department. These files contain information such as the employee's job application, resume, training records, performance appraisals, written reprimands, salary increase documentation, and other employment-related records. Certain information is protected from disclosure to the public under C.R.S. 24-72-204(3)(a)(II)(A). The employee, the employee's supervisor, the Town Manager or designee, legal counsel for the Town and Human Resources have access to an employee personnel file. No personnel files, or part thereof, will be removed from Human Resources without their specific authorization.

Files kept by individual supervisors are not part of the official record of an employee for the purposes of "Personnel Files" and cannot be used against or for any employee during an investigation, for promotion, termination, etc.

Requests are often made by various organizations or individuals for information about past and present employees. All requests for information about employees are to be directed to Human Resources. It is assumed that employment verifications have been authorized by the employee in the case of application for credit or employment, thus information regarding date of hire and/or separation and salary levels, as appropriate, may be released. Human Resources will confirm prospective employers' position and dates of employment. The Town will not provide any other information about employee's employment, including a letter of reference.

Employees who wish to review their own file should contact Human Resources. With reasonable notice, employees may review their own personnel files in the Town's offices and in the presence of a member of Human Resources.

Access to personnel files for employment references will not be permitted. Records will only be released consistent with a subpoena or court order.

Upon receipt of a written waiver authorizing disclosure, the personnel file of a current or former police officer shall be disclosed to another law enforcement agency or governmental agency that is interviewing the officer in accordance with state law.

Personnel Data Changes: It is the responsibility of each employee to promptly notify the Town of any changes in personal data, such as mailing addresses, telephone numbers, number and names of dependents, individuals to be contacted in the event of an emergency, educational accomplishments, and other such status reports should always be accurate and current.

TRAVEL AND MILEAGE POLICY

Overview: This Town policy is intended to guide staff through reasonable and necessary expenses incurred during approved work-related travel.

Employees seeking travel for training should incur the lowest reasonable travel expenses and exercise care to avoid impropriety or the appearance of impropriety. Reimbursement is allowed only when reimbursement has not been, and will not be, received from other sources. If a circumstance arises that is not specifically covered in this travel policy, then the most conservative course of action should be taken.

Authorization and responsibility: All staff out-of-state travel must be pre-approved at least three (3) weeks prior to travel, in state travel at least seven (7) days before travel day. A travel request form must be submitted to the employees' Department Director. The Director will partner with Human Resources and Finance for approval. All out-of-state travel requires approval by Human Resources, the Finance Department, and the Town Manager.

An individual may not approve his or her own travel or reimbursement. If the travel reimbursement form is used it must be signed by the department director or the town manager, following purchasing policy limits.

Designated approval authorities are required to review expenditures and withhold reimbursement if there is reason to believe that the expenditures are inappropriate or extravagant.

Personal funds: Travelers should review reimbursement guidelines before spending personal funds for business travel to determine if such expenses are reimbursable. See Travel Expenses/Procedures for details. The Town reserves the right to deny reimbursement of travel-related expenses for failure to comply with policies and procedures.

Travelers who use personal funds to facilitate travel arrangements will not be reimbursed until after the trip occurs and proper documentation is submitted.

Vacation in conjunction with business travel: In cases where vacation time is added to a business trip, any cost variance in airfare, car rental or lodging must be clearly identified on the travel request form. The Town will not prepay any personal expenses with the intention of being "repaid" at a later time, nor will any personal expenses be reimbursed.

Exceptions: Occasionally it may be necessary for travelers to request exceptions to this travel policy. Requests for exceptions to the policy must be made in writing and approved by the Town Manager or by the Director of Finance. Exceptions related to the Town Manager, or the Director of Finance's expenses must be submitted to the opposite person for approval. In most instances, the expected turnaround time for review and approval is five (5) business days.

Reimbursable Travel Expenses/Procedures:

General information: Authorized out-of-state business travel for staff must be submitted at a minimum of three (3) weeks prior to travel; that includes prepayments and per diem must be pre-approved at a minimum of three (3) weeks prior to travel.

Permissible prepaid travel expenses: Before the travel, the Town may issue prepayments for airfare, rail transportation, rental vehicles, conference registration fees, and per diem cash advances. Applicable policies and methods of payments for these prepayments follow:

- **Airfare:** Travel arrangements are expected to be the lowest available airfare that reasonably meets business travel needs. Airfare will be prepaid by the Department Director with a credit card or check through the Finance Department with a check request form.
- **Driving:** The Town will prepay the cost of driving if the cost does not exceed the cost of the least expensive airfare.
- **Rental vehicles:** The Town will pay for the approved use of a rental vehicle. See Reimbursements section.
- **Conference registration fees:** Conference registration fees can be prepaid with a credit card by the Department Director or with a check through the Finance Department using a check request form. Business-related banquets or meals that are considered part of the conference can be paid for with the registration fees; however, such meals must be deducted from the traveler's per diem allowance.
- **Travel cash advances:** Cash advances are authorized only for specific situations, such as staff traveling on behalf of the Town, where undue financial hardship might otherwise occur. Situations are reviewed on a case-by-case basis. When approval is needed, partner with Human Resources and Finance Department.

Expenses associated with the travel must be reconciled and substantiated within two (2) weeks of the return date. The traveler must repay Town of Monument for any advances in excess of the approved reimbursable expenses. The department initiating the travel is responsible for notifying the Finance Department to deposit any excess funds into the appropriate departmental account.

Travel cash advances are processed by submitting a completed check request for payment form and travel request form to the Human Resources and Finance Departments. Reimbursement for any remaining expenses is processed on an employee reimbursement form, located on the Town's shared drive and approved by the designated approval authority.

Reimbursements: Requests for reimbursements of travel-related expenses are submitted on an employee reimbursement form. This form must be accompanied by supporting documentation and must include the Department Director's signature indicating approval.

These forms must be submitted to the Finance Department within two (2) weeks after the trip is completed. Employee reimbursement forms not submitted within this period require approval from the Department Director or from the Director of Finance.

Reimbursement of travel expenses is based on documentation of reasonable and actual expenses supported by the original, itemized receipts where required. Reimbursement that may be paid by the Town are shown below.

Public/Rideshare transportation: If public/rideshare transportation was not prepaid by the Finance Department, an original itemized receipt, original e-ticket receipt/statement, or Internet receipt/statement is required. The receipt must show the method of payment and indicate that payment was made.

Automobile (personally owned—domestic travel): Use of a Town vehicle is highly recommended for domestic business travel. If a personal vehicle must be used, the driver must possess a valid driver's license issued within the United States and personal automobile insurance in order to be reimbursed. Drivers should confirm the level of coverage their automobile insurance provides, if any, for business-related travel.

Reimbursement for use of a personal automobile is based on the Town and the annual standard IRS mileage rate. As of January 1, 2024, the rate is 67 cents per mile. To verify the most current rate per mile, visit [Standard mileage rates | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/standard-mileage-rates).

Parking fees, tolls, and other incidental costs associated with vehicle use require Director approval for reimbursement.

Automobile (rental—domestic travel): Reimbursement for a rental vehicle as a primary mode of transportation is authorized only if the rental vehicle is more economical than any other type of transportation, or if the destination is not otherwise accessible.

The Town authorizes rental for the most economic vehicle available. In certain circumstances, larger vehicles may be rented with supervisory approval. The rental agreement must clearly show the date and the points of departure/arrival as well as the total cost. Drivers must adhere to the rental requirements and restrictions must be followed. Original receipts are required.

When vehicle rentals are necessary, the Town encourages travelers to purchase collision damage waiver (CDW) and loss damage waiver (LDW) coverage. The Town will reimburse the cost of CDW and LDW coverage; all other insurance reimbursements will be denied.

Drivers should be aware of the extent of coverage provided by their personal automobile insurance for travel, if applicable.

Travelers are strongly encouraged to fill the gas tank before returning the vehicle to the rental agency to avoid service fees and more expensive fuel rates.

Parking fees, tolls, and other incidental costs associated with vehicle use require Director approval for reimbursement.

Conference registration fees: If the conference fee was not prepaid, the Town will reimburse these fees, including business-related banquets or meals that are part of the conference registration. Original receipts to support the payment are required. If the conference does not provide a receipt, then a cancelled check, credit card slip/statement, or documentation that the amount was paid is required for reimbursement.

Registration fees paid directly by an individual will not be reimbursed until the conference is completed.

Lodging (commercial): The cost of overnight lodging (room rate and tax only) will be authorized if travel is 45 miles or more from the traveler's home or primary worksite. Before leaving for the conference, ask the Finance Department for a copy of the tax-exempt certificate and ask at lodging checkout to have taxes removed from the final bill. Exceptions to this restriction may be approved in writing by the Town Manager or the Director of Finance.

The Town will cover lodging expenses at reasonable, single occupancy or standard business room rates. When the hotel or motel is the conference or convention site, reimbursement will be limited to the conference rate.

Only single room rates are authorized for payment unless the second party is representing the Town in an authorized capacity. If the lodging receipt shows more than a single occupancy, the single room rate must be noted. If reimbursement for more than the single room rate is requested, the name of the second person must be included.

Meals (per diem): Per diem allowances are for:

- In-state overnight travel that is 45 miles or more from the traveler's home or primary worksite.
- Out-of-state travel that is 45 miles or more from the traveler's home or primary worksite.

A traveler's total per diem amount will be prorated for meals provided as part of a conference or training course's registration fee. Certain provided meals may not be deducted from the traveler's per diem if they could not be consumed due to allergies or dietary restrictions. In these instances, the traveler must communicate with their supervisor and the Finance Department to determine final per diem payment. Entertainment activities such as golf outings and sightseeing tours will not be reimbursed.

Per diem rates are based on departure and return times over the entire 24-hour day and are prorated accordingly. The Town per diem rates are based on the U.S. General Services Administration Guidelines (link: [Per diem rates | GSA](#)) that vary by city location. In addition to meals, the GSA rates include a set of daily incidental payment to cover expenses such as laundry, dry cleaning, and service tips (housekeeping or porter tips). Incidental expenses, unless specifically cited in this policy, will not be reimbursed.

Receipts are not required for per diem allowances.

Parking: Original receipts are required for parking fees (including airport parking). The lodging bill can be used as a receipt when charges are included as part of the overnight stay.

Telephone calls: Covering the costs of their personal telephone calls.

Miscellaneous transportation: Original receipts are required for taxis, bus, subway, metro, ferry, and other modes of transportation for each occurrence.

Visa, passport fees, and immunizations: If these items are required for international travel, their reimbursement is left to your Directors discretion. If approved by the designated authority, original itemized receipts are required.

Non-Reimbursable Travel Expenses: The following items that may be associated with business travel will not be reimbursed by the Town:

- Airline club memberships.
- Airline upgrades (first class, business, premium economy, etc.).
- Childcare, babysitting, house-sitting, or pet-sitting/kennel charges.
- Commuting between home and the primary work location.
- Costs incurred by traveler's failure to cancel travel or hotel reservations in a timely fashion.
- Evening or formal wear expenses.
- Haircuts and personal grooming.

- Laundry and dry cleaning.
- Passports, vaccinations, and visas when not required as a specific and necessary condition of the travel assignment.
- Personal entertainment expenses, including in-flight movies, headsets, health club facilities, hotel pay-per-view movies, in-theater movies, social activities, and related incidental costs.
- Travel accident insurance premiums or purchase of additional travel insurance.
- Other expenses not directly related to the business travel.
- Penalties associated with parking, or any other automotive violations incurred by the traveler.

Travel for Non-Employees: Additional costs for travel, lodging, meals, or other travel expenses for spouses or other family members will not be reimbursed.

WEATHER OR EMERGENCY CLOSURES

The decision to close the Town facilities will be made by the Town Manager or designee. The Town will make every attempt to retain regular working hours during periods of severe weather. At times, however, in the interest of the employees and public safety, the Town Manager may determine that Town operations be subject to an early closing, late start, or all-day closure.

Regularly scheduled operations shall continue as normal to the extent that employees are able to travel safely to Town facilities. All employees are urged to use caution and personal judgment in their travels to and from Town facilities.

If it is determined that facilities are closed or on a delayed start, the Town's designated internal communicator will be notified by the Town Manager or designee as soon as practical, and information will be disbursed to employees.

The decision to close Town Hall will be decided between the Town Manager or designee and Department Directors no later than 6:00 a.m. on the day of the event. A notification through your supervisor, a Town alert, or social media posting as soon as possible. Notifications will be made to the phone number on file via phone call or text messaging.

In the absence of a specific announcement to the contrary, it should be understood that normal business functions will continue as scheduled.

Essential employees required to report to work under various weather conditions, as they provide services that are essential for the health, safety, and welfare of members of the community. Essential employees who report to work will receive normal salaries unless the hours worked place them in the "overtime" category. Essential personnel may include but are not limited to Sworn Police Officers, Public Works personnel, and key management staff. All non-essential employees who report to work when an official closing is ordered will be sent home.

All sworn officers, in any position, are considered essential personnel. Police Service Aides (PSAs) and professional staff are not considered essential personnel when considering emergency closures. On inclement weather days, any officer scheduled to work that day should report as scheduled. Officers assigned to any special assignments or roles such as training, detectives, CRO, etc. who do not typically work patrol assignments are to report to work as usual but are required to also check with the on-duty supervisor on whether they are needed for patrol duties that day. The patrol lieutenant or patrol commander typically comes in for emergency closure days and will coordinate emergency response and planning efforts with command staff who will report as needed for assignments or collaboration at local or regional Emergency Operation Centers (EOCs).

There will be no alternate day off for essential workers who work during weather closures. Essential workers' jobs are classified and compensated as an essential employee who was hired to work in adverse weather conditions.

Police Department employees should also reference *Monument Police Policy 207: Emergency Management Plan and Town Closures* for further information.

When operations are officially closed due to emergency conditions, the time off will be paid; if employees are scheduled to be off on leave, leave time will be used.

In cases where an emergency closing is not authorized, employees who fail to report for work will not be paid for the time off. Employees must update their supervisor as soon as possible if they are unable to report to work. In this case, the employee may request available paid leave time such as unused vacation, sick, or personal day.



RECEIPT OF EMPLOYEE HANDBOOK

THIS HANDBOOK IS DESIGNED TO ACQUAINT YOU WITH THE TOWN OF MONUMENT ("TOWN") AND GIVE YOU AN OVERVIEW OF THE POLICIES, PROCEDURES, AND BENEFITS THAT RELATE TO YOUR EMPLOYMENT.

THIS HANDBOOK REPRESENTS A BRIEF SUMMARY OF SOME IMPORTANT ORGANIZATIONAL INFORMATION; HOWEVER, IT IS NOT ALL-INCLUSIVE.

THIS EDITION SUPERSEDES AND REPLACES ALL PREVIOUSLY ISSUED EDITIONS.

THE POLICIES AND PROCEDURES CONTAINED IN THIS HANDBOOK AND ANY VERBAL STATEMENTS MADE BY SUPERVISORY PERSONNEL DO NOT CONSTITUTE A CONTRACT, EITHER EXPRESSED OR IMPLIED, AND SHOULD NOT BE RELIED UPON AS BINDING PROMISES MADE BY THE TOWN. THE CONTENT OF THIS MANUAL IS A SUMMARY OF GUIDELINES FOR EMPLOYEES.

EMPLOYMENT AT THE TOWN IS AT WILL. ANY EMPLOYEE MAY BE TERMINATED WITH OR WITHOUT NOTICE AND WITHOUT AN EXPLANATION, JUST AS ANY EMPLOYEE MAY RESIGN AT ANY TIME, FOR ANY REASON. NOTHING IN THIS HANDBOOK IS INTENDED TO MODIFY THE TOWN'S AT-WILL EMPLOYMENT POLICY.

NO REPRESENTATIVE OF THE TOWN, OTHER THAN THE TOWN MANAGER OR THE TOWN COUNCIL, HAS THE AUTHORITY TO ENTER INTO AN AGREEMENT OF EMPLOYMENT FOR ANY SPECIFIED PERIOD AND SUCH AGREEMENT MUST BE IN WRITING AND SIGNED BY THE TOWN MANAGER AND THE EMPLOYEE.

THE TOWN RESERVES THE RIGHT TO MODIFY, REVOKE, RESCIND, SUSPEND, TERMINATE, INTERPRET, OR CHANGE ANY OR ALL OF THE POLICIES MENTIONED, IN WHOLE OR IN PART, AT ANY TIME, WITH OR WITHOUT NOTICE.

I hereby acknowledge receipt of the Employee Handbook of the Town of Monument. I understand and agree that it is my responsibility to read and comply with the policies of this handbook.

Print Name

Date

Signature of Employee



EMPLOYEE ACKNOWLEDGMENT OF EMPLOYMENT AT-WILL POLICY

Employment at the Town of Monument ("Town") is on an **At-Will** basis unless otherwise stated in a written individual employment agreement.

This means that either the employee or the Town may terminate the employment relationship at any time, for any reason, with or without notice.

Nothing in this employee handbook creates or is intended to create an employment agreement, express or implied. Nothing contained in this, or any other document provided to the employee is intended to be, nor should it be, construed as a contract that employment or any benefit will be continued for any period of time. In addition, no Town representative is authorized to modify this policy for any employee or to enter into any agreement, oral or written, that changes the **At-Will** relationship.

Nothing in this handbook is intended to prohibit or restrict employees from discussing terms and conditions of employment.

I hereby acknowledge receipt of the **At-Will** policy. I understand and agree that it is my responsibility to understand the criteria of this policy. If I have questions, I also understand that I should reach out to my Department Director or Human Resources for further discussion.

Print Name

Date

Signature of Employee

MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Thomas A. Tharnish, Director of Public Works
DATE: December 16, 2024
RE: Resolution 61-2024 to approve an agreement with Elite Surface Infrastructure for ARPA funded Stormwater Infrastructure Projects in 2025.

BACKGROUND: The Town of Monument Public Works Department staff has been evaluating the Stormwater Master Plan and determined that there are several Stormwater Infrastructure Improvement Projects that need to be done as they have been in the master plan for several years and the opportunity to complete these projects in the next year with available funding through the ARPA grant funding program is a rare occurrence.

DISCUSSION: The Town of Monument Public Works Department has sent out an RFP for bids and after evaluation of the bids received, Elite Surface Infrastructure was the lowest responsive bidder and is recommended to be selected for this project. The Town has evaluated the background and references from Elite Surface Infrastructure, and they are well experienced with these types of stormwater projects. The bids were received for the 3 stormwater projects and came much lower than the estimate.

PROS/CON'S: Pro's - By moving forward with this resolution to approve the agreement with Elite Surface Infrastructure, to construct and improve 3 stormwater projects all funded with ARPA grant funding will help improve our entire stormwater collection system. Cons – By not approving this agreement, staff will need to re-evaluate how we would fund these much-needed stormwater infrastructure projects in the future.

FISCAL IMPACT: The cost for this agreement is **\$540,174.00** for the these stormwater projects. The projects will be funded through the ARPA grant the Town received and will be completed in 2025.

STAFF RECOMMENDATION: **Recommend passage of Resolution 61-2024, approving the agreement with Elite Surface Infrastructure to construct and improve the identified stormwater projects from above.**

TOWN OF MONUMENT

RESOLUTION NO. 61 - 2024

**A RESOLUTION APPROVING AN AGREEMENT WITH ELITE SURFACE
INFRASTRUCTURE FOR THE ARPA STORMWATER INFRASTRUCTURE
IMPROVEMENT PROJECT**

WHEREAS, the Town staff has evaluated the need to improve several locations throughout Monument with stormwater infrastructure improvements, and;

WHEREAS, the Town's staff has identified 3 stormwater projects and the bids came at a much lower price than anticipated, and;

WHEREAS, the Town staff sent out an RFP for this project and has evaluated the submittals and has referred the approval of Elite Surface Infrastructure as the lowest responsive bidder for this project, and;

WHEREAS, If the Town Council approves this agreement with Elite Surface Infrastructure., the project can move forward in 2025 to utilize the ARPA funding that the Town has received as a grant fund source.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF MONUMENT, COLORADO THAT:**

The Town Council hereby approves the agreement with Elite Surface Infrastructure to improve stormwater infrastructure at 3 locations and will utilize ARPA funding. The bid amount totaled **\$540,174.00** for the 3 projects

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 16th day of December 2024 by a vote of ____ for and ____ against.

TOWN OF MONUMENT

Mitch Lakind, Mayor

ATTEST:

Tina Erickson, Town Clerk

AGREEMENT BETWEEN

Town of Monument and Elite Surface Infrastructure¹

THIS AGREEMENT (“Agreement”) is made as of this 16th day of December, 2024 between the **Town of Monument**, a Colorado home rule municipality (“Owner”), with a mailing address of 645 Beacon Lite Road, Monument, CO 80132, and Elite Surface Infrastructure, a LLC with a mailing address of 115 Inverness Dr East, Suite 100, Englewood Colorado 80112 (“Contractor”). The Owner and Contractor are sometimes referred to individually herein as a “Party” and collectively as the “Parties.”

In consideration of the mutual covenants, agreements, conditions, and undertakings hereinafter set forth, Owner and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform all work in accordance with the Contract Documents as identified in Section 18 (Contract Documents) for Town of Monument 2024 including furnishing all construction plans and methods, construction management, labor, equipment and materials (generally referred to as the “Project”), and shall complete the Project, including any additional work authorized pursuant to Section 17, in accordance with the terms of this Agreement and the Contract Documents.

Section 2. Contract Price. Owner shall pay Contractor for the performance of work and completion of the Project the total price of Five Hundred Forty Thousand One Hundred Seventy-Four Dollars (**\$540,174.00**) (the “Contract Price”), subject to certain adjustments as herein provided, in accordance with the bid proposal submitted by Contractor. The Contract Price may be adjusted (i) for changes in the Contract Documents or for extensions of time to complete performance, if approved by Owner and Contractor as specified in Section 17 (Appropriations; Change Orders); (ii) for any additional work authorized pursuant to Section 17 (Appropriations; Change Orders); and (iii) for certain changes in quantities, if bid on a unit-price basis in the bid proposal. All unit quantities requiring an adjustment of the Contract Price shall be verified by the Project Manager, as defined in Section 16 (Project Manager).

Section 3. Progress Payments. The owner will make progress payments monthly on account of the Contract Price in accordance with partial payment applications prepared by Contractor for work performed during the last monthly period and which have been approved by Project Manager and Owner. Contractor shall submit partial payment applications for the last completed work period to Project Manager by the first (1st) day of each month. The owner shall authorize progress payments for the amount approved by Project Manager and Owner under such partial payment applications on or before the

¹ **NOTE TO USER:** Insert name of Contractor.

fifteenth (15th) day of each month. Progress payments shall not constitute final acceptance of the Project. Owner may withhold progress payments if: (i) Contractor's performance is inadequate or defective and not remedied in accordance with Project Manager's directions; (ii) Contractor does not make prompt and proper disbursements to subcontractors on receipt of progress payments from Owner; (iii) Contractor does not promptly pay for materials, labor or equipment furnished on the Project; (iv) claims or liens are filed on the Project; (v) in Project Manager's opinion, Contractor's performance is not progressing satisfactorily or completion of the Project is jeopardized or delayed; or (vi) Owner has not been supplied with certificates of insurance as required by Section 12.g (Insurance).

Section 4. Retainage. An amount equal to five percent (5%) of each progress payment made on the Contract Price shall be retained by Owner. Such retainage of the Contract Price shall be held by Owner until the Project is completed and finally accepted by Owner in accordance with the provisions hereof. Owner shall pay the full amount of such retainage to Contractor within sixty (60) days of final completion and acceptance of the Project, except to the extent of any claims filed pursuant to Section 38-26-107, C.R.S. Any release of retainage to Contractor or a subcontractor prior to final payment shall, in addition to any other requirements of the Contract Documents, require written approval from the surety furnishing bonds pursuant to Section 13 (Performance, Payment and Warranty Bonds).

Section 5. Final Payment.²

a. Upon completion of the Project and Contractor's submittal of notice thereof to Project Manager and Owner, Project Manager shall inspect the Project and reject any portion of performance not in conformity with the Contract Documents. Defective materials, equipment or work shall be remedied immediately by Contractor before final payment. Owner shall make final payment to Contractor within thirty (30) days after (i) final acceptance of performance by Owner as specified in Section 6 (Final Acceptance) and (ii) receipt of Project Manager's confirmation to Owner that the Project has been completed satisfactorily. Final payment shall not, however, be due until Contractor has delivered to Owner a complete release of all claims or liens against the Project and has produced satisfactory receipts, waivers or lien releases indicating final and total payment to all subcontractors and persons who have furnished materials, labor and equipment on which a lien or claim might potentially be filed in a form acceptable to Owner. **Owner shall, no later than ten (10) days before final payment is made, publish a notice of final payment at least twice in a legal newspaper of general circulation in any county where the work was contracted for or performed pursuant to Section 38-26-107, C.R.S.**

b. By making final payment, Owner waives all claims against Contractor, except those expressly declared to Contractor in writing prior to final payment

² **NOTE TO USER:** Required for contracts of \$50,000 or more. Strongly recommended for ALL contracts.

or those arising out of: (i) defective performance appearing after final acceptance; (ii) performance that fails to comply with the Contract Documents, unless expressly waived by Owner in writing; (iii) outstanding claims of any nature, including but not limited to claims for property damage or personal injury arising during the construction period or liens or claims against the Project; or (iv) Contractor's failure to execute any warranty, guarantee or bond or to provide insurance or other defense and indemnification required by the Contract Documents. By accepting final payment, Contractor waives all claims against Owner, except those expressly declared to Owner in writing and received by Owner prior to final payment. Notwithstanding the foregoing, Contractor shall work with Owner in good faith to resolve any claims it may have prior to final payment being made.

Section 6. Final Acceptance.

a. Final acceptance of the Project shall follow inspection and approval of Contractor's performance by Project Manager, along with inspection by appropriate manufacturers' representatives and governmental officials pursuant to local, State, and federal requirements, as necessary. Owner shall have the right to determine the acceptability of Contractor's performance and conformance with the Contract Documents, which determination shall be conclusive and binding upon Contractor. Final acceptance by Owner is subject to Section 5 provisions (Final Payment) and does not affect or release any warranty or guarantee with Contractor or manufacturers or suppliers of Project equipment or materials.

b. When presented for final acceptance, the Project shall be delivered to Owner in complete compliance with the Contract Documents free from any lien, claim or encumbrance, whether in existence or subsequently established by law, statute, ordinance or otherwise. Notwithstanding the foregoing, nothing in the Contract Documents shall give Contractor or any subcontractor, laborer, supplier, manufacturer or other person or entity, either expressly or by implication, any right to assert a lien, claim or encumbrance against the Project.

Section 7. Commencement and Completion of Performance; Liquidated Damages.

a. Contractor shall commence performance within ten (10) days after receipt of written notice to proceed, which is expected to be given on or before December 17, 2024, and shall diligently perform all work through completion. Unless an extension of time is granted by Owner as hereinafter set forth, Contractor shall substantially complete the Project within a maximum period of 365 days (about 12 months) after the date of written notice to proceed and shall finally complete the Project within a maximum period of 365 days (about 12 months) after the date of Substantial Completion. For purposes of this Agreement, (i) "Substantial Completion" shall be the time at which the Project (or a specified part thereof) has progressed to the point where, in the opinion of Project Manager, the Project (or a specified part thereof) is sufficiently complete in accordance with the

Contract Documents, so that the Project (or a specified part thereof) can be utilized by Owner for the purposes for which it is intended; and (ii) "Final Completion" shall be the time at which Owner accepts the Project upon confirmation from Project Manager and Contractor that the Project is totally complete in accordance with Contract Documents.

b. If Contractor fails to perform the Project within the above-referenced performance deadlines or any extension thereof (the "Performance Deadlines"), Contractor shall pay to Owner as liquidated damages (and not as a penalty) for ordinary and general damages and inconvenience (exclusive of any **special** damages such as, by way of example and not limitation, any liabilities to third parties) the sum of:

Late Final Completion \$100.00 per day

These liquidated damages are based on Owner's evaluation of its losses if the Performance Deadlines are not met. The liquidated damages herein established are agreed to by Contractor after full discussion of the implication of this Section 7. The failure to perform the work and complete the Project by the Performance Deadlines will cause considerable damage to the Owner. Owner and Contractor agree that such actual damages caused by Contractor's failure to meet the Performance Deadlines would reasonably likely include, without limitation, the costs for additional construction management and other Owner representative/employee time; the costs for third-party consultants' time; inefficiency and inconvenience damages to Owner's operations; damages to Owner's reputation with third-parties (including governmental entities with regulatory jurisdiction over Owner), as well as other potential actual damages to Owner reasonably associated with the subject matter of this Agreement. Contractor acknowledges that the liquidated damages established herein are a reasonable pre-estimate of the detriment Owner will suffer in the event Contractor fails to perform the work and complete the Project by the Performance Deadlines and, after a full discussion of the implications of this section, further acknowledges that the above estimates are reasonable of presumed actual damages given it would be impractical and difficult to precisely ascertain the actual damages that Owner might suffer by reason of Contractor's failure to perform the work and complete the Project by the Performance Deadlines. The liquidated damages established herein are intended to be and are cumulative and shall be in addition to any other remedy enforceable at law under this Agreement. Liquidated damages do not include any sums of money to reimburse Owner for extra costs which Owner may become obligated to pay on other contracts that are delayed or extended because of Contractor's failure to perform the work and complete the Project by the Performance Deadlines. Should Owner incur such other additional costs because of delays or extensions to other contracts resulting from Contractor's unexcused failure or delay in performance, Owner will assess any such extra costs against Contractor in addition to the liquidated damages provided for herein.

c. No extension of time to complete performance shall be granted under normal circumstances. Extensions of time to complete performance may be authorized by Owner in its sole discretion for any actual period of delay on an occurrence basis for:

(i) adverse weather or climatic conditions not reasonably anticipated; (ii) major labor disputes; (iii) acts of God; (iv) detrimental acts of Owner; (v) acts of another contractor in the performance of related work under a separate contract with Owner; (vi) delays resulting from the intervention of governmental agencies in the performance of work on the Project, if not caused by Contractor or its subcontractors; or (vii) other extraordinary circumstances beyond Contractor's reasonable control. Foreseeable weather delays and delays or failures in delivery of equipment or materials shall not constitute cause for an extension of time to complete performance or for an adjustment to the Contract Price. Any request for an extension of time to complete performance shall be submitted in writing to Project Manager for Owner's approval within ten (10) days after such occurrence and shall be accompanied and supported by a schedule analysis based on the critical path method, which shows how and where the delay occurred on the then-critical path and its effect on any milestone date or the date of Substantial Completion. The decision of the Owner shall be conclusive and binding upon the Contractor.

Section 8. Default. Owner may give written notice of grounds for default to Contractor at any time if: (i) Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the Contract Documents or terms of this Agreement, as determined by Project Manager or Owner; (ii) Project Manager advises Owner that performance of work on the Project is being delayed unnecessarily or that Contractor is executing its responsibilities in bad faith or contrary to the intent of this Agreement; (iii) performance is not fully completed within the period of time specified for completion under Section 7 (Commencement and Completion of Performance; Liquidated Damages); (iv) work to be performed by Contractor is assigned without Owner's consent; (v) the Contractor fails to procure the insurance required hereunder or provide the Owner with Certificates of Insurance, as defined in Section 12.g. (Insurance), within the timeframe provided herein; (vi) Contractor is insolvent or files for bankruptcy; (vii) Contractor makes a general assignment of assets for the benefit of creditors; (viii) a receiver is appointed for Contractor; or (ix) other serious and reasonable cause exists which jeopardizes completion of the Project. If Contractor does not remedy or otherwise correct the grounds for default within such period of time as specified by Owner, Owner may terminate this Agreement and direct Contractor to discontinue any further work on the Project, and Contractor shall immediately stop all work on the Project and forfeit all rights under this Agreement. The owner, in its discretion, may complete the Project, or may request the surety of Contractor to complete the Project, or may contract with others to complete the Project at the expense of Contractor and its surety. Any increase in costs over the Contract Price and any actual and/or special damages incurred by Owner as a consequence of such default, including reasonable attorneys' fees, shall be paid, and satisfied in full by Contractor and its surety.

Section 9. Termination. At any time, Owner may, without cause and without prejudice to any other right or remedy hereunder, elect to terminate this Agreement. In such an event, the Owner shall give written notice of Project termination to Contractor at least five (5) days in advance of the Project termination date. Such notice may include

specific instructions as to work to be completed and other winding-up matters. In the absence of any contrary instructions, Contractor shall place no further orders or enter subcontracts related to the Project, shall terminate all orders and subcontracts to the extent they relate to terminated work, and shall stop work on the date and in accordance with directions specified in the notice. The contractor shall cooperate with Owner to transfer all of Contractor's rights and interests in any orders, subcontracts or work as directed by Owner. Owner shall pay Contractor for the performance of all work through the Project termination date and for such additional amounts as, in the opinion of Project Manager, are reasonable to compensate Contractor for the termination of this Agreement. Final payment to the Contractor shall be made in accordance with Section 5 (Final Payment).

Section 10. Taxes, Licenses, Permits, and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law, except for sales and use taxes from which Owner or the Project are exempt and shall obtain all licenses and permits necessary for completion of the Project, including payment of all fees, unless otherwise specified by the Contract Documents or approved in writing by the Project Manager. Contractor shall comply with all laws, ordinances, codes, rules, and regulations of all governmental authorities, whether local, State or federal, relating to the performance of work on the Project and particularly for compliance with those laws concerning the environment, stormwater management permits, workmen's compensation, safety and health, labor, immigration and equal employment opportunity. Owner shall, upon request, furnish Contractor with a copy of its certificate of sales and use tax exemption. It shall be incumbent upon the contractor to fulfill all requirements to achieve tax exemption once provided the Town's Tax-Exempt Certificate. Owner shall not reimburse Contractor for any sales or use taxes paid to the State or any county or municipality from which Owner or the Project are exempt.

Section 11. Indemnification; No Waiver of Liability or Immunity. Contractor agrees to indemnify, defend, and hold harmless the Owner and its officers, directors, employees, agents, engineers/architects and attorneys from all costs, claims, damages, judgments, losses, liability and expenses of every nature, including reasonable attorneys' fees, arising at any time from any act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. Contractor shall upon request of the Owner promptly assume the defense, with defense counsel of Owner's choice and at Contractor's sole expense, of any claim, action, proceeding or suit that is brought against the Owner arising from any act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. If other persons and/or entities, excluding the Owner and its officers, directors, employees, agents, engineers, architects, and attorneys, at fault exist, Contractor agrees to work in good faith with such persons and/or entities in determining how the Owner's defense costs shall be covered, but under no circumstances shall the Owner be responsible for those costs. Contractor further agrees that, to the extent applicable, indemnification shall only be to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or its agents,

representatives, subcontractors, or suppliers. The extent of the Contractor's obligation to indemnify the Owner and its officers, directors, employees, agents, engineers/architects, and attorneys may be determined only after the Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement of the Parties. Contractor's obligations under this Section shall be fully permitted by law and shall survive termination or expiration of this Agreement. **Notwithstanding any other provision contained in this Agreement, the Owner does not agree to defend, indemnify, or hold harmless the Contractor or waive or limit its rights and/or claims in any respect regarding the Contractor's liability (either by type of liability or amount).** Owner is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, defenses and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to the Owner or its officers or employees. Nothing in this Section shall be construed to require any indemnification that would make this provision void or unenforceable or to eliminate or reduce the indemnification or rights which the Owner has by law.

Section 12. Insurance.

- a.** During the term of this Agreement, the Contractor shall purchase and maintain, at its own cost and expense, the following:
 - 1.** Workers' compensation insurance for its employees, if any, as required by Colorado law with limits of at least \$500,000 per injury or illness an employee suffers because of providing the services hereunder, with a \$500,000 aggregate per occurrence.
 - 2.** Employer's liability insurance with limits of at least \$500,000 per employee/accident and \$1,000,000 aggregate.
 - 3.** Commercial general liability insurance covering, without limitation, premises operations, products-completed operations, contractual liability insuring the obligations assumed by the Contractor under this Agreement, personal and advertising injury, and broad form property damage, with limits of at least \$2,000,000 per occurrence for bodily injury, death or damage to property; \$2,000,000 per occurrence for personal and advertising injury; \$2,000,000 products-completed operations aggregate; and \$2,000,000 general aggregate;
 - 4.** Automobile liability insurance covering all owned, hired, and non-owned vehicles used in the performance of the work under

this Agreement with a limit of at least \$2,000,000 combined per accident for bodily injury and property damage.

5. Unless otherwise waived by the Owner in writing, builder's risk insurance for protection against damage, explosion, fire, vandalism, theft and other dangers ordinarily included under such coverage, including loss of use resulting therefrom, to the full insurable value of all property, structures, equipment and material of the Owner within the Contractor's control, designating Owner as "loss payee" thereunder; and
6. Pollution/environmental liability insurance with limits of at least \$2,000,000 per claim and in the aggregate covering liability for bodily injury, property damage, environmental damage, clean-up costs and defense costs from operations performed. Such claims-made insurance shall provide a retroactive date of one month prior to the date of the Agreement and either (i) continuous insurance coverage for a period of three (3) years after termination of the Agreement, or (ii) an extended reporting period of not less than three (3) years after termination of the Agreement.

b. The insurance required herein may be satisfied through any combination of primary and excess/umbrella liability policies.

c. The insurance required herein shall be written by an insurance company or companies that (i) have an A.M. Best Company rating of "A-VII" or better, and (ii) are authorized to issue insurance in the State of Colorado.

d. The Owner, its directors, officers, employees, Project Manager, and Town Assistant Engineer shall be endorsed as "Additional Insureds" under the (i) commercial general liability insurance policy for both ongoing and completed performance and/or operations for a period of one (1) year and (ii) automobile liability policy.

e. The Contractor shall provide a waiver of subrogation endorsement, or its equivalent, under the (i) workers' compensation; (ii) commercial general liability; and (iii) automobile liability insurance policies in favor of the Owner, its directors, officers, agents, and employees.

f. All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the Owner and its directors, officers, agents, and employees. Any insurance maintained by the Owner

and its directors, officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

g. Prior to commencement of work under this Agreement, Contractor shall provide certificates of insurance satisfactory to the Owner that clearly evidence all insurance coverages required herein, including but not limited to endorsements (individually and collectively, "Certificates of Insurance"). Contractor agrees that, until the Owner is supplied with Certificates of Insurance, no payment under this Agreement will be made by the Owner. Contractor will provide the Owner with updated Certificates of Insurance within ten (10) calendar days of the anniversary of the effective date of coverage should that date fall during the term of this Agreement. Failure of the Owner to require Certificates of Insurance or to identify a deficiency in coverage shall not relieve the Contractor from its responsibility to provide the specific insurance coverages set forth herein.

h. Contractors shall require as part of its contract(s) with subcontractors that each subcontractor purchase and maintain insurance of the types and with policy limits no less than those required of Contractor under this Section 12. All general liability policies carried out by a subcontractor shall be endorsed to include the Additional Insureds identified above. Each subcontractor must provide the Contractor with certificates of insurance evidencing such coverage prior to work by a subcontractor. Such certificates of insurance shall be provided to Owner upon request.

i. The insurance policies afforded hereunder shall not be cancelled or allowed to expire unless at least thirty (30) days' prior written notice has been delivered to the Owner, except in the event of cancellation due to non-payment of a premium, in which case notice shall be given to the Owner no later than ten (10) days prior to cancellation of the policy. Upon receipt of any notice of cancellation or non-renewal, the Contractor shall, within five (5) days, procure other policies of insurance as necessary to comply with Section 12 and provide Certificates of Insurance evidencing the same to the Owner.

Section 13. Performance and Payment, and Bond. -If the Contract Price is greater than Fifty Thousand Dollars (\$50,000.00), prior to commencement of performance, Contractor shall provide to Owner a general performance and payment bond executed by the Contractor and an acceptable corporate surety, or collateral approved by the Owner, in the full amount of the Contract Price, including provisions for any adjustment of the Contract Price in accordance with the terms of this Agreement. Such bond shall expressly guarantee: (i) faithful performance of this Agreement and completion of the Project in complete compliance with the Contract Documents; (ii) repair and replacement, if required, or payment of the costs of all defective equipment, materials and work performed on the Project or as provided under any warranty, guarantee or other Contract Document for the full warranty and guarantee period; and (iii) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project. The

contractor shall obtain such bond on Owner's behalf separately and apart from any similar bond or surety or warranty agreement entered independently between Owner and any manufacturer or supplier. Owner may, in its discretion, require that the bond guaranteeing payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project be separate from the bond guaranteeing performance and warranting the work. Notwithstanding anything contained within the bonds to the contrary, such bonds are required, in part, by and shall comply with the minimum requirements of Section 38-26-106, C.R.S.

Section 14. Warranties and Guarantees. The contractor hereby represents, warrants, and guarantees to the Owner all workmanship, equipment, and materials on or made a part of the Project and its structures for one (1) year following Final Completion of the Project. Such warranty and guarantee shall be construed to include, but is not limited to, representations that all workmanship, equipment, and materials are of excellent quality, free from any defects or irregularities, and in strict conformity with the Contract Documents. If any defect in workmanship, equipment or materials arises, Contractor shall remedy or otherwise correct such defect without cost to Owner within such reasonable period as specified by Owner in writing. If Contractor fails to repair such defect within such period as is specified by Owner, Owner may repair such defect or contract for such repairs at the expense of Contractor and its surety. The performance bond specified in Section 13 shall remain in full force and effect during the period of this warranty and guarantee, including any period necessary to remedy or otherwise correct any defects. The contractor shall provide such warranty and guarantee on Owner's behalf separately and apart from other warranties, guarantees and surety agreements entered independently between Owner and any manufacturer or supplier.

Section 15. Subcontractors, Suppliers and Others. Contractor shall, prior to commencement of performance, submit a list of all major subcontractors, suppliers, and other individuals or entities to be engaged to work on the Project for Owner's reasonable acceptance (either in writing or by failing to make written objection thereto within ten (10) days after such submission). The contractor shall not substitute any subcontractor, supplier, or other individual or entity previously accepted by Owner without Owner's prior written consent, which shall not be unreasonably withheld. The owner's acceptance of such subcontractor, supplier, or other individual or entity so identified may be withheld or revoked based on reasonable objection after due investigation. In such event, Contractor shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity, and the Contract Price may be adjusted by any reasonable difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Project Manager to reject defective work. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement and the Contract Documents. The contractor shall be responsible and held liable for any

bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors, suppliers, or other individuals or entities. Upon receipt of progress and final payments from Owner, Contractor shall disburse the same to subcontractors, suppliers, and other individuals and entities in accordance with the contractual terms between Contractor and such subcontractors, suppliers, and other individuals and entities, without any requirement of Owner to supervise the same. No contractual relationship shall exist between Owner and any subcontractor, supplier, or other individual or entity because of the subcontracting of any part of the Project.

Section 16. Project Manager. Official authority for the administration of all performance under this Agreement is hereby delegated to Owner's engineer or project manager ("Project Manager"), unless otherwise provided in the Contract Documents. Throughout the construction period, the Project Manager, or such other duly authorized representative of the Owner, may inspect the Project and shall consult with the Contractor regarding any inquiries, directions, or interpretations of the Contract Documents.

Section 17. Appropriations; Change Orders. This Agreement is subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

a. Owner represents that it has appropriated money equal to or in excess of the Contract Price for the work.

b. Owner shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable work to be performed that will cause the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Contract Price and any subsequent appropriations, unless:

1. Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made and are available prior to performance of the additional work; or

2. Such additional work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from Owner explaining the expected sources of funding for the additional work. In the event the Owner does not provide such written assurance satisfactory to Contractor within five (5) days of Contractor's request, Contractor may stop work until such time as Owner provides satisfactory assurances. Contractor's acceptance of a Change Order in accordance with any assurances provided under this paragraph shall not limit or restrict Contractor from making a claim under the Contract Documents for an adjustment in the Contract Price or the Performance Deadlines or otherwise for expenses or damages directly attributable to Contractor's stoppage of the work as permitted hereunder.

c. For any Change Order or other directive (other than a clarification) that requires additional compensable work to be performed, Owner shall reimburse

Contractor for Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before Contractor has submitted an estimate of cost to Owner for the additional compensable work to be performed.

Section 18. Contract Documents. The Contract Documents comprise the entire agreement and contract between Owner and Contractor and consist of (i) this Agreement and any exhibit or addendum hereto; (ii) any documents furnished to Contractor by or at the request of Owner in connection with the Project, including but not limited to notice to bidders, instructions to bidders, bid bond form, bid proposal, performance, payment and maintenance bonds, notice of award, notice to proceed, specifications, plans, drawings and special conditions, and any addendum to such documents; and (iii) any modifications, change orders or other such revisions approved by the Parties in writing or duly authorized after the execution of this Agreement.

Section 19. Report of Differing Conditions. If Contractor believes that any technical data on which Contractor is entitled to rely is inaccurate, or any physical condition differs materially from that indicated, reflected or referred to in the Contract Documents, Contractor shall promptly, after becoming aware of such condition and before performing any further work in connection with the Project, notify Project Manager and Owner in writing about such inadequacy or difference.

Section 20. Amendment. This Agreement may be amended by agreement between the Parties. No amendment, modification or alteration of this Agreement shall be binding upon the Parties unless the same is in writing and approved by the duly authorized representatives of each Party. No document executed after this Agreement shall be interpreted to amend, modify, or alter the terms of this Agreement, unless express reference to amending the terms of this Agreement is made in such document.

Section 21. Colorado Labor. If the Project is financed in whole or in part by funds of the State or any county, school district or municipality of the State, Colorado labor shall be employed to perform at least eighty percent (80%) of the work, unless such requirement is waived by the Owner in accordance with Section 8-17-101 (1), C.R.S. "Colorado labor" means any person who is a resident of the State at the time of the Project. A "resident of the State" is a person who can provide a valid Colorado driver's license, a valid State-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days.

Section 22. Participation in Certified Apprentice Training Program. If the Owner used a prequalification process pursuant to Section 32-1-1805, C.R.S. to select and award the Work, by execution of this Agreement, Contractor represents, warrants, and agrees that the Contractor shall comply with the provisions of Section 32-1-1805(3), C.R.S., relating to access to apprentice training programs certified by the U.S. Department of Labor or a comparable alternative. If the Contract Price is \$250,000 or more, the

Contractor represents, warrants, and agrees that all subcontractors, at any tier, shall have similar access to either a certified program or comparable alternative.

Section 23. Severability. If any term or condition of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term or condition shall not affect any of the remaining provisions of this Agreement.

Section 24. Waiver. No waiver by either Party of any right, term or condition of this Agreement 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 this Agreement.

Section 25. Remedies. None of the remedies provided to either Party under this Agreement 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 shall be enforceable by any appropriate action, petition or proceeding at law or in equity, including specific performance. If the Owner does not pursue a particular remedy contemporaneously with a default and/or any other issue that may arise, the Owner does not waive the right to pursue the remedy at a later date.

Section 26. Counterparts; Electronic Signatures; Electronic Records. 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. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101 *et seq.*, C.R.S.

Section 27. Entirety. This Agreement and all other Contract Documents constitute 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 this Agreement and the other Contract Documents.

Section 28. Conflicting Provisions; Grant Requirements Control; Interpretation. 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. If the Project is financed in whole or in part by a federal or State grant, any provision of the Contract Documents that conflicts with the terms of such grant shall be inapplicable.

Section 29. Assignment. Contractor shall not assign any interest in this Agreement to any person or entity without the prior written consent of Owner. The terms of this Agreement shall inure to and be binding upon any successors and assigns of the Parties.

Section 30. Time. Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in this Agreement are of the essence.

Section 31. Notice. Any notice required hereunder shall be in writing delivered to the applicable Party at the address set forth at the beginning of this Agreement or as changed pursuant to the provisions of this Section.

Section 32. Section Headings. The section headings in this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of any part of this Agreement.

Section 33. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to extend any benefits to any person, nor a Party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any rights, legal or equitable, to enforce or rely on any provision of this Agreement.

Section 34. Duly Authorized Signatories. By execution of this Agreement, the undersigned each individually represents that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

Section 35. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution, and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for El Paso County.

Section 36. Not Construed Against Drafter. Each Party acknowledges that it has had an adequate opportunity to review each, and every provision contained in this Agreement, including the opportunity to consult with legal counsel. Based on the foregoing, no provision of this Agreement shall be construed against either Party by reason of such Party being deemed to have drafted such provision.

Attachments: Original RFP, Elist Surface Infrastructure Bid and Scope of Work Document

[Signature Pages Follow]

Elite Surface Infrastructure

By: _____
Name: _____
Title: _____

STATE OF COLORADO

COUNTY OF County

Witness my hand and official seal.

My commission expires: _____

Notary Public

MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Thomas A. Tharnish, Director of Public Works
DATE: December 16, 2024
RE: Resolution 62-2024 to approve an agreement with Barnard Constructors, Inc. for the Distribution System Upgrade Project.

BACKGROUND: The Town of Monument Water Department staff has been evaluating how to improve efficiencies within the Water Distribution System. The most relevant way to improve one of the efficiencies is to combine two of our three pressure zones to help move water between different locations around the system. This project will accomplish that objective.

DISCUSSION: The Town of Monument Water Department has sent out an RFP for bids and after evaluation of the bids received, Barnard Constructors Inc. was the lowest responsive bidder and is recommended to be selected for this project. The Town has had great success with Barnard Constructors as they were the company selected to build the three new wellhouses for the Well #11, 12, and 13 Project earlier this year. The bids were less than the estimated engineering estimate of \$200,000 and are included in the 2025 budget in the WEF budget. The project consists of installing two new valves in the distribution system and modifying two existing valves in the Booster Station, next to the Town Hall, so that they can reverse flow out of the Monument Hill Tank which is currently only supplying the Commercial Zone. This project will allow more use of water coming out of the Monument Hill tank and will help equalize the two pressure zones making for improving distribution operations.

PROS/CON'S: Pro's - By moving forward with this resolution to approve the agreement with Barnard Constructors Inc., to install the two new valves and modify two other existing valves it will benefit distribution system efficiencies and operations in a timely manner. Cons – By not approving this agreement, staff will need to re-evaluate how we would be able to equalize system zone pressures to gain operational efficiency within the distribution system.

FISCAL IMPACT: The cost for this agreement is **\$179,924.00** for the installation of two new distribution valves and modifying two other critical valves in the system. The project is budgeted within the 2025 budget and if it starts early there is funding available in the 2024 budget to start the project, but we expect most of the work to be performed in early 2025.

STAFF RECOMMENDATION: Recommend passage of Resolution 62-2024, approving the agreement with Barnard Constructors Inc to install the two new valves and provide modifications of two additional valves in the booster station.

TOWN OF MONUMENT

RESOLUTION NO. 62 - 2024

**A RESOLUTION APPROVING AN AGREEMENT WITH BARNARD
CONSTRUCTORS INC. FOR THE DISTRIBUTION SYSTEM UPGRADES
PROJECT**

WHEREAS, the Town staff has evaluated the need to integrate two of our pressure zones since the existing pressures are too close together to be effective, and;

WHEREAS, the Town's staff has proposed a project to add two new valves and modify two other valves in order to integrate the two pressure zones, and;

WHEREAS, the Town staff sent out an RFP for this project and has evaluated the submittals and has referred Barnard Constructors Inc. as the lowest responsive bidder for this project, and;

WHEREAS, If the Town Council approves this contract with Barnard Constructors Inc., the project can move forward in the next few months to equalize the two pressure zones to improve the operational efficiency of the distribution system.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF MONUMENT, COLORADO THAT:**

The Town Council hereby approves the contract with Barnard Constructors Inc. to install two new valves and modify two other valves to improve the distribution efficiency of our water system. The total cost of the contract is **NTE \$179,924.00**.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 16th day of December 2024 by a vote of ____ for and ____ against.

TOWN OF MONUMENT

Mitch Lakind, Mayor

ATTEST:

Tina Erickson, Town Clerk

AGREEMENT BETWEEN

Town of Monument and Barnard Structures Inc.

THIS AGREEMENT ("Agreement") is made as of this 16th day of December, 2024, between the **Town of Monument**, a Colorado home rule municipality ("Owner"), with a mailing address of 645 Beacon Lite Road, Monument, CO 80132, and Barnard Structures Inc., a corporation with a mailing address of 4096 Cheyenne Drive, Larkspur Colorado 80118 ("Contractor"). The Owner and Contractor are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

In consideration of the mutual covenants, agreements, conditions, and undertakings hereinafter set forth, Owner and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform all work in accordance with the Contract Documents as identified in Section 17 (Contract Documents) for Town of Monument 2024 including furnishing all construction plans and methods, construction management, labor, equipment and materials (generally referred to as the "Project"), and shall complete the Project, including any additional work authorized pursuant to Section 16, in accordance with the terms of this Agreement and the Contract Documents.

Section 2. Contract Price. Owner shall pay Contractor for the performance of work and completion of the Project Not to Exceed a total price of One Hundred Seventy-Nine Thousand Nine Hundred Twenty-Four Dollars (**\$179,924.00**) (the "Contract Price"), subject to certain adjustments as herein provided, in accordance with the bid proposal submitted by Contractor. The Contract Price may be adjusted (i) for changes in the Contract Documents or for extensions of time to complete performance, if approved by Owner and Contractor as specified in Section 16 (Appropriations; Change Orders); (ii) for any additional work authorized pursuant to Section 16 (Appropriations; Change Orders); and (iii) for certain changes in quantities, if bid on a unit-price basis in the bid proposal. All unit quantities requiring an adjustment of the Contract Price shall be verified by the Project Manager, as defined in Section 15 (Project Manager).

Section 3. Progress Payments. The owner will make progress payments monthly on account of the Contract Price in accordance with partial payment applications prepared by Contractor for work performed during the last monthly period and which have been approved by Project Manager and Owner. Contractor shall submit partial payment applications for the last completed work period to Project Manager by the first (1st) day of each month. The owner shall authorize progress payments for the amount approved by Project Manager and Owner under such partial payment applications on or before the fifteenth (15th) day of each month. Progress payments shall not constitute final acceptance of the Project. Owner may withhold progress payments if: (i) Contractor's performance is inadequate or defective and not remedied in accordance with Project Manager's

directions; (ii) Contractor does not make prompt and proper disbursements to subcontractors on receipt of progress payments from Owner; (iii) Contractor does not promptly pay for materials, labor or equipment furnished on the Project; (iv) claims or liens are filed on the Project; (v) in Project Manager's opinion, Contractor's performance is not progressing satisfactorily or completion of the Project is jeopardized or delayed; or (vi) Owner has not been supplied with certificates of insurance as required by Section 11.g (Insurance).

Section 4. Final Payment.¹

a. Upon completion of the Project and Contractor's submittal of notice thereof to Project Manager and Owner, Project Manager shall inspect the Project and reject any portion of performance not in conformity with the Contract Documents. Defective materials, equipment or work shall be remedied immediately by Contractor before final payment. Owner shall make final payment to Contractor within thirty (30) days after (i) final acceptance of performance by Owner as specified in Section 6 (Final Acceptance) and (ii) receipt of Project Manager's confirmation to Owner that the Project has been completed satisfactorily. Final payment shall not, however, be due until Contractor has delivered to Owner a complete release of all claims or liens against the Project and has produced satisfactory receipts, waivers or lien releases indicating final and total payment to all subcontractors and persons who have furnished materials, labor and equipment on which a lien or claim might potentially be filed in a form acceptable to Owner. **Owner shall, no later than ten (10) days before final payment is made, publish a notice of final payment at least twice in a legal newspaper of general circulation in any county where the work was contracted for or performed pursuant to Section 38-26-107, C.R.S.**

b. By making final payment, Owner waives all claims against Contractor, except those expressly declared to Contractor in writing prior to final payment or those arising out of: (i) defective performance appearing after final acceptance; (ii) performance that fails to comply with the Contract Documents, unless expressly waived by Owner in writing; (iii) outstanding claims of any nature, including but not limited to claims for property damage or personal injury arising during the construction period or liens or claims against the Project; or (iv) Contractor's failure to execute any warranty, guarantee or bond or to provide insurance or other defense and indemnification required by the Contract Documents. By accepting final payment, Contractor waives all claims against Owner, except those expressly declared to Owner in writing and received by Owner prior to final payment. Notwithstanding the foregoing, Contractor shall work with Owner in good faith to resolve any claims it may have prior to final payment being made.

Section 5. Final Acceptance.

a. Final acceptance of the Project shall follow inspection and approval of Contractor's performance by Project Manager, along with inspection by appropriate

¹ **NOTE TO USER:** Required for contracts of \$50,000 or more. Strongly recommended for ALL contracts.

manufacturers' representatives and governmental officials pursuant to local, State, and federal requirements, as necessary. Owner shall have the right to determine the acceptability of Contractor's performance and conformance with the Contract Documents, which determination shall be conclusive and binding upon Contractor. Final acceptance by Owner is subject to Section 4 provisions (Final Payment) and does not affect or release any warranty or guarantee with Contractor or manufacturers or suppliers of Project equipment or materials.

b. When presented for final acceptance, the Project shall be delivered to Owner in complete compliance with the Contract Documents free from any lien, claim or encumbrance, whether in existence or subsequently established by law, statute, ordinance or otherwise. Notwithstanding the foregoing, nothing in the Contract Documents shall give Contractor or any subcontractor, laborer, supplier, manufacturer or other person or entity, either expressly or by implication, any right to assert a lien, claim or encumbrance against the Project.

Section 6. Commencement and Completion of Performance.

a. Contractor shall commence performance within ten (10) days after receipt of written notice to proceed, which is expected to be given on or before December 17, 2024, and shall diligently perform all work through completion. Unless an extension of time is granted by the Owner as hereinafter set forth, Contractor shall complete the Project by end of business on January 20, 2025. For purposes of this Agreement, (i) Owner accepts the Project upon confirmation from Project Manager and Contractor that the Project is complete in accordance with Contract Documents.

b. No extension of time to complete performance shall be granted under normal circumstances. Extensions of time to complete performance may be authorized by Owner in its sole discretion for any actual period of delay on an occurrence basis for: (i) adverse weather or climatic conditions not reasonably anticipated; (ii) major labor disputes; (iii) acts of God; (iv) detrimental acts of Owner; (v) acts of another contractor in the performance of related work under a separate contract with Owner; (vi) delays resulting from the intervention of governmental agencies in the performance of work on the Project, if not caused by Contractor or its subcontractors; or (vii) other extraordinary circumstances beyond Contractor's reasonable control. Foreseeable weather delays and delays or failures in delivery of equipment or materials shall not constitute cause for an extension of time to complete performance or for an adjustment to the Contract Price. Any request for an extension of time to complete performance shall be submitted in writing to Project Manager for Owner's approval within ten (10) days after such occurrence and shall be accompanied and supported by a schedule analysis based on the critical path method, which shows how and where the delay occurred on the then-critical

path and its effect on any milestone date or the date of Substantial Completion. The decision of the Owner shall be conclusive and binding upon the Contractor.

Section 7. Default. Owner may give written notice of grounds for default to Contractor at any time if: (i) Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the Contract Documents or terms of this Agreement, as determined by Project Manager or Owner; (ii) Project Manager advises Owner that performance of work on the Project is being delayed unnecessarily or that Contractor is executing its responsibilities in bad faith or contrary to the intent of this Agreement; (iii) performance is not fully completed within the period of time specified for completion under Section 6 (Commencement and Completion of Performance); (iv) work to be performed by Contractor is assigned without Owner's consent; (v) the Contractor fails to procure the insurance required hereunder or provide the Owner with Certificates of Insurance, as defined in Section 11.g. (Insurance), within the timeframe provided herein; (vi) Contractor is insolvent or files for bankruptcy; (vii) Contractor makes a general assignment of assets for the benefit of creditors; (viii) a receiver is appointed for Contractor; or (ix) other serious and reasonable cause exists which jeopardizes completion of the Project. If Contractor does not remedy or otherwise correct the grounds for default within such period of time as specified by Owner, Owner may terminate this Agreement and direct Contractor to discontinue any further work on the Project, and Contractor shall immediately stop all work on the Project and forfeit all rights under this Agreement. The owner, in its discretion, may complete the Project, or may request the surety of Contractor to complete the Project, or may contract with others to complete the Project at the expense of Contractor and its surety. Any increase in costs over the Contract Price and any actual and/or special damages incurred by Owner because of such default, including reasonable attorneys' fees, shall be paid and satisfied in full by Contractor and its surety.

Section 8. Termination. At any time, Owner may, without cause and without prejudice to any other right or remedy hereunder, elect to terminate this Agreement. In such an event, the Owner shall give written notice of Project termination to Contractor at least five (5) days in advance of the Project termination date. Such notice may include specific instructions as to work to be completed and other winding-up matters. In the absence of any contrary instructions, Contractor shall place no further orders or enter subcontracts related to the Project, shall terminate all orders and subcontracts to the extent they relate to terminated work, and shall stop work on the date and in accordance with directions specified in the notice. The contractor shall cooperate with Owner to transfer all of Contractor's rights and interests in any orders, subcontracts or work as directed by Owner. Owner shall pay Contractor for the performance of all work through the Project termination date and for such additional amounts as, in the opinion of Project Manager, are reasonable to

compensate Contractor for the termination of this Agreement. Final payment to the Contractor shall be made in accordance with Section 4 (Final Payment).

Section 9. Taxes, Licenses, Permits, and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law, except for sales and use taxes from which Owner or the Project are exempt and shall obtain all licenses and permits necessary for completion of the Project, including payment of all fees, unless otherwise specified by the Contract Documents or approved in writing by the Project Manager. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, State, or federal, relating to the performance of work on the Project and particularly for compliance with those laws concerning the environment, stormwater management permits, workmen's compensation, safety and health, labor, immigration and equal employment opportunity. Owner shall, upon request, furnish Contractor with a copy of its certificate of sales and use tax exemption. The contractor must file all the necessary paperwork to satisfy the requirements to be exempt from payment of sales tax. Owner shall not reimburse Contractor for any sales or use taxes paid to the State or any county or municipality from which Owner or the Project are exempt.

Section 10. Indemnification; No Waiver of Liability or Immunity. Contractor agrees to indemnify, defend, and hold harmless the Owner and its officers, directors, employees, agents, engineers/architects and attorneys from all costs, claims, damages, judgments, losses, liability and expenses of every nature, including reasonable attorneys' fees, arising at any time from any act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. Contractor shall upon request of the Owner promptly assume the defense, with defense counsel of Owner's choice and at Contractor's sole expense, of any claim, action, proceeding or suit that is brought against the Owner arising from any act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. If other persons and/or entities, excluding the Owner and its officers, directors, employees, agents, engineers, architects, and attorneys, at fault exist, Contractor agrees to work in good faith with such persons and/or entities in determining how the Owner's defense costs shall be covered, but under no circumstances shall the Owner be responsible for those costs. Contractor further agrees that, to the extent applicable, indemnification shall only be to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or its agents, representatives, subcontractors, or suppliers. The extent of the Contractor's obligation to indemnify the Owner and its officers, directors, employees, agents, engineers/architects, and attorneys may be determined only after the Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement of the Parties. Contractor's obligations under this Section shall be to the fullest extent permitted by law and shall survive termination or expiration of this Agreement. **Notwithstanding any other provision contained in this Agreement, the Owner does not agree to defend, indemnify,**

or hold harmless the Contractor or waive or limit its rights and/or claims in any respect regarding the Contractor's liability (either by type of liability or amount). Owner is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, defenses and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to the Owner or its officers or employees. Nothing in this Section shall be construed to require any indemnification that would make this provision void or unenforceable or to eliminate or reduce the indemnification or rights which the Owner has by law.

Section 11. Insurance.

c. During the term of this Agreement, the Contractor shall purchase and maintain, at its own cost and expense, the following:

- 1.** Workers' compensation insurance for its employees, if any, as required by Colorado law with limits of at least \$500,000 per injury or illness an employee suffers as a result of providing the services hereunder, with a \$500,000 aggregate per occurrence;
- 2.** Employer's liability insurance with limits of at least \$500,000 per employee/accident and \$1,000,000 aggregate;
- 3.** Commercial general liability insurance covering, without limitation, premises operations, products-completed operations, contractual liability insuring the obligations assumed by the Contractor under this Agreement, personal and advertising injury, and broad form property damage, with limits of at least \$2,000,000 per occurrence for bodily injury, death or damage to property; \$2,000,000 per occurrence for personal and advertising injury; \$2,000,000 products-completed operations aggregate; and \$2,000,000 general aggregate;
- 4.** Automobile liability insurance covering all owned, hired and non-owned vehicles used in the performance of the work under this Agreement with a limit of at least \$2,000,000 combined per accident for bodily injury and property damage;
- 5.** Unless otherwise waived by the Owner in writing, builder's risk insurance for protection against damage, explosion, fire, vandalism, theft and other dangers ordinarily included under such coverage, including loss of use resulting therefrom, to the full insurable value of all property, structures, equipment and

material of the Owner within the Contractor's control, designating Owner as "loss payee" thereunder; and

- 6.** Pollution/environmental liability insurance with limits of at least \$2,000,000 per claim and in the aggregate covering liability for bodily injury, property damage, environmental damage, clean-up costs and defense costs from operations performed. Such claims-made insurance shall provide a retroactive date of one month prior to the date of the Agreement and either (i) continuous insurance coverage for a period of three (3) years after termination of the Agreement, or (ii) an extended reporting period of not less than three (3) years after termination of the Agreement.

- a.** The insurance required herein may be satisfied through any combination of primary and excess/umbrella liability policies.

- b.** The insurance required herein shall be written by an insurance company or companies that (i) have an A.M. Best Company rating of "A-VII" or better, and (ii) are authorized to issue insurance in the State of Colorado.

- c.** The Owner, its directors, officers, employees, Project Manager, and Assistant Engineer shall be endorsed as "Additional Insureds" under the (i) commercial general liability insurance policy for both ongoing and completed performance and/or operations for a period of two (2) years and (ii) automobile liability policy.

- d.** The Contractor shall provide a waiver of subrogation endorsement, or its equivalent, under the (i) workers' compensation; (ii) commercial general liability; and (iii) automobile liability insurance policies in favor of the Owner, its directors, officers, agents, and employees.

- e.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the Owner and its directors, officers, agents, and employees. Any insurance maintained by the Owner and its directors, officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

- f.** Prior to commencement of work under this Agreement, Contractor shall provide certificates of insurance satisfactory to the Owner that clearly evidence all insurance coverages required herein, including but not limited to endorsements (individually and collectively, "Certificates of Insurance"). Contractor agrees that, until the Owner is supplied with Certificates of Insurance, no payment under this Agreement will be made by the Owner. Contractor will provide the Owner with updated Certificates of Insurance within ten (10) calendar days of the anniversary of the effective date of coverage

should that date fall during the term of this Agreement. Failure of the Owner to require Certificates of Insurance or to identify a deficiency in coverage shall not relieve the Contractor from its responsibility to provide the specific insurance coverages set forth herein.

g. Contractor shall require as part of its contract(s) with subcontractors that each subcontractor purchase and maintain insurance of the types and with policy limits no less than those required of Contractor under this Section 11. All general liability policies carried out by a subcontractor shall be endorsed to include the Additional Insureds identified above. Each subcontractor shall be required to provide Contractor with certificates of insurance evidencing such coverage prior to commencement of work by a subcontractor. Such certificates of insurance shall be provided to Owner upon request.

h. The insurance policies afforded hereunder shall not be cancelled or allowed to expire unless at least thirty (30) days' prior written notice has been delivered to the Owner, except in the event of cancellation due to non-payment of a premium, in which case notice shall be given to the Owner no later than ten (10) days prior to cancellation of the policy. Upon receipt of any notice of cancellation or non-renewal, the Contractor shall, within five (5) days, procure other policies of insurance as necessary to comply with Section 11 and provide Certificates of Insurance evidencing the same to the Owner.

Section 12. Performance, Payment, and Warranty Bond. If the Contract Price is greater than Fifty Thousand Dollars (\$50,000.00), prior to commencement of performance, Contractor shall provide to Owner a general performance, and payment bond executed by Contractor and an acceptable corporate surety, or collateral approved by Owner, in the full amount of the Contract Price, including provisions for any adjustment of the Contract Price in accordance with the terms of this Agreement. Such bond shall expressly guarantee: (i) faithful performance of this Agreement and completion of the Project in complete compliance with the Contract Documents; (ii) repair and replacement, if required, or payment of the costs of all defective equipment, materials and work performed on the Project or as provided under any warranty, guarantee or other Contract Document for the full warranty and guarantee period; and (iii) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project. The contractor shall obtain such bond on Owner's behalf separately and apart from any similar bond or surety or warranty agreement entered into independently between Owner and any manufacturer or supplier. The owner may, in its discretion, require that the bond guaranteeing payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project be separate from the bond guaranteeing performance. Notwithstanding anything contained within the bonds to the contrary, such bonds are required, in part, by and shall comply with the minimum requirements of Section 38-26-106, C.R.S.

Section 13. Warranties and Guarantees. The contractor hereby represents, warrants, and guarantees to the Owner all workmanship, equipment, and materials on or made a part of the Project and its structures for one (1) year following Final Completion of the Project. Such warranty and guarantee shall be construed to include, but is not limited to, representations that all workmanship, equipment, and materials are of good quality, free from any defects or irregularities, and in strict conformity with the Contract Documents. If any defect in workmanship, equipment or materials arises, Contractor shall remedy or otherwise correct such defect with out cost to Owner within such reasonable period of time as specified by Owner in writing. If Contractor fails to repair such defect within such period of time as is specified by Owner, Owner may repair such defect or contract for such repairs at the expense of Contractor and its surety. The performance bond specified in Section 12 shall remain in full force and effect during the period of this warranty and guarantee, including any period necessary to remedy or otherwise correct any defects. The contractor shall provide such warranty and guarantee on Owner's behalf separately and apart from other warranties, guarantees and surety agreements entered independently between Owner and any manufacturer or supplier.

Section 14. Subcontractors, Suppliers and Others. Contractor shall, prior to commencement of performance, submit a list of all major subcontractors, suppliers, and other individuals or entities to be engaged to work on the Project for Owner's reasonable acceptance (either in writing or by failing to make written objection thereto within ten (10) days after such submission). The contractor shall not substitute any subcontractor, supplier, or other individual or entity previously accepted by Owner without Owner's prior written consent, which shall not be unreasonably withheld. The owner's acceptance of such subcontractor, supplier, or other individual or entity so identified may be withheld or revoked based on reasonable objection after due investigation. In such event, Contractor shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity, and the Contract Price may be adjusted by any reasonable difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Project Manager to reject defective work. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement and the Contract Documents. Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors, suppliers, or other individuals or entities. Upon receipt of progress and final payments from Owner, Contractor shall disburse the same to subcontractors, suppliers, and other individuals and entities in accordance with the contractual terms between Contractor and such subcontractors, suppliers, and other individuals and entities, without any requirement of Owner to supervise the same.

No contractual relationship shall exist between Owner and any subcontractor, supplier, or other individual or entity because of the subcontracting of any part of the Project.

Section 15. Project Manager. Official authority for the administration of all performance under this Agreement is hereby delegated to Owner's engineer or project manager ("Project Manager"), unless otherwise provided in the Contract Documents. Throughout the construction period, Project Manager, or such other duly authorized representative of Owner, may inspect the Project and shall consult with Contractor in regard to any inquiries, directions or interpretations of the Contract Documents.

Section 16. Appropriations; Change Orders. This Agreement is subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

- a. Owner represents that it has appropriated money equal to or in excess of the Contract Price for the work.
- b. Owner shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable work to be performed that will cause the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Contract Price and any subsequent appropriations, unless:
 1. Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional work have been made and are available prior to performance of the additional work; or
 2. Such additional work is covered by the following remedy-granting provision: Contractor may request, in writing, a letter from Owner explaining the expected sources of funding for the additional work. In the event the Owner does not provide such written assurance reasonably satisfactory to Contractor within five (5) days of Contractor's request, Contractor may stop work until such time as Owner provides satisfactory assurances. Contractor's acceptance of a Change Order in accordance with any assurances provided under this paragraph shall not limit or restrict Contractor from making a claim under the Contract Documents for an adjustment in the Contract Price or the Performance Deadlines or otherwise for expenses or damages directly attributable to Contractor's stoppage of the work as permitted hereunder.
 3. For any Change Order or other directive (other than a clarification) that requires additional compensable work to be performed, Owner shall reimburse Contractor for Contractor's costs on the periodic basis set forth in the Contract Documents for all additional directed work performed until the Change

Order is finalized. In no instance shall the periodic reimbursement be required before Contractor has submitted an estimate of cost to Owner for the additional compensable work to be performed.

Section 17. Contract Documents. The Contract Documents comprise the entire agreement and contract between Owner and Contractor and consist of (i) this Agreement and any exhibit or addendum hereto; (ii) any documents furnished to Contractor by or at the request of Owner in connection with the Project, including but not limited to notice to bidders, instructions to bidders, bid bond form, bid proposal, performance, payment and maintenance bonds, notice of award, notice to proceed, specifications, plans, drawings and special conditions, and any addendum to such documents; and (iii) any modifications, change orders or other such revisions approved by the Parties in writing or duly authorized after the execution of this Agreement.

Section 18. Report of Differing Conditions. If Contractor believes that any technical data on which Contractor is entitled to rely is inaccurate, or any physical condition differs materially from that indicated, reflected or referred to in the Contract Documents, Contractor shall promptly, after becoming aware of such condition and before performing any further work in connection with the Project, notify Project Manager and Owner in writing about such inadequacy or difference.

Section 19. Amendment. This Agreement may be amended by agreement between the Parties. No amendment, modification or alteration of this Agreement shall be binding upon the Parties unless the same is in writing and approved by the duly authorized representatives of each Party. No document executed subsequent to this Agreement shall be interpreted to amend, modify, or alter the terms of this Agreement, unless express reference to amending the terms of this Agreement is made in such document.

Section 20. Colorado Labor. If the Project is financed in whole or in part by funds of the State or any county, school district or municipality of the State, Colorado labor shall be employed to perform at least eighty percent (80%) of the work, unless such requirement is waived by the Owner in accordance with Section 8-17-101 (1), C.R.S. "Colorado labor" means any person who is a resident of the State at the time of the Project. A "resident of the State" is a person who can provide a valid Colorado driver's license, a valid State-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days.

Section 21. Participation in Certified Apprentice Training Program. If the Owner used a prequalification process pursuant to Section 32-1-1805, C.R.S. to select and award the Work, by execution of this Agreement, Contractor represents, warrants, and agrees that the Contractor shall comply with the provisions of Section 32-1-1805(3), C.R.S., relating to access to apprentice training programs certified by

the U.S. Department of Labor or a comparable alternative. If the Contract Price is \$250,000 or more, the Contractor represents, warrants, and agrees that all subcontractors, at any tier, shall have similar access to either a certified program or comparable alternative.

Section 22. Severability. If any term or condition of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term or condition shall not affect any of the remaining provisions of this Agreement.

Section 23. Waiver. No waiver by either Party of any right, term or condition of this Agreement 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 this Agreement.

Section 24. Remedies. None of the remedies provided to either Party under this Agreement 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 shall be enforceable by any appropriate action, petition or proceeding at law or in equity, including specific performance. If the Owner does not pursue a particular remedy contemporaneously with a default and/or any other issue that may arise, he does not waive the right to pursue the remedy later.

Section 25. Counterparts; Electronic Signatures; Electronic Records. 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. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101 *et seq.*, C.R.S.

Section 26. Entirety. This Agreement and all other Contract Documents constitute 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 this Agreement and the other Contract Documents.

Section 27. Conflicting Provisions; Grant Requirements Control; Interpretation. 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. If the Project is financed in whole or in part by a federal or State grant, any provision of the Contract Documents that conflicts with the terms of such grant shall be inapplicable.

Section 28. Assignment. Contractor shall not assign any interest in this Agreement to any person or entity without the prior written consent of Owner. The terms of this Agreement shall inure to and be binding upon any successors and assigns of the Parties.

Section 29. Time. Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in this Agreement are of the essence.

Section 30. Notice. Any notice required hereunder shall be in writing delivered to the applicable Party at the address set forth at the beginning of this Agreement or as changed pursuant to the provisions of this Section.

Section 31. Section Headings. The section headings in this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of any part of this Agreement.

Section 32. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to extend any benefits to any person, nor a Party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any rights, legal or equitable, to enforce or rely on any provision of this Agreement.

Section 33. Duly Authorized Signatories. By execution of this Agreement, the undersigned each individually represents that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

Section 34. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution, and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for El Paso County.

Section 35. Not Construed Against Drafter. Each Party acknowledges that it has had an adequate opportunity to review each, and every provision contained in this Agreement, including the opportunity to consult with legal counsel. Based on the foregoing, no provision of this Agreement shall be construed against either Party by reason of such Party being deemed to have drafted such provision.

Attachments: RFP and Attachments, Contractors Bid, Addenda 1 & 2, Scope Summary

[Signature Pages Follow]

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF County)

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN OF MONUMENT

ORDINANCE NO. 24-2024

**AN ORDINANCE AMENDING SECTION 18.03.380
AND ADDING ARTICLE 5 TO CHAPTER 18.04 OF
THE MONUMENT MUNICIPAL CODE
CONCERNING THE REGULATION OF NATURAL
MEDICINE BUSINESSES**

WHEREAS, the Town of Monument (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town’s Home Rule Charter approved by the electors on November 8, 2022 (“Charter”); and

WHEREAS, the Natural Medicine Health Act of 2022 (“Act”), a citizen-initiated measure intended to decriminalize the use of certain plants or fungi for people 21 years of age and older, was approved by Colorado voters in November 2022; and

WHEREAS, the Act decriminalizes the personal possession, growing, sharing, and use, but not the sale, of five (5) natural psychedelic mushrooms (psilocybin and psilocin) and three (3) plant-based psychedelic substances (dimethyltryptamine, ibogaine, and mescaline); and

WHEREAS, the Act allows the supervised use of psychedelic mushrooms by individuals aged 21 and over at licensed facilities and requires the state to create a regulatory structure for the operation of these licensed facilities; and

WHEREAS, the Act allows the State to expand the type of substances that may be used in licensed facilities to include plant-based psychedelic substances (dimethyltryptamine, ibogaine, and mescaline), starting in 2026; and

WHEREAS, in May 2023, the Governor signed Senate Bill 23-290 entitled “Natural Medicine Regulation and Legalization,” which clarifies and sets the regulatory framework for a regulated natural medicine program in Colorado; and

WHEREAS, Senate Bill 23-290 is codified in C.R.S. § 44-50-101 through 904 (the “Regulatory Act”) to create the regulatory structure for the operation of these licensed facilities, which includes the licensing and registration of facilities and related businesses that provide for the use, cultivation, manufacture, and testing of these substances; and

WHEREAS, the Act and the Regulatory Act prohibit local governments from banning licensed facilities, services, and use of natural psychedelic substances permitted

by the Act, while allowing local governments to regulate the time, place, and manner of operation of these facilities; and

WHEREAS, the Regulatory Act prohibits the “state licensing authority” as defined by the Regulatory Act, from processing applications for a natural medicine business license for a location not permitted under the applicable zoning law of the local jurisdiction; and

WHEREAS, the Regulatory Act prohibits processing applications for a Natural Medicine Business License for a location within one thousand feet of a child care center; preschool; elementary, middle, junior or high school; or a residential child care facility, but allows local jurisdictions to vary the distance restrictions or eliminate one or more types of schools or facilities from the application of a distance restriction; and

WHEREAS, the Town Council of the Town of Monument desires to enact this ordinance to regulate the time, place, and manner of the operation of licenses issued pursuant to the Regulatory Act; to establish the appropriate zoning districts for the operation of licenses issued pursuant to the Regulatory Act; and to establish distance restrictions for buildings where natural medicine services are provided within the vicinity of a child care center; preschool; elementary, middle, junior or high school; or residential child care facility; or residential dwellings pursuant to the Regulatory Act; and

WHEREAS, this Ordinance was introduced by title, considered at public hearing, and voted upon at the regular meeting of the Town Council on December 16, 2024.

THE TOWN COUNCIL OF THE TOWN OF MONUMENT, COLORADO, ORDAINS:

Section 1. Incorporation. The recitals set forth above are incorporated and ordained as if set forth in this section in full.

Section 2. Amendments to Section 18.03.380 of the Monument Municipal Code. Section 18.03.380 of the Monument Municipal Code is hereby amended as set forth in Section 1 of Exhibit A, attached hereto and incorporated herein.

Section 3. Amendment of Chapter 18.04 of the Monument Municipal Code. Chapter 18.04 of the Monument Municipal Code is hereby amended by the addition of Article 5 as set forth in Section 2 of Exhibit A, attached hereto and incorporated herein.

Section 4. Publication. Pursuant to Subsection 6.5, 3. of the Town of Monument Home Rule Charter and Subsection 2.04.030, G. of the Monument Municipal Code, upon approval this Ordinance shall be published on the Town's official website in full for not less than ten (10) days.

Section 5. Authentication and Filing. Upon passage this Ordinance shall be authenticated by the Mayor and Town Clerk and maintained by the Town Clerk in such form as is sufficient to assure reasonable access by the public. Failure to authenticate any ordinance shall not invalidate it or suspend its operation.

Section 6. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 7. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 8. Severability. If any portion of this Ordinance or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the court to be inoperable.

INTRODUCED, **PASSED, and ADOPTED/REJECTED**, by the Town Council of the Town of Monument, Colorado this 16th day of December, 2024 by a vote of ____ for and _____ against.

TOWN OF MONUMENT, COLORADO

By:

Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

CERTIFICATE OF PUBLICATION

I, the duly qualified and Town Clerk of the Town of Monument, Colorado, do hereby certify the foregoing Ordinance No. 24-2024 was approved by the Town Council of the Town of Monument at its *regular* meeting held on the 16th day of December, 2024, and was published on December __, 2024, on the Town's official website for not less than ten (10) days, as shown on the Attached Exhibit A.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Monument, Colorado, this _____ day of December, 2024.

Tina Erickson, Town Clerk

(S E A L)

Exhibit A to Certificate of Publication

/Screenshot showing date and time of website publication/

EXHIBIT A TO ORDINANCE NO. 24-2024

Section 1. Amendment to Section 18.03.380, of the Monument Municipal Code. Sec. 18.03.380 of the Monument Municipal Code, Schedule of standard zoning district uses, is amended, under Commercial Uses, in alphabetical order, but addition of the following Land Use:

Land Use	LLR	SFD-1	SFD-2	RA	MHP	DB	CC	BC	LI	P
COMMERCIAL USES										
Natural Medicine Businesses (see Article 5, Chapter 18.03)							C			

Section 2. Amendments to Title 18, Chapter 18.04 of the Monument Municipal Code. Title 18, Chapter 18.04 of the Monument Municipal Code is amended by adding the following new Article 5, as follows:

Title 18 – LAND DEVELOPMENT CODE

Chapter 18.04 – SUPPLEMENTAL USE STANDARDS

Article 5. - Natural Medicine Businesses

18.04.500 - Definitions.

For purposes of this Article, terms used in this Article that are not defined below but which are defined in the Regulatory Act or in the regulations promulgated by the state licensing authority within the Colorado Department of Revenue under the Regulatory Act, shall have the meanings defined by the Regulatory Act and the state licensing authority regulations; the following terms shall have the following meanings:

“Natural medicine” means psilocybin of psilocyn and other substances described in the Regulatory Act as “natural medicine.”

“Natural medicine business” means any of the following entities licensed under the Regulatory Act and includes a natural medicine healing center, a natural medicine

cultivation facility, a natural medicine products manufacturer, or a natural medicine testing facility, or any other licensed entity created by the state licensing authority.

“Natural medicine cultivation facility” means a location where regulated natural medicine is grown, harvested, and prepared to be transferred and distributed to either a healing center, facilitator, a natural medicine products manufacturer, or to another natural medicine cultivation facility as defined by regulations promulgated by the Colorado Department of Revenue under the Regulatory Act.

“Natural medicine healing center” means a facility where an entity is licensed by the state licensing authority to permit a facilitator, to provide and supervise natural medicine services for a participant, which includes a participant consuming and experiencing the effects of regulated natural medicine or regulated natural medicine product under the supervision of a facilitator.

“Natural medicine product” means a product infused with natural medicine that is intended for consumption.

“Natural medicine products manufacturer” means a person or entity who manufactures regulated natural medicine products for transfer to a healing center, facilitator, or to another natural medicine products manufacturer as defined by regulations promulgated by the Department of Revenue under the Regulatory Act.

“Natural medicine services” means a preparation session, administrative session, and integration session.

“Natural medicine testing facility” means a public or private laboratory licensed or approved by the Natural Medicine Division of the Colorado Department of Revenue to perform testing and research on regulated natural medicine and regulated natural medicine product.

“Participant” means an individual who is twenty-one (21) years of age or older who receives natural medicine services prescribed by and under the supervision of a facilitator, as provided by the Regulatory Act.

“Regulatory Act” means the Colorado Natural Medicine Code, as codified in Article 50, Title 44, Colorado Revised Statutes.

“Regulated natural medicine” means natural medicine that is cultivated, manufactured, tested, stored, distributed, transported, or dispensed, as provided by the Regulatory Act.

“Regulated natural medicine product” means a natural medicine product that is cultivated, manufactured, tested, stored, distributed, transported, or disposed, as provided by the Regulatory Act.

“State licensing authority” means the authority created under the Regulatory Act for the purpose of regulating and controlling the licensing of the cultivation, manufacturing, testing, storing, distribution, transfer, and dispensation of regulated natural medicine and regulated natural medicine product.

18.04.505 - Permitted location for a natural medicine business.

Natural medicine business may be permitted by conditional use review in the commercial center (CC) zone district, subject to the distance requirements and the time, place, and manner requirements contained in this Article. Natural medicine businesses are prohibited in all other zoning districts in the Town, including the Regency Park overlay zone district and Planned Unit Development zone districts.

18.04.510 - Distance from schools and residential dwellings.

- A. No natural medicine business shall operate out of a building that is within one thousand (1,000) feet of a childcare center; preschool; elementary, middle, junior or high school; residential child care facility (collectively “school”), single-family dwellings, duplexes, or multi-family dwellings (collectively “residential dwellings”).
- B. Subsection (a) above does not apply to a licensed natural medicine business located on land owned by the State of Colorado or apply to a natural medicine business that was actively doing business under a valid license issued by the state licensing authority before the school or residential dwelling was constructed.
- C. The distances referred to in this Section shall be computed by direct measurement from the nearest property line of the land used for a school or facility to the nearest portion of the building in which natural medicine business is located, using a route of direct pedestrian access.

18.04.515 - Hours of operation.

Natural medicine businesses shall only operate between the hours of 9 a.m. to 5 p.m., Monday through Friday and shall not operate on any federal holiday.

18.04.520 - Public view.

All doorways, windows, and other openings of natural medicine business buildings shall be located, covered, or screened in such a manner to prevent a view into the interior from

any exterior public or semipublic area. All activities of natural medicine businesses shall occur indoors.

18.04.525 - Lighting.

Primary entrances, parking lots, and exterior walkways of natural medicine businesses shall be clearly illuminated with downward facing security lights to provide after-dark visibility for facilitators, participants, and employees.

18.04.530 - Storage.

All storage for natural medicine businesses shall be located within a permanent building and may not be located within a trailer, tent, or motor vehicle.

18.04.535 - Odor.

Natural medicine businesses shall use an air filtration and ventilation system designed to ensure that the odors from natural medicine and natural medicine products are confined to the premises and are not detectable beyond the property boundaries on which the facility is located.

18.04.540 - Secure disposal.

Natural medicine businesses shall provide secure disposal of natural medicine and natural medicine product remnants or by-products, such as to prevent disposed products and by-products from being accessed or consumed by any person other than those persons being treated by the business. Natural medicine and natural medicine product remnants or by-products shall not be placed within the facilities' exterior refuse container.

18.04.545 - Processing of natural medicine.

- A. The processing of natural medicine that includes the use of hazardous materials, including without limitation, and by way of example, flammable and combustible liquids, carbon dioxide, and liquified petroleum gases, such as butane, is prohibited.
- B. Nonhazardous materials used to process natural medicine shall be stored in a manner so as to mitigate and ensure odors are not detectable beyond the property boundaries on which the processing facility is located or the exterior walls of the processing facility associated with the processing of natural medicine.
- C. The processing of natural medicine shall meet the requirements of all adopted Town building and life/safety codes.

- D. The processing of natural medicine shall meet all of the requirements of all adopted water and sewer regulations promulgated by the applicable water and sewer provider.

18.04.550 - Nuisance.

It is unlawful and deemed a nuisance under Chapter 8.04 of this Code to dispose of, discharge out of or from, or permit to flow from any facility associated with natural medicine, any foul odor, foul or noxious liquid or substance of any kind whatsoever, including, without limitation, by-products of the natural medicine process, into or upon any adjacent ground or lot, into any street, alley, or public place, or into any storm sewer and/or system in the Town.

18.04.555 - Enforcement.

Any natural medicine business in violation of the provisions of this Article shall be subject to enforcement pursuant to Chapter 2.36 of the Monument Municipal Code, provided however, actions and conduct permitted pursuant to a license, registration, or permit issued by the state licensing authority under the Regulatory Act, shall not constitute a violation of this Article.



MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Madeline VanDenHoek, Interim Town Manager
DATE: December 16, 2024
RE: Ordinance No. 25-2024 Authorizing the Execution and Delivery of a Lease Purchase Agreement and Other Documents Related Thereto in Connection With the Completing of Energy Performance Improvements for Town of Monument Facilities

BACKGROUND: The Town has partnered with the State of Colorado Energy Office and engaged with Veregy to perform an Energy Audit on Town buildings. In this process they have engineered solutions to improve energy efficiencies and replace aging mechanical systems as necessary at Town Hall, 645 Beacon Lite Road, Water Plant, 225 Beacon Lite Rd., Public Works Building, 259 Beacon Lite Road, and the Public Works Shop, 506 Jefferson Street.

DISCUSSION: Through this energy project, Veregy has identified several items to retrofit, improve and replace to gain energy savings for the Town. The Town has applied for and received a DOLA EIAF grant in the amount of \$500,000 to help off-set the costs of this project. Other grants have been applied for and have not been awarded to date, but the Town will continue to apply for grant funding. To proceed with Phase 1, the Town has budgeted \$250,000 in the 2025 budget and the remainder will need to be financed through a lease purchase agreement. The energy savings and repair costs will save the Town approximately \$1,150,000 in energy savings, rebates, and maintenance costs.

Phase 1 includes:

- LED Lighting in all buildings
- Solar at Town Hall (645 Beacon Lite Rd.) and Public Works Building (259 Beacon Lite Rd.)
- Building Envelope – Exterior Sealing/Door Sweeps at all buildings
- HVAC units upgrade at Public Works Building (259 Beacon Lite Rd.)
- HVAC – VVT Systems at Town Hall (645 Beacon Lite Rd.)
- Orchestrate Controls & Energy Tracer at all buildings

The project costs:

Total Project Costs for Phase 1	\$ 1,337,181
Town Cash Contribution	\$ 250,000
DOLA Grant	\$ 500,000
Financed Amount Principal	\$605,000
Interest Rate	4.95%
Total Lease repayment	\$885,000
Finance Term	16 years

Lease Terms:

- a) the Lease term shall not extend beyond December 31, 2040;
- b) the aggregate principal amount of the Rental Payments payable by the Town pursuant to the Lease shall not exceed \$605,000;
- c) the maximum annual amount of Rental Payments payable by the Town pursuant to the Lease shall not exceed \$55,650;
- d) the maximum total repayment amount of Rental Payments payable by the Town pursuant to the Lease shall not exceed \$885,000;
- e) the maximum interest rate on the interest component of the Rental Payments shall not exceed 4.95%.

STAFF RECOMMENDATION: Staff recommends approval of Ordinance No. 25-2024 Authorizing the Execution and Delivery of a Lease Purchase Agreement and Other Documents Related Thereto in Connection With the Completing of Energy Performance Improvements for Town of Monument Facilities.

ORDINANCE NO. 25-2024

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT AND OTHER DOCUMENTS RELATED THERETO IN CONNECTION WITH THE COMPLETION OF ENERGY PERFORMANCE IMPROVEMENTS FOR TOWN OF MONUMENT FACILITIES.

WHEREAS, the Town of Monument, Colorado (the “Town”), is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”); and

WHEREAS, the Town is authorized by Article XX, Section 6 of the Colorado Constitution, its Charter and part 8 of Article 15 of title 31, Colorado Revised Statutes (“C.R.S.”), to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, the Council has determined and now hereby determines that it is necessary and in the best interest of the Town and its inhabitants that the Town acquire, construct and install certain improvements at various Town facilities as part of an energy performance (“EPC”) contract (the “Project”), all as authorized by law; and

WHEREAS, the Council has determined and now hereby determines that to facilitate the Project, that it is in the best interest of the Town to enter into an equipment lease purchase financing in accordance with the terms and provisions of a Lease Purchase Agreement (the “Lease”) and Escrow Agreement, if required (an “Escrow Agreement”) between the Town and a proposed lessor and/or escrow bank to be hereafter determined pursuant to a response for qualifications (the “Lessor”); and

WHEREAS, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain rental payments (“Rental Payments” as defined in the Lease) in consideration for the right of the Town to use the Equipment; and

WHEREAS, the Town’s obligation under the Lease to pay Rental Payments shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, there has been presented to the Council and is on file at the Town offices a form of the Lease to be executed by the Town and the Lessor and a form of Escrow Agreement; and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to the Lease and the financing; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

**THE TOWN COUNCIL OF THE TOWN OF MONUMENT, COLORADO,
ORDAINS:**

Section 1. Short Title. This ordinance shall be known and may be cited by the short title “2024 EPC Equipment Lease Purchase Ordinance.”

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council or the officers, agents or employees of the Council or the Town relating to the Lease, the financing, acquisition or implementation of the Project, and the execution and delivery of the Lease is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the acquisition of the Project, under the terms and provisions set forth in the Lease, is necessary, convenient and in furtherance of the Town’s purposes and is in the best interests of the inhabitants of the Town and the Council hereby authorizes and approves the same.

Section 4. Supplemental Act; Parameters. The Council hereby elects to apply all of the Supplemental Act to the Lease and in connection therewith delegates to each of the Mayor, the Town Manager or the Finance Director of the Town the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, in relation to the Lease, and to execute a sale certificate (the “Sale Certificate”) setting forth such determinations, including without limitation, the term of the Lease and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- a) the Lease term shall not extend beyond December 31, 2040;
- b) the aggregate principal amount of the Rental Payments payable by the Town pursuant to the Lease shall not exceed \$605,000;
- c) the maximum annual amount of Rental Payments payable by the Town pursuant to the Lease shall not exceed \$55,650;
- d) the maximum total repayment amount of Rental Payments payable by the Town pursuant to the Lease shall not exceed \$885,000;
- e) the maximum interest rate on the interest component of the Rental Payments shall not exceed 4.95%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to each of the Mayor, the Town Manager or the Finance Director the independent authority to sign or to accept a binding bid from a Lessor under the Lease and to execute any agreement or agreements in connection therewith.

Section 5. Approval of Documents. The Lease and the Escrow Agreement, in substantially the forms presented to the Council and on file with the Town, are in all respects approved, authorized and confirmed, and the Mayor is hereby authorized and directed for and on behalf of the Town to execute and deliver the Lease and the Escrow Agreement (if required), in substantially the form and with substantially the same contents as presented to the Council, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this ordinance.

Section 6. Authorization to Execute Collateral Documents. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this ordinance and to place the seal of the Town on any document authorized and approved by this ordinance. The Mayor and Town Clerk and other appropriate officials or employees of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance. The appropriate officers of the Town are authorized to execute on behalf of the Town agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance, and are specifically authorized and directed hereby to invest such funds in investments as are authorized by state law and the Charter. The execution of any instrument by the aforementioned officers or members of the Council shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms hereof and thereof.

Section 7. No General Obligation Debt. No provision of this ordinance or the Lease shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Lease except in connection with the payment of the Rental Payments (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. The Lease shall not constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Lease shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. The Lease shall not directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 8. Reasonableness of Rentals. The Council hereby determines and declares that the Rental Payments due under the Lease, in the maximum amounts authorized pursuant to Section 4 hereof, constitute the fair rental value of the Equipment and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Equipment pursuant to the Lease. The Council hereby determines and declares that the period during which the Town has an option to purchase the Equipment (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Equipment.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the Rental Payments. Such recourse shall not be available either directly or indirectly through the Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Lease and as a part of the consideration of their sale or purchase, the Lender specifically waives any such recourse.

Section 10. Repealer. All bylaws, orders, resolutions and ordinances of the Town, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the Town, or part thereof, heretofore repealed. All rules of the Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the Council be, and the same hereby are, suspended.

Section 11. Severability. If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Rental Payments by the Town during the Lease Term, provisions for the quiet enjoyment of the Equipment by the Town during the Lease Term and provisions for the conveyance of the Equipment to the Town under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, the intent being that the same are severable.

Section 12. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 13. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect 10 days following publication after final passage. This ordinance shall be recorded in "The Ordinance Book" of the Town kept for that purpose, and shall be authenticated by the signatures of the Mayor and Town Clerk, and published in accordance with law.

Section 14. Electronic Transactions. Any individual or individuals who are authorized to execute the Lease or other required financing documents on behalf of the Town or Lender are hereby authorized to execute such documents electronically via facsimile or email signature. This agreement by the parties to use electronic signatures is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. Any electronic signature so affixed to the Lease or other financing documents shall carry the full legal force and effect of any original, handwritten signature. The Town hereby determines that the transactions described herein and in the Lease may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law

INTRODUCED, READ AND APPROVED on first reading by a vote of _____ to _____ this 16th day of December, 2024, and ordered published in full on the Towns website, on December 16, 2024, pursuant to Section 6.5 of the Home Rule Charter and Section 2.04.030(G) of the Municipal Code.

TOWN OF MONUMENT, COLORADO

(SEAL)

Mayor

ATTEST:

Town Clerk

STATE OF COLORADO)
)
COUNTY OF EL PASO) SS.
)
TOWN OF MONUMENT)

I, Tina Erickson, the Town Clerk of the Town of Monument, Colorado (the “Town”), do hereby certify:

1. That the foregoing pages are a true, perfect and complete copy of the Ordinance adopted by the Town Council constituting the governing board of the Town of Monument (the “Town Council”), had and taken at an open, regular meeting of the Town Council held at the Town Hall, in Monument, Colorado, on December 16, 2024, convening at the hour of 6:30 p.m., as recorded in the regular book of official records of the proceedings of said Town of Monument kept in my office.

2. That the Ordinance was read by title, duly moved and seconded and the Ordinance was approved on first reading by a vote of ____ to ____ of the members of the Town Council at the regular meeting of the Town Council held at the Town Hall, in Monument, Colorado, on December 16, 2024, as follows:

Name	“Yes”	“No”	Absent	Abstain
Mitch LaKind, Mayor				
Steve King, Mayor Pro Tem				
Jim Romanello				
Sana Abbott				
Kenneth Kimple				
Marco P. Fiorito				
Laura Kronick				

3. That the ordinance was published in full after first reading on the Town’s website as required by Section 2.04.030(G) of the Municipal Code.

4. The members of the Town Council were present at the meeting and voted on the passage of such Ordinance as set forth above.

5. There are no bylaws, rules or regulations of the Town Council which might prohibit the adoption of said Ordinance.

6. Notice of the meeting of December 16, 2024, in the form attached hereto as **Exhibit A** was posted at the Town Hall, not less than 24 hours prior to each meeting in accordance with law.

WITNESS my hand and the seal of said Town affixed this December __, 2024.

(SEAL)

Town Clerk

EXHIBIT A

(Attach Notice of Meeting of December 16, 2024)

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SOURCES AND USES OF FUNDS

Town of Monument, Colorado
Energy Lease Financing, Series 2025

Dated Date 01/22/2025
Delivery Date 01/22/2025

Sources:

Bond Proceeds:	
Par Amount	601,726.00
	601,726.00

Uses:

Project Fund Deposits:	
Project Fund	571,726.00
Delivery Date Expenses:	
Cost of Issuance	30,000.00
Underwriter's Discount	-
	30,000.00
	601,726.00

BOND PRICING

Town of Monument, Colorado
Energy Lease Financing, Series 2025

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Bond Component:					
	12/01/2025	22,196	4.950%	4.950%	100.000
	12/01/2026	26,958	4.950%	4.950%	100.000
	12/01/2027	28,292	4.950%	4.950%	100.000
	12/01/2028	29,693	4.950%	4.950%	100.000
	12/01/2029	31,163	4.950%	4.950%	100.000
	12/01/2030	32,705	4.950%	4.950%	100.000
	12/01/2031	34,324	4.950%	4.950%	100.000
	12/01/2032	36,023	4.950%	4.950%	100.000
	12/01/2033	37,806	4.950%	4.950%	100.000
	12/01/2034	39,678	4.950%	4.950%	100.000
	12/01/2035	41,642	4.950%	4.950%	100.000
	12/01/2036	43,703	4.950%	4.950%	100.000
	12/01/2037	45,866	4.950%	4.950%	100.000
	12/01/2038	48,137	4.950%	4.950%	100.000
	12/01/2039	50,520	4.950%	4.950%	100.000
	12/01/2040	53,020	4.950%	4.950%	100.000
		601,726			

Dated Date	01/22/2025	
Delivery Date	01/22/2025	
First Coupon	06/01/2025	
Par Amount	601,726.00	
Original Issue Discount	-	
Production	601,726.00	100.000000%
Underwriter's Discount	-	-
Purchase Price	601,726.00	100.000000%
Accrued Interest	-	
Net Proceeds	601,726.00	

BOND DEBT SERVICE

Town of Monument, Colorado
Energy Lease Financing, Series 2025

Dated Date 01/22/2025
Delivery Date 01/22/2025

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
06/01/2025	-	-	10,673.11	10,673.11	-
12/01/2025	22,196	4.950%	14,892.72	37,088.72	47,761.83
06/01/2026	-	-	14,343.37	14,343.37	-
12/01/2026	26,958	4.950%	14,343.37	41,301.37	55,644.74
06/01/2027	-	-	13,676.16	13,676.16	-
12/01/2027	28,292	4.950%	13,676.16	41,968.16	55,644.32
06/01/2028	-	-	12,975.93	12,975.93	-
12/01/2028	29,693	4.950%	12,975.93	42,668.93	55,644.86
06/01/2029	-	-	12,241.03	12,241.03	-
12/01/2029	31,163	4.950%	12,241.03	43,404.03	55,645.06
06/01/2030	-	-	11,469.74	11,469.74	-
12/01/2030	32,705	4.950%	11,469.74	44,174.74	55,644.48
06/01/2031	-	-	10,660.30	10,660.30	-
12/01/2031	34,324	4.950%	10,660.30	44,984.30	55,644.60
06/01/2032	-	-	9,810.78	9,810.78	-
12/01/2032	36,023	4.950%	9,810.78	45,833.78	55,644.56
06/01/2033	-	-	8,919.21	8,919.21	-
12/01/2033	37,806	4.950%	8,919.21	46,725.21	55,644.42
06/01/2034	-	-	7,983.51	7,983.51	-
12/01/2034	39,678	4.950%	7,983.51	47,661.51	55,645.02
06/01/2035	-	-	7,001.48	7,001.48	-
12/01/2035	41,642	4.950%	7,001.48	48,643.48	55,644.96
06/01/2036	-	-	5,970.84	5,970.84	-
12/01/2036	43,703	4.950%	5,970.84	49,673.84	55,644.68
06/01/2037	-	-	4,889.19	4,889.19	-
12/01/2037	45,866	4.950%	4,889.19	50,755.19	55,644.38
06/01/2038	-	-	3,754.01	3,754.01	-
12/01/2038	48,137	4.950%	3,754.01	51,891.01	55,645.02
06/01/2039	-	-	2,562.62	2,562.62	-
12/01/2039	50,520	4.950%	2,562.62	53,082.62	55,645.24
06/01/2040	-	-	1,312.25	1,312.25	-
12/01/2040	53,020	4.950%	1,312.25	54,332.25	55,644.50
	601,726		280,706.67	882,432.67	882,432.67

BOND DEBT SERVICE

Town of Monument, Colorado
Energy Lease Financing, Series 2025

Dated Date 01/22/2025
Delivery Date 01/22/2025

Period Ending	Principal	Coupon	Interest	Debt Service
12/01/2025	22,196	4.950%	25,565.83	47,761.83
12/01/2026	26,958	4.950%	28,686.74	55,644.74
12/01/2027	28,292	4.950%	27,352.32	55,644.32
12/01/2028	29,693	4.950%	25,951.86	55,644.86
12/01/2029	31,163	4.950%	24,482.06	55,645.06
12/01/2030	32,705	4.950%	22,939.48	55,644.48
12/01/2031	34,324	4.950%	21,320.60	55,644.60
12/01/2032	36,023	4.950%	19,621.56	55,644.56
12/01/2033	37,806	4.950%	17,838.42	55,644.42
12/01/2034	39,678	4.950%	15,967.02	55,645.02
12/01/2035	41,642	4.950%	14,002.96	55,644.96
12/01/2036	43,703	4.950%	11,941.68	55,644.68
12/01/2037	45,866	4.950%	9,778.38	55,644.38
12/01/2038	48,137	4.950%	7,508.02	55,645.02
12/01/2039	50,520	4.950%	5,125.24	55,645.24
12/01/2040	53,020	4.950%	2,624.50	55,644.50
	601,726		280,706.67	882,432.67

BOND SUMMARY STATISTICS

Town of Monument, Colorado
Energy Lease Financing, Series 2025

Dated Date	01/22/2025
Delivery Date	01/22/2025
Last Maturity	12/01/2040
Arbitrage Yield	4.950848%
True Interest Cost (TIC)	4.950848%
Net Interest Cost (NIC)	4.950001%
All-In TIC	5.675671%
Average Coupon	4.950001%
Average Life (years)	9.424
Weighted Average Maturity (years)	9.424
Duration of Issue (years)	7.316
Par Amount	601,726.00
Bond Proceeds	601,726.00
Total Interest	280,706.67
Net Interest	280,706.67
Total Debt Service	882,432.67
Maximum Annual Debt Service	55,645.24
Average Annual Debt Service	55,644.73
Underwriter's Fees (per \$1000)	
Average Takedown	-
Other Fee	-
Total Underwriter's Discount	-
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Bond Component	601,726.00	100.000	4.950%	9.424	655.88
	601,726.00			9.424	655.88

	TIC	All-In TIC	Arbitrage Yield
Par Value	601,726.00	601,726.00	601,726.00
+ Accrued Interest	-	-	-
+ Premium (Discount)	-	-	-
- Underwriter's Discount	-	-	-
- Cost of Issuance Expense	-	(30,000.00)	-
- Other Amounts	-	-	-
Target Value	601,726.00	571,726.00	601,726.00
Target Date	01/22/2025	01/22/2025	01/22/2025
Yield	4.950848%	5.675671%	4.950848%

TOWN OF MONUMENT
ORDINANCE NO. 26-2024

**A ORDINANCE AUTHORIZING THE MAYOR OR INTERIM TOWN MANAGER TO
SIGN ALL DOCUMENTS RELATED TO A REAL PROPERTY TRANSFER
WITH I-25 PROPERTIES AND COMCAST OF COLORADO/PENNSYLVANIA/WEST
VIRGINIA, LLC., RELATED TO THE TOWN'S WATER TANK LOCATED ON
BEACON LITE ROAD, EL PASO COUNTY**

WHEREAS, the Town of Monument ("Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town's Home Rule Charter approved by the electors on November 8, 2022 ("Charter"); and

WHEREAS, the Members of the Town Council ("Council") have been duly elected and qualified; and

WHEREAS, via Ordinance No. 17-2021, attached as **Exhibit A**, the Town authorized the purchase contract for the purchase of approximately one-half acre of real property (the "New Water Tank Site") located directly east of the Town's water tank, (the "Old Water Tank Site") El Paso County Parcel 7102200004, located on Beacon Lite Road, for \$70,000 (the "2021 Purchase Contract"); and

WHEREAS, via Ordinance No. 17-2021, the Board of Trustees for the Town (the Board") desired to authorize and otherwise proceed with the purchase of the New Water Tank Site using 2A ASD Funds; and

WHEREAS, via Ordinance No. 17-2021, the Mayor or Town Manager are authorized and directed to execute the 2021 Purchase Contract in substantially the form and with substantially the same content as the form thereof presented to the Board, for and on behalf of the Town, but with such changes therein as the Mayor or Town Manager may deem necessary or appropriate upon the advice of the Town Attorney, as evidenced by the execution thereof; and

WHEREAS, via Ordinance No. 17-2021 the Town authorized an escrow agreement to facilitate the 2021 Purchase Contract, whereby \$10,000 was deposited with Land Title Guarantee Company in an escrow account, Order Number: SC55095120-3 (the "Escrow Deposit"); and

WHEREAS, during the due diligence period of the 2021 Purchase Contract, the Town identified defects in title and the legal descriptions for the property described in the 2021 Purchase Contract; and

WHEREAS, with the cooperation of Cable HoldCo. Exchange, LLC NKA Comcast of Colorado/Pennsylvania/West Virginia, LLC, ("Comcast") the owner of the real property adjacent to the Old Water Tank Site and the New Water Tank Site, I-25 Properties LTD ("I-25"), party to the 2021 Purchase Contract, and the Town, the said parties have agreed to, or will agree to, a new

Contract to Buy and Sell Property, attached hereto as **Exhibit B** (the “Property Purchase Contract”) to: (i) exchange their respective interests in the real properties described therein; and (ii) correct certain title defects and legal descriptions for the Old Water Tank Site and the New Water Tank Site, for the purpose of facilitating the Town’s request to acquire the real property necessary to construct a new municipal water tank on the New Water Tank Site; and

WHEREAS, the Property Purchase Contract requires the preparation, approval and recording of an exemption plat (the “Exemption Plat”) to resolve the identified boundary and title issues, which Exemption Plat shall also dedicate portions of land as rights-of-way and other easements to El Paso County along Beacon Lite Road; and

WHEREAS, the Escrow Deposit shall be applied to the purchase price in the Property Purchase Contract to be paid to I-25, which purchase price is the same amount as in the 2021 Purchase Contract, and

WHEREAS, Comcast has requested that the Town reimburse and pay to Comcast the legal fees and Closing costs incurred by Comcast, not to exceed the aggregate amount of Thirty-Four Thousand Dollars (\$34,000.00), in connection with the Property Purchase Agreement; and

WHEREAS, the Council desires to proceed with the property transfers as set forth in the Property Purchase Contract and complete all actions necessary to effectuate the real property transfer contemplated in the Property Purchase Contract.

**THE TOWN COUNCIL OF THE TOWN OF MONUMENT, COLORADO,
ORDAINS:**

Section 1. Incorporation. The recitals set forth above are incorporated and resolved as if set forth in this section in full.

Section 2. Authorization. The Mayor, Mitch LaKind, and the Interim Town Manager Madeline VanDenHoek, are each authorized to execute on behalf of the Town the Property Purchase Contract substantially in the form and with substantially the same content as the form thereof presented to the Council, but with such changes therein as the Mayor or Interim Town Manager may deem necessary or appropriate upon advice of the Town Attorney, and any and all deeds, agreements, easements, or other documents reasonably necessary to carry out the Property Purchase Contract.

Section 3. Appropriation. The Town has sufficient funds that have been budgeted and appropriated for 2024 and 2025 to pay all amounts due under the Property Purchase Contract from the 2A Water ASD Fund.

Section 4. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or by the officers and employees of the Town directed toward the purchase and financing for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 5. Publication. Pursuant to Subsection 6.5, 3. of the Town of Monument Home Rule Charter and Subsection 2.04.030, G. of the Monument Municipal Code, upon approval this Ordinance shall be published on the Town's official website in full for not less than ten (10) days.

Section 6. Authentication and Filing. Upon passage this Ordinance shall be authenticated by the Mayor and Town Clerk and maintained by the Town Clerk in such form as is sufficient to assure reasonable access by the public. Failure to authenticate any ordinance shall not invalidate it or suspend its operation.

Section 7. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 8. Severability. If any portion of this Ordinance or the application hereof shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications which can be given effect without the invalid portion or application, provided such remaining portions or applications are not determined by the court to be inoperable.

INTRODUCED, PASSED, and ADOPTED/REJECTED, by the Town Council of the Town of Monument, Colorado this 16th day of December, 2024 by a vote of __ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

EXHIBIT A

Ordinance 17-2021

ORDINANCE NO. 17-2021

AN ORDINANCE OF THE TOWN OF MONUMENT, COLORADO, APPROVING THE PURCHASE OF REAL PROPERTY LOCATED ADJACENT TO THE TOWN'S WATER TANK LOCATED ON BEACON LITE ROAD, EL PASO COUNTY, COLORADO; AND PROVIDING OTHER DETAILS REGARDING THE FINANCING OF THE PURCHASE.

WHEREAS, the Town of Monument, Colorado (the "Town"), is a municipal corporation duly organized and operating as a statutory municipality under the Constitution and laws of the State of Colorado (the "State"); and

WHEREAS, pursuant to Section 31-15-101(1)(d), CRS, the Town has the power to acquire, hold, lease, and dispose of property, both real and personal; and

WHEREAS, the Board through Ordinance No. 08-2009 authorized the 2A Water ASD Fund and authorized the transfer of 100% of the net of the 1% Sales Tax and all related revenues and expenditures from the General Fund to this Fund to accurately account for the financing and development of all new water acquisition, storage and delivery; and

WHEREAS, the Board deems it to be in the best interests of the Town to purchase approximately one-half acre of real property located directly East of the Town's water tank El Paso County Parcel 7102200004 located on Beacon Lite Road. The half-acre to be taken from El Paso County Parcel 7102300001, County of El Paso, State of Colorado for the purpose of providing additional land for Town water storage infrastructure, as more specifically set forth in Exhibit A attached hereto (the "Property"); and

WHEREAS, there has been presented to the administrative staff of the Town and its advisors, and to the Board, copies of the negotiated Purchase Agreement by the Property owner and Town Manager, which proposal complies with Town purchasing rules; and

WHEREAS, the Board desires to finance the purchase of the Property for the purpose of providing additional land for required water storage and distribution facilities for Town from the 2A ASD Fund; and

WHEREAS, the 2A ASD Fund contains both ample funds for the purchase of the Property and said funds from the 2A ASD fund may lawfully be used to purchase the Property upon the passage of an Ordinance by the Board authorizing said purchase and use of 2A ASD Funds; and

WHEREAS, the Board desires to authorize and otherwise proceed with the purchase of the Property using 2A ASD Funds; and

WHEREAS, the negotiated agreement, by its terms is time sensitive and requires the purchase of the Property to be completed by May 27, 2021; therefore

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MONUMENT, COLORADO:

Section 1. Authorization of Property Purchase. The Board hereby approves the Purchase Agreement set forth in Exhibit A, in substantially the form and with substantially the content presented to the Board, is in all respects approved, authorized and confirmed, and the Mayor or Town Manager are authorized and directed to execute the Purchase Agreement in substantially the form and with substantially the same content as the form thereof presented to the Board, for and on behalf of the Town, but with such changes therein as the Mayor or Town Manager may deem necessary or appropriate upon the advice of the Town Attorney, as evidenced by the execution thereof.

Section 2. Authorization of Escrow Agreement. The Escrow Agreement (earnest money dates) set forth in Exhibit A, in substantially the form and with substantially the content presented to the Board, is in all respects approved, authorized and confirmed, and the Mayor or Town Manager are authorized and directed to execute the Escrow Agreement in substantially the form and with substantially the same content as the form thereof presented to the Board, for and on behalf of the Town, but with such changes therein as the Mayor or Town Manager may deem necessary or appropriate upon the advice of the Town Attorney, as evidenced by the execution thereof.

Section 3. Execution of Miscellaneous Documents. The Town Clerk or, in the absence thereof, the Deputy Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Board or the Town in connection with the matters authorized by this Ordinance, and to place the seal of the Town on the Purchase Agreement, the Escrow Agreement, and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Mayor and other officials, employees and agents of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance and relating to the purchase of the Property.

Section 4. Obligations of the Town. No provision of this Ordinance, the Purchase Agreement, the Escrow Agreement or all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance shall be construed as creating or constituting a general obligation or multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the Town nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Purchase Agreement shall be in effect. The term of the Purchase Agreement shall not extend beyond one year, subject to annual renewal, and the Town shall have no obligation to make any payment except in connection with the payment under the terms of Purchase Agreement.

Section 5. Declarations and Findings. The Board hereby determines and declares that the Purchase agreement for the Property in an amount \$70,000 represents the fair value for the Property. In making such determinations, the Board has given consideration to the current market value of the Property, the cost of acquiring, constructing or equipping property similar to

the Property, the uses and purposes for which the Property is being and will be employed by the Town, the benefit to the citizens and residents of the Town by reason of the use of the Property. The Board hereby determines and declares that the purchase of the Property pursuant to the Purchase Agreement will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Property were performed by the Town other than pursuant to the Purchase Agreement.

Section 6. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or by the officers and employees of the Town directed toward the purchase and financing for the purposes herein set forth are hereby ratified, approved and confirmed.

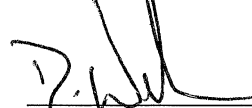
Section 7. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 8. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 9. Repealer. All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

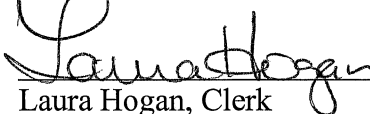
INTRODUCED, PASSED and ADOPTED by the Board of Trustees of the Town of Monument, El Paso County, Colorado, this 5th day of April 2021, by a vote of ___ for and ___ against.

TOWN OF MONUMENT



Don Wilson, Mayor

ATTEST:



Laura Hogan, Clerk



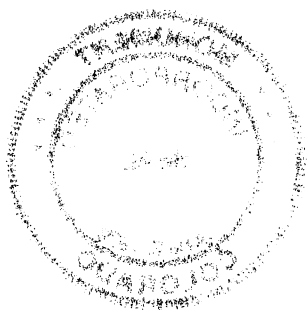


Exhibit A



RE/MAX Advantage

5590 North Academy Blvd Colorado Springs, CO 80918

L. Brian Maecker, The Brian Maecker Team contracts@maecker.com;

lisamstroud@gmail.com

Ph: 719-593-2963 Fax: 719-599-7777

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS4-5-19) (Mandatory 7-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE

(LAND)

☐ Property with No Residences)

☐ Property with Residences-Residential Addendum Attached)

Date: 3/1/2021

AGREEMENT

1. **AGREEMENT.** Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, **Town of Monument** (Buyer) will take title to the Property described below as

☐ Joint Tenants ☐ Tenants In Common ☒ Other n/a.

2.2. **No Assignability.** This Contract IS NOT assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. **Seller.** (Seller) is the current owner of the Property described below.

2.4. **Property.** The Property is the following legally described real estate in the County of El Paso, Colorado: A portion of the West one half of Section 2 in Township 11 South, Range 67 West of the 6th P.M. that is described as follows: From the Northwest corner of said Section 2 run South on the West line thereof a distance of 2,556.3 feet; thence angle left 90° and run East a distance of 205.0 feet for the Point of Beginning of the tract herein described; thence angle right 90° South on a line parallel to and 205.0 feet East of the West line of said Section 2 a distance of 243.7 feet; thence angle left 90° East a distance of 84.2 feet; thence angle left 90° North a distance of 243.7 feet; thence angle left 90° and run West a distance of 84.2 feet; thence to the Point of Beginning. To be verified by survey and title commitment known as No. n/a Beacon Lite Rd, Monument, CO 80132, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto except as herein excluded (Property).

2.5. **Inclusions.** The Purchase Price includes the following items (Inclusions):

2.5.1. **Inclusions.** The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under Exclusions:

n/a If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. **Personal Property — Conveyance.** Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except n/a.

Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.6. **Exclusions.** The following items are excluded (Exclusions): Equipment in the Barn which Must be removed within 30 days of closing.

2.7. **Water Rights, Well Rights, Water and Sewer Taps.**

☐ 2.7.1. **Deeded Water Rights.** The following legally described water rights: ground water rights included with parcel. Any deeded water rights will be conveyed by a good and sufficient deed at Closing.

☐ 2.7.2. **Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing: Monument Water tank

☐ 2.7.3. **Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must

file the form with the Division within sixty days after Closing. The Well Permit # is n/a.

☐ 2.7.4. **Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows: n/a

2.7.5. **Water and Sewer Taps.** The parties agree that water and sewer taps listed below for the Property are being conveyed as part of the Purchase Price as follows: Water tap that is currently granted to the Ferguson properties shall be transferred with new water tank

If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.

2.7.6. **Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), § 2.7.4 (Water Stock Certificates), or § 2.7.5 (Water and Sewer Taps), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

2.8. **Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:

n/a

Item No.	Reference	Event	Date or Deadline	
1	§ 4.3	Alternative Earnest Money Deadline	3/12/2021	Friday
Title				
2	§ 8.1, 8.4	Record Title Deadline	3/19/2021	Friday
3	§ 8.2, 8.4	Record Title Objection Deadline	3/26/2021	Friday
4	§ 8.3	Off-Record Title Deadline	3/19/2021	Friday
5	§ 8.3	Off-Record Title Objection Deadline	3/16/2021	Friday
6	§ 8.5	Title Resolution Deadline	3/29/2021	Monday
7	§ 8.6	Right of First Refusal Deadline	n/a	
Owners' Association				
8	§ 7.2	Association Documents Deadline	n/a	
9	§ 7.4	Association Documents Termination Deadline	n/a	
Seller's Disclosures				
10	§ 10.1	Seller's Property Disclosure Deadline	n/a	
11	§ 10.10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	n/a	
Loan and Credit				
12	§ 5.1	New Loan Application Deadline	n/a	
13	§ 5.2	New Loan Termination Deadline	n/a	
14	§ 5.3	Buyer's Credit Information Deadline	n/a	
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a	
16	§ 5.4	Existing Loan Deadline	n/a	
17	§ 5.4	Existing Loan Termination Deadline	n/a	
18	§ 5.4	Loan Transfer Approval Deadline	n/a	
19	§ 4.7	Seller or Private Financing Deadline	n/a	
Appraisal				
20	§ 6.2	Appraisal Deadline	n/a	
21	§ 6.2	Appraisal Objection Deadline	n/a	
22	§ 6.2	Appraisal Resolution Deadline	n/a	
Survey				
23	§ 9.1	New ILC or New Survey Deadline	3/30/2021	Tuesday
24	§ 9.3	New ILC or New Survey Objection Deadline	4/2/2021	Friday
25	§ 9.3	New ILC or New Survey Resolution Deadline	4/5/2021	Monday
Inspection and Due Diligence				
26	§ 10.3	Inspection Objection Deadline	n/a	
27	§ 10.3	Inspection Termination Deadline	n/a	
28	§ 10.3	Inspection Resolution Deadline	n/a	
29	§ 10.5	Property Insurance Termination Deadline	n/a	
30	§ 10.6	Due Diligence Documents Delivery Deadline	n/a	
31	§ 10.6	Due Diligence Documents Objection Deadline	n/a	
32	§ 10.6	Due Diligence Documents Resolution Deadline	n/a	

33	§ 10.6	Environmental Inspection Termination Deadline	n/a	
34	§ 10.6	ADA Evaluation Termination Deadline	n/a	
35	§ 10.7	Conditional Sale Deadline	n/a	
36	§ 10.10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)	n/a	
37	§ 11.1, 11.2	Estoppel Statements Deadline	n/a	
38	§ 11.3	Estoppel Statements Termination Deadline		
Closing and Possession			5/27/2021	MF MF
39	§ 12.3	Closing Date	4/27/2021	Tuesday
40	§ 17	Possession Date	4/27/2021	Tuesday
41	§ 17	Possession Time	n/a	
42	§ 28	Acceptance Deadline Date	3/11/2021	Thursday
43	§ 28	Acceptance Deadline Time	n/a	
44	n/a	n/a	n/a	
45	n/a	n/a	n/a	

3.2. **Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. If any deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. **Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$70,000.00	
2	§ 4.3	Earnest Money		\$10,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7	n/a	n/a		
8	n/a	n/a		
9	§ 4.4	Cash at Closing		\$60,000.00
10		TOTAL	\$70,000.00	\$70,000.00

4.2. **Seller Concession.** At Closing, Seller will credit to Buyer \$ 0 (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

4.3. **Earnest Money.** The Earnest Money set forth in this section, in the form of a certified funds, will be payable to and held by Land Title (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an Alternative Earnest Money Deadline for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

4.3.1. **Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract, is as set forth as the Alternative Earnest Money Deadline.

4.3.2. **Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money has not already been

returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.

4.4. Form of Funds; Time of Payment; Available Funds.

4.4.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.4.2. Time of Payment; Available Funds. All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.5. New Loan. (Omitted as inapplicable)

4.6. Assumption. (Omitted as inapplicable)

4.7. Seller or Private Financing. (Omitted as inapplicable)

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS. (Omitted as inapplicable)

5.3. Credit Information. If an existing loan is not to be released at Closing, this Contract is conditional (for the sole benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be in Seller's sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's Credit Information Deadline**, at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information and documents received by Seller must be held by Seller in confidence and not released to others except to protect Seller's interest in this transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective discretion, Seller has the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline**.

5.4. Existing Loan Review. If an existing loan is not to be released at Closing, Seller must deliver copies of the loan documents (including note, deed of trust and any modifications) to Buyer by **Existing Loan Deadline**. For the sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer has the Right to Terminate under § 25.1, on or before **Existing Loan Termination Deadline**, based on any unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

6. APPRAISAL PROVISIONS.

6.1. Appraisal Definition. An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

6.2. Appraisal Condition. The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

6.2.1. Conventional/Other. Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**, notwithstanding § 8.3 or § 13:

6.2.1.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

6.2.1.2. Appraisal Objection. Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

6.2.1.3. Appraisal Resolution. If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**,

unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

6.3. Lender Property Requirements. If the lender imposes any written requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in writing by Buyer.

6.4. Cost of Appraisal. Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by ☐ Buyer ☐ Seller. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

7. OWNERS' ASSOCIATION. This Section is applicable if the Property is located within a Common Interest Community and subject to the declaration (Association).

7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

7.2. Association Documents to Buyer. Seller is obligated to provide to Buyer the Association Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

7.3. Association Documents. Association documents (Association Documents) consist of the following:

7.3.1. All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements, rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

7.3.2. Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings; such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, **Governing Documents**); and

7.3.3. List of all Association insurance policies as provided in the Association's last Annual Disclosure, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed (**Association Insurance Documents**);

7.3.4. A list by unit type of the Association's assessments, including both regular and special assessments as disclosed in the Association's last Annual Disclosure;

7.3.5. The Association's most recent financial documents which consist of: (1) the Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the fees and charges (regardless of name of title of such fees or charges) that the Association's community association manager or Association will charge in connection with the Closing including, but not limited to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, **Financial Documents**);

7.3.6. Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent

Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

8.1. Evidence of Record Title.

☐ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, ☐ an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☒ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

8.1.3. Owner's Extended Coverage (OEC). The Title Commitment ☐ **Will** ☐ **Will Not** contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by ☒ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other n/a.**

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title, Resolution).

8.1.4. Title Documents. Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

8.1.5. Copies of Title Documents. Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

8.1.6. Existing Abstracts of Title. Seller must deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

8.2. Record Title. Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

487 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies
488 of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements,
489 liens (including, without limitation, governmental improvements approved, but not yet installed) or other title
490 matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller
491 has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under §
492 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right
493 in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water
494 rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed
495 by Seller or revealed by such inspection, notwithstanding § 8.2 (Record Title) and § 13 (Transfer of Title)), in
496 Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**.
497 If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of
498 Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives
499 Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection
500 by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller does not
501 receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer
502 accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of
503 which Buyer has actual knowledge.

504 **8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL**
505 **OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON**
506 **THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE**
507 **PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT**
508 **WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE**
509 **SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE**
510 **THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY**
511 **TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY**
512 **OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY**
513 **CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

514 A tax certificate from the respective county treasurer listing any special taxing districts that effect the
515 Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is located
516 within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective discretion,
517 Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that the Property is
518 included in a special taxing district and is received by Buyer after the **Record Title Deadline**, Buyer has until the
519 earlier of Closing or ten days after receipt by Buyer to review and object to the Property's inclusion in a special
520 taxing district as unsatisfactory to Buyer.

521 **8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective discretion, to
522 any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), § 8.4 (Special
523 Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the applicable deadline,
524 Buyer has the following options:

525 **8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title
526 matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a
527 written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of
528 **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection
529 (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on
530 or before expiration of **Title Resolution Deadline**. If either the **Record Title Deadline** or the **Off-Record Title**
531 **Deadline**, or both, are extended pursuant to § 8.2 (Record Title), § 8.3 (Off-Record Title) or § 8.4 (Special Taxing
532 Districts), the **Title Resolution Deadline** also will be automatically extended to the earlier of Closing or fifteen days
533 after Buyer's receipt of the applicable documents; or

534 **8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under §
535 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole
536 subjective discretion.

537 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a
538 right to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of
539 such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve
540 disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or
541 the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in
542 writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not
543 occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

544 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should
545 be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title,
546 ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back
547 requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and
548 other unrecorded agreements, water on or under the Property, and various laws and governmental regulations
549 concerning land use, development and environmental matters.

550 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**
551 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER**
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OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.

8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.7.5. Title Insurance Exclusions. Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.8. Consult an Attorney. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., Record Title Objection Deadline and Off-Record Title Objection Deadline).

9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, a: 1) ☐ New Improvement Location Certificate (New ILC); or, 2) ☒ New Survey in the form of n/a; is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. ☐ Seller ☒ Buyer will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: ☐ Seller ☒ Buyer or Survey to paid for by Monument for the half acre parcel to be sold to Monument as referenced in this contract

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and Buyer and Seller and Agents will receive a New ILC or New Survey on or before New ILC or New Survey Deadline.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the New ILC or New Survey Objection Deadline. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object to the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before New ILC or New Survey Objection Deadline, notwithstanding § 8.3 or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

9.3.3. New ILC or New Survey Resolution. If a New ILC or New Survey Objection is received by Seller, on or before New ILC or New Survey Objection Deadline and if Buyer and Seller have not agreed in writing to a settlement thereof on or before New ILC or New Survey Resolution Deadline, this Contract will terminate on expiration of the New ILC or New Survey Resolution Deadline, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before expiration of New ILC or New Survey Resolution Deadline.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before Seller's Property Disclosure Deadline, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property

Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

10.3.1. Inspection Objection. On or before the **Inspection Objection Deadline**, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

10.3.2. Terminate. On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in § 3.1 for Inspection Termination Deadline.**

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence.

10.6.1. Due Diligence Documents. If the respective box is checked, Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

☐ **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;

☐ **10.6.1.2.** Property tax bills for the last n/ years;

☐ **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent Certificates of Occupancy, to the extent now available;

☐ **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;

☐ **10.6.1.5.** Operating statements for the past n/a years;

☐ **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;

☐ **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases): None

☐ **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet been completed and capital improvement work either scheduled or in process on the date of this Contract;

☐ **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past n/a years;

☐ **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3);

- ☐ 10.6.1.11. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;
- ☐ 10.6.1.12. Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;
- ☐ 10.6.1.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and
- ☐ 10.6.1.14. Other documents and information:
- N/A

10.6.2. Due Diligence Documents Review and Objection. Buyer has the right to review and object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

10.6.2.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

10.6.2.2. Due Diligence Documents Objection. Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

10.6.2.3. Due Diligence Documents Resolution. If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**.

10.6.3. Zoning. Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

10.6.4. Due Diligence – Environmental, ADA. Buyer has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ Seller ☐ Buyer will order or provide ☐ **Phase I Environmental Site Assessment**, ☐ **Phase II Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or ☐ n/a, at the expense of ☐ Seller ☐ Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by n/ days (Extended Environmental Inspection Termination Deadline) and if such Extended Environmental Inspection Termination Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, ☐ Seller ☐ Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Termination Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Termination Deadline**, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.7. Conditional Upon Sale of Property. This Contract is conditional upon the sale and closing of that certain property owned by Buyer and commonly known as n/a. Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this provision.

10.8. Source of Potable Water (Residential Land and Residential Improvements Only). Buyer ☐ Does ☒ Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. ☒ There is No Well. Buyer ☐ Does ☐ Does Not acknowledge receipt of a copy of the current well permit.
Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent

abatement except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

11. ESTOPPEL STATEMENTS.

11.1. **Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:

11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

11.1.6. That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. **Seller Estoppel Statements.** In the event Seller does not receive from all tenants of the Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents required §11.1 above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

11.3. **Estoppel Statements Termination.** Buyer has the Right to Terminate under § 25.1, on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. **Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all customary or reasonably-required documents at or before Closing.

12.2. **Closing Instructions.** Colorado Real Estate Commission's Closing Instructions ☐ Are ☒ Are Not executed with this Contract.

12.3. **Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by *n/a*.

12.4. **Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. **TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing:

☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ *n/a* deed. Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing.

Unless otherwise specified in §30 (Additional Provisions), if title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in §38-30-113(5)(a), C.R.S.

14. **PAYMENT OF LIENS AND ENCUMBRANCES.** Unless agreed to by Buyer in writing, any amounts owed on any liens or encumbrances securing a monetary sum, including, but not limited to, any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not and previous years' taxes, will be paid at or before Closing by Seller from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

892 15.1. **Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and
893 all other items required to be paid at Closing, except as otherwise provided herein.

894 15.2. **Closing Services Fee.** The fee for real estate closing services must be paid at Closing by

895 ☒ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller

896 ☐ Other n/a

897 15.3. **Status Letter and Record Change Fees.** At least fourteen days prior to Closing Date, Seller
898 agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident to the
899 issuance of Association's Status Letter must be paid by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and
900 One-Half by Seller. Any Record Change Fee must be paid by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by
901 Buyer and One-Half by Seller.

902 15.4. **Local Transfer Tax.** ☐ The Local Transfer Tax of n/a % of the Purchase Price must
903 be paid at Closing by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

904 15.5. **Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property,
905 payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at
906 Closing by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller. The Private Transfer fee,
907 whether one or more, is for the following association(s): n/a in the total amount of n/a % of the Purchase Price or
908 \$.

909 15.6. **Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this
910 Contract, do not exceed \$n/a for:

911 ☐ Water Stock/Certificates ☐ Water District

912 ☐ Augmentation Membership ☐ Small Domestic Water Company ☐ n/a and must be paid at Closing by ☒
913 None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller

914 15.7. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction
915 must be paid when due by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

916 15.8. **FIRPTA and Colorado Withholding.**

917 15.8.1. **FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of the
918 Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur,
919 the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is
920 checked, Seller represents that Seller ☐ is a foreign person for purposes of U.S. income taxation. If the box in this
921 Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation.
922 Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to
923 verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such
924 amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or
925 if an exemption exists.

926 15.8.2. **Colorado Withholding.** The Colorado Department of Revenue may require a portion of
927 the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not
928 otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably
929 requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to
930 withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if
931 withholding applies or if an exemption exists.

932 16. **PRORATIONS AND ASSOCIATION ASSESSMENTS.** The following will be prorated to the Closing
933 Date, except as otherwise provided:

934 16.1. **Taxes.** Personal property taxes, if any, special taxing district assessments, if any and general
935 real estate taxes for the year of Closing, based on ☒ Taxes for the Calendar Year Immediately Preceding
936 Closing ☐ Most Recent Mill Levy and Most Recent Assessed Valuation, ☐ Other n/a.

937 16.2. **Rents.** Rents based on ☐ Rents Actually Received ☐ Accrued. At Closing, Seller will
938 transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions
939 and notify all tenants in writing of such transfer and of the transferee's name and address. Seller must assign to
940 Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such Leases.

941 16.3. **Association Assessments.** Current regular Association assessments and dues (Association
942 Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular
943 Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may
944 be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the
945 Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to
946 Closing Date by the Association will be the obligation of ☐ Buyer ☐ Seller. Except however, any special
947 assessment by the Association for improvements that have been installed as of the date of Buyer's signature
948 hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents there are no
949 unpaid regular or special assessments against the Property except the current regular assessments and n/a.
950 Association Assessments are subject to change as provided in the Governing Documents.

951 16.4. **Other Prorations.** Water and sewer charges, propane, interest on continuing loan and n/a.

952 16.5. **Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

17. **POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ n/a per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

GENERAL PROVISIONS

18. **DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

18.1. **Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings, as applicable).

18.2. **Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☐ Will ☐ Will Not be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

19. **CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. **Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

19.2. **Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

19.3. **Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

19.4. **Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

19.5. **Home Warranty.** [Intentionally Deleted]

19.6. **Risk of Loss -- Growing Crops** The risk of loss for damage to growing crops by fire or other casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance proceeds or benefits for the growing crops.

20. **RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller

acknowledge that the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

21.1. If Buyer is in Default:

☐ **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

22. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

23. MEDIATION. If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interplead the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder will be returned to Buyer and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

1135 26. **ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and
1136 specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior
1137 agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No
1138 subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable
1139 unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or
1140 is intended to be performed after termination or Closing survives the same. Any successor to a party receives the
1141 predecessor's benefits and obligations of this Contract.
1142

27. **NOTICE, DELIVERY AND CHOICE OF LAW.**

27.1. **Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing, except as provided in § 27.2 and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

27.2. **Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or n/a.

27.3. **Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

27.4. **Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

28. **NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

29. **GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey; and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence and Source of Water.**

ADDITIONAL PROVISIONS AND ATTACHMENTS

30. **ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

1) *The Town of Monument shall grant annexation into the Town of Monument for all parcels accessed off Beacon Lite Rd to the North and South of the Property being sold owned or controlled by Seller at no cost to Seller when so requested by Seller and when the Town, at its sole discretion, procured 1/6th contiguity with the parcels subject to a request for annexation.*

31. **OTHER DOCUMENTS.**

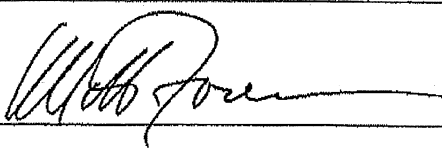
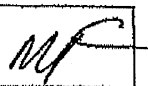
31.1. The following documents are a part of this Contract:

n/a

31.2. The following documents have been provided but are not a part of this Contract:

n/a

SIGNATURES

		Initials 
---	--	---

Buyer: *Town of Monument BY Mike Freeman*

[NOTE: If this offer is being countered or rejected, do not sign this document.

Seller: *Robert F. [signature]* Date: *3-19-21*

END OF CONTRACT TO BUY AND SELL REAL ESTATE

32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker ☐ Does ☐ Does Not acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Buyer as a ☐ Buyer's Agent ☐ Transaction-Broker in this transaction. ☐ This is a Change of Status

☐ Customer. Broker has no brokerage relationship with Buyer. See § 33 for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by ☐ Listing Brokerage ☐ Buyer ☐ Other n/a.

Brokerage Firm's Name: *RE/MAX Advantage*

Brokerage Firm's License #: *EC000099110*

L. Brian Maecker, The Brian Maecker Team

Date: _____

Broker's Name: *L. Brian Maecker, The Brian Maecker Team*

Broker's License #: *FA001100935*

Address: *5590 North Academy Blvd Colorado Springs, CO 80918*

Ph: *719-593-2963* Fax: *719-599-7777* Email Address: *contracts@maecker.com;*
lisamstroud@gmail.com

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker ☐ Does ☒ Does Not ☐ (n/a) acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Seller as a ☐ Seller's Agent ☐ Transaction-Broker ☒ (n/a) ☐ This is a Change of Status.

☒ **Customer.** Broker has no brokerage relationship with Seller. See § 32 for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by ☐ Seller ☐ Buyer ☒ Other

n/a

Brokerage Firm's License #:

Broker's License #:

Brokerage Firm's Name: **RE/MAX Advantage**

Broker's Name: **Cole Underwood**

Address: **5590 North Academy Boulevard Colorado Springs, CO 80918**

Ph: 719-548-8600 Fax: 719-548-5040 Email Address: cole@coleunderwood.com

CBS4-5-19. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

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EXHIBIT B

Property Purchase Contract

CONTRACT TO BUY AND SELL REAL PROPERTY

Comcast of Colorado/Pennsylvania/West Virginia, LLC (FKA Cable HoldCo. Exchange I, LLC) (“COMCAST”), the Town of Monument, Colorado (the “TOWN”), and Interstate 25 Properties, LTD (“I-25”) (hereinafter, collectively COMCAST, the TOWN and I-25 constitute the “Parties”) agree to buy and sell real property under the terms and conditions set forth in this Contract to Buy and Sell Real Property (CONTRACT).

WHEREAS, the TOWN is organized and incorporated as a Colorado municipality pursuant to C.R.S. § 31-2-101, *et seq.*;

WHEREAS, the TOWN seeks to acquire the real property necessary to construct and maintain a municipal water tank, a public purpose and use;

WHEREAS, in October 1977, the TOWN purchased from I-25’s predecessor in interest the real property necessary to construct and maintain a municipal water tank (the “Old Water Tank Site”) and as consideration for the purchase granted a water tap to serve the remaining seller property as further described in that certain Receipt and Option Contract (Vacant Land) dated October 19, 1977, attached as Exhibit A to Ordinance No. 129 (the “Water Tap”);

WHEREAS, the TOWN approved Ordinance No. 17-2021 for the purpose of entering into an agreement with I-25 (the “2021 Agreement”) to purchase real property for SEVENTY THOUSAND DOLLARS (\$70,000), with such real property necessary to construct and maintain a new municipal water tank (the “New Water Tank Site”);

WHEREAS, the Land Title Guarantee Company (the “Title Company”) opened an escrow account, Order Number: SC55095120-3, and accepted deposit of TEN THOUSAND DOLLARS (\$10,000) pursuant to the 2021 Agreement (the “Earnest Money”);

WHEREAS, pursuant to the agreement to purchase the New Water Tank Site, the TOWN identified defects in title and the legal descriptions for the Old Water Tank Site and the New Water Tank Site;

WHEREAS, the TOWN and I-25 desire to have this Contract supersede the 2021 Agreement and have the Earnest Money applied to the transaction as described herein; and

WHEREAS, with the cooperation of COMCAST, the owner of the real property adjacent to the Old Water Tank Site and the New Water Tank Site, I-25 and the TOWN, the Parties hereby agree to: (i) exchange their respective interests in the real properties described herein; and (ii) correct certain title defects and legal descriptions for the Old Water Tank Site and the New Water Tank Site, for the purpose of facilitating the TOWN’s request to acquire the real property necessary to construct a new municipal water tank on the New Water Tank Site.

AGREEMENT

Page 1 of 12

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS. The Parties incorporate the above-stated Recitals into this CONTRACT as if fully stated herein.
2. TRANSACTIONS AND SUBDIVISION EXEMPTION.
 - (a) The Parties hereby agree to complete, or cause to be completed, the following conveyances, subject to the Final Plat, as defined below, to effectuate the exchanges of real property contemplated by this CONTRACT (collectively, the “Transactions”) and assemble sole ownership of each of the platted lots as created by the Final Plat.
 - i. The TOWN shall convey to I-25 the real property depicted (in bold) and described in **Exhibit 1** (approximately 13,728 SF);
 - ii. I-25 shall convey to the TOWN the real property depicted (in bold) and described in **Exhibit 2** (approximately 11,494 SF);
 - iii. I-25 shall convey to COMCAST the real property depicted (in bold) and described in **Exhibit 3** (approximately 45,331 SF);
 - iv. COMCAST shall convey to the TOWN the real property depicted (in bold) and described in **Exhibit 4** (approximately 27,707 SF);
 - v. COMCAST shall convey to I-25 the real property depicted (in bold) and described in **Exhibit 5** (approximately 16,320 SF (Tract A) and approximately 810 SF (Tract B));
 - vi. I-25 shall vacate and waive its right to use and/or access any and all recorded or claimed access easements over or through COMCAST’s or the TOWN’s real property (**Exhibit 5** contains a depiction of the gravel roadway as described in the property records and as situated on the applicable real properties or portions thereof);
 - vii. I-25 shall execute and deliver a termination of easement agreement in recordable form to the Office of the El Paso County Clerk and Recorder for any and all recorded or claimed access easements in which I-25 has or claims to have a right to use over or through COMCAST’s or the TOWN’s real property, as applicable;
 - viii. I-25 shall convey to the TOWN a drainage and utility easement over the north portion of the real property depicted on **Exhibit 1** and extending east across I-25 property not part of the Final Plat, as depicted on **Exhibit 7**;

- ix. COMCAST shall convey to the TOWN an access easement over or through the real property depicted (in bold) and described in **Exhibit 6** to provide the TOWN's staff, agents, and contractors a means of ingress and egress to and from the New Water Tank Site from Beacon Lite Road (approximately 1,583 SF);
- x. COMCAST shall convey to the TOWN a temporary access easement over or through the real property depicted (in bold) and described in **Exhibit 7** to provide the TOWN's staff, agents, and contractors a means of ingress and egress for large construction traffic to and from the New Water Tank Site from Beacon Lite Road; provided that if such construction traffic will materially impede access to any of Comcast's business operations located on its real property, the TOWN shall provide advance written notice to Comcast at least seven (7) business days before the construction activities are scheduled to occur;
- xi. The conveyances and other agreements and covenants set forth in this Section 2 shall not burden or encumber COMCAST's real property following satisfaction of the Condition Precedent (as hereinafter defined) and Closing, and the TOWN shall obtain, at its sole cost and expense, subject to COMCAST's reasonably exercised direction and approval, an ALTA Standard Owner's Policy of Title Insurance (the "Comcast Title Policy") and a final ALTA survey (the "Comcast Survey") for the real property depicted as COMCAST's Lot 1 on **Exhibit 7**.
- xii. The conveyances set forth in Section 2(a)(i-v) shall be by quitclaim deed, and shall except any water and sewer taps, including but not limited to the Water Tap, utility connections, and all water, water rights, wells, water company stock, ditches, or ditch rights.

(b) Prior to completion of the Transactions described in Section 2(a), the Parties shall complete the following actions (each a "Condition Precedent"):

- i. The Parties shall jointly submit to El Paso County, Colorado a Subdivision Exemption Application for the purpose of platting the respective property interests of the Parties depicted on **Exhibit 7** (COMCAST's Lot 1, the TOWN's Lot 2, and I-25's Lot 3, Tract A and Tract B; collectively, the "Final Plat"); and
- ii. Pursuant to the Subdivision Exemption Application, COMCAST, the TOWN and I-25 shall dedicate to El Paso County the rights of way and public use easements, as may be applicable, adjacent to Beacon Lite Road substantially as shown on **Exhibit 7**; and
- iii. The Parties shall jointly execute the county approved Subdivision Exemption Plat and record said Plat immediately prior to those other documents to be recorded at Closing pursuant to Section 7 below.

- (c) The TOWN shall pay I-25 SEVENTY THOUSAND DOLLARS (\$70,000) for the Transactions between the TOWN and I-25 (the "Purchase Price").
3. CONTRACT NOT ASSIGNABLE. This CONTRACT shall not be assignable without the prior written consent of all Parties. Except as so restricted, this CONTRACT shall inure to the benefit of and be binding upon the Parties and their heirs, personal representatives, successors and assigns.
4. CONDITION TO CLOSING. In addition to the satisfaction of each of the Transactions listed in Section 2, the obligation of the Parties to complete Closing hereunder is contingent upon approval by El Paso County of the Subdivision Exemption Application and accompanying plat jointly submitted by the Parties.
5. CLOSING.
- (a) The Closing shall occur on the first business day occurring thirty (30) days after El Paso County approves the Parties' jointly submitted Subdivision Exemption Application and the accompanying plat, or on such other date as may be mutually agreed upon by the Parties after such approval has been duly issued (the "Closing Date"). Closing fees shall be equally divided among the Parties.
- (b) Prorations. General taxes for the year of closing, if any, prorated to the day of closing (based on the taxes for the calendar year immediately preceding closing), and pursuant to Sections 39-3-131 and 39-3-133, C.R.S., shall be paid by the respective transferor of the real property to the El Paso County Treasurer. The TOWN is a quasi-municipal corporation and political subdivision of the State of Colorado organized pursuant to Article 1, Title 32, C.R.S. and, therefore, is exempt from taxes. If applicable, all rents, water and sewer charges, and any similar items which are customarily prorated in El Paso County, Colorado shall be prorated to date of Closing, and paid by the respective transferor in the Transactions. Said prorations shall be a final settlement.
6. LEGAL FEE PAYMENT. The Parties hereby agree that at Closing, the TOWN shall reimburse and pay to COMCAST the legal fees incurred by COMCAST, not to exceed the aggregate amount of THIRTY-FOUR THOUSAND DOLLARS (\$34,000.00), in connection with this CONTRACT including, but not limited to, the drafting and negotiation of this CONTRACT.
7. CLOSING DELIVERABLES.
- (a) COMCAST's Closing Deliveries. At Closing, subject to the performance of its other obligations under this CONTRACT, COMCAST shall execute, acknowledge (where appropriate), and deliver to the TOWN and I-25, as applicable, the following documents, each dated as of the Closing Date:
- i. A deed conveying the real property depicted on **Exhibit 4** to the TOWN (the "Comcast Deed A");

- ii. An access easement agreement granting an easement over or through the real property depicted on **Exhibit 6** to the TOWN (the “Comcast Access Easement”);
- iii. A temporary construction access easement agreement granting an easement over or through the real property depicted on **Exhibit 7** to the TOWN (the “Comcast Construction Easement”);
- iv. A deed conveying the real property depicted on **Exhibit 5** to I-25 (the “Comcast Deed B”);
- v. A transferor’s certification to the TOWN and I-25 stating that COMCAST is not a “foreign person”, “foreign partnership”, “foreign trust” or “foreign estate” as those terms are defined in Section 1445 of the Internal Revenue Code;
- vi. All customary documents and instruments, each executed and acknowledged (where appropriate) by COMCAST, which are reasonably necessary to convey the real property interests described in this CONTRACT to the TOWN depicted on **Exhibits 4 and 6** and to I-25 depicted on **Exhibit 5**, reasonably necessary to evidence COMCAST’s authority to enter into and perform this CONTRACT or required under applicable law; and
- vii. A Closing Statement consistent with this CONTRACT executed by COMCAST.

(b) I-25’s Closing Deliveries. At Closing, subject to the performance of its other obligations under this CONTRACT, I-25 shall execute, acknowledge (where appropriate), and deliver to the TOWN and COMCAST, as applicable, the following documents, each dated as of the Closing Date:

- i. A deed conveying the real property depicted on **Exhibit 2** to the TOWN (the “I-25 Deed A”);
- ii. An access easement granting an easement over or through the real property depicted on **Exhibit 1** to the TOWN (the “I-25 Easement”);
- iii. A deed conveying the real property depicted on **Exhibit 3** to COMCAST (the “I-25 Deed B”);
- iv. A drainage and utility easement granting an easement to the Town over the north portion of the real property depicted on **Exhibit 1** and extending east across I-25 property not part of the Final Plat, as depicted on **Exhibit 7**.
- v. A transferor’s certification to the TOWN and COMCAST stating that I-25 is not a “foreign person”, “foreign partnership”, “foreign trust” or “foreign

estate” as those terms are defined in Section 1445 of the Internal Revenue Code;

- vi. All customary documents and instruments, each executed and acknowledged (where appropriate) by I-25, which are reasonably necessary to convey the real property interests described in this CONTRACT to the TOWN depicted on **Exhibits 1 and 2** and to COMCAST depicted on **Exhibit 3**, reasonably necessary to evidence I-25’s authority to enter into and perform this CONTRACT or required under applicable law;
 - vii. A Closing Statement consistent with this CONTRACT executed by I-25; and
 - viii. Any necessary easement termination agreements in recordable form in accordance with this CONTRACT.
- (c) The TOWN’s Closing Deliveries. At Closing, subject to the performance of its other obligations under this CONTRACT, the TOWN shall execute, acknowledge (where appropriate), and deliver to I-25 and COMCAST, as applicable, the following documents, each dated as of the Closing Date:
- i. A deed conveying the real property depicted on **Exhibit 1** to I-25 (the “TOWN Deed”);
 - ii. A transferor’s certification to I-25 and COMCAST stating that the TOWN is not a “foreign person”, “foreign partnership”, “foreign trust” or “foreign estate” as those terms are defined in Section 1445 of the Internal Revenue Code;
 - iii. All customary documents and instruments, each executed and acknowledged (where appropriate) by the TOWN, which are reasonably necessary to transfer the real property depicted on **Exhibit 1** to I-25, reasonably necessary to evidence the TOWN’s authority to enter into and perform this CONTRACT, required by the title company or surveyor as condition to issuing the Comcast Title Policy and Comcast Survey or required under applicable law; and
 - iv. A Closing Statement consistent with this CONTRACT executed by the TOWN.
 - v. The TOWN shall deliver SIXTY THOUSAND DOLLARS (\$60,000) to Title Company as the balance of the PURCHASE PRICE, to be paid to I-25 at Closing.
8. TITLE EVIDENCE. Upon or shortly after the Closing Date, the TOWN shall deliver, or cause to be delivered, to COMCAST the Comcast Title Policy and the Comcast Survey. This Section 7 shall survive Closing and not be merged into any deed. The TOWN shall pay for a title policy for property that the TOWN receives in the Transactions.

9. POSSESSION. Possession of the Lots and Tracts identified in this CONTRACT shall be delivered to the respective Parties on the Closing Date in accordance with the terms of this CONTRACT.
10. PRORATIONS. Taxes for the year of the Closing Date, based on the taxes for the calendar year immediately preceding the Closing Date, shall be prorated to the Closing Date. Each Party assumes responsibility for all real property taxes due but not paid, if any, as of Closing Date for their respective properties' interests as assessed prior to the real property transfers contemplated by this CONTRACT.
11. AUTHORITY. Each of the Parties represents and warrants: (i) that the person(s) executing this CONTRACT on its behalf has the full authority to execute and deliver this CONTRACT; (ii) that it has all power and authority to enter into this CONTRACT and to perform the terms set forth herein; (iii) that it has taken all requisite action in order to authorize the same; (iv) that upon such execution and delivery, this CONTRACT will be enforceable against each of the other Parties in accordance with its terms; (v) that by entering into this CONTRACT and performing the obligation hereunder, each of the Parties will not violate any contracts, leases, or other third party agreements to which any other Party may be subject; (vi) that by entering into this CONTRACT and performing the obligation hereunder, each Party assumes full responsibility for any and all claims for costs, fees, and other claims for compensation or reimbursement arising from any contract(s), lease(s), or other third party agreement(s) to which the Party may be subject; and (vii) any and all right for any third party to use or occupy the applicable real property as described in the CONTRACT expires or terminates on the Closing Date. The provisions of this paragraph 9 shall survive the Closing Date and the delivery of the deed as provided herein.
12. RIGHT OF INSPECTION. Upon reasonable advance notice, each Party shall provide to any other Party, and their agents or contractors or staff, reasonable access to the real property contemplated herein, and each Party grants to the TOWN the authority to perform reasonable and customary tests, evaluations, and other assessments of the contemplated Lot 2 to prepare for its eventual construction of a municipal water tank.
13. EACH PARTY TO COMPLETE TRANSACTION(S). In addition to the obligations set forth herein, each Party shall perform, or to cause to be performed, on or before the Closing Date, any and all further acts as may be reasonably necessary to consummate the Transactions contemplated hereby. In the event a Party fails to perform any act required herein including, but not limited to, conveying the applicable real property in accordance with the terms set forth in this CONTRACT, any other Party shall have the right, but not the obligation, to obtain specific performance thereof in addition to any other remedy available under applicable law.
14. ACKNOWLEDGEMENT OF PARTIES. Each Party to this CONTRACT affirms that, prior to executing this CONTRACT, it conducted due diligence and all inspections of the real property as described in this CONTRACT that it deemed necessary and appropriate for the Transactions described herein, and that each Party shall accept the real property

conveyed in accordance with this CONTRACT in its AS IS, WHERE IS condition as of the date the Condition Precedent is achieved.

15. GENERAL PROVISIONS.

- A. Entire Agreement. This CONTRACT embodies the whole agreement between the Parties, and there are no other promises, terms, conditions or obligations regarding the subject matter hereof, other than as herein contained.
- B. Binding Agreement; Assignment. This CONTRACT shall be deemed a contract extending to and binding upon the Parties and their respective heirs, devisees, executors, administrators, legal representatives, successors and assigns; provided, however, that any assignment of this CONTRACT may occur only upon the written consent of all Parties.
- C. Governing Law and Venue; Attorney Fees. This CONTRACT shall be interpreted and enforced under the laws and judicial decisions of the State of Colorado. The Parties agree and stipulate that the County and District Courts situated in El Paso County, Colorado, shall have jurisdiction over any and all disputes which may arise under this CONTRACT and the enforcement hereof and that venue in such courts shall be proper. In the event any action or other proceeding is commenced to enforce the terms hereof, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred in connection with such action or proceeding.
- D. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this CONTRACT and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that only COMCAST, the TOWN, and I-25 shall be the beneficiaries of this CONTRACT and that any other person or entity shall be deemed to be only an incidental beneficiary under this CONTRACT.
- E. No Waiver. The waiver of any breach of a term, provision or requirement of this CONTRACT shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement of any other term, provision or requirement.
- F. Construction. The rule of strict construction does not apply to this CONTRACT. This CONTRACT shall be given a reasonable construction in light of the intention of the Parties to swap interests in real property for the purpose of facilitating the TOWN's goal of constructing a new municipal water tank, a public purpose and use.
- G. Counterparts. This CONTRACT may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument. This CONTRACT may be executed by Portable Document Format (PDF) or through

an electronic signature platform (e.g. DocuSign), and the exchange of such electronic signature pages thereafter shall have the same force and effect as if an original executed copy, and shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes.

- H. Acknowledgement Open Records Act – Public Document. COMCAST and I-25 acknowledge that the TOWN is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.*, and as such, this CONTRACT may be subject to public disclosure thereunder.

Town of Monument, Colorado (Town)

By: _____ on the _____ day of _____ 2024
Mitch LaKind, Mayor
Town of Monument Colorado

By: _____ on the _____ day of _____ 2024
Tina Erickson, Town Clerk
Town of Monument, Colorado

Town' Address: 645 Beacon Lite Road, Monument, CO

FOR THE TOWN OF MONUMENT:

STATE OF COLORADO)
) SS.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024,
_____, Town of Monument, and as attested to by Tina Erickson, the Town Clerk.

WITNESS my hand and official seal.

My commission expires: _____.

My address is: _____.

Notary Public: _____

Comcast of Colorado/Pennsylvania/West Virginia, LLC (FKA Cable HoldCo. Exchange I, LLC) (COMCAST)

By: _____ on the _____ day of _____ 2024

Name: _____

Title: _____

COMCAST'S ADDRESS: c/o Comcast Cable Communication Management, LLC, 9401 E. Panorama Circle, Centennial, CO 80112, Attn: VP Finance with a copy to: c/o Comcast Cable Communication Management, LLC, One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103-2838, Attn: Real Estate Counsel

Interstate 25 Properties, LTD (I-25)

By: Robert S. Ferguson on the 16 day of Dec 2024
Robert S. Ferguson
General Partner

I-25's ADDRESS: 970 Corral Valley Rd
Colorado Springs, CO 80929

Exhibit 1

CONTRACT TO BUY AND SELL REAL PROPERTY



Drexel, Barrell & Co.
*Traditional Services, Innovative Solutions
Since 1949*

1376 Miners Drive, Suite 107 • Lafayette, CO 80026 • 303.442.4338 • 303.442.4373 fax
101 Sahwatch St., Suite 100 • Colorado Springs, CO 80903 • 719-260-0887 • 719-260-8352 fax

DBC Project: 21507-00
December 3, 2024

EXHIBIT A

LEGAL DESCRIPTION - Lands of The Town of Monument to be conveyed to Interstate 25 Properties, LTD

A TRACT OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, SAID TRACT BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED IN BOOK 2997, PAGE 345 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2556.30 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE NORTHERNMOST SOUTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO;

THENCE ALONG THE SOUTHERLY LINE OF SAID TRACT OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730, NORTH 89°29'54" EAST, 175.00 FEET; THENCE SOUTH 00°30'06" EAST, 136.04 FEET TO THE "POINT OF BEGINNING";

THENCE CONTINUING SOUTH 00°30'06" EAST, 107.66 FEET; THENCE SOUTH 89°29'54" WEST, 104.44 FEET TO THE EASTERLY LINE OF THAT PARCEL OF LAND AS DESCRIBED IN THAT SPECIAL WARRANTY DEED RECORDED AT RECEPTION NO. 224045237 OF THE RECORDS OF THE COUNTY OF EL PASO; THENCE NORTH 22°44'32" WEST, 88.23 FEET TO A POINT OF CURVE TO THE RIGHT;

THENCE 28.99 FEET ALONG THE ARC OF SAID CURVE TO THE END THEREOF, SAID ARC HAVING A CENTRAL ANGLE OF 03°09'51", A RADIUS OF 525.00 FEET AND BEING SUBTENDED BY A CHORD THAT BEARS NORTH 21°09'36" WEST, 28.99 FEET; THENCE NORTH 89°29'54" EAST, 63.99 FEET; THENCE SOUTH 89°43'43" EAST, 84.08 FEET TO THE POINT OF BEGINNING.

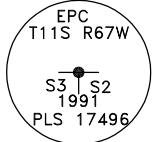
THE ABOVE-DESCRIBED TRACT CONTAINS 13,728 SQUARE FEET, MORE OR LESS.

I, JOHN C. DAY, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

JOHN C. DAY PLS 29413
FOR AND ON BEHALF OF
DREXEL, BARRELL & CO.
101 SAHWATCH ST., SUITE 100
COLORADO SPRINGS, COLORADO 80903
719-260-0887



Point of
Commencement



Stamping
on cap

EXHIBIT B

LANDS OF THE TOWN OF MONUMENT TO BE
CONVEYED TO INTERSTATE 25 PROPERTIES, LTD

Lands of Interstate 25
Properties, LTD per
Book 5501, Page 684

BASIS OF BEARINGS

S0°30'06"E 2767.20'(M)

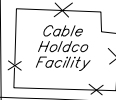
West Line of NW 1/4 Section 2, T11S, R67W

S0°30'06"E 2556.30' (R)

Lands of Cable Holdco
Exchange I, LLC, Per
Reception No. 206119730

AREA
156,555 s.f. +/-

PARCEL LINE TABLE		
LINE #	DIRECTION	LENGTH
L-1	N89°29'54"E	63.99'
L-2	S89°43'43"E	84.08'



Existing Town of
Monument chain link
fence.

Gravel Rd.

Northernmost SW Corner
of lands of Cable Holdco
Exchange I, LLC per
reception #206119730

Proposed
Replacement
Water Tank

Wood
Building

Fenced area
around cell
tower. No lease
documents for
this site in title
information to
date.

N89°29'54"E
30.00'

BEACON LITE RD.
(gravel)

N89°29'54"E 175.00'(R1)

Existing
Town of
Monument
Water Tank

**20' Ingress-Egress

Southernmost
SW Corner of
lands of Cable
Holdco Exchange
I, LLC

Existing cell tower
is within chain
link fence

**OneComm et al,
50'X50' Lease
Parcel & 20'
Ingress-Egress
Easements, location
per lease legal
descriptions. No cell
Tower in this area.

Point of
Beginning

Portion of lands of the
Town of Monument to be
conveyed to Interstate 25 Properties,
LTD. 13,728 s.f. +/-

S0°30'06"E

107.66'

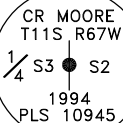
Lands of Interstate 25
Properties, LTD per
Book 5501, Page 684

Lands of the Town
of Monument per:
Book 2997,
Page 345

S89°29'54"W
104.44'

Right-of-Way conveyed
to El Paso County,
Special Warranty Deed
Reception #224045237

Area excepted by the
Town of Monument
deed: Book 2997,
Page 345



Stamping
on cap

(R)=Record distances per Special Warranty Deed
to Cable Holdco Exchange I, LLC (Comcast),
Reception No. 206119730

(R1)=Record distances per Warranty Deed to the
Town of Monument, Book 2997, Page 345

(M)=Measured Dimension

s.f.=Square Feet

NOTE: THIS MAP IS NOT A LAND SURVEY
PLAT OR AN IMPROVEMENT SURVEY PLAT.
THE PURPOSE OF THIS MAP IS TO DEPICT
THE ATTACHED LEGAL DESCRIPTION.



SCALE: 1"=100'

CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	28.99'	525.00'	3°09'51"	N21°09'36"W	28.99'

PREPARED BY:

Drexel, Barrell & Co. Engineers/Surveyors



101 S. SAHWATCH ST. SUITE 100, COLORADO SPRINGS, CO 80903
1376 MINERS DRIVE, SUITE 107, LAFAYETTE, CO 80026
(719)260-0887

Revisions-Date

Date
12/03/2024

Drawn By
SRC/AYC

Job No.
21507-00

Revisions per County ROW
12/02/24

Scale
1" = 100'

Checked By
JCD

Drawing No.
21507-00 EXH Town-I 25

Exhibit 2

CONTRACT TO BUY AND SELL REAL PROPERTY

DBC Project: 21507-00
July 2, 2022

EXHIBIT A

LEGAL DESCRIPTION - Lands of I 25 Properties, LTD to be conveyed to The Town of Monument

A TRACT OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, SAID TRACT BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED IN BOOK 5501, PAGE 684 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S10 S11 S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2556.30 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE NORTHERNMOST SOUTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO;

THENCE ALONG THE SOUTHERLY LINE OF SAID TRACT OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730, NORTH 89°29'54" EAST, 175.00 FEET TO THE "POINT OF BEGINNING";

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, NORTH 89°29'54" EAST, 84.20 FEET; THENCE ALONG THE WESTERLY LINE OF SAID TRACT, SOUTH 00°30'06" EAST, 100.00 FEET TO THE SOUTHERNMOST SOUTHWEST CORNER OF SAID TRACT OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730;

THENCE CONTINUING SOUTH 00°30'06" EAST, 36.98 FEET; THENCE NORTH 89°51'42" WEST, 84.21 FEET; THENCE NORTH 00°30'06" WEST, 136.04 FEET TO THE POINT OF BEGINNING.
THE ABOVE-DESCRIBED TRACT CONTAINS 11,494 SQUARE FEET, MORE OR LESS.

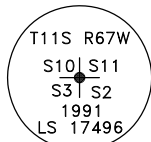
I, JOHN C. DAY, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

JOHN C. DAY PLS 29413
FOR AND ON BEHALF OF
DREXEL, BARRELL & CO.
3 SOUTH 7TH STREET
COLORADO SPRINGS, COLORADO 80905
719-260-0887



Point of
Commencement

NW Corner
of Section
2, T-11-S,
R-67-W
Found #6 rebar with
3.25" aluminum cap



Stamping
on cap

BASIS OF BEARINGS

S0°30'06"E 2767.20'(M)

West Line of NW 1/4 Section 2, T11S, R67W

S0°30'06"E 2556.30'(R)

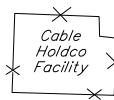
EXHIBIT B

LANDS OF INTERSTATE 25 PROPERTIES, LTD TO
BE CONVEYED TO THE TOWN OF MONUMENT

Lands of Interstate 25
Properties, LTD per
Book 5501, Page 684

Lands of Cable Holdco
Exchange I, LLC, Per
Reception No. 206119730

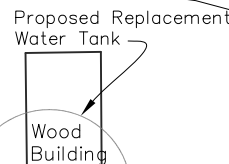
AREA
156,555 s.f. +/-



Existing Town of
Monument chain link
fence

Gravel Rd.

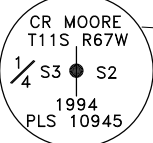
Northernmost SW Corner
of lands of Cable Holdco
Exchange I, LLC per
reception #206119730



N89°29'54"E
30.00'

SW Corner of
the NW 1/4
Section 2,
T-11-S,
R-67-W

Found #6 rebar,
with 2" aluminum
cap.
Stamping on cap



Area excepted by the
Town of Monument
deed: Book 2997,
Page 345

BEACON LITE RD.
(gravel)

N0°30'06"W 82.63'

N15°55'54"W 53.54'

N20°35'35"W 116.55'

N20°35'35"W 116.55'

N20°35'35"W 116.55'

N20°35'35"W 116.55'

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N20°35'35"W 116.55'

N20°35'35"W 116.55'

Point of
Beginning

N89°29'54"E 175.00'(R1)



Lands of the Town
of Monument per:
Book 2997, Page
345

S89°29'54"W
120.72'

S0°30'06"E 107.66'

S0°30'06"E 107.66'

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S0°30'06"E 107.66'

S0°30'06"E 107.66'

N89°29'54"E 84.20'

N0°30'06"W 136.04'

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N0°30'06"W 136.04'

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N0°30'06"W 136.04'

N0°30'06"W 136.04'

**20' Ingress-Egress
Southernmost
SW Corner of
lands of Cable
Holdco Exchange
I, LLC

Lands of Interstate 25
Properties, LTD per
Book 5501, Page 684

Existing cell tower
is within chain
link fence

**OneComm et al,
50'X50' Lease
Parcel & 20'
Ingress-Egress
Easements, location
per lease legal
descriptions. No cell
Tower in this area.

(R)=Record distances per Special Warranty Deed to Cable Holdco Exchange I, LLC
(Comcast), Reception No. 206119730

(R1)=Record distances per Warranty Deed to the Town of Monument, Book 2997,
Page 345

(M)=Measured Dimension

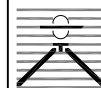
s.f.=Square Feet

NOTE: THIS MAP IS NOT A LAND SURVEY
PLAT OR AN IMPROVEMENT SURVEY PLAT.
THE PURPOSE OF THIS MAP IS TO DEPICT
THE ATTACHED LEGAL DESCRIPTION.



SCALE: 1"=100'

PREPARED BY:



Drexel, Barrell & Co. Engineers/Surveyors
3 SOUTH 7TH STREET COLORADO SPRINGS, COLORADO 80905 (719)260-0887
1800 38TH STREET BOULDER, COLORADO 80301 (303)442-4338

Revisions-Date	Date 7/02/2022	Drawn By AYC	Job No. 21507-00
	Scale 1" = 100'	Checked By JCD	Drawing No. 21507-00 EXH I 25-Town

Exhibit 3

**CONTRACT TO BUY AND SELL REAL
PROPERTY**

DBC Project: 21507-00
June 29, 2022

EXHIBIT A

LEGAL DESCRIPTION - Lands of Interstate 25 Properties, LTD to be conveyed to
Cable Holdco Exchange I, LLC

A PARCEL OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, SAID PARCEL BEING A PORTION OF THAT TRACT OF LAND AS DESCRIBED IN BOOK 5501, PAGE 684 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S10 S11 S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2556.30 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE SOUTHWEST CORNER OF THAT TRACT OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO; THENCE NORTH 00°30'06" WEST, 345.93 FEET TO THE "POINT OF BEGINNING";

THENCE NORTH 00°30'06" WEST, 110.78 FEET; THENCE NORTH 89°29'54" EAST, 409.20 FEET; THENCE SOUTH 00°30'06" EAST, 110.78 FEET; THENCE SOUTH 89°29'54" WEST, 409.20 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TRACT CONTAINS 45331 SQUARE FEET, MORE OR LESS.

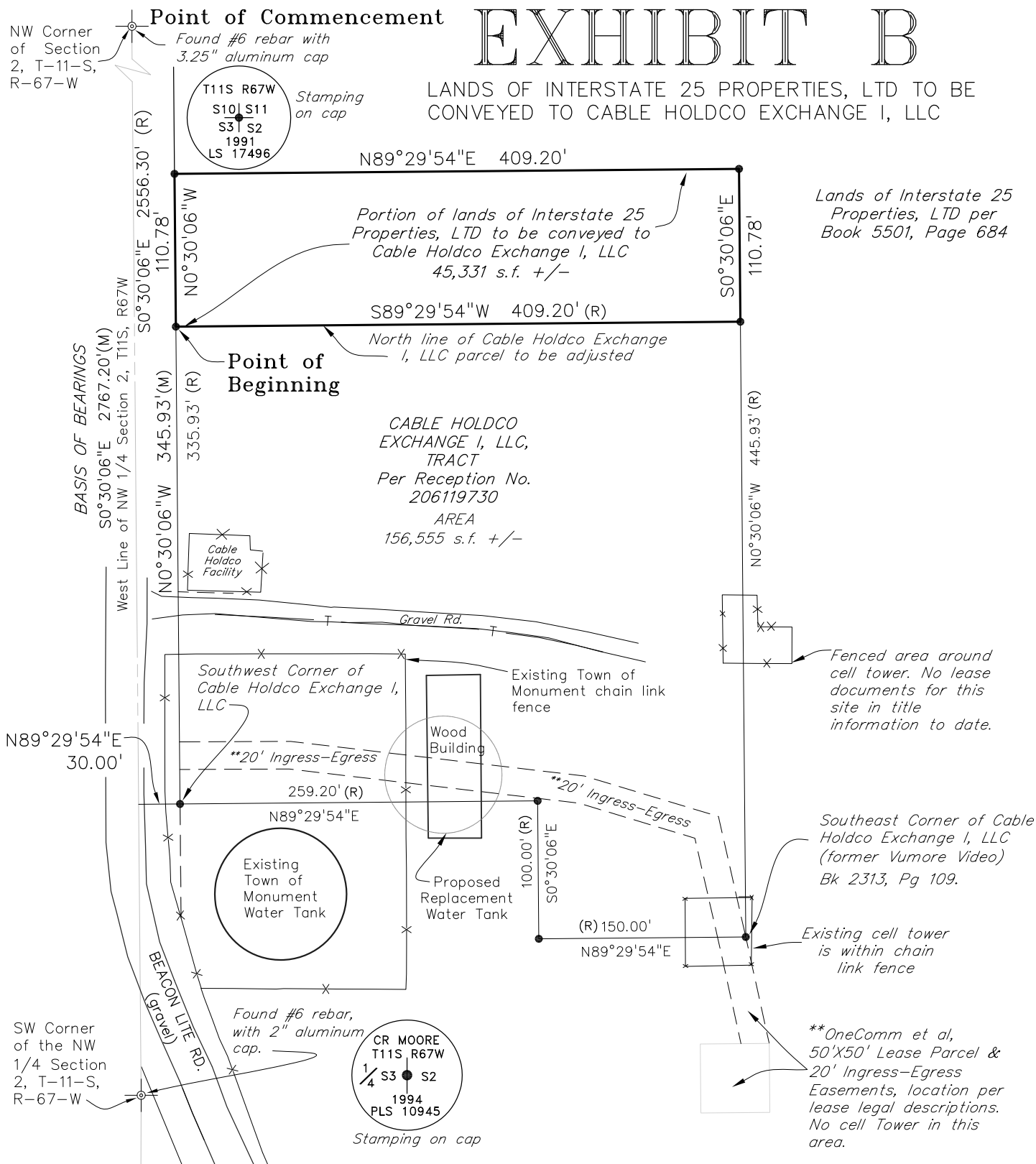
I, JOHN C. DAY, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

JOHN C. DAY PLS 29413
FOR AND ON BEHALF OF
DREXEL, BARRELL & CO.
3 SOUTH 7TH STREET
COLORADO SPRINGS, COLORADO 80905
719-260-0887



EXHIBIT B

LANDS OF INTERSTATE 25 PROPERTIES, LTD TO BE
CONVEYED TO CABLE HOLDCO EXCHANGE I, LLC



(R)=Record distance per Special Warranty Deed to
Cable Holdco Exchange I, LLC (Comcast),
Reception No. 206119730

(M)=Measured dimension
s.f.=Square Feet

NOTE: THIS MAP IS NOT A LAND SURVEY
PLAT OR AN IMPROVEMENT SURVEY PLAT.
THE PURPOSE OF THIS MAP IS TO DEPICT
THE ATTACHED LEGAL DESCRIPTION.



SCALE: 1"=100'

PREPARED BY:



Drexel, Barrell & Co. Engineers/Surveyors
3 SOUTH 7TH STREET COLORADO SPRINGS, COLORADO 80905 (719)260-0887
1800 38TH STREET BOULDER, COLORADO 80301 (303)442-4338

Revisions-Date	Date	Drawn By	Job No.
	6/29/2022	AYC	21507-00
	Scale	Checked By	Drawing No.
	1" = 100'	JCD	21507-00 EXH to Holdco

Exhibit 4

**CONTRACT TO BUY AND SELL REAL
PROPERTY**

DBC

Drexel, Barrell & Co.

Traditional Services, Innovative Solutions
Since 1949

1376 Miners Drive, Suite 107 • Lafayette, CO 80026 • 303.442.4338 • 303.442.4373 fax
101 Sawatch St., Suite 100 • Colorado Springs, CO 80903 • 719-260-0887 • 719-260-8352 fax

DBC Project: 21507-00

December 3, 2024

EXHIBIT A

LEGAL DESCRIPTION - Lands of Cable Holdco Exchange I LLC, to be conveyed to the Town of Monument

A TRACT OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, SAID TRACT BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED UNDER RECEPTION NO. 206119730 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S10 S11 S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2556.30 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE NORTHERNMOST SOUTHWEST CORNER OF SAID PARCEL OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730, THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, NORTH 89°29'54" EAST, 5.51 FEET TO THE "POINT OF BEGINNING";

THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 89°29'54" EAST, 253.69 FEET; THENCE NORTH 00°30'06" WEST, 108.80 FEET; THENCE SOUTH 89°29'54" WEST, 251.84 FEET; THENCE SOUTH 43°48'17" WEST, 3.91 FEET; THENCE SOUTH 00°10'10" WEST, 71.34 FEET TO A POINT OF CURVE TO THE LEFT;

THENCE 34.69 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF BEGINNING, SAID ARC HAVING A CENTRAL ANGLE OF 03°49'50", A RADIUS OF 518.93 FEET AND BEING SUBTENDED BY A CHORD THAT BEARS SOUTH 02°38'28" EAST, 34.69 FEET.

THE ABOVE-DESCRIBED TRACT CONTAINS 27,707 SQUARE FEET, MORE OR LESS.

I, JOHN C. DAY, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

JOHN C. DAY PLS 29413
FOR AND ON BEHALF OF
DREXEL, BARRELL & CO.
101 SAWATCH ST., SUITE 100
COLORADO SPRINGS, COLORADO 80903
719-260-0887



NW Corner of Section 2, T-11-S, R-67-W

Point of Commencement

Found #6 rebar with 3.25" aluminum cap

EXHIBIT B

LANDS OF CABLE HOLDCO EXCHANGE I, LLC TO BE CONVEYED TO THE TOWN OF MONUMENT

T11S R67W
S10 S11
S3 S2
1991
LS 17496

Stamping on cap

Lands of Interstate 25
Properties, LTD per
Book 5501, Page 684

S89°29'54"W 409.20' (R)

CABLE HOLDCO
EXCHANGE I, LLC,
TRACT
Per Reception No.
206119730

AREA
156,555 s.f. +/-

BASIS OF BEARINGS

S0°30'06"E 2767.20' (M)

West Line of NW 1/4 Section 2, T11S, R67W

S0°30'06"E

335.93' (R)

237.13'

N0°30'06"W

445.93' (R)

108.80'

N0°30'06"W

100.00' (R)

S89°29'54"W

150.00' (R)

N0°30'06"W

150.00' (R)

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150.00' (R)

S89°29'54"W

150.00' (R)

N0°30'06"W

150.00' (R)

S89°29'54

Exhibit 5

**CONTRACT TO BUY AND SELL REAL
PROPERTY**

DBC Project: 21507-00
June 29, 2022

EXHIBIT A

LEGAL DESCRIPTION - Lands of Cable Holdco Exchange I LLC, to be conveyed to Interstate 25 Properties, LTD

TWO TRACTS OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, SAID TRACTS BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED UNDER RECEPTION NO. 206119730 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT A

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S10 S11 S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2556.30 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, NORTH 89°29'54" EAST, 259.20 FEET TO THE "POINT OF BEGINNING";

THENCE NORTH 00°30'06" WEST, 8.80 FEET; THENCE NORTH 89°29'54" EAST, 150.00 FEET TO THE EAST LINE OF SAID PARCEL; THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID PARCEL:

1. SOUTH 00°30'06" EAST, 108.80 FEET;
2. SOUTH 89°29'54" WEST, 150.00 FEET;
3. NORTH 00°30'06" WEST, 100.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TRACT CONTAINS 16,320 SQUARE FEET, MORE OR LESS.

TRACT B

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S10 S11 S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS

Description Continued:

BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2556.30 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND AS DESCRIBED UNDER RECEPTION NUMBER 206119730; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, NORTH 89°29'54" EAST, 259.20 FEET; THENCE NORTH 00°30'06" WEST, 8.80 FEET; THENCE NORTH 89°29'54" EAST, 150.00 FEET TO THE EAST LINE OF SAID PARCEL; THENCE ALONG SAID EAST LINE, NORTH 00°30'06" WEST 88.55 FEET TO THE "POINT OF BEGINNING";

THENCE NORTH 89°29'54" WEST, 15.67 FEET;
THENCE NORTH 00°42'08" WEST, 51.40 FEET;
THENCE NORTH 89°28'56" EAST, 15.85 FEET;
THENCE SOUTH 00°30'06" EAST, 51.41 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TRACT CONTAINS 810 SQUARE FEET, MORE OR LESS.

I, JOHN C. DAY, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

JOHN C. DAY PLS 29413
FOR AND ON BEHALF OF
DREXEL, BARRELL & CO.
3 SOUTH 7TH STREET
COLORADO SPRINGS, COLORADO 80905
719-260-0887



Drawing No.
21507-00 EXH CH to I 25

Exhibit 6

**CONTRACT TO BUY AND SELL REAL
PROPERTY**

DBC Project: 21507-00
December 3, 2024

EXHIBIT A

LEGAL DESCRIPTION - Lands of Cable Holdco Exchange I LLC, to be conveyed to the Town of Monument as an Access Easement

A TRACT OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, SAID TRACT BEING A PORTION OF THAT PARCEL OF LAND AS DESCRIBED AT RECEPTION NUMBER 206119730 OF THE RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING" AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06" EAST, 2767.20 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, SAID LINE MONUMENTED AT THE NORTH TERMINUS BY A FOUND #6 REBAR WITH A 3.25" ALUMINUM CAP STAMPED "T11S R67W S10 S11 S3 S2 1991 LS 17496" AND MONUMENTED AT THE SOUTH TERMINUS BY A FOUND #6 REBAR WITH A 2" ALUMINUM CAP STAMPED "CR MOORE T11S R67W 1/4 S3 S2 1994 PLS 10945";

THENCE SOUTH 00°30'06" EAST, 2447.50 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE WEST LINE OF SAID PARCEL OF LAND AS DESCRIBED AT RECEPTION NUMBER 206119730; THENCE ALONG SAID WEST LINE NORTH 00°30'06" WEST, 13.87 FEET TO THE "POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, NORTH 00°30'06" WEST, 31.13 FEET;
THENCE SOUTH 88°21'10" EAST, 40.00 FEET;
THENCE SOUTH 00°32'20" EAST, 43.50 FEET
THENCE SOUTH 89°29'54" WEST, 32.64 FEET;
THENCE NORTH 43°47'17" EAST, 14.98 FEET;
THENCE NORTH 45°40'36" WEST, 4.46 FEET;
THENCE SOUTH 89°29'31" WEST, 14.66 FEET TO THE POINT OF BEGINNING;

THE ABOVE-DESCRIBED TRACT CONTAINS 1583 SQUARE FEET, MORE OR LESS.

I, JOHN C. DAY, A PROFESSIONAL LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

JOHN C. DAY PLS 29413
FOR AND ON BEHALF OF
DREXEL, BARRELL & CO.
101 SAHWATCH ST., SUITE 100
COLORADO SPRINGS, COLORADO 80903
719-260-0887



NW Corner
of Section
2, T-11-S,
R-67-W

Point of Commencement

Found #6 rebar with
3.25" aluminum cap

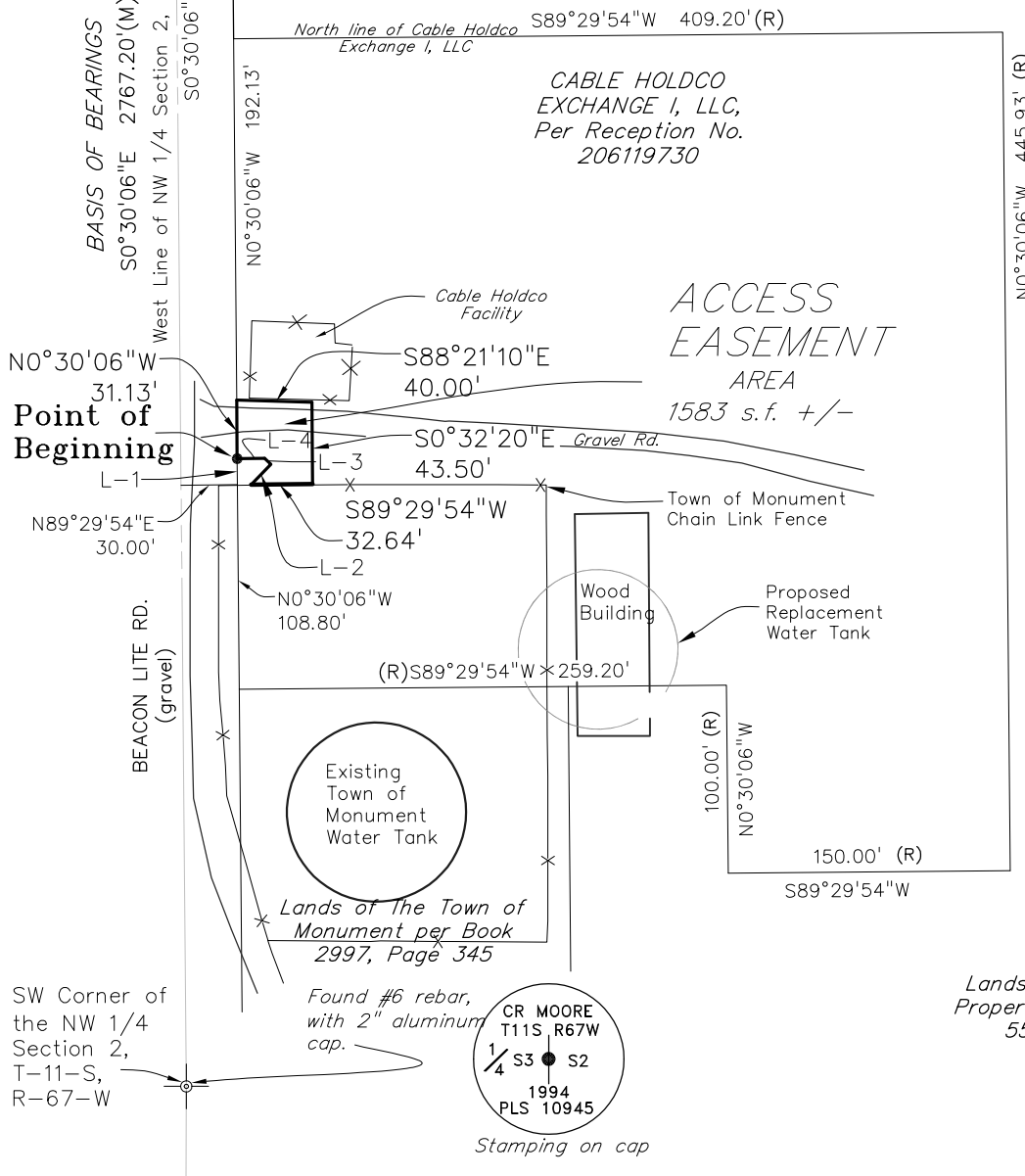
T11S R67W
S10 S11
S3 S2
1991
LS 17496

Stamping
on cap

EXHIBIT B

ACCESS EASEMENT ACROSS LANDS OF CABLE
HOLDCO EXCHANGE I, LLC, TO BE CONVEYED
TO THE TOWN OF MONUMENT

Lands of Interstate 25
Properties, LTD per
Book 5501, Page 684



PARCEL LINE TABLE		
LINE #	LENGTH	DIRECTION
L-1	13.87'	N0°30'06"W
L-2	14.98'	N43°47'17"E
L-3	4.46'	N45°40'36"W
L-4	14.66'	S89°29'31"W

(R)=Record distances per Special Warranty Deed to
Cable Holdco Exchange I, LLC (Comcast),
Reception No. 206119730

(M)=Measured Dimension

s.f.=Square Feet

NOTE: THIS MAP IS NOT A LAND SURVEY
PLAT OR AN IMPROVEMENT SURVEY PLAT.
THE PURPOSE OF THIS MAP IS TO DEPICT
THE ATTACHED LEGAL DESCRIPTION.



SCALE: 1"=100'

Lands of Interstate 25
Properties, LTD per Book
5501, Page 684

PREPARED BY:



Drexel, Barrell & Co. Engineers/Surveyors
101 S. SAHWATCH ST. SUITE 100, COLORADO SPRINGS, CO 80903
(719)260-0887
1376 MINERS DRIVE, SUITE 107 LAFAYETTE, COLORADO 80026 (303)442-4338

Revisions per County ROW 12/02/24	Date 12/03/2024	Drawn By AYC	Job No. 21507-00
	Scale 1" = 100'	Checked By JCD	Drawing No. 21507-00 EXH CH to Town

Exhibit 7

**CONTRACT TO BUY AND SELL REAL
PROPERTY**

TOWN OF MONUMENT BEACON LITE WATER TANK SUBDIVISION EXEMPTION

A PORTION OF LAND LOCATED IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 2 AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO

KNOW ALL MEN BY THESE PRESENTS:

THAT THE TOWN OF MONUMENT, CABLE HOLDCO EXCHANGE I LLC AND INTERSTATE 25 PROPERTIES, LTD, A LIMITED PARTNERSHIP, BEING THE OWNERS OF THE FOLLOWING DESCRIBED TRACT OF LAND:

LEGAL DESCRIPTION (See Survey Note #3):

A PARCEL OF LAND LOCATED IN THE WEST 1/2 OF THE NW 1/4 OF SECTION 2 AND THE WEST 1/2 OF THE SW 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH P.M., COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"COMMENCING"AT THE NORTHWEST CORNER OF SAID SECTION 2 AND CONSIDERING THE WEST LINE OF THE NW 1/4 OF SECTION 2 TO BEAR SOUTH 00°30'06"EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO: THENCE SOUTH 00°30'06"EAST, 2447.50 FEET ALONG SAID WEST LINE; THENCE NORTH 89°29'54" EAST, 30.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF BEACON LITE ROAD AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 00°30'06" WEST, 347.91 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE NORTH 89°29'54" EAST, 409.20 FEET; THENCE SOUTH 00°30'06" EAST, 556.71 FEET; THENCE SOUTH 89°29'54" WEST, 150.00 FEET; THENCE SOUTH 00°30'06"EAST, 36.98 FEET; THENCE NORTH 89°51'42" WEST, 84.21 FEET; THENCE SOUTH 00°30'06" EAST, 107.66 FEET; THENCE SOUTH 89°29'54" WEST, 175.00 FEET; THENCE NORTH 00°30'06" WEST, 352.50 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE-DESCRIBED TRACT CONTAINS 5.8775 ACRES OR 256,027 SQUARE FEET, MORE OR LESS.

OWNERS CERTIFICATE:

THE UNDERSIGNED, BEING ALL THE OWNERS, MORTGAGES, BENEFICIARIES OF DEEDS OF TRUST AND HOLDERS OF OTHER INTERESTS IN THE LAND DESCRIBED HEREIN, HAVE LAID OUT, SUBDIVIDED, AND PLATTED SAID LANDS INTO LOTS, TRACTS AND EASEMENTS FOR PUBLIC UTILITIES AND DRAINAGE PURPOSES AS SHOWN OR NOTED HEREON UNDER THE NAME OF "TOWN OF MONUMENT BEACON LITE WATER TANK SUBDIVISION EXEMPTION".

THE UTILITY EASEMENTS SHOWN HEREON ARE HEREBY DEDICATED FOR PUBLIC UTILITIES AND COMMUNICATION SYSTEMS AND OTHER PURPOSES AS SHOWN HEREON. THE ENTITIES RESPONSIBLE FOR PROVIDING THE SERVICES FOR WHICH THE EASEMENTS ARE ESTABLISHED ARE HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTIES FOR INSTALLATION, MAINTENANCE, AND REPLACEMENT OF UTILITY LINES AND RELATED FACILITIES.

BY: _____

TOWN OF MONUMENT

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2024
BY:

WITNESS MY HAND AND OFFICIAL SEAL:

NOTARY PUBLIC MY COMMISSION EXPIRES: _____

BY: _____
INTERSTATE 25 PROPERTIES, LTD., A COLORADO LIMITED PARTNERSHIP

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss

INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2024
BY:

WITNESS MY HAND AND OFFICIAL SEAL:

NOTARY PUBLIC MY COMMISSION EXPIRES: _____

BY: _____
CABLE HOLDCO EXCHANGE I, LLC A LIMITED LIABILITY COMPANY
(NKA COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC.)

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2024
BY:

WITNESS MY HAND AND OFFICIAL SEAL:

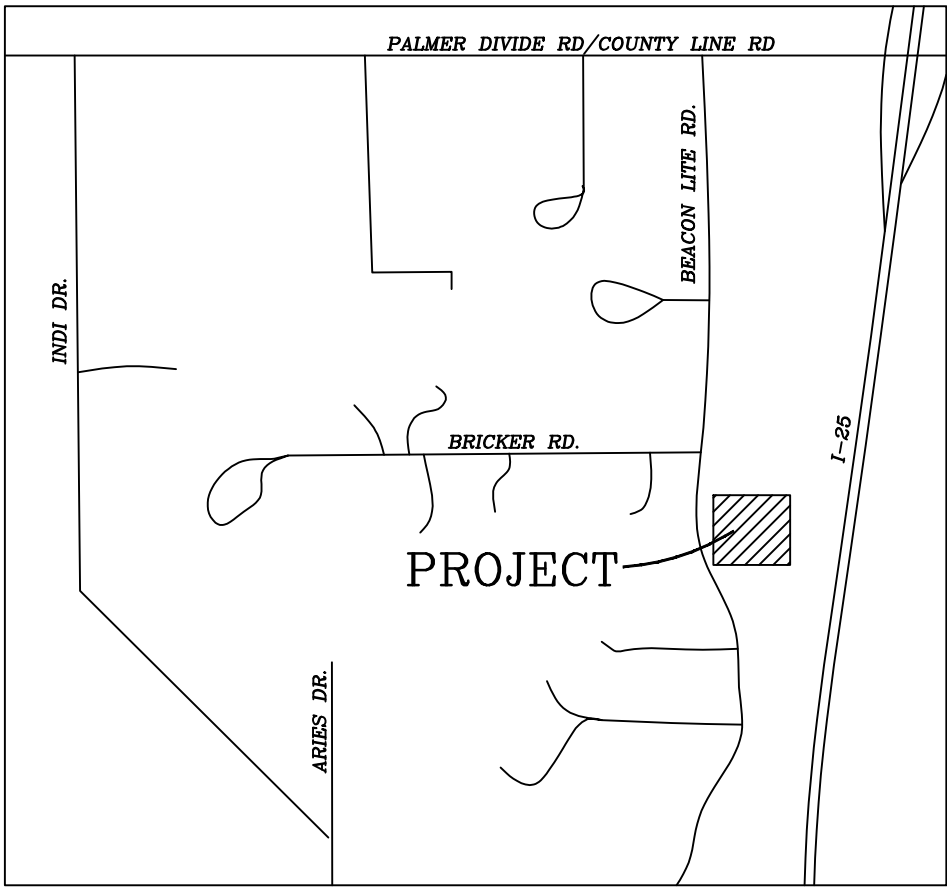
NOTARY PUBLIC MY COMMISSION EXPIRES: _____

SURVEY NOTES:

- THE BEARINGS AS SHOWN HEREON ARE BASED UPON THE CONSIDERATION THAT THE WEST LINE OF SECTION 2, T11S, R67W IS ASSUMED TO BEAR S00°30'06E, AND IS MONUMENTED AS SHOWN HEREON.
- THE LINEAL UNIT OF MEASURE IS THE U.S. SURVEY FOOT. ALL MONUMENTS FOUND OR SET ARE WITHIN 0.1'+/- OF THE GROUND SURFACE, UNLESS NOTED OTHERWISE.
- LEGAL DESCRIPTION BASED ON MEASUREMENTS BETWEEN SET MONUMENTS, PREPARED BY JOHN C. DAY, PLS 29413, FOR AND ON BEHALF OF DREXEL, BARRELL & CO.
- SURVEY FIELD WORK COMMENCED IN 2020, COMPLETED IN 2024.
- "NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON".
- ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO C.R.S. §18-4-508.
- THE UNDERSIGNED HAS RELIED UPON FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT FOR TITLE INSURANCE, FILE No. NCS-1065987-CO, HAVING AN EFFECTIVE DATE OF JULY 08, 2021 AT 5:00 P.M., FOR OWNERSHIP AND FOR THE PURPOSE OF SHOWING RECORDED EASEMENTS AND RIGHTS-OF-WAY ACROSS THE TOWN OF MONUMENT PARCEL. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY DREXEL, BARRELL & CO. TO DETERMINE OWNERSHIP AND EASEMENTS OF RECORD.
- THE UNDERSIGNED HAS RELIED UPON OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, COMMITMENT FOR TITLE INSURANCE, ORDER No. SC55100331, HAVING AN EFFECTIVE DATE OF AUGUST 30, 2021 AT 5:00 P.M., FOR OWNERSHIP AND FOR THE PURPOSE OF SHOWING RECORDED EASEMENTS AND RIGHTS-OF-WAY ACROSS THE CABLE HOLDCO EXCHANGE I LLC PARCEL. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY DREXEL, BARRELL & CO. TO DETERMINE OWNERSHIP AND EASEMENTS OF RECORD.
- THE UNDERSIGNED HAS RELIED UPON FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT FOR TITLE INSURANCE, FILE No. NCS-1065987-1-CO, HAVING AN EFFECTIVE DATE OF JULY 27, 2021 AT 5:00 P.M., FOR OWNERSHIP AND FOR THE PURPOSE OF SHOWING RECORDED EASEMENTS AND RIGHTS-OF-WAY ACROSS THE INTERSTATE 25 PROPERTIES, LTD., A COLORADO LIMITED PARTNERSHIP PARCEL. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY DREXEL, BARRELL & CO. TO DETERMINE OWNERSHIP AND EASEMENTS OF RECORD.
- THE PORTION OF LOT 1, SOUTH OF THIS LINE IS CURRENTLY VESTED IN CABLE HOLDCO EXCHANGE I LLC, AS DESCRIBED IN THAT DOCUMENT RECORDED UNDER RECEPTION NO. 206119730 OF THE RECORDS OF EL PASO COUNTY, COLORADO. THE PORTION OF LOT 1, NORTH OF THIS LINE IS CURRENTLY VESTED IN INTERSTATE 25 PROPERTIES, LTD PROPERTY AS DESCRIBED IN THAT DOCUMENT RECORDED IN BOOK 5501, PAGE 684, OF THE RECORDS OF EL PASO COUNTY, COLORADO.
- THE PORTION OF LOT 2, NORTH OF THIS LINE IS CURRENTLY VESTED IN CABLE HOLDCO EXCHANGE I LLC, AS DESCRIBED IN THAT DOCUMENT RECORDED UNDER RECEPTION NO. 206119730 OF THE RECORDS OF EL PASO COUNTY, COLORADO.
- THE PORTION OF LOT 2, SOUTH AND WEST OF THESE LINES IS CURRENTLY VESTED IN THE TOWN OF MONUMENT, AS DESCRIBED IN THAT DOCUMENT RECORDED IN BOOK 2997, PAGE 345 OF THE RECORDS OF EL PASO COUNTY, COLORADO.
- TRACTS A & B ARE A PORTIONS OF LANDS CURRENTLY VESTED IN CABLE HOLDCO EXCHANGE I LLC PROPERTY, AS DESCRIBED IN THAT DOCUMENT RECORDED UNDER RECEPTION NO. 206119730 OF THE RECORDS OF EL PASO COUNTY, COLORADO.
- THIS PORTION OF LOT 2 IS CURRENTLY VESTED IN INTERSTATE 25 PROPERTIES, LTD PROPERTY AS DESCRIBED IN THAT DOCUMENT RECORDED IN BOOK 5501, PAGE 684 OF THE RECORDS OF EL PASO COUNTY.
- LOT 3, ALONG WITH THE RIGHT-OF-WAY AND TEMPORARY EASEMENT CONVEYED TO EL PASO COUNTY PER RECEPTION NUMBERS 224045237 & 224045241, ARE CURRENTLY VESTED IN THE TOWN OF MONUMENT, AS DESCRIBED IN THAT DOCUMENT RECORDED IN BOOK 2997, PAGE 345 OF THE RECORDS OF EL PASO COUNTY, COLORADO.
- THESE FOUND MONUMENTS WERE NOT ACCEPTED BY THE DREXEL, BARRELL & CO SURVEYOR NOTED ON THE CERTIFICATION SHOWN HEREON, AS REPRESENTING THE LOCATION OF THE TOWN OF MONUMENT PROPERTY OR THE HOLDCO EXCHANGE I, LLC, PROPERTY. THE TOWN OF MONUMENT DEED, BOOK 2997, PAGE 345 DEED CALL OF "...TO THAT TRACT OF LAND AS DESCRIBED IN BOOK 2313, PAGE 405..." IS AN EXCLUSION TO THE DISTANCE CALLS ALONG THE SECTION LINE IN THE TOWN DEED AND SUPERIOR TO THE TOWN DEED CALL OF "...AS STAKED ON THE GROUND AS OF OCTOBER 11, 1977"; SAID DATE BEING SEVEN YEARS AFTER THE RECORDING OF THE CONVEYANCE TO HOLDCO EXCHANGE I, LLC, IN BOOK 2313, PAGE 409. THAT AS STAKED POSITION IS ALSO 108 FEET MORE OR LESS NORTH OF THE BOUNDARY LINES AS DESCRIBED IN BOOK 2313, PAGE 409.
- ALTHOUGH THESE FOUND MONUMENTS APPEAR TO CORRESPOND TO AND POSSIBLY REPRESENT THE TOWN OF MONUMENT DEED LEGAL DESCRIPTION CALLS OF "...THENCE SOUTHERLY ON THE WEST LINE OF SAID SECTION 2, A DISTANCE OF 2447.5 FEET MORE OR LESS TO THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF THAT TRACT OF LAND DESCRIBED IN BOOK 2313 AT PAGE 409 AS STAKED ON THE GROUND AS OF OCTOBER 11, 1977;" THEY ARE IN CONFLICT WITH THE SENIOR DEED LEGAL DESCRIPTION IN BOOK 2313, PAGE 409, AS NOTED IN ABOVE NOTE 16.
- THE 1969 VUMORE VIDEO DEED IN BOOK 2313, PAGE 409, IS SENIOR TO THE TOWN OF MONUMENT DEED BY 8 YEARS. THE BEARINGS AND DISTANCES CALLS IN THIS DEED MAKE NO REFERENCE TO "AS STAKED" LOCATIONS. THE HOLDCO EXCHANGE I, LLC, 2006 DEED LEGAL DESCRIPTION IS THE SAME AS THE ORIGINAL 1969 VUMORE DEED AND THE SUBSEQUENT 1995 DEED TO CENTURY COLORADO SPRINGS PARTNERSHIP, BOOK 6695, PAGE 276.
- NONE OF THE TITLE DOCUMENTS, REFERENCED ABOVE, REFER TO ANY FORMAL DEDICATION OF THE BEACON LITE ROAD RIGHT-OF-WAY. THE TOWN OF MONUMENT DEED, BOOK 2997, PAGE 345 AND THE INTERSTATE 25 PROPERTIES, LTD DEED, BOOK 5501, PAGE 684, BOTH EXCEPT ANY PORTION LYING IN THE COUNTY ROAD KNOWN AS BEACON LITE ROAD. THESE AREAS ARE BEING DEDICATED TO EL PASO COUNTY TO INCLUDE THOSE PORTIONS OF BEACON LITE ROAD AS REFERENCED IN THE TOWN OF MONUMENT DEED, THE PROPOSED ROW AND ROW TO BE ACQUIRED AS SHOWN ON THE EL PASO COUNTY BEACON LITE ROAD IMPROVEMENTS RIGHT-OF-WAY PLANS, EPC PROJECT #128558, DATED 12/08/2023.
- AS SHOWN HEREON, INTERSTATE 25 PROPERTIES CONVEYED A PORTION OF LOT 2 TO EL PASO COUNTY PER THAT SPECIAL WARRANTY DEED RECORDED AT RECEPTION NO. 224045237 AND ALSO A TEMPORARY CONSTRUCTION EASEMENT PER THAT EASEMENT AGREEMENT RECORDED AT RECEPTION NO. 224045241. AT THE TIME THESE DOCUMENTS WERE RECORDED, THESE PORTIONS OF LOT 3 WERE VESTED IN THE TOWN OF MONUMENT PROPERTY AS DESCRIBED IN BOOK 2997, PAGE 345. THE PARCELS CONVEYED ARE KNOWN AS RW-119 & TE-119A AS SHOWN ON THE RIGHT-OF-WAY PLANS REFERENCED IN NOTE 17.3 BELOW.
- THE CABLE HOLDCO EXCHANGE I LLC PROPERTY DEED, RECEPTION NO. 206119730 MAKES NO MENTION OF BEACON LITE ROAD, BUT DESCRIBES THE PROPERTY AS BEING 30.00' EAST OF AND PARALLEL TO THE SECTION LINE.
- THESE RIGHT-OF WAY AND EASEMENT AREAS ARE PARCELS AS SHOWN ON THE BEACON LITE ROAD IMPROVEMENTS RIGHT-OF-WAY PLANS, EPC PROJECT #128558, DATED 12/08/2023.
- THIS AREA DESIGNATED ON THE ABOVE EPC PROJECT AS: RW-120 AND IS RIGHT-OF-WAY TO BE DEDICATED TO EL PASO COUNTY BY THIS PLAT.
- THESE AREAS ARE PORTIONS DESIGNATED ON THE ABOVE EPC PROJECT AS: RW-121 AND ARE RIGHT-OF-WAY TO BE DEDICATED TO EL PASO COUNTY BY THIS PLAT.
- THIS AREA DESIGNATED ON THE ABOVE EPC PROJECT AS: PE-121 AND IS A NON-EXCLUSIVE PERMANENT EASEMENT TO BE DEDICATED TO EL PASO COUNTY BY THIS PLAT, SEE PLAT NOTE 11.
- THIS AREA DESIGNATED ON THE ABOVE EPC PROJECT AS: PE-120 AND IS A NON-EXCLUSIVE PERMANENT EASEMENT CONVEYED TO EL PASO COUNTY 9/30/2024 BY COMCAST OF COLORADO/PENNSYLVANIA/ WEST VIRGINIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FKA AND WHO TOOK TITLE AS CABLE HOLDCO EXCHANGE I LLC.
- THIS AREA DESIGNATED ON THE ABOVE EPC PROJECT AS: TE-120 AND IS A TEMPORARY EASEMENT PER THAT AGREEMENT AS DESCRIBED IN RECEPTION NO. 22406889.BETWEEN EL PASO COUNTY AND COMCAST OF COLORADO/PENNSYLVANIA/ WEST VIRGINIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FKA AND WHO TOOK TITLE AS CABLE HOLDCO EXCHANGE I LLC. THIS EASEMENT IS TO BE REVISED BY A SEPARATE AGREEMENT.
- THE PORTIONS OF THIS 20' EASEMENT CROSSING LOTS 1 AND 2 WILL BE VACATED BY SEPARATE DOCUMENTS.
- THERE IS A MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC. 20' STRIP ELECTRIC EASEMENT ACROSS THE CABLE HOLDCO EXCHANGE I LLC PROPERTY, PER THAT GRANT OF RIGHT OF WAY DOCUMENT RECORDED IN BOOK 2328, PAGE 56. THE EASEMENT LOCATION IS NOT DEFINED IN THE REFERENCED DOCUMENT.

PLAT NOTES:

- THE PURPOSE OF THIS SUBDIVISION EXEMPTION PLAT IS TO ADDRESS THE DEED DIMENSION DISCREPANCIES BETWEEN TOWN OF MONUMENT PARCEL AND THE CABLE HOLDCO I, LLC PARCEL AS DESCRIBED IN SURVEY NOTES 16-16.2 ABOVE AND TO BRING THESE PARCELS INTO COMPLIANCE WITH THE EL PASO COUNTY SUBDIVISION REGULATIONS.
- THE COLLECTIVE PROPERTY OWNERS AS SHOWN HEREON, AND BEING SIGNATORIES TO THIS EXEMPTION PLAT, INTEND TO TRANSFER OWNERSHIP OF PARCELS BY SEPERATE DOCUMENTS TO VEST OWNERSHIP OF EACH LOT AND TRACT IN A SINGLE OWNER.
- ALL PROPERTY OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPER STORM WATER DRAINAGE IN AND THROUGHOUT THEIR PROPERTY. PUBLIC DRAINAGE EASEMENTS AS SPECIFICALLY NOTED ON THE PLAT SHALL BE MAINTAINED BY THE INDIVIDUAL LOT OWNERS UNLESS OTHERWISE INDICATED. STRUCTURES, FENCES, MATERIALS OR LANDSCAPING THAT COULD IMPEDE THE FLOW OF RUNOFF SHALL NOT BE PLACED IN DRAINAGE EASEMENTS.
- DEVELOPER SHALL COMPLY WITH FEDERAL AND STATE LAWS, REGULATIONS, ORDINANCES, REVIEW AND PERMIT REQUIREMENTS, AND OTHER AGENCY REQUIREMENTS, IF ANY, OF APPLICABLE AGENCIES INCLUDING, BUT NOT LIMITED TO, THE COLORADO DIVISION OF WILDLIFE, COLORADO DEPARTMENT OF TRANSPORTATION, U.S. ARMY CORPS OF ENGINEERS AND THE U.S. FISH AND WILDLIFE SERVICE REGARDING THE ENDANGERED SPECIES ACT, PARTICULARLY AS IT RELATES TO THE LISTED SPECIES (E.G.,PREBLE'S MEADOW JUMPING MOUSE).
- THE ADDRESSES EXHIBITED ON THIS PLAT ARE FOR INFORMATIONAL PURPOSES ONLY. THEY ARE NOT THE LEGAL DESCRIPTION AND ARE SUBJECT TO CHANGE.
- NO DRIVEWAY SHALL BE ESTABLISHED UNLESS AN ACCESS PERMIT HAS BEEN GRANTED BY EL PASO COUNTY.
- MAILBOXES SHALL BE INSTALLED IN ACCORDANCE WITH ALL EL PASO COUNTY AND UNITED STATES POSTAL SERVICE REGULATIONS.
- THE SUBDIVIDER(S) AGREES ON BEHALF OF HIM/HERSELF AND ASSIGNEES THAT SUBDIVIDER AND/OR SAID SUCCESSORS AND ASSIGNS SHALL BE REQUIRED TO PAY TRAFFIC IMPACT FEES IN ACCORDANCE WITH THE EL PASO COUNTY ROAD IMPACT FEE PROGRAM RESOLUTION (RESOLUTION NO. 18-471), OR ANY AMENDMENTS THERETO, AT OR PRIOR TO THE TIME OF BUILDING PERMIT SUBMITTALS.
- BY SEPARATE INSTRUMENT: 40' TEMPORARY CONSTRUCTION EASEMENT TO BENEFIT THE TOWN OF MONUMENT; FOR EQUIPMENT ACCESS TO LOT 2, DURING THE CONSTRUCTION OF A NEW WATER TANK.
- BY SEPARATE INSTRUMENT: THESE GRADING AND UTILITY EASEMENTS ARE TO BE CONVEYED TO THE TOWN OF MONUMENT BY INTERSTATE 25 PROPERTIES, LTD.
- THIS NON-EXCLUSIVE PERMANENT EASEMENT WITHIN LOT 2 IS FOR THE FOLLOWING PURPOSES, WHICH INCLUDE, BUT ARE NOT LIMITED TO: CONSTRUCTION, DRAINAGE, SLOPE, MAINTENANCE, REPAIR, REPLACEMENT, OPERATION, INGRESS AND EGRESS.
- BY SEPARATE INSTRUMENT: THIS INGRESS-EGRESS EASEMENT IS TO BE CONVEYED TO THE TOWN OF MONUMENT BY CABLE HOLDCO EXCHANGE I, LLC, (NKA COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC)



Vicinity Map

N.T.S.



BOARD OF COUNTY COMMISSIONERS CERTIFICATE:

THIS PLAT FOR "TOWN OF MONUMENT BEACON LITE WATER TANK SUBDIVISION EXEMPTION" WAS APPROVED FOR FILING BY THE EL PASO COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS ON THE _____ DAY OF _____, 2022, SUBJECT TO ANY NOTES SPECIFIED HEREON AND ANY CONDITIONS INCLUDED IN THE RESOLUTION OF APPROVAL. THE DEDICATIONS OF LAND TO THE PUBLIC, EASEMENTS FOR UTILITIES AND PUBLIC IMPROVEMENTS, ARE ACCEPTED, BUT PUBLIC IMPROVEMENTS THEREON WILL NOT BECOME THE MAINTENANCE RESPONSIBILITY OF EL PASO COUNTY UNTIL PRELIMINARY ACCEPTANCE OF THE PUBLIC IMPROVEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAND DEVELOPMENT CODE AND ENGINEERING CRITERIA MANUAL, AND THE SUBDIVISION IMPROVEMENTS AGREEMENT.

CHAIR, BOARD OF COUNTY COMMISSIONERS

DATE

SURVEYOR'S STATEMENT:

THE UNDERSIGNED PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, HEREBY STATES AND DECLARES THAT THE ACCOMPANYING PLAT AS DRAWN, REFLECTS THE RESULTS OF A SURVEY MADE UNDER MY RESPONSIBLE CHARGE, SUPERVISION AND CHECKING AND IN ACCORDANCE WITH THE REQUIREMENTS PERTAINING TO LAND SURVEYING OF TITLE 38 OF THE COLORADO REVISED STATUTES, 1973, AS AMENDED, AND ACCURATELY SHOWS THE DESCRIBED TRACT OF LAND, AND SUBDIVISION THEREOF, TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. THIS LAND SURVEY PLAT IS NOT A GUARANTY OR WARRANTY, EITHER EXPRESSED OR IMPLIED.

JOHN C. DAY
PLS NUMBER 29413
FOR AND BEHALF OF
DREXEL BARRELL & CO.

DATE:

PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR CERTIFICATE:

THIS PLAT FOR "TOWN OF MONUMENT BEACON LITE WATER TANK SUBDIVISION EXEMPTION" WAS APPROVED FOR FILING BY THE EL PASO COUNTY, COLORADO PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT DIRECTOR ON THE _____ DAY OF _____, 2022, SUBJECT TO ANY NOTES OR CONDITIONS SPECIFIED HEREON.

DIRECTOR, PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

ASSESSOR

FEES:

DRAINAGE FEE: _____
BRIDGE FEE: _____
SCHOOL FEE: _____
PARK FEE: _____

CLERK AND RECORDER'S CERTIFICATE:

STATE OF COLORADO)
COUNTY OF EL PASO) ss

I HEREBY CERTIFY THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT _____ O'CLOCK, _____ M., THIS _____ DAY OF _____, 2024 AND IS DULY RECORDED UNDER RECEPTION NUMBER _____ OF THE RECORDS OF EL PASO COUNTY, COLORADO. STEVE SCHLEIKER, RECORDER.

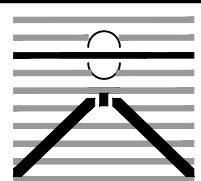
BY: _____

DEPUTY

FEE: _____
SURCHARGE: _____

DECEMBER 04, 2024

Sheet 1 of 2



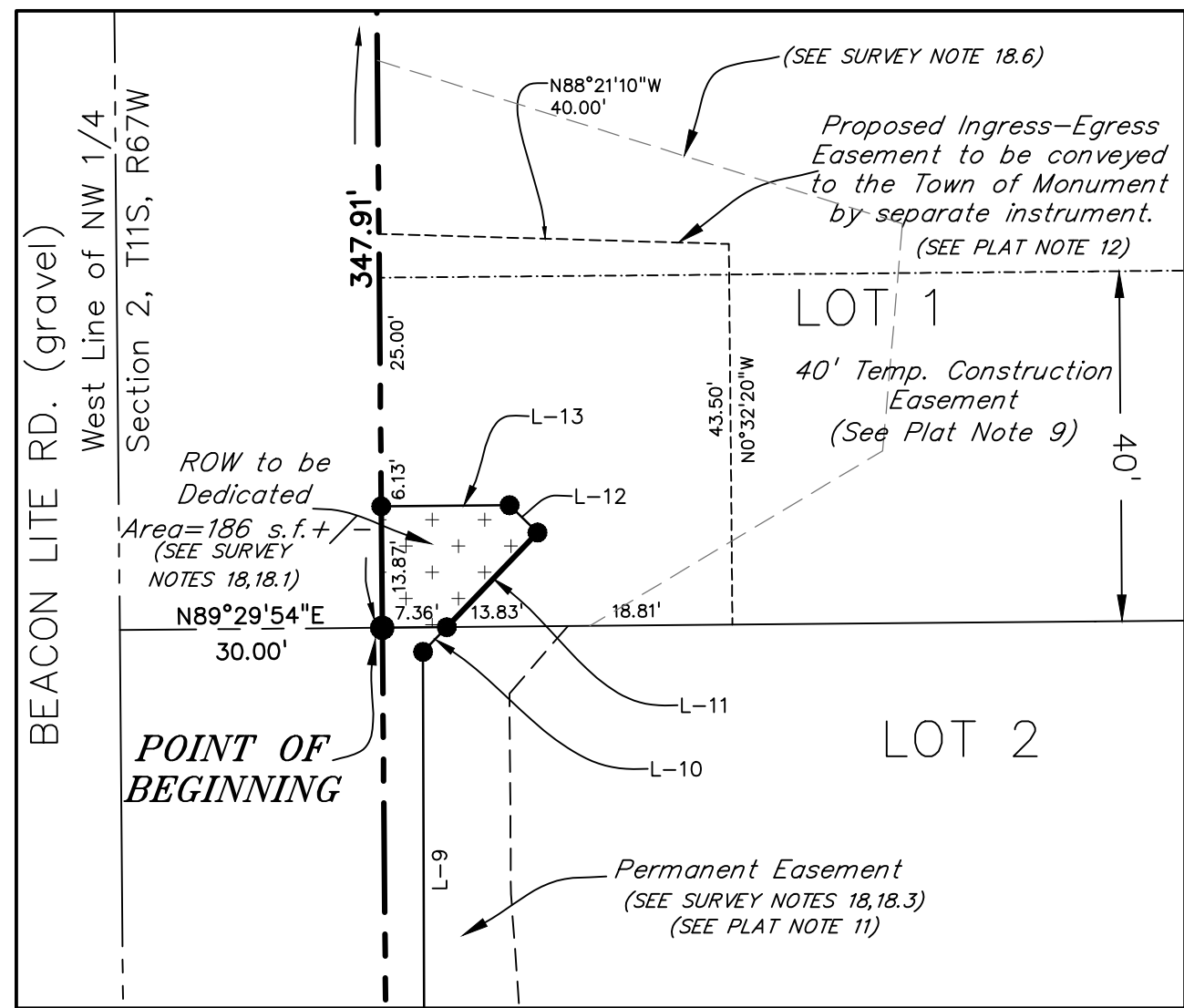
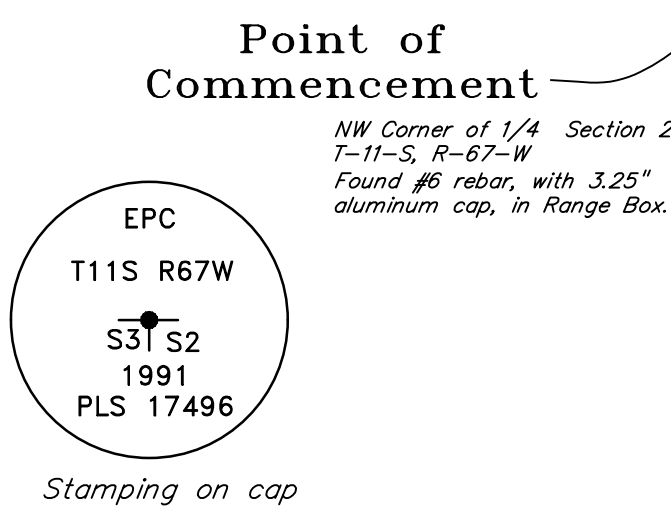
DREXEL, BARRELL & CO.
Engineers+Surveyors
101 S. SAWATCH ST. SUITE-107
COLORADO SPGS, COLORADO 80903
(719) 260-0887 Fax: (719) 260-8352

Sheet 1 - Description, Dedication, Notes and Certificates
Sheet 2 - Plat Graphic, Overall Boundary

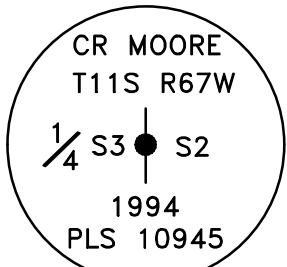
Job No.21507-00 Drawing:21507-00 Subd Exmpt Plat.dwg

TOWN OF MONUMENT BEACON LITE WATER TANK SUBDIVISION EXEMPTION

A PORTION OF LAND LOCATED IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 2 AND THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO

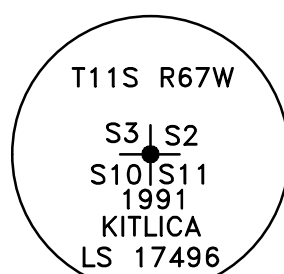


DETAIL A



Stamping on cap

SW Corner of NW 1/4, Section 2
Found #6 rebar, with 2" Aluminum Cap stamped "CR MOORE PLS 10945"



Stamping on cap

Found 3" Aluminum Cap on #6 rebar, -1.6' below surface

ROW to be Dedicated
Area=186 s.f. +/-
(SEE SURVEY NOTES 18, 18.1)
SEE DETAIL A THIS SHEET

POINT OF BEGINNING

ROW to be Dedicated
Area=494 s.f. +/-
(SEE SURVEY NOTES 18, 18.2)

ROW to be Dedicated
Area=6610 s.f. +/-
(SEE SURVEY NOTES 17, 18, 18.2)

Portion of Right-of-Way
RW-119 conveyed to El Paso County, Special Warranty
Deed Reception #224045237
(SEE SURVEY NOTE 17.1)

Portion of Temporary
Easement TE-119A
conveyed to El Paso County, Special Warranty
Deed Reception #224045241.
(SEE SURVEY NOTE 17.1)

UNPLATTED
Interstate 25 Properties,
LTD:book 5501, page 684.

LOT 1
Area= 156,369 s.f. +/-
(###)

LOT 2
Area= 60,297 s.f. +/-
(###)

LOT 3
Area=13,728 s.f. +/-
(###)

TRACT B
Area=810 s.f. +/-
A portion of Cable Holdco Exchange 1, LLC parcel, Rpt. No. 206119730
(SEE SURVEY NOTE 13)

TRACT A
Area=16,320 s.f. +/-
(###)
A portion of Cable Holdco Exchange 1, LLC parcel, Rpt. No. 206119730
(SEE SURVEY NOTE 13)

UNPLATTED
Interstate 25 Properties,
LTD:book 5501, page 684.

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	28.99'	525.00'	3°09'51"	S21°09'36"E	28.99'
C2	34.69'	518.93'	3°49'50"	S02°38'28"E	34.69'
C3	131.71'	518.93'	14°32'31"	S11°49'39"E	131.35'

PARCEL LINE TABLE		
LINE #	LENGTH	DIRECTION
L-1	88.23'	N22°44'32"W
L-2	3.39'	S22°46'32"E
L-3	63.99'	N89°29'54"E
L-4	12.29'	N89°29'54"E
L-5	14.64'	N89°29'54"E
L-6	10.75'	N89°29'54"E
L-7	6.11'	N0°30'06"W
L-8	59.62'	S89°29'54"W
L-9	71.34'	N0°10'10"W
L-10	3.91'	N43°48'17"E
L-11	14.98'	N43°47'17"E
L-12	4.46'	N45°40'36"W
L-13	14.66'	S89°29'31"W

LEGEND

- FOUND MONUMENTATION AS SHOWN (SEE SURVEY NOTES 16-16.2)
- SET #5 REBAR 1/2" 1-1/2" ALUMINUM CAP STAMPED "D.B. & CO. PLS 29413" OR MAG NAIL WITH 1.5" STEEL DISK STAMPED THE SAME.
- FOUND MONUMENT AS DESCRIBED
- ⊙ FOUND #5 REBAR WITH 1.5" ALUMINUM CAP STAMPED "PLS 10376" N89°43'43"W, 11.73' FROM BOUNDARY CORNER.
- ⊕ SECTION CORNER
- ### ADDRESS
- s.f. SQUARE FEET
- Rpt. No. RECEPTION NUMBER
- (R) RECORD DIMENSION PER BOOK 2997, PAGE 345, DEED DATED 01/09/1978 TO THE TOWN OF MONUMENT
- (C) CALCULATED DIMENSION

- LOT LINE/TRACT LINE
- - - PARCEL LINES TO BE ADJUSTED
- - - R-O-W LINE
- BOUNDARY LINE
- - - EASEMENT LINES
- - - SECTION LINE



MEMORANDUM

TO: Town Council
FROM: Dan Ungerleider, Director of Planning
DATE: December 16, 2024
SUBJECT: Case No. FPD-23-017
Approval of a Preliminary and Final Plat known as Jackson Creek North PMD
Filing No.1.

During the December 2, 2024, regular Town Council meeting, the Council received the Planning Commission's recommendations and initiated a public hearing for the Final Plat, formally known as Jackson Creek North PMD Filing No. 1. Following the discussion, the Council continued the public hearing to December 16, 2024, to give the Applicant and Triview Metropolitan District time to address concerns raised about the planned Higby Road improvements outside and north of the Higby Road right of way and the Town's municipal boundary.

The Applicant has requested another continuation of the public hearing to January 6, 2025, to allow more time to address the Council's concerns and questions.

Requested Action: A motion to **CONTINUE** the Town Council Public Hearing, which started on December 2, 2024, and continued to December 16, 2024, for the Preliminary and Final Plat for Jackson Creek North PMD Filing No. 1, to January 6, 2025.



MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Madeline VanDenHoek, Interim Town Manager
DATE: December 16, 2024
RE: Resolution No. 63-2024 Approving an Energy Performance Contract with Veregy West, LLC

BACKGROUND: The Town has partnered with the State of Colorado Energy Office and engaged with Veregy to perform an Energy Audit on Town buildings. In this process they have engineered solutions to improve energy efficiencies and replace aging mechanical systems as necessary at Town Hall, 645 Beacon Lite Road, Water Plant, 225 Beacon Lite Rd., Public Works Building, 259 Beacon Lite Road, and the Public Works Shop, 506 Jefferson Street.

DISCUSSION: Through this energy project, Veregy has identified several items to retrofit, improve and replace to gain energy savings for the Town. The Town has applied for and received a DOLA EIAF grant in the amount of \$500,000 to help offset the costs of this project. Other grants have been applied for and have not been awarded to date, but the Town will continue to apply for grant funding. To proceed with Phase 1, the Town has budgeted \$250,000 in the 2025 budget and the remainder will need to be financed through a lease purchase agreement. The Town will save approximately \$1,150,000 in energy savings, rebates, and maintenance costs.

Phase 1 includes:

- LED Lighting in all buildings
- Solar at Town Hall (645 Beacon Lite Rd.) and Public Works Building (259 Beacon Lite Rd.)
- Building Envelope – Exterior Sealing/Door Sweeps at all buildings
- HVAC units upgrade at Public Works Building (259 Beacon Lite Rd.)
- HVAC – VVT Systems at Town Hall (645 Beacon Lite Rd.)
- Orchestrate Controls & Energy Tracer at all buildings

The project costs:

Total Project Costs for Phase 1	\$ 1,337,181
Town Cash Contribution	\$ 250,000
DOLA Grant	\$ 500,000
Financed Amount Principal	\$605,000
Interest Rate	4.95%
Total Lease repayment	\$885,000
Finance Term	16 years

STAFF RECOMMENDATION: Staff recommends approval of Resolution No. 63-2024 Approving an Energy Performance Contract with Veregy West, LLC for \$1,337,181.00 to acquire, construct, and install energy improvements at various Town facilities.

TOWN OF MONUMENT

RESOLUTION NO. 63-2024

A RESOLUTION TO APPROVING AN ENERGY PERFORMANCE CONTRACT WITH VEREGY WEST, LLC

WHEREAS, the Town of Monument, Colorado (the “Town”), is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”); and

WHEREAS, the Town has determined and now hereby determines that it is necessary and in the best interest of the Town and its inhabitants that the Town acquire, construct and install certain improvements at various Town facilities as part of an energy performance (“EPC”) contract (the “Project”), all as authorized by law; and

WHEREAS, authority for the Town to enter into this Contract exists in the law, including §29-12.5- 101, C.R.S. and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Town; and

WHEREAS, the Contractor or other entity and the Town entered into a certain Investment Grade Audit (IGA) Contract pursuant to §29-12.5-102, C.R.S., whereby the Contractor or other entity provided an analysis and recommendations in the form of an IGA Report and an Energy Performance Contracting (EPC) Project Proposal. Such report and project proposal provided: estimates of (i) the amounts by which Utility Cost Savings and Operation and Maintenance Cost Savings would increase and (ii) all costs of such Utility Cost-Savings Measures or Facility Improvement Measures (FIMs), including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service or estimates of (i) the amounts by which Vehicle Fleet Operational and Fuel Cost Savings would increase and (ii) all costs of such Vehicle Fleet Operational and Fuel Cost-Savings Measures, set forth in §29-12.5-102(2), C.R.S.; and

WHEREAS, the Contractor or other entity was selected by the Town as the entity to analyze and recommend measures to significantly increase utility cost, operation and maintenance cost, and vehicle fleet operational and fuel cost savings, through an IGA, pursuant to competitive negotiations; and

WHEREAS, the Town has approved Contractor’s or other entity’s analyses and recommendations in the IGA set forth in §29-12.5-102, C.R.S.; and

WHEREAS, the analysis and recommendations provided by the Contractor or other entity pursuant to the IGA indicate that the expected annual payments by the Town

required under this Contract, or as required in a contract with the Town and any Third-Party Lessor, which payments shall include any annual maintenance costs and annual fees for measurement and verification per statute, for the implementation of one or more Utility Cost-Savings Measures or FIMs is required to be equal to or less than the sum of the Utility Cost Savings and Operation and Maintenance Cost Savings achieved by the implementation of such Utility Cost- Savings Measures and FIMs on an annual basis; and

WHEREAS, the Contractor or other entity and the Governing Body of the Town have reviewed the Energy Performance Contract Project Proposal, which was derived from the IGA Report, in respect of which the Town has received and reviewed the IGA Record of Review from the Colorado Energy Office (CEO), and created a finalized EPC Description of Work (Schedule B), and that all the necessary information has been incorporated into the appropriate EPC schedules to complete the Work; and

WHEREAS, the Contractor is either (i) the same entity that performed the IGA and is therefore exempt from any additional competitive bidding or procurement provisions, pursuant to §29-12.5-103(1)(a), C.R.S., or (ii) not the same entity that performed the IGA and was selected for performance of this Contract pursuant to negotiation requirements, and applicable competitive bidding or procurement provisions; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF MONUMENT, COLORADO THAT

The Town Council hereby approves the Energy Performance Contract with Veregy West, LLC for \$1,337,181.00 to acquire, construct, and install energy improvements at various Town facilities.

PASSED AND RESOLVED by the Town Council of Monument, El Paso County, Colorado, this 16th day of December 2024 by a vote of ____ for and ____ against.

TOWN OF MONUMENT

Mitch LaKind, Mayor

ATTEST:

Tina Erickson, Town Clerk

COLORADO ENERGY OFFICE – ENERGY PERFORMANCE CONTRACTING PROGRAM



COLORADO
Energy Office

ENERGY PERFORMANCE CONTRACTING

FOR COLORADO POLITICAL SUBDIVISIONS (municipality, county, special district, or school district (**§29-12.5-101 (5) C.R.S.**))

MODEL CONTRACT

The Colorado Energy Office presents this document as a model contract. General Counsel to Political Subdivision should make suitable adaptations to this Model Contract pursuant to applicable Political Subdivision statutes, charter provisions and code or other procedural requirements.

POLITICAL SUBDIVISION:	<u>Town of Monument</u>
ENERGY SERVICE COMPANY (STATE REGISTERED NAME):	<u>Veregy LLC</u>
PROJECT NUMBER:	<u></u>
PROJECT NAME:	<u>Town of Monument Energy Performance Contracting (EPC)</u>

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PARTIES

This Energy Performance Contract (hereinafter called "Contract" or "EPC") is entered into by and between Energy Service Company, (Veregy West, LLC (f/k/a, Midstate Energy, LLC d/b/a Veregy) (hereinafter called "Contractor"), and the (Town of Monument) (hereinafter called the "Political Subdivision").

RECITALS

WHEREAS, authority for the Political Subdivision to enter into this Contract exists in the law, including **§29-12.5-101, C.R.S.** and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision; and

WHEREAS, required approvals, clearance and coordination have been accomplished by Political Subdivision, to enter into a contract for the design and implementation of energy analysis and recommendations pertaining to measures that would significantly increase Utility Cost Savings, Operations and Maintenance Cost Savings, and Vehicle Fleet Operational and Fuel Cost Savings, pursuant to **§29-12.5-101, C.R.S.**; and

WHEREAS, the Contractor or other entity and the Political Subdivision entered into a certain Investment Grade Audit (IGA) Contract pursuant to **§29-12.5-102, C.R.S.**, whereby the Contractor or other entity provided an analysis and recommendations in the form of an IGA Report and an Energy Performance Contracting (EPC) Project Proposal. Such report and project proposal provided: estimates of (i) the amounts by which Utility Cost Savings and Operation and Maintenance Cost Savings would increase and (ii) all costs of such Utility Cost-Savings Measures or Facility Improvement Measures (FIMs), including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service or estimates of (i) the amounts by which Vehicle Fleet Operational and Fuel Cost Savings would increase and (ii) all costs of such Vehicle Fleet Operational and Fuel Cost-Savings Measures, set forth in **§29-12.5-102(2), C.R.S.**; and

WHEREAS, the Contractor or other entity was selected by the Political Subdivision as the entity to analyze and recommend measures to significantly increase utility cost, operation and maintenance cost, and vehicle fleet operational and fuel cost savings, through an IGA, pursuant to competitive negotiations; and

WHEREAS, the Political Subdivision has approved Contractor's or other entity's analyses and recommendations in the IGA set forth in **§29-12.5-102, C.R.S.**; and

WHEREAS, the analysis and recommendations provided by the Contractor or other entity pursuant to the IGA indicate that the expected annual payments by the Political Subdivision required under this Contract, or as required in a contract with the Political Subdivision and any Third-Party Lessor, which payments shall include any annual maintenance costs and annual fees for measurement and verification per statute, for the implementation of one or more Utility Cost-Savings Measures or FIMs is required to be equal to or less than the sum of the Utility Cost Savings and Operation and Maintenance Cost Savings achieved by the implementation of such Utility Cost-Savings Measures and FIMs on an annual basis; and

WHEREAS, the Contractor or other entity and the Governing Body of the Political Subdivision have reviewed the Energy Performance Contract Project Proposal, which was derived from the IGA Report, in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the Colorado Energy Office (CEO), and created a finalized EPC Description of Work (**Schedule B**), and that all the necessary information has been incorporated into the appropriate EPC schedules to complete the Work; and

WHEREAS, the Contractor is either (i) the same entity that performed the IGA and is therefore exempt from any additional competitive bidding or procurement provisions, pursuant to **§29-12.5-103(1)(a), C.R.S.**, or (ii) not the same entity that performed the IGA and was selected for performance of this Contract pursuant to negotiation requirements, and applicable competitive bidding or procurement provisions; and

NOW, THEREFORE: in consideration of the premises and mutual agreements and covenants hereinafter set forth,

and intending to be legally bound, the Political Subdivision and the Contractor hereby agree to the terms and conditions in this Contract.

EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be effective or enforceable until it is authorized and approved by the Governing Body (defined below in Article 1) of the Political Subdivision, by applicable resolution, ordinance or other authorizing action of the Governing Body, and executed by a duly authorized representative of the Political Subdivision, as set forth in such resolution, ordinance or other authorizing action (defined below as the "Principal Representative"), on the date set forth in Section 28 hereof in the signature block of the Political Subdivision (the "Effective Date"). The Political Subdivision shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay or reimburse the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract, except that the Principle Representative may make any payments for work that was completed under a properly executed contract for an investment grade audit that are to be paid under this contract in accordance with the terms of the investment grade audit contract.

All references in this Contract to "Article," "Section," "Subsections," "Exhibits" or other "attachments," whether spelled out or using the § symbol, are references to Articles, Sections, Subsections, Exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

1. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

- A. Adjusted-Baseline Energy**
"Adjusted-Baseline Energy" means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**
"American Society of Heating, Refrigeration, and Air Conditioning Engineers" or "ASHRAE" means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work and the IGA Project Proposal Report.
- C. Baseline Energy**
"Baseline Energy" means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**
"Baseline Period" means the period of time chosen to represent operation of the facility or system before implementation of a Utility Cost-Savings Measure or any applicable FIM, as defined herein. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.
- E. Baseline**
"Baseline" means and pertains to the baseline period.
- F. Business Day**
"Business Day" means any day in which the Political Subdivision is open and conducting business, but shall not include Saturday, Sunday or any holidays observed by the Political Subdivision.
- G. Colorado Open Records Act (CORA)**
"CORA" means the Colorado Open Records Act, **§§24-72-200.1 et seq., C.R.S.**
- H. Commissioning**
"Commissioning" means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Political Subdivision's functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.
- I. Compensation**
"Compensation" means the funds payable to the Contractor by the Political Subdivision for the performance of the Contractor's obligations hereunder, including, but not limited to, the Project and the

M&V Services.

J. Contingency Funds

“Contingency Funds,” if applicable, means the moneys of the Political Subdivision not included in the Fixed Limit of Construction Cost and budgeted, appropriated and encumbered for Project contingency purposes in order that the Political Subdivision may use such moneys to pay to the Contractor, any other contractor through a Separate Contract constituting a portion of the Project Work as determined and authorized by the Governing Body, or any Third-Party Lessor. Contingency Funds could be used in the event of construction cost budget overage, if the Principal Representative, upon the authorization of the Governing Body, determines to add to or change the Contractor’s Scope of Work, hire a contractor for special services (example-environmental remediation) or reduce the Political Subdivision’s obligation to any Third-Party Lessor, all pursuant to **Article 6(C)** and **Article 6(J)**.

K. Construction Commencement Date

“Construction Commencement Date” means the date the Principal Representative issues a written Notice to Proceed to Commence Construction Phase form.

L. Construction Documents

“Construction Documents” means the documents set forth in **Article 6(A)**.

M. Construction Term

“Construction Term” means the period of time in which Contractor shall complete the Project, pursuant to **Article 6(F)**.

N. Contract Documents

“Contract Documents” means this Contract; the Exhibits; the Schedules; and the Construction Documents. **Article 25** and **Article 26**, respectively, list the Exhibits and Schedules attached hereto and incorporated by reference herein.

O. Contractor’s Intellectual Property

“Contractor’s Intellectual Property” means any formulas, patterns, devices, secret inventions or processes, copyrights, patents, or other intellectual property purchased, licensed or developed by Contractor prior to or outside of this Contract or purchased, licensed or developed by Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

P. Contract Term

“Contract Term” means the definition set forth in **Article 2(B)**.

Q. Cost-Weighted Average Service Life

“Cost-Weighted Average Service Life” means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each Utility Cost-Savings Measure or FIM (excluding the audit cost and Political Subdivision’s contingency), and the total cost of all the measures. The formula is the sum of each measure cost divided by the total cost multiplied by its service life. $\text{Cost-Weighted Average Service Life} = \sum \text{each measure} \div \text{total cost} \times \text{service life}$.

R. C.R.S.

“C.R.S.” means the Colorado Revised Statutes, as amended.

S. Deliverable

“Deliverable” means any document, material, data, information, specification or other deliverable that results from or is provided through the Services or that Contractor is required to deliver to the Principal Representative under this Contract, the Exhibits, Schedules or other document or report which is required to be delivered by Contractor to the Principal Representative pursuant to this Contract and is created after the Effective Date.

T. Design Documents

“Design Documents” or “DDs” means documents supplied by Contractor consisting of drawings, specifications, and other documents that fix and describe the size and character of the entire Project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate, and include design plans and documentation for each Utility Cost-Savings Measure or FIM that may become part of the Project, and as further described in **Article 5(C)**.

U. Energy

"Energy" means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility charged service.

V. Energy Conservation Measure

"Energy Conservation Measure" or "ECM" means an Energy Saving Measure or Utility Cost-Savings Measure as defined in **§29-12.5-101(4) and §29-12.5-101(9), C.R.S.**, respectively. An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. Within this Contract, Utility Cost- Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

W. Energy Cost-Savings Contract

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract as defined in **C.R.S.29-12.5-101 (2.5)**.

X. Energy Cost-Savings Measure

"Energy Cost-Savings Measure" means a Utility Cost-Savings Measure or a Vehicle Fleet Operational and Fuel Cost-Savings Measure. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost- savings measures.

Y. Energy Performance Contract

"Energy Performance Contract" ("EPC") as defined in **§29-12.5-101(3), C.R.S.**, is a contract for evaluations, recommendations or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost-Savings, which:

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the Political Subdivision contracting for the Energy Cost-Savings Measures;
- iii. Requires the party entering into the Energy Performance Contract with the Political Subdivision to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year;
- iv. Requires a minimum of one-tenth of payments by the Political Subdivision to be made within the first two years. Requires remaining payments by the Political Subdivision to be made within 12 years after the date of the execution of the contract, except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the contract is made, not to exceed 25 years.

Z. Energy Service Company

"Energy Service Company" or "ESCO" means the energy service company entity entering into a contract to design and construct the Project with the Political Subdivision. The Energy Service Company may also be referred to as "Contractor" in this Contract or in related schedules, exhibits, attachments, contract modification or procedural documents. The ESCO may be the architect/engineer for the Utility Cost- Savings Measures or may contract out these professional services with approval of the Governing Body.

AA. Equipment

"Equipment" means the equipment, systems and associated services set forth on **Schedule B**, together and with any and all includes all replacements, repairs, restorations, Modifications and improvements of or to such Equipment.

BB. Escrow Agreement

"Escrow Agreement" means the escrow agreement, if applicable, executed by the Political Subdivision, the Lessor, if any, and the Escrow Fund Custodian, pursuant to which the Escrow Fund is established and administered.

CC. Escrow Fund

"Escrow Fund" means the fund, if applicable, established under the Escrow Agreement

DD. Escrow Fund Custodian

"Escrow Fund Custodian" is indicated in **Article 3D**.

EE. Evaluation

"Evaluation" means the process of examining the Contractor's Work and rating such Contractor's Work based on criteria established in this Contract.

FF. Excluded Materials and Activities

"Excluded Materials and Activities" means asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, pollutants, hazardous wastes, hazardous materials, or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof.

GG. Facility

"Facility " or "Facilities" means any building or utility owned or operated by the Political Subdivision.

HH. Facility Improvement Measure

"Facility Improvement Measure" or "FIMS" is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an EPC. A FIM may be an activity requested by the Political Subdivision, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an EPC. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

II. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines

"Federal Energy Management Program ("FEMP") Measurement and Verification (M&V) Guidelines" means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP (definition below). The FEMP M&V Guidelines represents a specific application of the IPMVP to EPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

JJ. Finance Agreement Term

"Finance Agreement Term" means the original term and all renewal terms of any Lease-Purchase Agreement or any other financing or funding agreement of the Political Subdivision for the costs of this Contract.

KK. Fiscal Year

"Fiscal Year" means a 12-month period beginning on January 1st of each calendar year and ending on December 31st.

LL. Fixed Limit of Construction Cost

"Fixed Limit of Construction Cost" or "FLCC" means the total amount to be paid by the Political Subdivision or any Third-Party Lessor to Contractor for Contractor's satisfactory performance, construction, and installation of all elements of the Work, which shall include, but not be limited to, costs and expenses, permits, performance bonds, materials, labor, auditing, IGA, design, engineering, project construction management costs, commissioning, training, profit, travel expenses, communications, code work, including review, inspection, and compliance unless otherwise noted, acquisition and installation of Equipment. The Fixed Limit of Construction Cost is included as a part of the MCP and all costs comprising the Fixed Limit of Construction Cost shall be identified in **Schedule F**, which shall be executed after this Contract is effective. The Fixed Limit of Construction Cost does not include any Contingency Funds or the M&V Fee.

MM. Governing Body

“Governing Body” means the governing body of the Political Subdivision, a governing body (city or town council, board of trustees, etc.) of any municipality or home rule county, a board of county commissioners of any county, a board of directors of any special district, or a board of education of any school district as defined in **§29-12.5-101(1), C.R.S.**

NN. Guarantee

“Guarantee” means the warranty and guarantee made by the Contractor in **Article 14** hereof that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C** which shall be equal to or greater than the Political Subdivision’s annual payments used to repay the project funding, as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in Contractor directly remunerating the Political Subdivision the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the Governing Body’s consent, which shall not be unreasonably withheld, Contractor may implement additional Utility Cost-Savings Measures or FIMs, at no cost to the Political Subdivision, which may generate additional annual cost savings in future years of the Performance Period to offset future Guaranteed Annual Cost Savings shortfall.

OO. Guarantee Period

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the Contractor set forth in **EPC Schedule D**.

PP. Guaranteed Annual Cost Savings

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings, Guaranteed Annual Operations and Maintenance Cost Savings, and Annual Vehicle Fleet Operational and Fuel Cost Savings guaranteed by Contractor resulting from the Project that shall occur for each year of the Guarantee Period pursuant to **Schedule C**. Guaranteed Annual Utility Cost Savings shall be determined by Contractor’s Measurement and Verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in **Schedule C**.

QQ. Guaranteed Annual Operations and Maintenance Cost Savings

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the Political Subdivision’s operation and maintenance budget.

RR. Guaranteed Annual Utility Cost Savings

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in **Schedule C**.

SS. Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings

“Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings” means measurable and verifiable annual cost savings resulting from the reduction of vehicle operations, fuel and maintenance costs.

TT. International Performance Measurement and Verification Protocol

“International Performance Measurement and Verification Protocol” or “IPMVP” means the current document prepared by the Efficiency Valuation Organization on the Effective Date of the IGA contract. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the Investment Grade Audit Report and Energy Performance Contract Project Proposal (**reference §7**).

UU. Investment Grade Audit

“Investment Grade Audit” or “IGA” means a detailed audit of certain Facilities of the Political Subdivision, including the Premises, conducted by the Contractor or another party pursuant to the IGA Contract, as provided in **§29-12.5-102, C.R.S.** and in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the CEO, which serves as the basis for this Energy Performance Contract.

VV. Investment Grade Audit Contract

“Investment Grade Audit Contract” (IGA) means that certain contract between the Contractor and the

Political Subdivision and entered into pursuant to **§29-12.5-102, C.R.S.**, and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Performance Contract to provide for the implementation of Utility Cost Savings Measures, Facility Improvement Measures, and Operation and Maintenance Cost Savings Measures in Facilities owned or leased by the Political Subdivision and vehicle fleet operational and fuel cost saving measures at the Premises of the Political Subdivision.

WW. kW

"kW" means "Kilowatt" (abbreviation)

XX. kWh

"kWh" means "Kilowatt-hour" (abbreviation)

YY. Lease Purchase Agreement

"Lease Purchase Agreement" means any annually renewable lease purchase financing agreement entered into by the Political Subdivision, as lessee of the Equipment, and a Third-Party Lessor, as lessor of the Equipment and Services, for the financing of the Utility Cost-Savings Measures and FIMs as a result of Contractor's work pursuant to this Contract (constituting the capital project so financed), as authorized pursuant to **§29-12.5-103, C.R.S.**

ZZ. Material Change

"Material Change" means any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature as determined by the Governing Body or the Principal Representative, if authorized to do so by the Governing Body, and the Contractor, to increase or decrease Guaranteed Annual Cost Savings, as defined in **PP** above, in accordance with the provisions and procedures set forth in **Schedule B** and is correlated with such change in energy or water usage, and as described in **Article 17**.

AAA. Maximum Contract Price

"Maximum Contract Price" or "MCP" means the maximum amount of total allowable costs under this Contract, as set forth in **Article 4(A)**, which shall be the total amount paid by the Political Subdivision, or Third-Party Lessor on behalf of the Political Subdivision, to Contractor, and which shall include, but not be limited to, the Fixed Limit of Construction Cost, the Measurement and Verification Fee, and any Contingency Funds. It is the maximum amount payable to the Contractor pursuant to this Contract.

BBB. Measurement and Verification

"Measurement and Verification" or "M&V" means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy use. Instead savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current International Performance Measurement and Verification Protocol ("IPMVP"), as may be amended by the Efficiency Valuation Organization on the Effective Date of this contract. The CEO Measurement and Verification Policy may allow alternative verification standards as appropriate for select Utility Cost-Savings Measures or FIMs.

CCC. M&V Commencement Date

"M&V Commencement Date" means the first day of the month following the completion by Contractor and the Principal Representative's submittal of Notice of Final Acceptance.

DDD. M&V Fee

"M&V Fee" means an annual fee paid to Contractor by the Political Subdivision for Contractor's satisfactory performance of the M&V Services, as set forth in **Article 13**. The M&V Fee is included as a part of the EPC Maximum Contract Price.

EEE. M&V Plan

"M&V Plan" defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in **EPC Contract Schedule D**.

FFF. M&V Services

"M&V Services" means Services or activities relating to the measurement and verification by Contractor of the efficiency and effectiveness of the Project, pursuant to this Contract and the CEO Measurement and Verification Policy as applied.

GGG. M&V Term

"M&V Term" has the meaning as described to it in **EPC Contract §13**.

HHH. MMBtu

"MMBtu" means 1 Million British thermal unit (abbreviation).

III. Modification (of Equipment)

"Modification of Equipment" means a field installable upgrade, feature, addition, accessory or modification to Equipment, which is made by or for the original manufacturer of such Equipment.

JJJ. Modification (to the contract)

"Modification to the Contract" means a written (i) amendment to this Contract signed by both parties or (ii) Change Order executed in accordance with **Schedule A**.

KKK. Open Book Pricing

"Open Book Pricing" means "Open Book Pricing" as set forth in **Article 6(H)**.

LLL. Operation and Maintenance Cost Savings

"Operation and Maintenance Cost Savings" as defined in **§29-12.5-101 (4.5), C.R.S.**, means the measurable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

MMM. Personally Identifiable Information (PII)

"PII" means personally identifiable information including, without limitation, any information maintained by the Political Subdivision about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in **§24-72-501, C.R.S.**

NNN. Political Subdivision Confidential Information

"Political Subdivision Confidential Information" means any and all Records of the Political Subdivision not subject to disclosure under CORA. Confidential Information of the Political Subdivision shall include, but is not limited to PII, Tax Information, and Political Subdivision personnel records not subject to disclosure under CORA.

OOO. Premises

"Premises" is as set forth in **Article 5(A)**.

PPP. Project

"Project" means Contractor's design, acquisition, construction, and installation of the Utility Cost-Savings Measures and FIMs, and all Equipment and Services related thereto, as set forth in **Schedule B** and the Contract Documents, but does not include M&V Services.

QQQ. Rebate

"Rebate" means moneys used for Contractor's compensation that are not the moneys of the Political Subdivision or moneys from a Third-Party Lessor, including solar REC's and utility rebates, all as described in **Schedule B** and on **Schedule G**.

RRR. Review

"Review" means the examination by the Principal Representative of the Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with this Contract.

SSS. Schedule A

"Schedule A" means **Schedule A** to this Contract, attached hereto as General Conditions of the Energy Performance Contract.

TTT. Schedule B

"Schedule B" means **Schedule B** to this Contract, attached hereto as EPC Description of Work. The **Schedule B** is developed from information in the EPC Project Proposal. **Schedule B** includes, but is not limited to: the final list of facilities that define the Premise, final list of improvements, installed equipment and upgrades, training, start-up, commissioning, and design/construction schedule. **Schedule B** details the cost for the Work from initial design to the start of the Guarantee Period. **Schedule B** includes the financial performance including any rebates, grants, Political Subdivision provided funds, and the potential third-party financial amount that totals up to the Maximum Contract Price.

UUU. Services

“Services” means all services performed by Contractor hereunder, including, but not limited to, engineering, design, project management, construction management, design, training, and M&V Services, and tangible material produced either separately or in conjunction with the Work performed.

VVV. Simple Payback

“Simple Payback” means the length of time, typically presented in years, required to recover the cost of a measure or project.

WWW. Tax Information

“Tax Information” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

XXX. Third-Party Lessor

“Third-Party Lessor” means a third-party entity entering into a Lease Purchase Agreement, as lessor, with the Political Subdivision, as lessee, for the lease purchase financing of the Equipment and the Services pursuant to this Contract.

YYY. Utility or Utilities

“Utility” or “Utilities” means the water, sewer services, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Governing Body of the Political Subdivision.

ZZZ. Utility Cost Savings

“Utility Cost Savings” means the definition set forth in **§29-12.5-101(7), C.R.S.**, is the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Utility Cost-Savings Measures or FIMs when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

AAAA. Utility Cost-Savings Contract

“Utility Cost-Savings Contract” means an Energy Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment set forth in **§29-12.5-101(8), C.R.S.**

BBBB. Utility Cost-Savings Measure

“Utility Cost-Savings Measure” means the definition set forth in **§29-12.5-101(9), C.R.S.**, is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems
- ii. Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption
- iii. Automatic energy control systems
- iv. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants
- v. Caulking or weather stripping
- vi. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lightingsystem
- vii. Energy recovery systems
- viii. Renewable energy and alternate energy systems
- ix. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings
- x. Devices that reduce water consumption or sewer charges
- xi. Changes in operation and maintenance practices
- xii. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel

sources, and water

- xiii. Indoor air quality improvements that conform to applicable building code requirements
- xiv. Daylighting systems
- xv. Building operation programs that reduce utility and operating costs including computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities
- xvi. Services to reduce utility costs by identifying utility errors and optimizing existing rates schedules
- xvii. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes
- xviii. Vehicle fleet operational and fuel cost savings
- xix. When an energy saving measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy, as set forth in **§29-12.5-103(3), C.R.S.**

Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

CCCC. Vehicle Fleet Operational and Fuel Cost Savings

“Vehicle Fleet Operational and Fuel Cost Savings” means the definition set forth in **CRS§29-12.5-101(10)**, which is a measurable decrease in the operation and maintenance costs of Political Subdivision vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

DDDD. Vehicle Fleet Operational and Fuel Cost-Savings Contract

“Vehicle Fleet Operational and Fuel Cost-Savings Contract” in the definition set forth in **§29-12.5-101(11), C.R.S.**, means an Energy Performance Contract or any other agreement in which Vehicle Fleet Operational and Fuel Cost Savings are used to pay for the cost of the vehicle or associated capital investments.

EEEE. Vehicle Fleet Operational and Fuel Cost-Savings Measure

“Vehicle Fleet Operational and Fuel Cost-Savings Measure” is defined in **§29-12.5-101(12), C.R.S.**, means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

- i. Vehicle purchase or lease costs either in full or in part;
- ii. Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy performance contract.

FFFF. Work

“Work” means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

GGGG. Work Product

“Work Product” means the tangible or intangible results of the Contractor’s Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the Contractor’s Intellectual Property.

Any other term used in this Contract that is defined in a Schedule shall be construed and interpreted as defined in that Schedule.

2. ORGANIZATION AND TERM

A. Contract Phases

This Contract shall be performed in accordance with its provisions and contains the following phases:

- i. Funding (**Articles 3 and 4**)
- ii. Pre-Construction (**Article 5**)
- iii. Construction (**Article 6, 7, and 9**)
- iv. Start-up, Commissioning, and Acceptance (**Article 8**)

- v. Training (**Article 10**)
- vi. Measurement and Verification (**Article 13**)

B. Contract Term

Contractor shall complete the Work and its other obligations as described herein on or before

November 18th, 2025

The Political Subdivision shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract. The term of this Contract ("Contract Term") shall be divided into three (3) separate components:

- i. The "Planning Term," shall commence on the Effective Date and upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Design Phase under **Article 4(H)** and terminate upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase for the last improvement per the Construction and Installation **Article 6(B)**
- ii. The "Construction Term," shall commence upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase under **Article 6(E)**, and terminate no more than

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after the Construction Commencement Date, unless sooner terminated as provided in this Contract

- iii. The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute (**§29-12.5-101(3)(c), C.R.S.**) and no greater than the Finance Agreement Term. The M&V Term shall terminate pursuant to **Schedule D** unless sooner terminated as provided in this Contract.

3. FUNDING

A. Source of Funds

The Political Subdivision intends to obtain

\$1,337,181.00

in funds for the MCP required under this Contract by entering into a personal property annually renewable lease purchase financing arrangement with a Third-Party Lessor [INSERT suitable variations for other forms of financing such as "enterprise" revenue bonds] or in such other manner as the Governing Body of the Political Subdivision, in its sole discretion, shall deem authorized by resolution or ordinance pursuant to and within the limitations of applicable constitutional, statutory (which may include **§29-12.5- 101(3)(b), C.R.S.**) and code provisions pertaining to the Political Subdivision. The total amount of funds that the Governing Body of the Political Subdivision will seek to acquire from a Third-Party Lessor [INSERT suitable variation] will be

\$571,726.00

If Political Subdivision is unable to obtain funds in any manner for the entire amount of the MCP, the Governing Body of the Political Subdivision and the Contractor may negotiate a reasonable reduction in the Project scope, price, and Guarantee in a manner consistent with any available funds or the Governing Body of the Political Subdivision may unilaterally terminate this Contract, in the sole discretion of the Governing Body of the Political Subdivision. If the Political Subdivision is unable to obtain financing for the entire amount of the MCP and the Parties are unable to revise the Project scope to obtain available funds within sixty (60) days of the Effective Date, either Party may terminate this Contract upon 10 days written notice to the other Party and such termination shall not be a default under this Contract. Upon termination, neither Party shall have any obligation to the other Party under this Contract, except for those provisions which by their terms survive any such termination, as provided herein.

B. Political Subdivision Funds

The Political Subdivision will provide all or a portion of the moneys for the MCP required under this Contract in the amount of

\$750,000.00

from existing appropriations specifically budgeted, appropriated and encumbered for this purpose (insert \$0.00 if no contribution) as full or partial compensation for the cost of the Project as described in

Schedule B and indicated on **Schedule G** to be paid to Contractor as reimbursement pursuant to **Schedule A**.

C. Escrow Account

Any funds obtained by the Political Subdivision from a Third-Party Lessor shall be deposited into an escrow account established on the Political Subdivision's behalf. The Principal Representative shall be authorized by the Governing Body of the Political Subdivision to direct the Escrow Fund Custodian, as described in **Article 3(D)**, to compensate Contractor for the Work performed by Contractor and accepted in writing by the Principal Representative in accordance with **Article 4** and **Schedule A**, and the Escrow Fund Custodian will make payment from the escrow account in accordance with procedures set forth in the Lease Purchase Agreement, this Contract, and any escrow agreement. Final payment shall be made to Contractor upon the Principal Representative's submittal of the Notice of Final Acceptance of the Project. Any proceeds from the escrow account shall accrue to the Political Subdivision.

D. Escrow Fund Custodian

The Escrow Fund Custodian is hereby identified as:

INSERT NAME
INSERT TITLE
INSERT ADDRESS
INSERT PHONE NUMBER
INSERT EMAIL

Escrow Fund Custodian is subject to change at any time, without notice, and at the Principal Representative's discretion. The Principal Representative shall notify Contractor and the Third-Party Lessor within 15 days of any change in the Escrow Fund Custodian.

E. Energy Policy Act

The Political Subdivision agrees that, for the Work to be performed herein, Contractor may in consultation with the Principal Representative, determine which, if any, entity shall be the "designer(s)" as that term is identified in the Energy Policy Act of 2005, and which entity(s) shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under Section 179(d) of the Energy Policy Act of 2005, any tax benefit associated with the Work. Upon Notice of Final Acceptance, the Governing Body of the Political Subdivision, at its sole discretion, may authorize the Principal Representative to execute a Written Allocation including a Declaration related to Section 179D of the Internal Revenue Code. The Contractor may prepare the Declaration and all accompanying documentation.

4. COMPENSATION

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative will, or will direct any Escrow Fund Custodian to, in accordance with the provisions of this **Article 4**, pay Contractor in the amounts and using the methods set forth below:

A. Maximum Contract Price

The MCP from Schedule G is:	\$1,337,181.00
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The MCP reflects the maximum amount of compensation payable to Contractor pursuant to this Contract. The MCP may include, without limitation,

The cost of the IGA in the amount of:	\$8,125.00
The Fixed Limit of Construction Cost of:	\$1,243,470.00
The M&V Fees in an amount not to exceed:	\$15,455.00
And all Contingency Funds in the amount of:	\$78,257.00

If any Political Subdivision funds are used pursuant to **Article 3(B)** of this Contract, the maximum amount of the MCP available for payment by the Political Subdivision during any Fiscal Year of the Contract term shall be as follows:

*(Match this schedule with **Schedule G** and **Schedule B**, but do not use if amount in Political Subdivision provided capital contribution is zero)*

INSERT \$ AMOUNT in fiscal year 20 20 , ending June 30, 20
INSERT \$ AMOUNT in fiscal year 20 20 , ending June 30, 20
INSERT \$ AMOUNT in fiscal year 20 20 , ending June 30, 20 .
(Repeat for each fiscal year for all Political Subdivision capital contributions)

B. Changes to MCP

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative may decrease the amount available for the MCP with the mutual consent of the Contractor and assuring that the decrease in the MCP does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. The decrease in MCP may be based on the actual costs of labor and materials to Contractor. The MCP shall not be increased without an amendment to this Contract, in accordance with Political Subdivision Fiscal Rules.

C. Invoicing

Contractor shall invoice the Political Subdivision in the format and manner required by the Principal Representative. Contractor shall use the categories in **Schedule F** to demonstrate all costs categories, shall demonstrate all subcontractor costs, and shall allow the Principal Representative to review any records relating to the Project. Contractor shall provide measure-specific information and Project-level information in **Schedule F**. For each Utility Cost-Savings Measure and FIM and for the Project the profit shall be clearly explained and referenced in each invoice. The M&V Services shall be invoiced separately in a format and manner as required by the Principal Representative.

D. Payments and Retainage

The Principal Representative will, or will direct any Escrow Fund Custodian to, compensate Contractor for Work done by Contractor pursuant to **Schedule A**. The Principal Representative shall withhold and release retainage amounts pursuant to **Schedule A** and as allowed by applicable law.

E. Availability of Political Subdivision Funds

The Political Subdivision cannot make commitments in this EPC that extend beyond the term of the current Fiscal Year. Therefore, Contractor's compensation beyond the current Fiscal Year is contingent upon the specific budgeting, appropriations and encumbrances by the Governing Body of the Political Subdivision, in its sole discretion, for the purpose of providing for the commitments in this EPC in subsequent Fiscal Years. If other funds are used to fund this Contract, in whole or in part, the Political Subdivision's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds specifically budgeted, appropriated and encumbered for this Contract and the Political Subdivision's liability for such payments shall be limited to the amount remaining of such encumbered funds. If Political Subdivision or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Governing Body of the Political Subdivision may terminate this Contract, in whole or in part, without further liability in accordance with the provisions hereof.

F. Erroneous Payments and Excess Funds

Payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and Contractor or by other appropriate methods and

collected as a debt due to the Political Subdivision. Such funds shall not be paid to any party other than the Political Subdivision.

G. Notice to Proceed to Commence Design Phase

If the Political Subdivision obtains funding from any and all sources in the amount of the MCP for the purposes set forth herein, upon terms and conditions satisfactory to the Governing Body of the Political Subdivision, in its sole discretion, or obtains funds sufficient for a revised Project scope, price, and Guarantee, if authorized by the Governing Body of the Political Subdivision, the Principal Representative shall deliver to Contractor a Notice to Proceed to Commence Design Phase instructing Contractor to commence with the Pre-Construction Services, as described in **Article 5**.

5. PRE-CONSTRUCTION SERVICES

A. Premises

The Premises is the Facilities owned or controlled by the Political Subdivision, as initially detailed on the IGA Contract Exhibit C and finalized in EPC **Schedule B**.

B. Professional Design Services

i. Qualifications

Design services shall be performed by properly licensed and qualified architects, engineers and other professionals selected and paid by Contractor, subject to review by the Principal Representative. The professional obligations of such persons shall be undertaken and performed on behalf of Contractor. Nothing contained herein shall create any contractual relationship with the Political Subdivision between Subcontractors, architects, engineers or suppliers. Prior to designating a professional to perform any of these services, Contractor shall submit the name, together with a resume of training and experience in the work of like character and magnitude to the Project being contemplated to the Political Subdivision. All Drawings, Specifications, calculations, certifications and Submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Political Subdivision shall be entitled to rely upon the adequacy, accuracy and completeness of such design services.

ii. Designation of Professionals

All Work performed by Contractor that constitutes the practice of architecture/engineering shall be performed by properly qualified and licensed professionals employed by Contractor and shall be performed in accordance with applicable Colorado law.

iii. Conflict of Interest

Consultant or subcontractor, not already approved by the Governing Body of the Political Subdivision, shall not be engaged to perform Work wherein a conflict of interest exists, as described in **Article 27(N)**, provided, however, that with full disclosure to the Governing Body of the Political Subdivision of such interest, the Governing Body of the Political Subdivision may provide a waiver, in writing, in respect to the particular consultant or subcontractor.

iv. Pre-construction Meeting

Contractor and its architect and/or engineer may attend pre-construction meetings, as deemed necessary by the Contractor and the Principal Representative and such additional meetings as the Principal Representative may request. All pre-construction meetings shall be scheduled by Contractor with the approval of the Principal Representative.

v. Minutes

Contractor shall record minutes of all meetings and distribute them to all participants of the meetings within 30 days after each meeting.

C. Design Documents

i. Based on the Scope of Work in **Schedule B** the Contractor shall prepare, for the Principal Representative's acceptance, the Design Documents (DDs) defined in **Article 1(K)**. The DDs may be waived or modified per Utility Cost-Savings Measure or FIM as mutually agreed in writing between the Parties. Such DDs may include the following, where applicable:

- a)** Analysis of the proposed Work and the structure as such relates to any laws, codes, ordinances, and regulations
- b)** As necessary, provide site development Drawings for each proposed Utility Cost-Savings Measure

- or FIM, defining the proposed scope of the Project. Include earthwork, surface development, and utility infrastructure as applicable
- c) Plans in one-line format of the proposed structural, mechanical, and electrical systems as necessary to define size, location and quality of Equipment, materials, and constructions, for each proposed Utility Cost-Savings Measure or FIM
- d) Floor plans including proposed equipment
- e) Cut-sheets and/or samples of proposed materials, equipment and system components
- f) Proposed architectural schedule, HVAC, plumbing and electrical fixture schedules
- g) Specifications, which, identifying conditions of the Contract, materials, and standards for each proposed Utility Cost-Savings Measure or FIM
- h) Design plans and documentation for each Utility Cost-Savings Measure or FIM that requires a design as agreed to with the Principal Representative
- i) Submittal of final Equipment List, Construction and Installation Schedule, Systems Start-up and Commissioning, Contractor's Maintenance Responsibilities, Political Subdivision's Maintenance Responsibilities, Contractors Training Responsibilities, and the Manifest of Ownership
- j) Submittal of an updated construction cost estimate as applicable, in substantially the same form as **Schedule F**
- ii. A code review is required to meet the local jurisdiction authority code procedure.
- iii. At the completion by Contractor and acceptance by the Principal Representative of the DDs, Contractor shall provide electronic or printed drawings and such other documents as necessary to fully illustrate the Design Development Phase to the Principal Representative. Electronic drawing files should be in a form acceptable to the Principal Representative.
- iv. Contractor shall be responsible for ensuring that the DDs, prepared by Contractor are in full compliance with applicable codes, regulations, laws and ordinances, including both technical and administrative provisions thereof. If Contractor deviates from such codes, regulations, law or ordinance, without written authorization from the State Buildings Program, Contractor, shall make such corrections in the Construction Documents as may be necessary for compliance.
- v. The Principal Representative shall notify Contractor of acceptance or denial of the DDs in writing within 10 days of receipt.

6. CONSTRUCTION

A. Construction Documents

The Construction Documents, if required, shall consist of the following:

- i. Final Construction Documents reviewed and approved by the Principal Representative in writing for constructability and code compliance
- ii. All Design Documents applicable to the Project
- iii. Any appendices, addenda, clarifications and allowances
- iv. All modifications issued pursuant to this Contract
- v. Construction and Installation Schedule
- vi. Finalized Schedule of Values

B. Construction and Installation Schedule

Contractor shall prepare a Construction and Installation Schedule, which shall provide the timetable for the execution and completion of the Project. Such Construction and Installation Schedule shall be subject to the approval of the Principal Representative, pursuant to **Schedule A**, and shall be consistent with previously issued schedules, not exceed time limits under the Contract Documents and shall provide a schedule for the entire Project, to the extent required by the Contract Documents.

C. Schedule of Values

Contractor shall prepare a schedule of the cost of construction, which shall be delivered to the Principal Representative for approval and which shall be in substantially similar format as the attached **Schedule F**, and which such Contractor-submitted **Schedule F** shall be subject to review and approval by the Principal Representative. The Schedule of Values shall include, without duplication:

- i. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of

the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project

- ii. The compensation for services and the cost of work provided by Contractor
- iii. All bond premiums and costs of insurance
- iv. All Design and drafting Services
- v. All other allowable compensable services pursuant to this Contract as approved by the Principal Representative
- vi. Contingency Funds if any

D. Approval and Completion of Construction Documents

Except as otherwise provided in this Section, the Construction Documents shall be subject to final approval by Principal Representative, on behalf of the Political Subdivision, and other reviewing authorities. The Principal Representative or written designee shall review documents submitted by Contractor and shall render decisions pertaining thereto without unreasonable delay. If authorized by the Governing Body of the Political Subdivision, the Principal Representative's approval shall be issued in the form of the Notice to Proceed to Commence Construction Phase.

E. Notice to Proceed to Commence Construction Phase

Upon receipt of Notice to Proceed to Commence Construction Phase, Contractor shall commence the Project, as described in **Article 1**, and **Schedule B**. Notice to Proceed to Commence Construction may be issued per Utility Cost-Savings Measure or FIM.

F. Construction Term

The Construction Term shall commence on the Construction Commencement Date and shall terminate upon the date according to **Article 2** or the date on which:

- i. Contractor has completed the Project Work
- ii. Contractor has finalized and delivered to the Principal Representative all necessary, updated, and final documents, including schedules, exhibits, and completed Punch Lists, at the Principal Representative's determination
- iii. Contractor has delivered to the Principal Representative a Notice of Substantial Completion, which indicates that Contractor has constructed, installed, and commenced operating the Utility Cost-Savings Measures or FIMs specified in **Schedule B**
- iv. The Principal Representative has inspected and accepted the Project, according to **Article 8** and **Schedule A**, including the design, construction, installation, and operation of the Project and accepted Contractor's submittal of a Notice of Substantial Completion as demonstrated by signing and executing such Notice of Substantial Completion
- v. The Principal Representative, on behalf of the Political Subdivision, has issued a Notice of Final Acceptance

G. Fixed Limit of Construction Cost

Contractor shall complete the Project and be reimbursed an amount not to exceed the Fixed Limit of Construction Cost per **Article 4(A)**. Contractor shall design and construct the Project within the price specified in this **Article 6(G)** and shall furnish all of the labor and materials to perform the Work for the complete and prompt execution of the Project in accordance with the Contract Documents. The Fixed Limit of Construction Cost includes all of Contractor's Project Work responsibilities, including acquisition of plumbing and electrical building permits and conducting code review. The Governing Body of the Political Subdivision may unilaterally decrease the amount available for the Fixed Limit of Construction Cost based on the actual costs of labor and materials to Contractor, with the mutual consent of the Contractor, and assuring that the decrease in the FLCC does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. However the Fixed Limit of Construction Cost and the Maximum Contract Price shall not be changed without an amendment or change order to this Contract, in accordance with EPC General Conditions and Fiscal Rules.

H. Cost Reporting

Contractor shall fully disclose all costs as per the Open Book Pricing requirements to the Political Subdivision through Applications for Contractors Payments and in such detail as the Principal Representative may request. Contractor shall maintain cost accounting records on authorized work

performed as per **Article 24(K)**. Such accounting records shall identify all costs for materials, labor, including all costs of subcontractor's, vendors, and services received during the Contract Term **Article 2B**. Upon request by the Principal Representative a list of hourly rates and position descriptions for labor or services provided by the Contractor and for all subcontractors and vendors and supply information on any other basis as specified by the Principal Representative. The Principal Representative may evaluate all cost through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable. Upon request by the Principal Representative, Contractor shall provide the Principal Representative complete access to such records at reasonable times and locations. The records shall be consistent with the Schedule of Values, **Schedule F**. Any disputes shall be subject to the terms of this Contract and **Schedule A**.

I. Progress Meetings

Contractor shall schedule and conduct regular progress meetings at which meetings the Principal Representative and Contractor shall discuss such matters as procedures, progress, schedule, costs, quality control and problems relating to the Project. Contractor shall record and distribute minutes of all such progress construction meetings within

2

days of the meeting.

J. Contingency Funds

If authorized by the Governing Body of the Political Subdivision, the Principal Representative may authorize the disbursement of Contingency Funds to Contractor through an EPC Contract Change Order, as described in **Schedule A**.

7. CONTRACTOR PERFORMANCE

A. Performance of Project

Contractor shall perform the Project in accordance with the Contract Documents. Contractor shall construct and install the Project in accordance with the Construction and Installation Schedule. Contractor shall supervise and direct the Project and be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project under this Contract, subject to the review and approval of the Principal Representative and the Construction and Installation Schedule. Contractor shall design, construct and install the Utility Cost-Savings Measures or FIMs. Before purchasing any major Equipment not specified within the Construction Documents, Contractor shall consult with, and if necessary, receive the written or electronic approval of the Principal Representative regarding the price, specifications, warranty, and manufacturer of the Equipment.

B. Contractor's Duty of Proper Performance

Contractor shall perform the Project so as to maintain and not degrade the structural integrity of the Premises or its operating systems. Contractor shall provide the Equipment and all Services, and complete all Work contemplated under this Contract with skill and diligence to the satisfaction of the Principal Representative and in strict accordance with the provisions of the Contract Documents.

C. Standards of Comfort

Contractor's performance of the Project shall maintain and provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality as described in this Contract **Schedule N** (Standards of Comfort).

D. Security

Contractor shall meet Political Subdivision requirements for security and access to the Premises.

8. START-UP, COMMISSIONING, INSPECTION, and ACCEPTANCE

A. Contractor, in conjunction with the Political Subdivision's selected personnel, shall direct the testing of installed utilities, operations, systems and Equipment for readiness.

B. Systems Startup and Equipment Commissioning

Contractor shall conduct systematic commissioning of all Equipment installed as part of the Work, in accordance with the procedures specified in System Start-up and Commissioning **Schedule Q**, **Schedule A**, any operating parameters of Equipment from Equipment manufacturers, and this Contract. Contractor agrees that **Schedule Q** shall follow and use as a standard the procedures and protocol for Commissioning

located in the document *Commissioning Guidelines for Energy Saving Performance Contracts for the Colorado Energy Office*, provided by the Political Subdivision. Contractor shall test the Project and the Equipment to ensure it is functioning in accordance and compliance with any published Specifications and this Contract and to determine if modified building systems, subsystems or components are functioning properly within the Project Work. Contractor shall provide notice to the Principal Representative of the scheduled test(s) and the Principal Representative and/or its designees may be present at any or all such tests.

C. Acceptance by Principal Representative

Contractor's Work shall be subject to acceptance by the Principal Representative pursuant to this Contract and **Schedule A**.

D. Correction of Deficiencies

Contractor shall correct all deficiencies in the operation of the Project and the Equipment. Prior to Principal Representative acceptance, Contractor shall also provide Principal Representative with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule B** and any subsequently necessary and accepted design or construction documents.

E. Inspection and Disputes

- i. The Principal Representative may inspect the Work provided under this Contract at all reasonable times and places. If any Work does not conform to this Contract, the Principal Representative may require Contractor to perform the Work again in conformity with this Contract's requirements, with no additional compensation. When defects in the quality or quantity of Work cannot be corrected by re-performance, the Principal Representative may:
 - a) Require Contractor to take necessary action to ensure that the future performance conforms to Contract requirements; and/or
 - b) Equitably reduce the payment due Contractor to reflect the reduced value of the Work performed.
- ii. Such remedies in no way limit the remedies available to the Political Subdivision in the termination provisions of this Contract, or remedies otherwise available at law. Disputes under this Contract shall be subject to the terms of this Contract and **Schedule A**.

9. ENVIRONMENTAL REQUIREMENTS

A. Excluded Material and Activities

Pursuant to its performance of the Project, Contractor may encounter, but is not responsible for, any work relating to Excluded Materials and Activities, as defined in **Article 1**. If performance of Work involves any Excluded Materials and Activities, the Principal Representative may terminate this Contract without penalty, liability, or responsibility, and no further performance may be required, per **Schedule A**. If, in the sole discretion of the Governing Body of the Political Subdivision, the Political Subdivision requires continued performance of this Contract, and the performance of any Project involves any Excluded Materials and Activities, the Political Subdivision shall perform or arrange for the performance of such work and shall bear the sole cost, risk, and responsibility therefore.

B. Discovery of Excluded Materials and Activities

i. Notice - Work Stoppage

If Contractor discovers Excluded Materials and Activities, Contractor shall immediately cease work and remove all Contractor personnel or Subcontractors from the site, and notify the Principal Representative. Contractor shall undertake no further work on the Premises except as authorized by the Principal Representative in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Political Subdivision or Contractor shall not constitute a default. In the event of such stoppage of Work by Contractor, the time for the completion of the Work shall be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result shall be added by Change Order.

ii. Other Hazardous Materials

Contractor shall be responsible for safely handling, installing, and/or disposing of any other hazardous or other materials that it may bring to the Premises.

iii. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

Contractor is specifically responsible for the proper handling and disposal of Polychlorinated Biphenyl (PCB) Ballasts and Mercury Lamps. Upon discovery of PCB Ballasts and Mercury Lamps, Contractor shall enter into an agreement with an approved PCB ballast disposal contractor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services such materials. All capacitors and asphalt potting compound materials removed from the PCB Ballasts shall be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction shall be provided by the approved facility to the Principal Representative. Contractor's responsibility shall be for the proper and legal management of any of the PCB Ballasts removed as a result of the Work. Contractor shall enter into an agreement with an approved Mercury Lamp disposal contractor who shall provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the Manifest of Ownership.

iv. Manifests of Ownership

The Political Subdivision will sign a Manifest of Ownership for any PCB Ballasts and Mercury Lamps encountered and removed from the Premises.

10. TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR

A. Training

Contractor shall provide training to the Principal Representative and to Political Subdivision personnel regarding operation of all new and upgraded Equipment. Training shall be conducted simultaneously with Project Work and commissioning Work and shall include, but not be limited to, any HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals per **Schedule R** (Contractor Training Responsibilities). All training performed by Contractor shall (i) meet the standards established by the Equipment manufacturers, (ii) be included in the Fixed Limit of Construction Cost and (iii) be completed per **Schedule R**, in order for the Principal Representative to issue a Notice of Final Acceptance of the Project.

B. Emissions Reductions Documentation and Reporting

Contractor shall include information about environmental savings (not any Guaranteed Annual Cost Savings as described in **Article 14(B)**) in each annual report and advise the Principal Representative about opportunities to achieve monetary benefit from such credits.

C. Application for Certifications

Contractor shall provide information related to **Schedule B** necessary for the Principal Representative to submit any required Federal, State, Local performance or other applicable Certifications.

11. MALFUNCTIONS AND EMERGENCIES

- A.** The Principal Representative will use its best efforts to notify Contractor within 24 hours of the Principal Representative's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any pre-existing energy related equipment that might materially impact the Guaranteed Annual Cost Savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation. When the Principal Representative exercises reasonable due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify any such conditions as having a material impact upon the Guaranteed Annual Cost Savings.
- B.** If such malfunction, interruption, or alteration occurs during the Contractor's One-Year Warranty period, Contractor shall use commercially reasonable efforts to respond to any such notice within 24 hours of receipt of notice, and shall promptly thereafter proceed with corrective measures. The Principal Representative will provide Contractor with written memorialization of any telephone notice within three business days after the notice was given.
- C.** Contractor shall provide a written record of all service work performed for each malfunction or emergency. This record shall indicate the reason for the service, description of the problem and the corrective action performed.
- D.** The Political Subdivision may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. The Political Subdivision agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which

may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Political Subdivision applies to the Premises generally.

12. OWNERSHIP

A. Ownership of Documents (Instruments of Service)

- i. Drawings, specifications and other documents, including those in electronic form, prepared by the Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants are Instruments of Service for use solely with respect to this Project. The Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.
- ii. Upon execution of this EPC and the contract between the Contractor's and the Contractor's Architect/Engineer, the Contractor's Architect/Engineer shall grant to the Political Subdivision a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the Political Subdivision, the Contractor's Architect/Engineer's Instruments of Service solely for the purposes of constructing, using and maintaining the Project for future alterations or additions to the Project. The Contractor's Architect/Engineer shall obtain similar nonexclusive licenses from the Contractor's Architect/Engineer's consultants consistent with this Agreement. If and upon the date the Contractor's Architect/Engineer is adjudged in default, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Political Subdivision to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections and additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project for future alterations or additions to the Project.
- iii. Any unilateral use by the Political Subdivision of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the Political Subdivision's sole risk and without liability to the Contractor's Architect/Engineer and the Contractor's Architect/Engineers consultants; provided, however, that if the Political Subdivision's unilateral use occurs for completing, using or maintaining the Project as a result of the Contractor's Architect/Engineer's default, nothing in this Article shall be deemed to relieve the Contractor's Architect/Engineer of liability for its own acts or omissions or default.

B. As-Built Drawings/Record Drawings

The Contractor's Architect/Engineer and its consultants shall, upon completion of the Construction Term, receive redline as-built Drawings from any Subcontractors or vendors. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed shall be incorporated by the Contractor's Architect/Engineer and its consultants into a Record Drawings document provided to the Political Subdivision in the form of an electro-media format and a reproducible format as agreed between the parties. The Contractor's Architect/Engineer shall also provide the Principal Representative with the as-built Drawings as received from the Contractor.

C. Ownership of Existing Equipment

- i. Property owned by the Political Subdivision located at the Premises on the Effective Date shall remain the property of Political Subdivision even if it is replaced or its operation made unnecessary by Work Contractor performs pursuant to this Contract. Contractor shall advise the Principal Representative in writing of any equipment and materials to be replaced at the Premises and the Principal Representative shall within 30 days designate in writing to Contractor which equipment and materials should not be disposed of off-site by Contractor.
- ii. The Principal Representative shall designate the location and storage for any equipment and materials that it designates to be disposed of by Contractor. Contractor shall dispose of all equipment and materials designated by the Principal Representative as disposable off-site and in accordance with all applicable disposal laws and regulations.
- iii. Except as otherwise indicated, Contractor shall not be obligated to dispose of or be responsible for any materials identified in **Article 4(O)**.

13. MEASUREMENT AND VERIFICATION PLAN

A. M&V Plan

Contractor shall provide the M&V Plan as required per the CEO Measurement and Verification Policy. The M&V Plan shall outline the M&V Option for each Utility Cost-Savings Measure or FIM. The Contractor M&V Plan is presented in **Schedule D** per the requirements of **Schedule D**.

B. M&V Services

Contractor shall provide M&V Services and all other services required to be performed by it pursuant to **Schedule D** during the M&V Term. Contractor agrees that **Schedule D** shall follow and use as a standard the procedures and protocol as stated in the CEO Measurement and Verification Policy.

C. Energy Usage Records and Data

The Principal Representative shall furnish, or authorize its utility suppliers to furnish, to Contractor or its designee upon Contractor's written request, all records and data regarding energy, water, or other utilities usage and related maintenance at the Premises no later than 45 days from date of request.

D. M&V Term

The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute **§29-12.5-101(3)(c), C.R.S.** and no greater than the Finance Agreement Term. Upon termination of the M&V Term, the Political Subdivision shall have no further liability or responsibility for any further payment to Contractor for M&V Services. Upon termination of the M&V Term the Contractor shall have no further liability or responsibility for any M&V Services or Guarantee.

E. M&V Fee

The Political Subdivision shall pay to Contractor for performance of the M&V Services a maximum not-to-exceed amount as indicated in **Article 4** and as specified in **Schedule D** and shall be included in the MCP. Cost savings to support the fee are guaranteed. The cost is not included in the financed amount. At the request of the Principal Representative, additional years of M&V may be added at a negotiated additional cost, and shall not be included in the MCP.

F. Payment

The Political Subdivision shall pay Contractor pursuant to **Articles 6 and 7**.

G. M&V Information Procedure

Measurement and Verification of Savings shall be verified as outlined in **Schedule D**.

H. Monitoring Equipment

Contractor shall provide all additional necessary equipment required to perform the M&V Services. The Contractor may utilize existing equipment, systems, utility meters if applicable or provide the necessary equipment as described in **Schedule D**.

I. Independent Monitor

The Political Subdivision, at its sole expense, may hire an independent third party monitor to review Contractor's measurement and verification reports, including verifying the prorated share of the Guarantee in any event of contract termination. The Political Subdivision shall pay the cost of any independent monitoring through a separate contract.

14. GUARANTEE

A. Guarantee

The Guarantee for the first year of the Guarantee Period is

\$36,178.00

as indicated on **Schedule C**. Contractor hereby warrants and guarantees that during the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C** which shall be equal to or greater than the Political Subdivision's annual and aggregate payments used to repay the project funding, as provided in **Schedule C** and as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet Guaranteed Annual Cost Savings in any year during the Guarantee Period shall be as defined in **Article 1**. Cost savings in excess of the Guaranteed Annual Cost Savings shall be solely retained by the Political Subdivision.

B. Sufficiency of Savings

Contractor hereby warrants, guarantees, and represents that the Guaranteed Annual Cost Savings is accurately represented in **Schedule C**.

C. Termination

If this Contract is terminated by Governing Body of the Political Subdivision for any reason, the Guarantee

shall be cancelled and Contractor shall have no further obligations hereunder, except to guarantee the Political Subdivision the prorated portion of the annual amount of Guarantee up to the date of termination. The prorated portion shall include any Savings incurred prior to the termination date. The Contractor shall have all of the remedies listed in this **Article 14** in addition to all other remedies set forth in other sections of this Contract and **Schedule A**.

15. MODIFICATION, UPGRADE OR ALTERATIONS OF EQUIPMENT

A. Modification of Equipment

Without Contractor's prior written approval, which shall not be unreasonably withheld, during the term of this Contract, the Political Subdivision shall not affix or install any accessory equipment or device on any of the Equipment if such addition changes or impairs the originally intended Savings, functions, value or use of the Equipment.

B. Upgrade or Alteration of Equipment

- i. During the performance of this Contract, Contractor may, subject to prior authorization of the Governing Body of the Political Subdivision, change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that: (a) Contractor complies with the Standards of Comfort, as set forth in this Contract, and services set forth in **Schedule N**; (b) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures enable Contractor to achieve a greater amount of energy and cost savings than the Savings, at the Premises; (c) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures are solely borne by Contractor and paid for with any Contingency Funds; and (d) any such action complies with State, federal and local law and is in the public interest of the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision. Any such upgrade or alteration shall not result in any additional cost to the Political Subdivision.
- ii. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described at that time in supplemental Schedules provided to the Governing Body of the Political Subdivision for approval; provided that any replacement of the Equipment shall, unless otherwise agreed, be new and shall reduce energy consumption at the Premises more than the Equipment being replaced. Contractor shall update any and all software it owns which is necessary for the operation of the Equipment. Upon the approval of the Governing Body of the Political Subdivision, all replacements of and alterations or additions to the Equipment shall become part this Contract and the Equipment described in **Schedule B**.

16. LOCATION AND ACCESS

Contractor Access

The Principal Representative shall provide access to the Premises for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours requested by Contractor that are acceptable to the Principal Representative. Contractor shall be granted immediate access to make emergency repairs or corrections as Contractor determines are needed. Contractor shall provide a written memorialization within three business days of the access specifying the emergency action taken, the reasons therefore, and the impact on the Premises.

17. MATERIAL CHANGES

A Material Change as defined could be the result of the Political Subdivision not fulfilling its responsibilities as listed in **Article 22** or from actions including to but not limited to one or more of the following:

- i. manner of use of the Premises by the Political Subdivision; or
- ii. occupancy of the Premises; or
- iii. modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
- iv. facility modifications, renovations, new construction, including the replacement, addition or removal in types and quantities of energy and water consuming equipment, including plug load items, used at the Premises; or

- v. changes in utility provider or utility rate classification; or
- vi. any other conditions other than climate affecting energy or water usage at the Premises.

A. Reported Material Changes; Notice by Political Subdivision

The Principal Representative shall use commercially reasonable efforts to deliver to Contractor a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 14 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to Contractor of Material Changes which result because of a bona fide emergency or other situation precluding advance notice shall be deemed sufficient if given by the Principal Representative within five business days after the Principal Representative discovers the event constituting the Material Change or receives actual knowledge thereof.

B. Other Adjustments

Contractor shall work with the Principal Representative to investigate, identify and correct any Material Changes that prevent the Savings from being realized. As a result of any such investigation, Contractor and the Principal Representative shall determine what, if any, adjustments to the baseline shall be made in accordance with the provisions set forth in **Schedule B** and **Schedule C**. Any disputes between the Political Subdivision and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule A**.

C. Force Majeure

Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "*Force Majeure*") include, but are not limited to: acts of God; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; or unavailability of parts, materials or supplies.

18. INSURANCE

Contractor shall obtain and maintain at all times during this Contract, insurance in the kinds and amounts as specified in **Schedule A**.

19. BREACH

A. Defined

In addition to any Breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner may constitute a Breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, may also constitute a Breach.

Each of the following events or conditions may constitute a Breach by Contractor:

- i. Contractor does not provide the Standards of Comfort and service set forth in **Schedule N** due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract; or
- ii. Any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made; or
- iii. The existence of any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman which is not released or otherwise cured within 30 days after notice of said filing.
- iv. Any failure by the Contractor to perform or comply with the terms and conditions of this Contract, including Breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to the Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract; or
- v. The creation or submittal by Contractor of any data related to this Contract that is intentionally

inconsistent or incorrect, or the inability to verify Contractor's reports regarding the Guarantee as determined by any independent third-party monitor retained by the Political Subdivision if such third-party monitor determines that such inability is due to intentional acts of Contractor. Except as provided herein, any creation or submittal by Contractor of any data related to this Contract that is inconsistent, incorrect, or unable to be verified shall be considered a breach and is subject to the cure period discussed herein; or

- vi. The Savings is less than the Guaranteed Annual Cost Savings and the Contractor fails to reconcile the difference as provided herein.

B. Notice and Cure Period

In the event of a Breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **Article 27**. If such Breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the Breach has not begun within 30 days and pursued with due diligence, the Political Subdivision may exercise any of the remedies set forth in **Article 20**. Notwithstanding anything to the contrary herein, the Principal Representative, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

20. REMEDIES

A. Remedies Not Involving Termination

If Contractor is in Breach under any provision of this Contract, the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Governing Body of the Political Subdivision without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the directive of the Governing Body of the Political Subdivision and the Political Subdivision shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that because to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the Political Subdivision; provided, that any denial of payment shall be reasonably related to the value to the Political Subdivision of the obligations not performed.

iv. Removal

Notwithstanding any other provision herein, the Political Subdivision may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the Principal Representative deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the Political Subdivision's best interest.

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the Political Subdivision's option **(a)** obtain for the Political Subdivision or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the Political Subdivision.

B. Termination Prior to M&V Commencement Date

If Contractor is in Breach under any provision of this Contract, in addition to all other remedies set forth in other sections of this Contract and **Schedule A**. The Political Subdivision may terminate this entire Contract or any part of this Contract as provided herein or pursuant to **Schedule A**. The Political Subdivision may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. Exercise by the Political Subdivision of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

To the extent specified in any termination notice, Contractor shall complete and deliver to the Principal Representative for the records of the Political Subdivision all Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the Governing Body of the Political Subdivision, Contractor shall assign to the Political Subdivision all of Contractor's right, title, and interest under such terminated orders or subcontracts; provided that Contractor's obligations with respect to Contractor's Intellectual Property are set forth in **Article 12** above. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision. All Work Product, at the option of the Governing Body of the Political Subdivision, shall be delivered by Contractor to the Political Subdivision and shall become the Political Subdivision's personal property.

C. Termination of M&V Term

Notwithstanding anything to the contrary herein, the Governing Body of the Political Subdivision may terminate this Contract after the first three years of the M&V Term, and if so terminated, Contractor shall have no further obligations hereunder thereafter.

21. REPRESENTATIONS AND WARRANTIES

A. Representations

Contractor makes the following specific representations and warranties, each of which was relied on by Political Subdivision in entering into this Contract.

i. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

ii. Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the Political Subdivision, Contractor shall provide the Principal Representative, for the records of the Political Subdivision, with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

iii. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the Political Subdivision or other adjustment in MCP. Additionally, the Contractor shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any

such similar requirements necessary for Contractor to properly perform the terms of this Contract is an Event of Default by Contractor and constitutes grounds for termination of this Contract. Contractor shall use Subcontractors who are qualified and licensed in the State of Colorado to perform the work so subcontracted pursuant to the terms hereof.

The Equipment is or shall be compatible with, or functional with, and or an upgrade to all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components shall materially adversely affect each other as a direct or indirect result of Equipment installation or operation except in cases where that Principal Representative has directed, or approved, Contractor to install such equipment.

That Contractor is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the installation and perform its obligations under this Contract.

B. Warranties

The warranties set forth in this section and such other warranties as may be set forth in this Contract are a part of the minimum work requirements of this Contract and all remediation or other actions required by such warranties shall be performed or delivered without additional cost to the Political Subdivision.

i. Warranties Generally Applicable

In addition to the Warranties provided in **Schedule A**, during the Construction phase, **§2A**, of this Contract and for a period of one year following the Principal Representative's submission of either the Notice of Substantial Completion or Notice of Partial Substantial Completion for each Utility Cost-Savings Measure or FIM, whichever is longer, Contractor warrants that:

- a) The Work shall meet the Specifications set forth in the Contract Documents and be acceptable to the Political Subdivision;
- b) There are not any pending suits, claims, or actions of any type with respect to the Equipment or Work;
- c) All Equipment and Work provided are free and clear of any liens, encumbrances or claims arising by or through Contractor or any party related to Contractor;
- d) Contractor will perform all of its obligations in accordance with **Article 7**, Contractor Performance;
- e) the Equipment is new, unless otherwise agreed in writing;
- f) shall be materially free from defects in materials; and,
- g) shall function properly.

ii. Equipment

Specific and any material warranties that exceed the equipment One-Year Warranty period shall be provided directly by the Equipment or material manufacturers and Contractor shall assign such warranties to the Political Subdivision, after the One-Year Warranty period.

iii. Obligations

During the One-Year Warranty period, Contractor shall remedy any defects due to faulty materials and shall pay for, repair and replace any resulting damage to other work or any other resulting damage directly associated with the Work. Only new and not reconditioned parts may be used as a remedy. The Personal Representative shall give written notice to Contractor of observed defects or other Work requiring correction with reasonable promptness.

Contractor shall pursue rights and remedies against any Equipment manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, defects in parts, workmanship and performance during the One-Year Warranty period. Contractor shall, during the One-Year Warranty period, notify the Principal Representative whenever defects in Equipment parts or performance arise that may provide a warranty claim. During the One-Year Warranty period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property, equipment of the Political Subdivision or the Premises, or Equipment, due to Contractor's failure to exercise its warranty rights shall be borne solely by Contractor.

Notwithstanding the above, nothing in this section shall be construed to abrogate Contractor's duty to perform its other obligations under this Contract.

22. POLITICAL SUBDIVISION M&V TERM RESPONSIBILITIES

The Political Subdivision is responsible during the M&V Term for:

- a) Hours of operation of the Premises or for any equipment or systems operating at the Premises; or
- b) Notifying the Contractor about equipment performance issues as they are noticed; or
- c) Permanent changes in the comfort and service parameters set forth in **Schedule N** (Standards of Comfort); or
- d) Failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule S** (Political Subdivision's Maintenance Responsibilities); or
- e) Providing Contractor the right once a month, with prior notice, to inspect the Premises to determine if the Political Subdivision is complying with appropriate schedules. For the purpose of determining such compliance, the checklist to be set forth at **Schedule S** (Political Subdivision's Maintenance Responsibilities), as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record the compliance of the Political Subdivision. The Political Subdivision shall make the Premises available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor's recordation on the checklist. The Principal Representative, on behalf of the Political Subdivision, may complete checklist for the Political Subdivision at the same time. Contractor shall not interfere with any operations of the Political Subdivision during any monthly inspection.

23. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Except for Contractor's Intellectual Property, any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the nonexclusive property of the Political Subdivision and, all Work Product shall be delivered to the Principal Representative by Contractor upon completion or termination hereof. The nonexclusive rights of the Political Subdivision in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Principal Representative on behalf of the Political Subdivision.

24. GENERAL PROVISIONS

Below are provisions used by the State for State projects, modified for use by Political Subdivisions. Such provisions may not apply to the Political Subdivision. Political Subdivisions may use them, modify them, or substitute them.

A. Assignments

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract, except in the event that any third party acquires substantially all of the assets and obligations of Contractor, at which point the State may choose, in its sole discretion, to either provide consent to the assignment or terminate this contract without further obligation to the contractor.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the Governing Body of the Political Subdivision. Contractor shall submit to the Principal Representative a copy of each such subcontract upon request by the Principal Representative. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal, state and local laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **Article 24(A)**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors, and assigns.

D. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

F. Modification

Except as specifically provided in this Contract, any modifications to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable law and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies of the Political Subdivision. This Contract is subject to such modifications as may be required by changes in federal, State or local law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

G. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Contract to a statute, regulation, Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

H. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

I. Taxes

The Political Subdivision is exempt from all federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under **§§39-26-704(1), et seq., C.R.S.** The Political Subdivision shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State of Colorado imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

J. Conflict of Interest

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the Political Subdivision's interests. Absent the Principal Representative's prior written approval, after authorization from the Governing Body, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Political Subdivision hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Political Subdivision a disclosure statement setting forth the relevant details for the consideration of the Governing Body. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the apparent conflict constitutes a breach of this Contract.

K. Reporting – Notification

Reports, Evaluations, and reviews required under this **Article 24(K)** shall be in accordance with the procedures of and in such form as prescribed by the Principal Representative and in accordance with **Schedule A**, if applicable.

i. Performance, Progress, Personnel, and Funds

Principal Representative shall submit a report to the Contractor upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Schedule A**.

ii. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the Principal Representative of such action and deliver copies of such pleadings to the Principal Representative.

iii. Noncompliance

Contractor's failure to provide reports and notify the Principal Representative in a timely manner in accordance with this **Article 24(K)** may result in the delay of payment of funds and/or termination as provided under this Contract.

iv. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the Principal Representative in accordance with **Schedule A**. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal, state and local laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

L. Contractor Records

i. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the Principal Representative of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

ii. Inspection

Contractor shall permit the Principal Representative, any other authorized agent of the Political Subdivision, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The Political Subdivision reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the Political Subdivision may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the Political Subdivision may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

iii. Monitoring

Contractor shall permit the Political Subdivision, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the Political Subdivision shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

iv. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the Principal Representative, for the records of the Political Subdivision, or other designee of the Political Subdivision at the address

specified herein.

M. Confidential Information – Political Subdivision Records

Contractor shall comply with the provisions on this **Article 24(M)** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any Political Subdivision records, personnel records, and information concerning individuals.

i. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Political Subdivision Records are publicly available. Contractor shall not, without prior written approval of the Principal Representative, on behalf of the Political Subdivision, use, publish, copy, disclose to any third party, or permit the use by any third party of any Political Subdivision Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the Principal Representative, after authorization by Governing Body of the Political Subdivision. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

ii. Other Entity Access and Nondisclosure Agreements

Contractor may provide Political Subdivision Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to Political Subdivision Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any Political Subdivision Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the Principal Representative upon execution of the nondisclosure provisions if requested by the Principal Representative on behalf of the Political Subdivision.

iii. Use, Security, and Retention

Contractor shall use, hold and maintain Political Subdivision Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Political Subdivision Confidential Information. Contractor shall provide the Principal Representative with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of Political Subdivision Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return Political Subdivision Records provided to Contractor or destroy such Political Subdivision Records and certify to the Political Subdivision that it has done so, as directed by the Principal Representative. If Contractor is prevented by law or regulation from returning or destroying Political Subdivision Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such Political Subdivision Confidential Information.

iv. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Principal Representative regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Principal Representative. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Principal Representative, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Principal Representative at no additional cost to the Political Subdivision. The Principal Representative may

adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the Principal Representative. If Contractor cannot produce its analysis and plan within the allotted time, the Governing Body of the Political Subdivision, in its sole discretion, may perform such analysis and produce a remediation plan, or cause such analysis to be done and such remediation plan to be produced, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

v. Data Protection and Handling

Contractor shall ensure that all Political Subdivision Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract at all times.

vi. Compliance

Contractor shall review, on a semi-annual basis, all Colorado Office of Information Security (OIS) policies and procedures which OIS has promulgated pursuant to §§ 24-37.5-401. C.R.S., through 406 and 8 CCR § 1501-5, to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee. Contractor shall perform an annual SSAE16 SOC2 Type II audit including the following Trust Principles: Security, Confidentiality, and Availability, and shall provide the resulting audit report as directed by the Principal Representative.

vii. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the Principal Representative, including, without limitation, Political Subdivision non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

N. Order of Precedence

In the event of conflict or inconsistency between this Contract and its Schedules, Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. General Conditions of the **EPC Schedule A**
- ii. The provisions of the main body of this Contract
- iii. The remainder of **Schedule A**
- iv. Construction Documents **Article 6(A)**
- v. The remaining Schedules
- vi. Any other attachment

25. SCHEDULES-LIST OF

The following Schedules are attached hereto and incorporated by reference herein:

Schedule A	General Conditions of Energy Performance Contract
Schedule B	Energy Performance Contract Description of Work
Schedule C	Guarantee
Schedule D	Measurement and Verification Services Plan
Schedule E	Code Compliance Requirements
Schedule F	Schedule of Values (Initial)
Schedule G	Projected Financial Cost and Cash Flow Analysis
Schedule H	Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term
Schedule I	Record of Reviews (as recommended by the Colorado Energy Office)
Schedule J	Certification and Affidavit Regarding Unauthorized Immigrants (UI-1)
Schedule K	Certificate of Insurance (Including Professional Errors And Omissions Liability Insurance)
Schedule L	Performance Bond (SC-6.22)
Schedule M	Labor and Material Payment Bond (SC-6.221)
Schedule N	Standards of Comfort
Schedule O	Client Construction Specifications

Schedule P	Contractors Intellectual Property
Schedule Q	System Start-up and Commissioning
Schedule R	Contractor Training Responsibilities
Schedule S	Political Subdivision's Maintenance Responsibilities
Schedule T	Notice of Substantial Completion
Schedule U	Notice of Final Acceptance

26. OPTIONAL PROVISIONS AND ELECTIONS

The provisions of this Article alter the preceding Articles or enlarge upon them as indicated (The Energy Performance Contract General Conditions. The Principal Representative shall mark boxes and initial where applicable.

A. MODIFICATION OF ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

If the box below is marked, the six month warranty inspection is not required.

☐ _____ Principal Representative initial

B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES

If the box is marked, the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

☐ _____ Principal Representative initial

C. MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

If the box is marked and initialed by the Principal Representative as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same wherever they appear in the contract shall be similarly deleted.

The box may be marked only for projects with an estimated value of [less than \$500,000].

☐ _____ Principal Representative initial

D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time Of Completion And Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the party's right to damages only to the extent noted.

1. For the inability to use the Project, for each day after the number of calendar days specified in the Contractor's bid for the Project and the Contract for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to _____ (\$) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.
2. For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor's bid for the Project and the Agreement to finally complete the Project as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to _____ (\$) shall be assessed against

Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

27. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. Political Subdivision Designee:

<i>Madeline VanDenHoek, Interim Town Manager</i>
<i>Town Administration</i>
<i>645 Beacon Lite Rd.</i>
<i>Monument, CO 80132</i>
<i>mvandenhoeck@tomgov.org</i>

B. Contractor:

<i>Oscar Rangel, Sr. Account Executive</i>
<i>Sales</i>
<i>7535 E. Hampden Ave, Ste 400</i>
<i>Denver, CO 80231</i>
<i>orangel@veregy.com</i>

28. SIGNATURE PAGE

Contract Routing Number _____

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Political Subdivision is relying on their representations to that effect.**

CONTRACTOR INSERT-Legal Name of Contractor By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual _____ *Signature Date: _____	POLITICAL SUBDIVISION INSERT-Legal Name of Political Subdivision INSERT-Name of Governing Body _____ By: INSERT-Name & Title of Person Signing for Governing Body Date: _____
2nd Contractor Signature if Needed By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual _____ *Signature Date: _____	LEGAL REVIEW INSERT-Name & Title of Legal Counsel to Political Subdivision By: _____ Signature - Title Date: _____

[ALL CONTRACTS REQUIRE APPROVAL BY THE [CITY AUDITOR] OF POLITICAL SUBDIVISION

This Contract is not valid until signed and dated below by the [City Auditor] of the Political Subdivision. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the Political Subdivision is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

[CITY AUDITOR] OF POLITICAL SUBDIVISION By: _____ Date: _____]
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SCHEDULE A

GENERAL CONDITIONS OF THE ENERGY PERFORMANCE CONTRACT

General Conditions (GCs) are important for the construction phase of a contract. Following are GCs required by the State for State projects. Political Subdivisions may substitute their own required GCs. If available, provide a version from a recent construction contract, customize the state's version, work with an independent design firm to develop them, or use an ESCO-provided boiler-plate (since the ESCO is both designer and contractor, avoid a customized ESCO version if possible).

ARTICLE 1. DEFINITIONS

- A. CONTRACT DOCUMENTS
- B. DEFINITIONS OF WORDS AND TERMS USED
- C. ENERGY PERFORMANCE CONTRACT DEFINITIONS AND TERMS USED

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

- A. EXECUTION
- B. CORRELATION
- C. INTENT OF DOCUMENTS
- D. PARTNERING, COMMUNICATIONS AND COOPERATION

ARTICLE 3. COPIES FURNISHED

ARTICLE 4. OWNERSHIP OF DRAWINGS

ARTICLE 5. CONTRACTOR'S ARCHITECT/ENGINEER'S STATUS

ARTICLE 6. STATE DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

- A. DECISIONS
- B. JUDGMENTS
- C. ACCESS TO WORK
- D. INSPECTION

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

ARTICLE 8. MATERIALS AND EMPLOYEES

ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

- A. SURVEYS
- B. PERMITS AND LICENSES
- C. TAXES
- D. LAWS AND REGULATIONS

ARTICLE 10. PROTECTION OF WORK AND PROPERTY

- A. GENERAL PROVISIONS
- B. SAFETY PRECAUTIONS
- C. EMERGENCIES

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK documents available during construction

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

- A. DETAIL DRAWINGS AND INSTRUCTIONS
- B. SCHEDULES

ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. SUBMITTAL PROCESS
- B. FABRICATION AND ORDERING
- C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS
- D. CONTRACTOR REPRESENTATIONS

ARTICLE 14. SAMPLES AND TESTING

- A. SAMPLES
- B. TESTING – GENERAL (Intentionally Deleted)
- C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)
- D. TESTING – Construction phase Measurement and Verification

ARTICLE 15. SUBCONTRACTS

- A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO**
- B. SUBCONTRACTOR PREQUALIFICATION**
- C. SUBCONTRACTOR PROPOSALS**
- D. SUBCONTRACTOR FORMS**
- E. SUBCONTRACTOR SUBSTITUTION**
- F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS**

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

ARTICLE 18. SEPARATE CONTRACTS

ARTICLE 19. USE OF PREMISES

ARTICLE 20. CUTTING, FITTING OR PATCHING

ARTICLE 21. UTILITIES

- A. TEMPORARY UTILITIES**
- B. PROTECTION OF EXISTING UTILITIES**
- C. CROSSING OF UTILITIES**

ARTICLE 22. UNSUITABLE CONDITIONS

ARTICLE 23. TEMPORARY FACILITIES

- A. OFFICE FACILITIES**
- B. TEMPORARY HEAT**
- C. WEATHER PROTECTION**
- D. DUST PARTITIONS**
- E. BENCHMARKS**
- F. SIGN**
- G. SANITARY PROVISION**

ARTICLE 24. CLEANING UP

ARTICLE 25. INSURANCE

- A. GENERAL**
- B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**
- C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability rising out of any auto (including owned, hired and non-owned autos).**
- D. WORKERS' COMPENSATION INSURANCE**
- E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):**
- F. BUILDER'S RISK INSURANCE**
- H. POLLUTION LIABILITY INSURANCE**
- I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS**

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

ARTICLE 27. LABOR AND WAGES

ARTICLE 28. ROYALTIES AND PATENTS

ARTICLE 29. ASSIGNMENT

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

ARTICLE 31. APPLICATIONS FOR PAYMENTS

- A. CONTRACTOR'S SUBMITTALS**
- B. Intentionally deleted.**
- C. RETAINAGE WITHHELD**
- D. RELEASE OF RETAINAGE**

ARTICLE 32. CERTIFICATES FOR PAYMENTS

ARTICLE 33. PAYMENTS WITHHELD

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK (

ARTICLE 35. CHANGES IN THE WORK

CHANGES TO THE EPC FIXED LIMIT OF CONSTRUCTION COST

- A. THE VALUE OF CHANGED WORK**
- B. DETAILED BREAKDOWN**
- C. HAZARDOUS MATERIALS (add language from D/B GC)**

D.	<u>EMERGENCY FIELD CHANGE ORDERED WORK</u>
E.	<u>APPROPRIATION LIMITATIONS - §24-91-103.6, C.R.S., as amended</u>
ARTICLE 36. CLAIMS	
ARTICLE 37. DIFFERING SITE CONDITIONS (Intentionally Deleted)	
A.	<u>NOTICE IN WRITING (Intentionally Deleted)</u>
B.	<u>LIMITATIONS (Intentionally Deleted)</u>
ARTICLE 38. DELAYS AND EXTENSIONS OF TIME	
ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS	
ARTICLE 40. RIGHT OF OCCUPANCY	
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A.	<u>NOTICE OF COMPLETION</u>
B.	<u>FINAL INSPECTION</u>
C.	<u>NOTICE OF SUBSTANTIAL COMPLETION (Per Energy Conservation Measure and Project)</u>
D.	<u>NOTICE OF FINAL ACCEPTANCE (Per Energy Conservation Measure and Project)</u>
F.	<u>SETTLEMENT</u>
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B.	<u>SPECIAL WARRANTIES</u>
ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION	
ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES	
ARTICLE 47. DAMAGES	
ARTICLE 48. STATE’S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES	
A.	<u>STATE’S RIGHT TO DO THE WORK</u>
B.	<u>TEMPORARY SUSPENSION OF WORK</u>
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ARTICLE 49. STATE’S RIGHTS TO TERMINATE CONTRACT	
A.	<u>GENERAL</u>
B.	<u>CONDITIONS AND PROCEDURES</u>
C.	<u>ADDITIONAL CONDITIONS (Intentionally Deleted)</u>
ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE	
A.	<u>NOTICE OF T ERMINATION</u>
B.	<u>PROCEDURES</u>
ARTICLE 52. COLORADO SPECIAL PROVISIONS	
ARTICLE 53. MISCELLANEOUS PROVISIONS	

ARTICLE 1. DEFINITIONS

A. CONTRACT DOCUMENTS

The Contract Documents consist of the following, some of which are procedural documents used in the administration and performance of the Agreement:

1. The Energy Performance Contract between the State and Contractor and all its Schedules, and Attachments;
 - 1.1 Contractor’s Investment Grade Audit and Energy Performance Contract Project Proposal Contract, All Exhibits, Addenda, and Clarifications
 - 1.2 Accepted Investment Grade Audit Report and Energy Performance Contract Project Proposal
2. Performance Bond and Labor and Material Payment Bond ;
3. These General Conditions of the Energy Performance Contract (**EPC-GC**) and if applicable, Supplementary General Conditions;
4. Drawings developed by Contractor and accepted by State, prior to the Notice to Proceed to Commence Construction Phase;

5. Change Orders and any Amendments executed pursuant to State law and regulations;
6. Builder's risk insurance certificates of insurance;
7. Liability, workers' compensation and professional liability errors and omissions certificates of insurance;
8. Notice to Proceed to Commence Design Phase;
9. Notice to Proceed to Commence Construction Phase;
10. Notice of Approval of Occupancy/Use
11. Notice of Partial Substantial Completion);
12. Notice of Substantial Completion;
13. Notice of Partial Final Acceptance;
14. Notice of Final Acceptance);
15. Notice of Contractor's Settlement;
16. Application and Certificate for Contractor's Payment; and
17. Other procedural and reporting documents or forms referred to in these General Conditions of the Energy Performance Contract, the Specifications or required by the State Buildings Programs or the Principal Representative, including but not necessarily limited to the Pre-Acceptance Checklist form (SBP-05) and the Building Inspection Report (SBP-BIR). A list of the current standard Colorado Energy Office and State Buildings Programs forms applicable to this Contract may be obtained from the Principal Representative on request.

B. DEFINITIONS OF WORDS AND TERMS USED

1. **AGREEMENT.** The term "Agreement" shall mean the written agreement entered into by the State of Colorado acting by and through the Principal Representative and the Contractor for the performance of the Work and payment therefore, on the Energy Performance Contract (EPC-1). The term Agreement, when used without reference to EPC-1, may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement
2. **CHANGE ORDER.** When the Maximum Contracted Amount was increased, per EPC §7(B), the term "Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35A, The Value of Changed Work.
3. **COLORADO LABOR.** The term "Colorado labor", as provided in C.R.S. § 8-17-101(2)(a), as amended, means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the State of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days.
4. **CONSULTANT.** The term "Consultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design professionals and consultants are directly contracted to the Contractor.
5. **DAYS.** The term "days" whether singular or plural, shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used, it shall mean business days of the State of Colorado."
6. **DRAWINGS.** The term "Drawings" shall mean all drawings approved by appropriate State officials which have been prepared by the Contractor's Architect/Engineer showing the Work to be done, except that where a list of drawings is specifically enumerated in the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.
7. **EMERGENCY FIELD CHANGE ORDER.** The term "Emergency Field Change Order" shall mean a written change order for extra Work or a change in the Work necessitated by an emergency as defined in Article 35C, executed on Exhibit XIII and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.

8. **ENERGY SERVICE COMPANY'S ARCHITECT/ENGINEER.** The term "Energy Service Company Architect/Engineer" shall mean professionals licensed or registered by the State of Colorado who have contracted with the Energy Service Company with prior approval by the State, or a professional employee of the Energy Service Company, to accomplish the architectural and engineering services necessary for the Work. Nothing in this contract is intended to create a contractual relationship between such professional and the State of Colorado.
9. **ENERGY PERFORMANCE CONTRACT CHANGE ORDER.** The EPC Change Order is applicable only to Energy Performance Contracts and only for the original EPC MCP. The term "EPC Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35E, Changes in the EPC Fixed Limit of Construction Cost.
10. **FINAL ACCEPTANCE.** The terms "final acceptance" or "finally complete" mean the stage in the progress of the Project, after substantial completion, when all items of Work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Final Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a Partial Notice of Substantial Completion can be issued.
11. **NOTICE.** The term "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 27 (Energy Performance Contract), Notice Identification, or to such other person as either party identifies in writing to receive Notice or in the absence of the identified party, a principal of the Contractor. Notice by facsimile transmission where proper transmission is evidenced shall be adequate where facsimile numbers are included in Article 27 (Energy Performance Contract). Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.
12. **OCCUPANCY.** The term "Occupancy" means occupancy taken by the State as owner after the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Occupancy/Use. Prior to the date of execution of a Notice of Approval of Occupancy/Use, the State shall have no right to occupy and the project may not be considered safe for occupancy/use for the intended use.
13. **OWNER.** The term "Owner" shall mean the Principal Representative.
14. **PRINCIPAL REPRESENTATIVE.** The term "Principal Representative" shall be defined, as provided in §24-30-1301(14), C.R.S., and as may be amended, as the governing board of a state department, institution, or agency; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the General Assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in §24-30-1301(14), C.R.S. as amended. The Principal Representative may delegate authority. Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the project and shall be provided with a response in writing when requested.
15. **PRODUCT DATA.** The term "Product Data" shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.
16. **REASONABLY INFERABLE:** The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which Contractor could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes

into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications.

17. SAMPLES. The term "Samples" shall mean examples of materials or Work provided to establish the standard by which the Work will be judged.
18. SBP. The term "SBP" means "State Buildings Program," which is used in connection with labeling applicable State form documents (e.g., "SBP-01" is the form number for Notice of Approval of Occupancy/Use).
19. SC. The term "SC" means "State Contract" which is used in connection with labeling applicable State form documents (e.g. "SC 6.22" is the State form number for Performance Bond).
20. SCHEDULE OF VALUES. The term "Schedule of Values" is defined as the itemized listing of description of the Work. The format shall be the same as Schedule F (similar to the OSA form SC-7.2). Included shall be all costs of the Project, which shall be executed in final form by Contractor and delivered to the State, subject to acceptance by the State, after the Effective Date, and shall include design, material, labor and other costs, and the sum of all, as described in this Contract.
21. SHOP DRAWINGS. The term "Shop Drawings" shall mean any and all detailed drawings prepared and submitted by Contractor, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.
22. SPECIFICATIONS. The term "Specifications" shall mean the written requirements for the Work to be accomplished.
23. STATE BUILDINGS PROGRAMS. Shall refer to the Office of the State Architect within the Department of Personnel & Administration of Colorado State Government responsible for project administration, review, approval and coordination of plans, construction procurement policy, contractual procedures, and code compliance and inspection of all buildings, public works and improvements erected for state purposes; except public roads and highways and projects under the supervision of the division of wildlife and the division of parks and outdoor recreation as provided in § 24-30-1301, et seq, C.R.S. The term State Buildings Programs shall also mean that individual within a State Department agency or institution, including institutions of higher education, who has signed an agreement accepting delegation to perform all or part of the responsibilities and functions of State Buildings Programs.
24. SUBCONSULTANT. The term "Subconsultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design and other professionals directly contracted to the Contractor are considered subconsultants.
25. SUBCONTRACTOR. The term "Subcontractor" shall mean a person, firm or corporation supplying labor, materials, equipment and/or Services for Work at the site of the Project for, and under separate contract or agreement with the Contractor.
26. SUBMITTALS. The term "submittals" means drawings, lists, tables, documents and samples prepared by Contractor to facilitate the progress of the Work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of Subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.
27. SUBSTANTIAL COMPLETION. The terms "substantial completion" or "substantially complete" mean the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, as modified by any EPC Change Orders, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued.
28. SURETY. The term "Surety" shall mean any company providing labor and material payment and performance bonds for Contractor as obligor.

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

A. EXECUTION

Contractor, within ten (10) days from the Effective Date, as a requirement to execute the Energy Performance Contract, shall be required to furnish:

1. A fully executed Performance and Labor and Material Payment Bonds, on State Forms SC-6.22 and SC-6.221; and
2. A Certificate(s) of Insurance evidencing all required insurance on standard Acord forms designed for such purpose; and
3. A Professional Liability Errors and Omissions Insurance, if warranted by the Work.

B. CORRELATION

Upon execution of the Energy Performance Contract, the Contractor represents that Contractor has visited the Premises, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the State Buildings Program as implemented by the Principal Representative, and has correlated personal observations with the requirements of the Contract Documents.

C. INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or Work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply, so long as such more stringent or higher quality requirements are reasonably inferable. The Principal Representative shall decide with the Contractor a mutually agreeable resolution which requirements will provide the best installation. With the exception noted in the following paragraph, the precedence of the Contract Documents is as in the EPC Article 24, General Provisions:

Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the forms required by name or context and the form required by number, the form required by name or context shall control. The Contractor may obtain State and Colorado Energy Office forms from the Principal Representative upon request.

Nothing contained in the Energy Performance Contract Documents shall create a professional obligation or contractual relationship between the Principal Representative and any third party, including the Contractor's Architect/Engineer.

D. PARTNERING, COMMUNICATIONS AND COOPERATION

In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of energy performance contracts, the Contractor and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Contract may be better achieved and issues resolved in a more fully informed atmosphere.

Contractor and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of the issuance of the Notice to

Proceed to Commence Design Phase, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the Contract amount, and no costs associated with such plan or its development shall be recoverable under any Contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low Contract values may not justify the expense or special efforts required. In the case of small projects with an initial Fixed Limit of Construction Cost under \$500,000, the requirements of the preceding paragraph shall not apply.

ARTICLE 3. COPIES FURNISHED

The ESCO shall furnish to State the number of copies of Design Documents as specified in the Contract Documents (Article 5 (C) of the Energy Performance Contract), or if no number is specified, all copies reasonably necessary for the execution of the Work.

ARTICLE 4. OWNERSHIP OF DRAWINGS

Refer to Article 12 of the Energy Performance Contract.

ARTICLE 5. CONTRACTOR'S ARCHITECT/ENGINEER'S STATUS

In case of termination of employment or the death of the Contractor's Architect/Engineer, or the termination of the contract between the Contractor and the project's professional Architectural/Engineering firm, the Contractor will appoint a capable Architect/Engineer or contract with another professional firm, against whom the State makes no reasonable objection, whose status under the Contract shall be the same as that of the former Contractor's Architect/Engineer.

ARTICLE 6. DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

A. DECISIONS

The Contractor shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

Such decisions by the Contractor shall be promptly forwarded to the Principal Representative. The Principal Representative may consent with such decision by the Contractor or amend/revise such decision at the discretion of the Principal Representative.

B. JUDGMENTS

The State is the judge of the performance required by the Contract Documents as it relates to compliance with the Work and quality of workmanship and materials.

C. ACCESS TO WORK

The Principal Representative and representatives of State Buildings Programs shall at all times have access to the Work. Contractor shall provide proper facilities for such access and for their observations or inspection of the Work.

D. INSPECTION

The Contractor has agreed to allow the Principal Representative or consultants to the Principal Representative to make periodic visits to the Premises to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

If the Contract, the laws, or ordinances of any public authority require any Work to be specifically tested or approved, Contractor shall give the Principal Representative and appropriate testing agency (if necessary) timely notice of its readiness for observation by the State or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by Contractor. Contractor shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of Contractor to determine the Notice required by the State pursuant to the Building Inspection Record, according to State Building Inspection Form (SBP-B.I.R.), or the equivalent form required by the Principal Representative as approved by the State Buildings Program. If any such Work is covered up without approval or consent of the State or prior to any building code inspection, it must, if required by the State, the Principal Representative or the State Buildings Programs be uncovered for examination, at Contractor's expense. If such Work is found to be not in accordance with the Contract Documents, Contractor shall pay such costs, unless he or she shall show that the defect in the Work was caused by another contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned Work may be ordered, and if so ordered, the Work must be uncovered by Contractor. If such Work be found in accordance with the Contract Documents, Contractor shall be reimbursed the cost of examination and replacement.

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

The Contractor shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Principal Representative. The superintendent shall not be changed except with the consent of the Principal Representative, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to the superintendent shall be as binding as if given to the Contractor. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Contractor.

The Contractor shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Principal Representative.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a uniform, thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Contractor's Work. The Contractor shall lay out all work in a manner satisfactory to the Principal Representative making appropriate permanent records for all other parts of the Work.

ARTICLE 8. MATERIALS AND EMPLOYEES

Unless otherwise stipulated, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials and Equipment shall be new and both workmanship and materials shall be of uniform quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

Contractor is fully responsible for all acts and omissions of Contractor's employees and shall at all times enforce strict discipline and good order among employees on the Premises. Contractor shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the Work assigned to him.

ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

A. SURVEYS

The Principal Representative shall furnish all surveys, property lines and benchmarks deemed necessary by the Contractor, unless otherwise specified.

B. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by Contractor. Unless otherwise required, no local municipal or county building permit shall be required. However, State Buildings Programs requires each Principal Representative to administer a building code inspection program, the implementation of which may vary at each agency or institution of the State. The Contractor's employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements. State electrical and plumbing permits are required, unless the requirement to obtain such permits is altered by State Building's Programs. Contractor shall obtain and pay for such permits.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

C. TAXES

1. REFUND OF SALES AND USE TAXES

Contractor shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed to Commence Design or directed in the Specifications, Contractor shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by Contractor, and Contractor shall furnish such data as may be necessary to enable the State of Colorado, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, Contractor shall require Subcontractors to pay all local sales and use taxes required to be paid and to maintain records and furnish Contractor with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Colorado Department of Revenue shall issue to a Contractor or to a Subcontractor at any tier, a certificate or certificates of exemption per §39-26-114(1)(d), C.R.S., and §39-26-203, C.R.S.

2. FEDERAL TAXES

Contractor shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish Contractor, on request, exemption certificates.

D. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified.

Contractor shall bear all costs arising from the performance of Work required by the Drawings or Specifications that Contractor knows to be contrary to such laws, ordinances, rules or regulations.

ARTICLE 10. PROTECTION OF WORK AND PROPERTY

A. GENERAL PROVISIONS

Contractor shall continuously maintain adequate protection of all Work, materials, and protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. Contractor shall be responsible for any damage, injury or loss, except to the extent:

1. Caused by agents or employees of the Principal Representative; and,

2. Due to causes beyond Contractor's control and not to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by Contractor.

B. SAFETY PRECAUTIONS

Contractor shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Principal Representative by Contractor.

The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of this Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. Contractor shall not permit open fires within the building enclosure. Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.

Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

C. EMERGENCIES

In an emergency affecting the safety of life or of the Work or of adjoining property, Contractor without special instruction or authorization from the Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided Contractor has no responsibilities for the emergency, if Contractor incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency Work, the Fixed Limit of Construction Cost shall be equitably adjusted in accordance with Article 35, Changes in the Work.

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK

When applicable, as determined at the sole discretion of the Principal Representative, Contractor shall keep on the Premises a printed or electronic copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. All such documents shall be available to representatives of the State. In addition, Contractor shall keep on the Premises a printed or electronic copy of all approved addenda, Change Orders, EPC Change Orders, and requests for information issued for the Work.

Contractor shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Product Data submittal log, and a Sample submittal log to record the status of all necessary and required submittals.

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

A. DETAIL DRAWINGS AND INSTRUCTIONS

The Contractor shall furnish additional instructions with reasonable promptness, by means of drawings or otherwise, necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable there from.

The Work shall be executed in conformity with such instructions and Contractor shall do no Work without proper Drawings, Specifications or instructions.

The Contractor and the Principal Representative shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the Work, fixing the dates at which the various detail drawings and specification that will be required. A schedule shall be prepared, fixing the dates for the beginning of manufacture and installation of materials and for the completion of the various parts of the Work.

B. SCHEDULES

1. DESIGN SCHEDULE

Prior to receiving the Notice to Proceed to Commence Design Phase (SC-8.26), the Contractor shall submit a detailed Design Phase Schedule identifying all phases of design, including time identified for the Principal Representative to review and approve design documents and specifications at each design milestone. The Design Phase Schedule shall also identify adequate time for the document coordination between the Contractor and each of its consultants.

2. SUBMITTAL SCHEDULES

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase a schedule shall be prepared by the Contractor fixing the dates for the beginning of manufacture, procure the equipment, and installation of materials for the completion of the various parts of the Work. The schedule shall be subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Principal Representative. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture, procure the equipment and/or installation.

At the time the schedule is prepared, Contractor and Principal Representative shall jointly identify the Product Data and Samples, if any, which the Principal Representative shall receive simultaneously with the Contractor for the purposes of Owner coordination with existing facility standards and systems. Transmittal of Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

3. SCHEDULE OF VALUES

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative, for approval, and to the State Buildings Programs when specifically requested, a complete itemized Schedule of Values (Schedule F) of the various parts of the Work, as estimated by Contractor, aggregating the total Project price. The Schedule of Values shall be in by ECM/FIM as indicated in the EPC Description of Work (Schedule B) or in such detail as the Principal Representative shall require, and be prepared on forms acceptable to the Principal Representative. Contractor shall revise and resubmit the Schedule of Values for approval when, in the opinion of the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents.

The total cost of each line item so separately identified shall be consistent with the CEO Cost and Pricing Tool.

The cost of subcontracts shall be incorporated in Schedule of Values, and when requested by the Principal Representative, shall be separately shown as line items.

This Schedule of Values (Schedule F), when approved by the Principal Representative, shall be used in preparing Contractor's applications for payment.

4. CONSTRUCTION SCHEDULES

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Contractor's schedule shall be a critical-path method (CPM) construction schedule. The construction schedule should start with the date of Notice to Proceed to Commence Construction for the first Work phase and include the various Work activities, change order work (when applicable), demonstration of equipment operation when called for in the Specifications, commissioning of installed equipment, post-installation verification activities, testing, closeout, and acceptance and any other steps as agreed to with the Principal Representative. The completion time shall be the time specified in the Contract.

Contractor shall submit monthly updates of the construction schedule. These updates shall reflect Contractor's "Work in place" progress.

When construction phase measurement and verification is required by the Measurement and Verification Plan, Schedule D, the Contractor shall prepare and submit to the Principal Representative a schedule for M&V activities in accordance with Article 14, Samples and Testing, Construction Phase Measurement and Verification.

ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. SUBMITTAL PROCESS

Contractor shall check and field-verify all dimensions. Contractor shall check, approve and submit to the Principal Representative in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the Specifications or required for the Work of the various trades. All Drawings and Product Data shall contain identifying nomenclature and each Submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.

The Principal Representative shall review and comment on the Specifications, Shop Drawings, and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Specifications, Shop Drawings, and Product Data, if any, shall be clearly noted, and the submittals shall be returned to Contractor for such corrections. On resubmitted Specifications, Shop Drawings, Product Data or Samples, Contractor shall direct specific attention in writing on the transmittal cover to revisions on any previously checked submittal. The Principal Representative shall promptly review and comment on, and return, the resubmitted items.

Contractor shall thereafter furnish such other copies in the form approved by the Principal Representative as may be needed for the prosecution of the Work.

B. FABRICATION AND ORDERING

As required by the Work, fabrication shall be started by Contractor only after receiving approved Shop Drawings by the Principal Representative. Materials shall be ordered in accordance with

approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.

C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS

The review and comments of the Specifications, Shop Drawings, Product Data or Samples by the Principal Representative shall not relieve Contractor from responsibility for deviations from the Drawings or Specifications, unless the Contractor has in writing called the attention of the Principal Representative to such deviations at the time of submission, nor shall it relieve Contractor from responsibility for errors of any sort in Drawings or Specifications. Review and comments on Specifications, Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Principal Representative in accordance with Articles 35 and 36.

D. CONTRACTOR REPRESENTATIONS

By preparing, approving, and/or submitting Specifications, Shop Drawings, Product Data and Samples, Contractor represents that Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

ARTICLE 14. SAMPLES AND TESTING

A. SAMPLES

Contractor shall furnish for approval, with such promptness as to cause no delay in his or her Work or in that of any other Contractor, applicable Samples as defined in the Schedule B.

B. TESTING – GENERAL (Intentionally Deleted)

C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)

D. TESTING – Construction Phase Measurement and Verification

Additional testing required during construction by the Measurement and Verification Plan, **Schedule D**, will be coordinated by the Contractor.

ARTICLE 15. SUBCONTRACTS

A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO

After the contract is awarded, the Contractor is required to provide written notice to the Principal Representative no later than twenty (20) days after deciding to perform services under this contract outside the United States or Colorado or to subcontract services under this contract to a subcontractor that will perform such services outside the United States or Colorado. The written notification must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or Colorado and the reason why it is necessary or advantageous to go outside the United States or Colorado to perform the services. All notices received by the State pursuant to outsourced services shall be posted on the Colorado Department of Personnel & Administration's website. *If the Contractor knowingly fails to notify the Principal Representative of any outsourced services as specified herein, the Principal Representative, at its discretion, may terminate this contract as provided in C.R.S. § 24-102-206 (4). (Does not apply to any project that receives federal moneys.)*

B. SUBCONTRACTOR PREQUALIFICATION

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Contractor shall submit to the Principal Representative a complete list of all proposed pre-qualified Subcontractors. The Contractor shall submit to the Principal Representative a complete list of Consultants including the Contractor's Architect/Engineer and the professional Subconsultants. It shall be as complete as possible at the time, showing all known Subcontractors, Consultants and Subconsultants planned for the Work. The list shall be

supplemented as other Subcontractors are determined by the Contractor and any such supplemental list shall be submitted to the Principal Representative not less than ten (10) days before the Subcontractor commences Work.

The Contractor's list of all proposed pre-qualified Subcontractors shall include those Subcontractors, if any, which the Contractor indicated in its Investment Grade Audit report, would be employed for specific portions of the Work or if such indication was requested in the Request for Proposal documents issued by the State.

C. SUBCONTRACTOR PROPOSALS

The Contractor shall request and receive proposals from the Subcontractors and subcontracts will be awarded after the proposals are tabulated in a pre-approved format which compares to each Fixed Limit of Construction Cost per Schedule B, as indicated in the finalized Schedule F, and, reviewed by, Contractor, and Principal Representative.

Should Contractor submit a proposal for subcontract Work, the proposal conditions used shall be the same as for all subcontractor proposals. These Contractor proposals for subcontract Work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and be opened with the other proposals.

D. SUBCONTRACTOR FORMS

All subcontracts will be between Contractor and the Subcontractors. The form of subcontracts shall be furnished to the Principal Representative for review and consent as to form, for which consent shall not be unreasonably withheld.

E. SUBCONTRACTOR SUBSTITUTION

The substitution of any Subcontractor listed in the Contractor's proposal shall be justified in writing not less than ten (10) days after the date of the Notice to Proceed with Design, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. Contractor shall bear any additional cost incurred by such substitutions.

F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS

The Contractor shall not employ any Subcontractor that the Principal Representative, within ten (10) days after the date of receipt of the Contractor's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to either the Principal Representative or State Buildings Program. If a Subcontractor is deemed unacceptable, the Contractor shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Contractor.

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS

Contractor agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents and Procedural Documents, as applicable to the Work of such Subcontractor. Contractor further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the State of Colorado acting by and through its Principal Representative.

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

Should the Contractor cause damage to any separate contractor engaged by the Principal Representative on the Work, the Contractor agrees, upon due Notice, to settle with such separate contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the Contractor, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Contractor shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 53(l), Indemnification, provided the Contractor was given due Notice of an opportunity to settle.

ARTICLE 18. SEPARATE CONTRACTS

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate his or her Work with theirs. If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other separate contractor, the Contractor shall inspect and promptly report to the Principal Representative any defects in such Work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other separate contractor's Work as fit and proper for the reception of work, except as to defects which may develop in the other separate contractor's Work after the execution of the Contractor's Work.

To insure the proper execution of subsequent Work, the Contractor shall measure Work already in place and shall at once report to the Principal Representative any discrepancy between the executed Work and the Drawings.

ARTICLE 19. USE OF PREMISES

Contractor shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings or defined in the Work. Contractor shall not unreasonably encumber the premises with materials. Contractor shall enforce all of the Principal Representative's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

ARTICLE 20. CUTTING, FITTING OR PATCHING

The Contractor shall do all cutting, fitting or patching of Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of other separate contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted Work as the Principal Representative may direct. The Contractor shall not endanger any Work by cutting, excavating or otherwise altering the Work and shall not cut or alter the Work of any other separate contractor save with the consent of the Principal Representative.

ARTICLE 21. UTILITIES

A. TEMPORARY UTILITIES

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the placement of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to Contractor's compliance with all statutory or regulatory requirements. When actual conditions deviate from those shown in the Drawings and Specifications, Contractor shall comply with the requirements of Article 37, Differing Premises Conditions. As applicable to the Project, Contractor shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him or her and other Contractors for their Work associated with the Project and shall install and maintain all such

utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site, if applicable. Contractor shall pay for all consumption of power, light and water used by him or her and the other Contractors used during the Project as it applies to these temporary utilities, without regard to whether such items are metered by temporary or permanent meters. The Superintendent shall have full authority over all trades and Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the Notice of Substantial Completion of the Project, whichever shall be the earlier date.

B. PROTECTION OF EXISTING UTILITIES

Where existing utilities, such as water mains, sanitary sewers, storm sewers, computer networks, and electrical conduits, are shown on the Drawings, Contractor shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.

C. CROSSING OF UTILITIES

When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, Contractor shall secure proper written permission before executing such new construction. Contractor will be required to furnish a proper release before final acceptance of the Work.

ARTICLE 22. UNSUITABLE CONDITIONS

Contractor shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any loss, damage, or increased cost caused by ill-timed Work shall be borne by Contractor unless the timing of such Work shall have been directed by the Principal Representative, and Contractor provided Notice of any additional cost.

ARTICLE 23. TEMPORARY FACILITIES

A. OFFICE FACILITIES

Contractor shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the representatives of the Principal Representative.

B. TEMPORARY HEAT

Contractor shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If Contractor desires to put the permanent system into use, in whole or in part, Contractor shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve Contractor of his or her Warranty of the Work from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, Contractor shall provide manufacturers' extended warranties from the date of Contractor's use prior to the date of the Notice of Substantial Completion.

C. WEATHER PROTECTION

The Contractor shall, at all times, provide protection against weather, so as to maintain all Work, materials, apparatus and fixtures free from injury or damages. The Contractor shall provide weathertight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.

D. DUST PARTITIONS

If the Work involves Work in an occupied existing building, Contractor shall erect and maintain during the progress of the Work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

E. BENCHMARKS

Contractor shall maintain any Premises benchmarks provided by the Principal Representative and shall establish any additional benchmarks specified by the Principal Representative as necessary for Contractor to layout the Work and ascertain all grades and levels as needed.

F. SIGN

Contractor shall erect and permit one 4' x 8' sign only at the Premises to identify the Project as specified or directed by the State which shall be maintained in good condition during the life of the Project.

G. SANITARY PROVISION

Contractor shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete Contractor shall promptly remove them from the Premises, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are permanently soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt.

ARTICLE 24. CLEANING UP

Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or Work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the Work clean unless more exact requirements are specified.

ARTICLE 25. INSURANCE

A. GENERAL

The Contractor shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Contractor shall continue to provide evidence of such coverage to State of Colorado on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days' prior Notice per Article 27 (Energy Performance Contract) by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence."

B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)

This insurance must protect the Contractor from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Contract, whether such operations be by the Contractor or by any Subcontractor under him or anyone directly or indirectly employed by the Contractor or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

Personal Injury

\$1,000,000

The following coverages shall be included in the CGL:

1. Per project general aggregate (CG 25 03 or similar)
2. Additional Insured status in favor of the State of Colorado and any other parties as outlined in The Contract and must include both ONGOING Operations AND COMPLETED Operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law
3. The policy shall be endorsed to be primary and non-contributory with any insurance maintained by Additional Insureds
4. A waiver of Subrogation in favor of all Additional Insured parties
5. Personal Injury Liability
6. Contractual Liability coverage to support indemnification obligation per Article 53.1
7. Explosion, collapse and underground (xcu)

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to Work performed by Subcontract/Vendor (CG 22-94 or similar)
2. Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar)
3. If applicable to the Work to be performed: Residential or multi-family
4. If applicable to the Work to be performed: Exterior insulation finish systems
5. If applicable to the Work to be performed: Subsidence or Earth Movement

The Contractor shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in this Contract for three (3) years after completion of the project.

C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).

Combined Bodily Injury and Property Damage Liability
(Combined Single Limit): \$1,000,000 each accident

Coverages:
Specific waiver of subrogation

D. WORKERS' COMPENSATION INSURANCE

The Contractor shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the State of Colorado.

The Contractor shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):

The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section B-D above. Coverage shall follow the terms of the underlying insurance, including the additional insured and waiver of subrogation provisions. The amounts of insurance required in Sections above may be satisfied by the Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	\$5,000,000
Aggregate	\$5,000,000

F. BUILDER'S RISK INSURANCE

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than \$1,000,000), the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the Notice of Acceptance, State Form SBP-6.27 or whichever is later.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).

Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss.

Contractor shall maintain Builders Risk coverage including partial use by Owner.

The Contractor shall waive all rights of subrogation as regards the State of Colorado and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. For damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the

insurance represented by such independent contracts let or to be let to the total insurance carried.

The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

G. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE

The Contractor's Architect/Engineer or other such consultant providing professional services to the Contractor shall require to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Principal Representative and approved by the State Buildings Programs. The policy, including claims-made forms, shall remain in effect for the duration of this Agreement and for at least three (3) years beyond the completion and acceptance of the Work. The Contractor's Architect/Engineer shall be responsible for all claims, damages, losses or expenses including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Contractor's Architect/Engineer, any consultant or associate thereof, or anyone directly or indirectly employed by the Contractor. The Contractor shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of the said policy as they occur.

For a Fixed Limit of Construction Cost	Minimum Coverage per Claim	Minimum Coverage in the Aggregate
\$999,999 and under	\$250,000	\$500,000
\$1,000,000 to \$4,999,999	\$500,000	\$1,000,000
\$5,000,000 to \$19,999,999	\$1,000,000	\$2,000,000
\$20,000,000 and above	\$2,000,000	\$2,000,000

H. POLLUTION LIABILITY INSURANCE

If Contractor is providing directly or indirectly work with pollution/environmental hazards, the Contractor must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.

I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Contractor;
2. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to the Principal Representative and State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance

- requirements be construed to conflict with the obligations of the Contractor concerning indemnification;
3. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the Principal Representative;
 4. Receipt, review or acceptance by the Principal Representative of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Conditions.

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond on State Forms SC-6.22, Performance Bond, and SC-6.221, Labor and Material Payment Bond, or such other forms as State Buildings Programs may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Fixed Limit of Construction Cost. The expense of these bonds shall be borne by the Contractor and the bonds shall be filed with Principal Representative and State Buildings Programs.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents or the bid documents, or loses its right to do business in the State of Colorado, another Surety will be required, which Contractor shall furnish to the Principal Representative and State Buildings Programs within ten (10) days after receipt of Notice from the Principal Representative or after Contractor otherwise becomes aware of such conditions.

The bonds shall be maintained in full force and effect until Final Completion of the construction work but are not being furnished to cover any utility guarantee or guaranteed savings under this Contract. Upon Final Acceptance the bonds shall be released.

ARTICLE 27. LABOR AND WAGES

In accordance with laws of Colorado, **C.R.S. § 8-17-101(1)**, as amended, Colorado labor shall be employed to perform at least eighty percent (80%) of the work. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article 26 (Energy Performance Contract), Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

ARTICLE 28. ROYALTIES AND PATENTS

Contractor shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the Work. Contractor shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado and the Principal Representative harmless from loss on account thereof, in accordance with Article 53(l) Indemnification.

ARTICLE 29. ASSIGNMENT

Except as otherwise provided, hereafter the Contractor shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by **C.R.S. § 4-9-406**, et. seq., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative and the controller for the agency, department, or institution executing this Contract (as distinguished from the State Controller). Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Contractor assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called

for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the Principal Representative against the Contractor or the assignee.

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

Contractor shall promptly remove from the premises all Work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Principal Representative. If such materials shall have been incorporated in the Work, or if any unsatisfactory Work is discovered, the Contractor shall promptly replace and re-execute his or her Work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or Work.

Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or Work is in accordance with the Contract Documents, the value of such defective or questionable material or Work shall not be included in any application for payment, or if previously included, shall be deducted by the Principal Representative from the next application submitted by the Contractor.

If Contractor does not perform repair, correction and replacement of defective Work, in lieu of proceeding by issuance of a Notice of Intent to remove condemned Work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace defective Work, deduct all costs and expenses of replacement or correction as instructed by the State from Contractor's next application for payment in addition to the value of the defective Work or material. The Principal Representative may also make an equitable deduction from the Fixed Limit of Construction Cost by unilateral Change Order, in accordance with Article 33, Payments Withheld and Article 35, Changes in The Work.

If the Contractor does not remove such condemned or irreparably defective Work or material within a reasonable time, the Principal Representative may, after giving a second seven- (7) day advance Notice to the Contractor and the Surety, remove them and may store the material at the Contractor's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another separate contractor. If the Contractor does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Contractor. If the Contractor shall commence and diligently pursue such removal and replacement before the expiration of the seven-day period, or if the Contractor shall show good cause in conjunction with Schedule showing when the Work will be performed and why such removal of condemned Work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned Work.

If the Contractor disagrees with the Notice to remove Work or materials condemned or declared irreparably defective, the Contractor may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue

ARTICLE 31. APPLICATIONS FOR PAYMENTS

A. CONTRACTOR'S SUBMITTALS

On or before the first day of each month and no more than five days prior thereto, Contractor may submit applications for payment for the Work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. Contractor shall submit the application for payment to the Principal Representative on a format the State Buildings Programs shall approve (Schedule F) or the State forms SBP-7.2, Certificate for Contractor's Payment, in an itemized format in accordance with the Schedule of Values

(Schedule F), supported to the extent reasonably required by the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of Contractor's right to payments as the Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the Premises, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by Contractor of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative and shall be subject to the right to inspect the materials at the request of the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

B. Intentionally deleted.

C. RETAINAGE WITHHELD

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to five percent (5%) of the amount shown to be due the Contractor on each application for payment shall be withheld until the work required by the Contract has been performed. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.

D. RELEASE OF RETAINAGE

Contractor may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative for release of part or all of the withheld percentage applicable to the Work of a Subcontractor which has completed the subcontracted Work in a manner finally acceptable to Contractor and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's Contract with Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. The Principal Representative shall not be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.

Contractor's obligation under these General Conditions to warranty Work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

Contractor remains fully responsible for the Subcontractor's Work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers Contractor's request for such release satisfactory and supported by substantial reasons, the State may make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's Work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's Work, and the procedures of Article 41 shall be followed for that portion of the Work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

ARTICLE 32. CERTIFICATES FOR PAYMENTS

State Form SBP-7.2, Certificate For Contractor's Payment, as modified to include design and construction administration services and as approved by the Principal Representative and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor's Application for Payment, and shall be a representation by the Contractor to the Principal Representative that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative, the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.

ARTICLE 33. PAYMENTS WITHHELD

The Principal Representative may withhold, or on account of subsequently discovered evidence, nullify the whole or any part of any payment application on account of, but not limited to, any of the following:

1. Defective Work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of Contractor to make payments to Subcontractors for material or labor;
4. A reasonable doubt that the Contract can be completed for the balance of the Fixed Limit of Construction Cost then unpaid;
5. Damage or injury to another contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;
6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the State;
7. Failure to submit a monthly construction schedule;
8. Failure of Contractor to keep Work progressing in accordance with the construction schedule;
9. Failure to keep a superintendent on the Work;
10. Failure to maintain as built drawings of the Work in progress;
11. Unauthorized deviations by Contractor from the Contract Documents; or
12. On account of liquidated damages.

In addition, the Principal Representative or State Buildings Programs may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Energy Performance Contract. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Principal Representative estimates to be required to allow the Principal Representative to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys' fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK

If the Principal Representative deems it inexpedient to correct Work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after ten (10) days' Notice to Contractor of intent to do so, make reasonable reductions from the amounts otherwise due Contractor on the next application for payment. Notice shall specify the amount or terms of any contemplated reduction. Contractor may during this period elect to correct or perform the Work. If Contractor does not elect to

correct or perform the Work, an equitable deduction from the Fixed Limit of Construction Cost shall be made by Change Order, in accordance with Article 35, Changes In The Work. If either party elects facilitation of this issue after Notice is given, the 10-day notice period shall be extended and tolled until facilitation has occurred.

ARTICLE 35. CHANGES IN THE WORK

CHANGES TO THE EPC FIXED LIMIT OF CONSTRUCTION COST

Changes to the Fixed Limit of Construction Cost within the Maximum Contract Price of an Energy Performance Contract, that the costs are negotiation determined based upon the IGA Exhibit C, Cost and Pricing Elements instead of Article 35B limits. Articles 35 A, B, C, and D apply, but The Contractor will indicate and detail in any EPC Change Order if and how the Annual Guaranteed Cost Savings is modified. Changes to the Maximum Contract Price that are not based upon an additional EPC phase or a decrease in the EPC Description of Work (EPC Schedule B) are based upon the limits in Article 35B.

The Principal Representative may designate, without invalidating the Agreement, and with the approval of State Buildings Program and the State Controller, may order extra Work or make changes with or without the consent of the Contractor as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Contractor and adjusted by Change Order to the extent known at the time such change is ordered and before proceeding with the extra or changed Work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.

The Principal Representative or the Contractor's Architect/Engineer with the consent of the Principal Representative, shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the *intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Change Order, approved by the Principal Representative, State Buildings Program, and the State Controller prior to proceeding with the changed Work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Program as hereafter provided in Article 35C, Emergency Field Ordered Changed Work; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract Sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract Sum shall be valid unless so ordered.*

A. THE VALUE OF CHANGED WORK

1. *The value of any extra Work or changes in the Work shall be determined by agreement in one or more of the following ways:*
 - a. *By estimate and acceptance of a lump-sum amount;*
 - b. *By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;*
 - c. *By actual cost plus a fixed fee, in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed Work.*
2. *Where the Contractor and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Contractor to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Contractor's Architect/Engineer or Principal Representative. The value of the change in the Work shall be the Principal Representative's determination of the*

amount of equitable adjustment attributable to the extra Work or change. The Principal Representative's determination shall be subject to appeal by the Contractor pursuant to the claims process in Article 36, Claims.

3. Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-101, C.R.S., as amended, shall govern all Contract changes.

B. DETAILED BREAKDOWN

In all cases where the value of the extra or changed Work is not known, based on unit prices in the Contractor's proposal or the Agreement, a detailed change proposal shall be submitted by the Contractor on a Change Order Proposal (SC-6.312), or in such other format as the Principal Representative and State Buildings Program approve, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed Work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Principal Representative:

1. Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' Work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).
2. Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.
3. Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change.
4. Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.
5. Workers' compensation costs, if not included in labor burden.
6. The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Contractor as a result of the changed Work.
7. Overhead and profit, as hereafter specified.
8. Builder's risk insurance premium costs.
9. Bond premium costs.
10. Testing costs not otherwise excluded by these General Conditions.
11. Subcontract costs.
12. Contractor's Architect/Engineer Design Services Costs.

Unless modified in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.

	OVERHEAD	PROFIT	COMMISSION
To the Contractor or to Subcontractors for the portion of work performed with their own forces:	10%	5%	0%
To the Contractor or to Subcontractors for work performed by others at a tier immediately below either of them:	5%	0%	5%

Overhead shall include: a) insurance premium for policies not previously purchased (if required) for the Project and itemized above, b) home office costs for office management, administrative

and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "Work" as used in the preceding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted Work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for Work involving both additions and credits to the amount of the Contract Sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative and State Buildings Program approve. This requirement applies equally to Work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.

Except for proposals for Work involving both additions and credits, changed Work shall be adjusted and considered separately for Work either added or omitted. The amount of adjustment for Work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.

The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra Work; however, unless specifically required in the Contract Documents, the Contractor shall have no responsibility without additional compensation to supervise the Work of persons or firms separately contracted by the Principal Representative.

C. HAZARDOUS MATERIALS

The Principal Representative represents that it has undertaken an examination of the site of the Work and has determined that there are no hazardous substances, as defined below, which the Contractor could reasonably encounter in its performance of the Work. In the event the Principal Representative so discovers hazardous substances, the Principal Representative shall render harmless such hazards before the Contractor commences the Work.

In the event the Contractor encounters any materials reasonably believed to be hazardous substances which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Principal Representative, in writing. For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance," "hazardous waste," or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act. The Work in the affected area shall not, therefore, be resumed except by written agreement of the Principal Representative and the Contractor, if in fact materials that are hazardous substances have not

been rendered harmless. The Work in the affected area shall be resumed only in the absence of the hazardous substances or when it has been rendered harmless or by written agreement of the Principal Representative and the Contractor.

The Contractor shall not be required to perform Work without consent in any areas where it reasonably believes hazardous substances that have not been rendered harmless are present.

D. EMERGENCY FIELD CHANGE ORDERED WORK

The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Program and without the approval of the State Controller, may order extra Work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using an Emergency Field Change Order form (SC-6.31E).

If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a Not To Exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor will be entitled, including direct and indirect costs of changed Work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

On Emergency Field Change Orders where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Contractor shall report all costs to the Principal Representative. The final adjustment of the Emergency Field Change Order amount and the adjustment to the Project time for completion shall be prepared on a normal Change Order from (SC-6.31) in accordance with the procedures described in Article 35A, The Value of Changed Work, and B, Detailed Breakdown, above. Unless otherwise provided in writing signed by the Director of State Buildings Program to the Principal Representative and the Contractor, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000.

E. APPROPRIATION LIMITATIONS - § 24-91-103.6, C.R.S., as amended

The amount of money appropriated, as shown on the Design/Build Maximum Price Agreement (SC 9.0), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf, which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Design Build Guaranteed Maximum Price Agreement (SC-9.0), unless one of the following occurs: (1) the Contractor is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a Contractor remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for any order, directive or instruction by the Contractor's

Architect/Engineer or the Principal Representative to perform Work which is determined to be within the performance required by the Contract Documents; the Contractor's remedy shall be as described elsewhere in these General Conditions.

ARTICLE 36. CLAIMS

It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of issues relating to the Premises, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of this Article 36, Claims, Contractor shall 1) first, informally present the claim to Principal Representative as described hereafter, and 2) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal Contract controversy, and 3) seek resolution outside the Contract as provided by the Procurement Code.

If the Contractor claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Principal Representative affecting the scope of the Contractor's Work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Contractor shall have the right to assert a claim for such costs or time.

Unless it is the Principal Representative's judgment and determination that the Work is not included in the performance required by the Contract Documents, the Contractor shall proceed with the work as originally directed. Where the Contractor's claim involves a dispute concerning the value of Work unilaterally directed pursuant to Article 35A2 the Contractor shall also proceed with the Work as originally directed while his or her claim is being considered.

The Contractor shall give the Principal Representative Notice of any claim promptly but in no case later than ten (10) days from the date of the occurrence affecting the claim. The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes in The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Contractor with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Contractor and Principal Representative agree) after receipt of the Contractor's Notice of claim regarding such instructions or alleged act or omission. If no response to the Contractor's claim is received within seven (7) business days of Contractor's Notice (or at such other time as the Contractor and Principal Representative agree) and the instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Contractor's claim that is denied.

If the Contractor disagrees with the Principal Representative's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within

ten (10) days of receipt of the Principal Representative's decision denying the claim. A "contract controversy," as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Contractor. The Contractor's failure to proceed with Work directed by the Principal Representative or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Contractor and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Contractor may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Contractor in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Contractor of the reasons for any denial. Unless the claim has been decided by the Principal Representative (as opposed to delegates of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. In the event of a denial, the Principal Representative shall give Notice to the Contractor of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 *et seq*, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Contractor's giving Notice (or such other date as the Contractor and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission has not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Contractor's claim.

Either the Contractor or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Contractor shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.

Disagreement with the decision of the Principal Representative to deny any claim or denying the contract controversy shall not be grounds for the Contractor to refuse to perform the Work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Contractor shall proceed diligently with the Work directed.

In all cases where the Contractor proceeds with the Work and seeks equitable adjustment by filing a claim and or statutory appeal, the Contractor shall keep a correct account of the extra cost, in accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.

The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the Work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.

ARTICLE 37. DIFFERING SITE CONDITIONS

A. NOTICE IN WRITING

Contractor shall promptly, and where possible before conditions are disturbed, give the Principal Representative Notice in writing of:

1. subsurface or latent physical conditions at the Premises differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,
2. unknown physical conditions at the Premises, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.

The Principal Representative shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in Contractor's costs of performance of any part of the Work required by the Contract Documents, whether or not such Work is changed as a result of such conditions, an equitable adjustment shall be made and the Fixed Limit of Construction Cost shall be modified in accordance with Article 35, Changes In The Work.

If the time required for completion of the Work affected by such materially differing conditions will extend the Work the time for completion shall also be equitably adjusted.

B. LIMITATIONS

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the Notice required in Article 37A, Notice In Writing, above The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the Principal Representative to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Contractor for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Contractor requests a final inspection pursuant to Article 41A, Notice Of Completion.

ARTICLE 38. DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the State of Colorado, Principal Representative, or of any employee or agent of either, or by any separately employed Contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the Work as the Contractor shall be able to show he or she could not have avoided by the exercise of due diligence.

The Contractor shall provide Notice in writing to the Principal Representative within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.

All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Principal Representative as part of a claim for extra cost, if any, in accordance with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.

Except as otherwise provided in this paragraph, no extension of time shall be granted when the Contractor has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on Contractor's CPM schedule.

Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Contractor would have Worked but was unable to Work, with each separate extension figured to the nearest whole calendar day.

For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Contractor shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

Contractor and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them or any decision of the State. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non-requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; provided, however, that either party may request the director of State Buildings Programs to appoint such a person, who, if appointed, shall be accepted for this purpose by both Contractor and the Principal Representative.

The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.

Any dispute, claim, question or disagreement arising from or relating to the Contract or an alleged breach of the Contract may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.

The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:

1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;
2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available, including the State;

7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through (10) this Article 39 no more than three times during the course of the Project;
9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,
10. to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

In accordance with State Fiscal Rules and the Colorado Special Provisions, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.

A partnering plan developed as described in Article 2D, Partnering, Communications and Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under \$500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 26, Optional Provisions and Elections (Energy Performance Contract). When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

ARTICLE 40. RIGHT OF OCCUPANCY

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and Contractor shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work, but may impact equipment warranty start date.

Prior to any occupancy of the Project, an inspection shall be made by the Principal Representative, the Contractor's Architect/Engineer, and the Contractor. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended and the Notice of Substantial Completion has been issued for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The Contractor shall assist the Principal Representative in completing and executing State Form SBP-01, Approval of Occupancy/Use, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 41, Completion, Final Inspection, Acceptance and Settlement.

ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. NOTICE OF COMPLETION

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Contractor shall file a written Notice with the Principal Representative that the Work, or such discrete physical portion, in the opinion of the Contractor, is substantially complete under the terms of the Contract. The Contractor shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Principal Representative shall determine after inspection. If the Contractor's Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Contractor and the Notice shall then be resubmitted.

B. FINAL INSPECTION

Within ten (10) days after Contractor files written Notice that the Work is substantially complete, the Principal Representative, and Contractor shall make a "final inspection" of the Project to determine whether the Work is substantially complete and has been completed in accordance with the Contract Documents. State Buildings Programs shall be notified of the inspection not less than three (3) business days in advance of the inspection. Contractor shall provide the Principal Representative an updated punch list in sufficient detail to fully outline the following:

1. Work to be completed, if any; and
2. Work not in compliance with the Drawings or Specifications, if any.

A final punch list shall be made by the State in sufficient detail to fully outline to Contractor:

1. Work to be completed, if any;
2. Work not in compliance with the Drawings or Specifications, if any; and
3. unsatisfactory Work for any reason, if any.

The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Contractor to the Principal Representative and State Buildings Programs.

C. NOTICE OF SUBSTANTIAL COMPLETION

Notice of Substantial Completion shall establish the date of substantial completion of the Project, as indicated on the form of Notice of Substantial Completion. Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.

The Notice of Substantial Completion shall not be issued until the following have been fully established:

1. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
2. All required corrections noted on the Building Inspection Record shall have been completed unless the Principal Representative and State Buildings Programs, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
3. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by Contractor's employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
4. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
5. Contractor has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the Work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the

exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 26, D, of the Energy Performance Contract, the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed punch-list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.

Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

Contractor shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Principal Representative a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative and State Buildings Programs, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project.

D. NOTICE OF FINAL ACCEPTANCE

The Notice of Final Acceptance shall establish the completion date of the Project. It shall not be authorized until Contractor shall have performed all of the Work to allow completion and approval of the Pre-Acceptance Checklist (SBP-05).

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the Work described in Change Orders executed during late stages of the Project where a later completion date for the Change Ordered Work is expressly provided for in the Contract as amended by the Change Order, provided the Work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the Work included for which final payment will be made.

E. SETTLEMENT

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Pre-Acceptance Checklist (SBP-05) have been completed, the Notice of Acceptance (SBP-6.27) issued, and the Notice of Contractors Settlement (SBP-7.3) published. If the Work shall be substantially completed, but final acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of Contractor, the Principal Representative in his or her discretion may release to Contractor such amounts as may be in excess of three times the cost of completing the unfinished Work or the cost of correcting the defective Work, as estimated and approved by State Buildings Programs. Before the Principal Representative may issue the Notice of Contractor's Settlement and advertise the Project for final payment, Contractor shall have corrected all items

on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

1. Delivered to the State:
 - a. All warranties;
 - b. All statements to support local sales tax refunds, if any;
 - c. Three (3) complete bound sets of required operating maintenance instructions;
 - d. One (1) set of as-built Contract Documents showing all job changes, as necessary, and,
 - e. Electronic files of all above items in a format acceptable to Principal Representative.
2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.
3. Delivered to the State of Colorado Department of Personnel & Administration in accordance with C.R.S. § 24-103-210, a written disclosure of the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods and the total cost and country of origin of those five goods and whether the project was subject to any existing domestic content preferences.

Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or Contractor from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

Except as hereafter provided, on the date of final settlement thus advertised, provided Contractor has submitted a written Notice to the State that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due Contractor, the Principal Representative and the State Controller shall withhold from Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished Work or the cost to repair defective Work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with Contractor, as set forth in the published Notice of Contractor's Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative and the State Controller. At the expiration of the ninety (90) day period, the Principal Representative shall authorize the State Controller to release to Contractor all other money not the subject of such action at law or withheld based on the cost to complete unfinished Work or the cost to repair defective Work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the Work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to Contractor subject to the same conditions regarding unpaid claims.

ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE

Contractor warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. Contractor further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for defects or faulty materials or workmanship. The Contractor shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Contractor shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which were not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 44, One-Year Warranties.

ARTICLE 43. LIENS

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, §38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public Work in that final payment may not be made to a Contractor until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to Contractor in the amount of such claims.

ARTICLE 44. ONE-YEAR WARRANTIES

A. ONE YEAR WARRANTY OF THE WORK

The Contractor shall warrant to remedy defects and repair or replace the Work for a period of one year from the date of the Notice of Substantial Completion or from the dates of any Partial Notices of Substantial Completion issued for discrete physical portions of the Work. Contractor shall remedy any defects due to faulty materials or workmanship and shall pay for, repair and replace any damage to other Work resulting therefrom, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. Contractor shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that Contractor shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other Work requiring correction with reasonable promptness. Such Notice shall be in writing to Contractor.

The one year warranty of Contractor's Work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued.

B. SPECIAL WARRANTIES

In case of Work performed for which product, manufacturers or other special warranties are required by the Specifications, Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative upon completion of the Work.

These products, manufacturers or other special warranties, as such, do not in any way lessen Contractor's responsibilities under the Contract. Whenever warranties are required by the Specifications for a longer period than one year, such longer period shall govern. Administration of such extended warranties may be the responsibility of the specific manufacturer of the product being warranted and not necessarily the Contractor, unless explicitly stated in the Contract Documents.

ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

The Principal Representative and Contractor together shall make at least one (1) complete inspection of the Work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Eleven-Month Warranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year warranties do not run reasonably concurrent.

Written punch lists and reports of these inspections shall be made by Contractor and forwarded to the Principal Representative and State Buildings Programs within ten (10) days after the completion of the inspections. The punch list shall itemize all warranty items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. Contractor shall immediately initiate such remedial Work as may be necessary to correct any deficiencies or defective Work shown by this report, and shall promptly complete all such remedial Work in a manner satisfactory to the Principal Representative and State Buildings Programs.

If Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving Contractor ten (10) days written Notice of intention to do so.

The State of Colorado, acting by and through the Principal Representative, shall be entitled to collect from Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.

ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed (SC-6.26).

It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.

Contractor acknowledges that subject to any limitations in the Lease Purchase Agreement, the Fixed Limit of Construction Cost is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to which the parties may have stipulated in the Agreement, which stipulation was based on the Fixed Limit of Construction Cost. Contractor agrees that Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.

It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 26 of the Energy Performance Contract, Modification of Article 46, are reasonable times for these stages of completion of the Work, taking into such

consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.

If Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 26 of the Energy Performance Contract, Modification of Article 46.

Contractor and Contractor's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

In the first instance, specified in Article 26 of the Energy Performance Contract, Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

In the second instance, specified in Article 26 of the Energy Performance Contract, Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 26 of the Energy Performance Contract, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in Contractor's bid for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

In the third instance, when so specified in both Articles 26 of the Energy Performance Contract, both types of liquidated damages shall be separately assessed where those delays have occurred.

The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.

The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed substantial completion or final acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.

ARTICLE 47. DAMAGES

If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Contractor's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at his

or her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty Work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Contractor to which Article 36, Claims, applies shall be made in accordance with Article 36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Contractor.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES

A. STATE'S RIGHT TO DO THE WORK

If after receipt of Notice to do so, Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to Contractor and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due Contractor, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld.

B. TEMPORARY SUSPENSION OF WORK

The State shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:

1. Unsuitable weather;
2. Faulty workmanship;
3. Improper superintendence;
4. Contractor's failure to carry out orders or to perform any provision of the Contract Documents;
5. Loss of, or restrictions to, appropriations;
6. Conditions, which may be considered unfavorable for the prosecution of the Work.

If it should become necessary to stop Work for an indefinite period, Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and Contractor shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.

Notice of suspension of Work shall be provided to Contractor in writing stating the reasons therefore. Contractor shall again proceed with the Work when so notified in writing.

Contractor understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. Contractor further acknowledges and agrees that in such event that State may, upon Notice to Contractor, suspend the Work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For the Public Interest of State. If the Contract is not so terminated the Fixed Limit of Construction Cost and the Contract time shall be equitably adjusted at the time the Principal Representative directs the Work to be recommenced and gives Notice that the revenue to fund the appropriation is available.

C. DELAY DAMAGES

The Principal Representative and the State of Colorado shall be liable to Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the Work only when and to the limited extent that such hindrance or delay is caused by an act or omission within the control of the Principal Representative or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to Contractor for the payment of such a claim only if Contractor has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the Work before proceeding with the changed Work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.

ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT

A. GENERAL

If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of Contractor's creditors; or if a receiver should be appointed to take over Contractor's affairs, or if he or she should fail to prosecute Contractor's Work with due diligence and carry the Work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on Contractor and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases the right to exercise such remedy.

In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once..

B. CONDITIONS AND PROCEDURES

- 1. The Principal Representative may terminate the services of Contractor, which termination shall take effect immediately upon service of Notice thereof on Contractor and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of the Contractor's service, Contractor shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes*

over the Work and if the unpaid balance of the Contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of Contractor, such excess shall be paid to Contractor. If, however, the cost, expenses and damages as certified by the State exceed such unpaid balance of the Contract price, Contractor and the Contractor's Surety shall pay the difference to the Principal Representative.

2. The Principal Representative may require the Surety on Contractor's bond to take control of the Work and see to it that all the deficiencies of Contractor are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of Contractor pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the Work to be done by the Surety, the Surety being substituted for Contractor as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.
3. The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of Contractor, or the Surety if the Surety has been substituted for Contractor, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from Contractor and his or her Surety, or to deduct from any payment then or thereafter due Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor, provided the State approves the amount thus charged to Contractor. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes InThe Work.

C. ADDITIONAL CONDITIONS

If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and Contractor shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by Contractor shall not be subject to such conversion.

ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE

A. NOTICE OF TERMINATION

The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of Work hereunder shall be effected by delivery to Contractor of a Notice of such termination specifying the extent to which the performance of Work under the Contract is terminated and the date upon which such termination becomes effective.

B. PROCEDURES

After receipt of the Notice of termination, Contractor shall, to the extent appropriate to the termination, cancel outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any Work terminated by the Notice. With respect to such canceled commitments, Contractor agrees to:

1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or

she may require, which approval or ratification shall be final for all purposes of this clause; and,

- 2. assign to the Principal Representative, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of Contractor under the orders and subcontracts, consultants, subconsultants terminated, in which case the State 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.*

The Contractor shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such three (3)-month period or authorized extension thereof. Upon failure of the Contractor to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of §24-107-101, C.R.S., as amended and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.

Subject to the preceding provisions, Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by Contractor and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which Contractor is unable to cancel, Contractor shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract and Contractor shall be paid the agreed amount.

The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

Contractor agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:

- 1. Completed or partially completed plans, Drawings and information; and,*
- 2. Materials or equipment produced or in process or acquired in connection with the performance of the Work terminated by the Notice.*

Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Principal Representative to the Contractor under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property

related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, §§24-109-101, et seq., C.R.S., as amended.

ARTICLE 51. CONTRACTOR'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Contractor or of any one employed by him, then the Contractor may on seven (7) days' written Notice to the Principal Representative stop Work or terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained on any plant or material, and a reasonable profit only for the Work completed. If the Principal Representative shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Contractor any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Contractor within thirty (30) days then the *Contractor* may on ten (10) days' written Notice to the Principal Representative stop Work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Contractor any amount not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the *Contractor* may terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained upon any plant or materials, and profit only for Work completed.

ARTICLE 52. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

These Special Provisions apply to all contracts except where noted in italics.

A CONTROLLER'S APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

B FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C GOVERNMENTAL IMMUNITY

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

F COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

G CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

H BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

I SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 00200.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of

this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

J EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §24-18-201 and §24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

K VENDOR OFFSET. §24-30-202(1) and §24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

L PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

M PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has

produced one form of identification required by **§24-76.5-103, C.R.S.** prior to the Effective Date of this Contract.

ARTICLE 53. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION OF LANGUAGE

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with Article 2C, the intent of the Contract. .

B. SEVERABILITY

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

C. CAPTIONS AND REFERENCES

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

D. AUTHORITY

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. INTEGRATION OF UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

F. JURISDICTION AND VENUE

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. NO THIRD PARTY BENEFICIARIES

Except for the Parties' respective successors and assigns described in §24.B, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

H. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

I. INDEMNIFICATION

1. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

2. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

J. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$500,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply.

Contractor agrees to be governed, and to abide, by the provisions of CRS 24-102-205, 24-102-206, 24-103-601, 24-103.5-101, 24-105-101, and 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Principal Representative, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS 24-105-102(6)), or (b) under CRS 24-105-102(6), exercising the debarment protest and appeal rights provided in CRS 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

K. CORA DISCLOSURE

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act.

EPC SCHEDULE B
ENERGY PERFORMANCE CONTRACT DESCRIPTION OF WORK

Executive Summary

1. Executive Summary

Veregy and the Town of Monument agreed to perform an Investment Grade Audit (IGA). Veregy, as well as our subcontractors and consultants, conducted energy audits at various Town of Monument sites. Veregy also conducted an energy analysis of the various buildings by analyzing utility bills. The objective of this document is to present the findings of the IGA and energy analysis to the Town of Monument.

1.1. Project Objective

The objective of the project is to create a Performance Contract (PC) project by analyzing the current operation of the facilities and to identify Cost Savings Measures that will reduce utility bills and offer significant energy cost savings to the Town of Monument. These energy cost savings will be used to fund the capital required to install the said Cost Savings Measures. Veregy visited the following Town of Monument sites on numerous occasions:

Table 1 - List of Sites

PROPERTY NAME	ADDRESS	CITY	STATE	ZIP CODE	Square Ft
Monument Town Hall/Police	645 Beacon Lite Rd	Monument	CO	80132	15,500
Public Works	506 Jefferson St	Monument	CO	80132	8,000
259 Beacon Lite	259 Beacon Lite Rd	Monument	CO	80132	7,300
225 Beacon Lite Rd	225 Beacon Lite Rd	Monument	CO	80132	6,000

1.2. Summary of Cost Savings Measures

During the auditing process, the Veregy team interviewed facility staff regarding the occupancy, space utilization, conditions maintained, existing system deficiencies and the staff's opinions as to what opportunities may exist. Observations of equipment conditions and other signs of operational issues were noted. The following Cost Savings Measures are recommended.

Executive Summary

Table 2 - List of ECMs by site

Property Name	ECM 1	ECM 2	ECM 3	ECM 4	ECM 5	ECM 6	ECM 7	ECM 8
	Lighting - LED	Building Envelope - Exterior Sealing/Door Sweeps	HVAC - Packaged Unit Upgrades	HVAC - VVT Systems	Orchestrate - Wireless HVAC Controls	Orchestrate - Energy Tracer	Orchestrate - Facility Management	Solar - Rooftop Photovoltaic
Monument Town Hall/Police	X	X		X	X	X		X
Public Works	X	X			X	X		
259 Beacon Lite	X	X	X		X	X		X
225 Beacon Lite Rd	X	X			X	X		
Town Building-wide							X	

ECM 1 – LED Lighting

Wherever applicable, older lighting technology, such as fluorescent lamps, compact fluorescent lamps, halogen lamps, etc., is to be retrofitted with LED lighting lamps and drivers and fixtures.

ECM 2 – Building Envelope – Exterior Sealing/Door Sweeps

Weatherization of building envelopes includes installing new door sweeps and sealing any exterior infiltration sites. As they age, the sealing around windows and doors tends to degrade and become less effective. By resealing the windows, doors and other infiltration spots, we are able to better keep conditioned air inside the building and the unconditioned air outside. This allows HVAC equipment to run less often by making cooling and heating demands easier to meet.

ECM 3 – HVAC – Packaged Unit Upgrades

Replace existing old and inefficient packaged unit at 259 Beacon Lite with new, high efficiency, packaged unit. Doing so will reduce the electric and natural gas input needed to meet the space conditioning needs of the sites.

ECM 4 – HVAC – VVT System

The town hall HVAC system currently operates with single zone direct duct systems, where each RTU serves a single zone in the building. Currently, one RTU serves all perimeter zones on the West and another serves all perimeter zones on the East. This is causing comfort issues as North and South sides of the building have very different conditioning requirements depending on the time of the year. On a sunny day in the Fall, the South side of the building could be calling for cooling, while the North side is calling for heating. The current system cannot vary the temperature of supply air and therefore cannot satisfy both zone's requirements at the same time. By converting to a VVT system, we will be able to alter the supply temperature to the zones and provide a more comfortable environment to all spaces.

Executive Summary

ECM 5, 6, 7 – Orchestrate – Wireless HVAC Controls, EnergyTracer, Facility Mgmt.

Veregy provides a suite of cloud-based software solutions allowing the client to access it 24 hours a day and 7 days a week from any computer or mobile device with internet connectivity. As a cloud-based product it does not use up valuable space on the client's servers and is continually updated without requiring support from the client's IT staff. The proposed suite includes the following modules, as indicated with "X":

Table 3 - Orchestrate Scope

Orchestrate Module Scope	Building Automation	Utility Mgmt.	Facility Mgmt.	Solar Mgmt.
Monument Town Hall/Police	X	X		X
Public Works	X	X		
259 Beacon Lite	X	X		X
225 Beacon Lite Rd	X	X		
Town Building-wide			X	

ECM 8 – Solar Photovoltaic Systems

Installing solar arrays at the Town Hall and 259 Beacon Lite will help offset energy usage at these sites. When the sun is shining, the arrays will generate electricity and feed it into the grid. Net metering then allows that generated energy to count towards the building's electric usage for the month and decrease your bill.

1.3. Summary of Measure Savings

Energy calculations were performed using a combination of spread sheet analysis and in accordance with practices and principals instilled by the Association of Energy Engineers. Savings calculations are based on yearly data and assumptions therefore, the below energy savings are calculated on an annual not monthly basis. The total savings calculated are as follows:

Executive Summary

Table 4 - Summary of Utility Savings

Energy Conservation Measure (ECM)	Electric Savings (kWh)	Demand Savings (kW)	Natural Gas Savings (Therms)	Cost Savings (\$)
Lighting - LED	104,501	27	-738	\$10,873
Building Envelope - Exterior Sealing/Door Sweeps	0	0	2,119	\$2,000
HVAC - Packaged Unit Upgrades	3,394	1	200	\$613
HVAC - VVT Systems	2,815	0	-1,002	\$0
Orchestrate - Wireless HVAC Controls	8,502	3	518	\$1,574
Orchestrate - Energy Tracer	0	0	0	\$0
Orchestrate - Facility Management	0	0	0	\$0
Solar - Rooftop Photovoltaic	117,068	0	0	\$15,089
Totals	236,281	31	1,097	\$30,149

The parameters used for savings calculations were taken directly from site data collected during facility audits, manufacturer's data on old and new equipment and engineering principles. The energy savings calculated were compared against a disaggregation of the baseline to establish reasonableness of calculated savings and for verification of assumptions.

Climatic changes were characterized by use of degree days for both heating and cooling at a reference point of 65°F. Weather data was taken from the National Oceanic and Atmospheric Administration (NOAA), ASHRAE, and other public organizations. A description of the approach and key parameters utilized in the general savings calculations are found below in the following ECM calculation descriptions.

1.4. Summary of Project Financials

The following tables represent the projected first year financial summary and amortized cash flow that will result from implementing the Performance Contract. The projected financial summary represents the projections during a 16-year contract term required to amortize the investment in the building infrastructure upgrades. The financial summary is modeled using projected savings and using an indicative investment rate for the supporting lease agreement. The intent is to model the transaction, for illustrative purposes only.

Table 5 - Summary of Project Financials

Project Total	Grants	Monument Contribution	Financed Amount	Total First Year Savings	Potential Rebates*	Total First Year Benefits	Amortized Payback Period
\$1,321,726	\$500,000	\$250,000	\$571,726	\$30,149	\$192,344	\$222,493	15.6

Executive Summary

Table 6 - Project Cash Flow

Year	P&I Payment	M&V Cost	Orchestrate Fees	Total Annual Cost	Annual Energy Savings	O&M Savings	Potential Rebate & Incentives	Total Annual Savings	Net Annual Savings
0	\$0	\$0	\$0	\$0	\$0	\$0		\$0	\$0
1	\$40,378	\$5,000	Included	\$45,378	\$30,149	\$6,028	\$9,200	\$45,378	\$0
2	\$207,744	\$5,150	\$7,736	\$220,630	\$31,277	\$6,209	\$183,144	\$220,630	\$0
3	\$25,570	\$5,305	\$7,968	\$38,842	\$32,447	\$6,395		\$38,842	\$0
4	\$32,041	\$0	\$8,207	\$40,248	\$33,661	\$6,587		\$40,248	\$0
5	\$33,252	\$0	\$8,453	\$41,705	\$34,920	\$6,785		\$41,705	\$0
6	\$34,508	\$0	\$8,707	\$43,215	\$36,227	\$6,989		\$43,215	\$0
7	\$35,813	\$0	\$8,968	\$44,781	\$37,583	\$7,198		\$44,781	\$0
8	\$37,167	\$0	\$9,237	\$46,404	\$38,990	\$7,414		\$46,404	\$0
9	\$38,572	\$0	\$9,514	\$48,086	\$40,450	\$7,637		\$48,086	\$0
10	\$40,030	\$0	\$9,800	\$49,830	\$41,965	\$7,866		\$49,830	\$0
11	\$41,072	\$0	\$10,094	\$51,166	\$43,536	\$7,630		\$51,166	\$0
12	\$42,172	\$0	\$10,397	\$52,568	\$45,167	\$7,401		\$52,568	\$0
13	\$43,330	\$0	\$10,708	\$54,038	\$46,860	\$7,179		\$54,038	\$0
14	\$44,549	\$0	\$11,030	\$55,579	\$48,616	\$6,963		\$55,579	\$0
15	\$45,832	\$0	\$11,361	\$57,192	\$50,438	\$6,754		\$57,192	\$0
16	\$28,005	\$0	\$11,701	\$39,706	\$52,329	\$6,552		\$58,881	\$19,175
Totals	\$770,034	\$15,455	\$143,881	\$929,369	\$644,613	\$111,587	\$192,344	\$948,544	\$19,175

Facility and Building Data

2. Existing Facility Descriptions

This section describes the existing conditions of each facility that was part of this Investment Grade Audit. The audit included seven sites, each where the Town of Monument pays utilities. Table 7 gives the addresses and square footage of each of the five buildings.

Table 7 – List of Properties and Square Footage

PROPERTY NAME	ADDRESS	CITY	STATE	ZIP CODE	Square Ft
Monument Town Hall/Police	645 Beacon Lite Rd	Monument	CO	80132	15,500
Public Works	506 Jefferson St	Monument	CO	80132	8,000
259 Beacon Lite	259 Beacon Lite Rd	Monument	CO	80132	7,300
225 Beacon Lite Rd	225 Beacon Lite Rd	Monument	CO	80132	6,000

2.1. Town Hall and Police Department

The Town of Monuments town hall and police department is a 15,500 square foot building. It provides office space for town employees and police officers. The office is open to normal use Monday through Friday from 8am to 5pm. The office is also open in limited functionality 24/7 for police operations.

Space conditioning is provided by 12 packaged RTUs with DX cooling and NG heating coils ranging from 3-7.5 tons. There are 2 additional mini split systems for providing supplemental cooling to IT closets.

Interior lighting, as well as a full mechanical assessment was evaluated at this site. Lighting is mostly T8 fluorescent fixtures inside with CFL, halogen and incandescent recessed cans and pendants.



Facility and Building Data

2.2. 259 Beacon Lite Rd

259 Beacon Lite Rd is a 7,300 square foot building that provides office space to the Town's Operations staff. The building is occupied by Town staff Monday through Friday from 6am to 5pm, with possible nights and weekend on-call usage.

Space conditioning is provided by five packaged RTUs with DX cooling and NG heating coils that are each 3-ton units.

Interior lighting is mostly T8 fluorescent fixtures with halogen, CFL, and incandescent recessed cans and pendants. Exterior lighting is LED wall packs.



2.3. 225 Beacon Lite Rd

225 Beacon Lite is a 6,000 square foot, one story building that houses well equipment and a lab and acts as the water department. The building is occupied by Town staff Monday through Friday from 6:30am to 3pm, with on-call usage during nights and weekends.

Cooling is provided by 2 condensing units (1.5 and 3 tons) that are connected to 2 AHUs (1.5 tons and 5 tons) that provide cooling and ventilation to the building. Heating is provided by 2 x 81,000 Btu gas fired unit heaters.

Interior lighting is mostly T8 fluorescent fixtures with halogen, CFL, and incandescent recessed cans and pendants. Exterior lighting is LED wall packs.



Facility and Building Data

2.4. Public Works

The public works building is a single-story, 8,000 square foot building that serves as a workshop and garage for the public works department. The building is occupied by staff Monday through Friday from 6:30am to 3pm, with on-call usage during nights and weekends and the winter months.



The building has no cooling and heating is provided by 2 gas fired unit heaters and 3 gas fired radiant tube heaters.

Interior lighting is mostly high bay T12 and T8 fluorescent fixtures. Exterior lighting is LED wall packs and spotlights.

Baseline Period Utility Consumption

3. Baseline vs. Performance Period

This section describes the purpose of baselining, how the baseline was developed, and the energy consumption of each site.

3.1. Baseline Analysis

Utility baselines summarize how much energy and cost a building has previously used over a specified period, or baseline period. Taking multiple years into account to review the baseline period is done to establish confidence of the baseline data, the utility baseline is then the two or three-year average of the entire baseline period to minimize baseline error.

A deeper dive is then taken by performing regression analysis on the baseline data to determine a statistically appropriate regression model of the facility usages, using regressors such as weather data (Cooling Degree Days (CDD), Heating Degree Days (HDD), Relative Humidity, Solar Irradiance, etc.), production data, days open, schedules, etc. The created regression models are then used to determine a typical year's baseline, using Typical Meteorological Year (TMY) weather data and other typical year data for the same regressors using in the regression analysis. The regression coefficients for CDD and HDD are reviewed and used to determine the HVAC usage portion of the baseline data, as shown in Section 3.5. The two baselines (averaged billing history and regression adjusted TMY baseline) are compared, and best practice engineering judgement is used to determine the baseline to be used in the potential savings and energy balancing. This is done to not over or under state usages due to yearly anomalies, such as extreme weather, irregular building usage, or broken equipment. Important factors, including utility rates and benchmarking data, are taken directly from the utility baseline.

3.2. Baseline Development Process

Utility data is gathered directly from utility billing information and provides details needed such as efficiencies, usage anomalies and the framework for maximum achievable savings. Once the baseline period is established and the data is gathered, an average consumption over that period is taken to establish consumption, cost, and utility rates.

If utility bills are found to be missing during time periods or sites, an effort is made to contact facility staff and local utility company to obtain a record of those bills. If an official bill or statement cannot be obtained for a single month, historical data from that period or an average for the month will be used to fill that data. Billing anomalies are investigated and treated as outliers when deemed necessary.

Once the utility data was reviewed, it was entered into a spreadsheet where a detailed analysis of the energy bills was performed. The analysis helps to identify opportunities for savings, develop performance metrics for each utility and establish a disaggregated consumption end-use as a basis to calculate energy savings. Additional items provided by this analysis include:

Baseline Period Utility Consumption

1. Peak energy usage periods
2. Base loads
3. Typical energy usage patterns and anomalies
4. Baseline disaggregation
5. Load factors
6. Utility rates

Unusual energy use can point out previously unknown wastes and opportunities for further savings. The total amount spent provided savings benchmarks that allow comparison with other facilities and was used to provide savings ceilings so conservative energy savings can be established.

Once a final proposed scope of ECMs is developed, the baseline is refined by removing data that will not be directly affected by conservation efforts. This data can range from removing an entire billing account and associated meter to just removing a subsection from a single bill such as irrigation usage and cost. A list of utility accounts and meters accounted for in the baseline can be found below.

3.3. Utility Supply Description

Town of Monument facilities receive electricity from Mountain View Electric Association. Natural gas is provided by Black Hills Energy. Monthly billing data was provided for the baseline analysis.

Table 8 - Utility Account Summary

Site Name	Electric			Natural Gas		
	Provider	Account Number	Rate Schedule	Provider	Account Number	Rate Schedule
Town Hall/Police	MVEA	103503201	Large Power	Black Hills	6900 4175 04	CO237
259 Beacon Lite	MVEA	85432601	Small Power	Black Hills	6900 4175 04	CO010
	MVEA	85432703	Small Power			
	MVEA	85432803	Small Power			
	MVEA	85432903	Small Power			
	MVEA	85433003	Small Power			
	MVEA	85433105	Small Power			
225 Beacon Lite	MVEA	92232200	Municipal Pumping	Black Hills	7134 3819 57	CO010
Public Works	MVEA	92230700	Small Power	Black Hills	7134 3819 57	CO010

Electric Rates:

Utility: Mountain View Electric Association

Rate Plan: Small Power 3 Phase

Energy: \$0.123182/kWh

Demand: \$0.00/kVA

Rate Plan: Large Power

Energy: \$0.050034/kWh

Baseline Period Utility Consumption

Demand: \$17.79/kVA

Rate Plan: Municipal Pumping

Energy: \$0.057909/kWh

Demand: \$12.11/kVA

Natural Gas Rates:

Utility: Black Hills Energy

Rate Plan: CO237

Energy: \$0.800021508/Therm

Rate Plan: CO010

Energy: \$0.972782322/Therm

3.4. Baseline Period

The baseline period chosen for the basis of this audit is a two-year period ranging from Oct 2022 – September 2024.

3.5. Baseline Energy Consumption

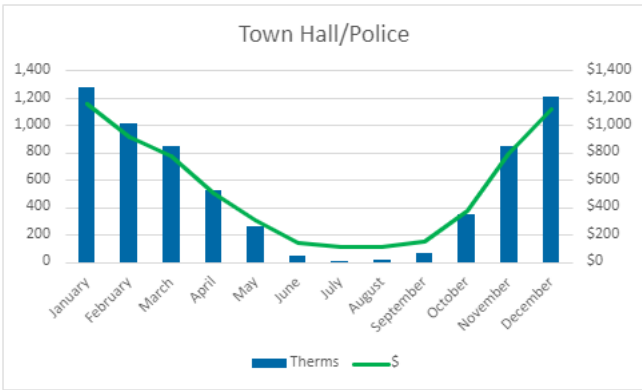
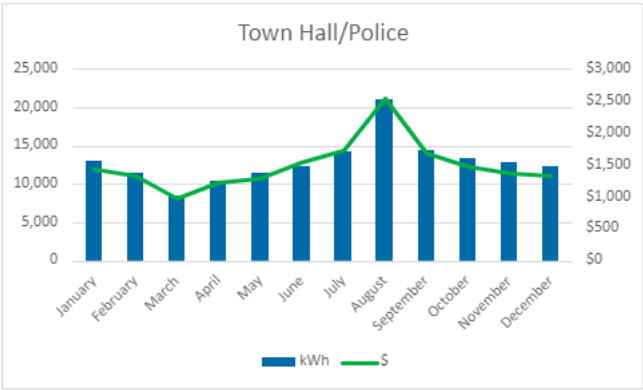
The averaged utility baseline used to calculate cost avoidance for the four sites totaled \$109,199. Only meters that are to be affected have been used in this total. The table below provides breakouts of the total utility consumption and cost for each site.

Table 9 - Utility Baseline Summary

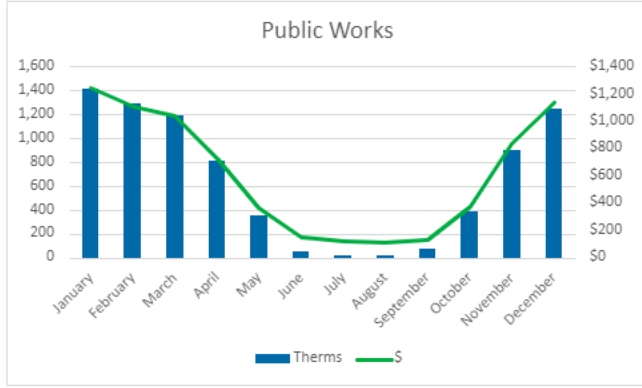
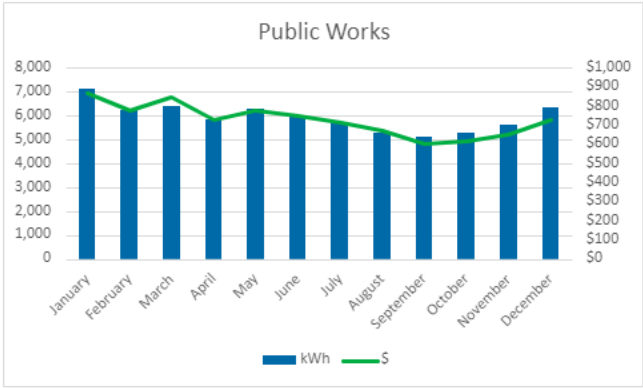
Property Name	Electric					NATURAL GAS			Totals (\$)
	Total Usage (kWh)	Max Demand (kW)	Total Cost (\$)	Energy Rate (\$/kWh)	Demand Rate (\$/kW)	Total Usage (therm)	Total Cost (\$)	Rate (\$/cf)	
Monument Town Hall/Police	155,849	78	\$17,951	\$0.050	\$17.79	6,469	\$6,495	\$0.800	\$24,446
Public Works	71,300	40	\$8,761	\$0.123	\$0.00	7,784	\$7,399	\$0.973	\$16,160
259 Beacon Lite	60,343	-	\$11,907	\$0.123	\$0.00	3,974	\$4,252	\$0.973	\$16,159
225 Beacon Lite Rd	411,000	163	\$47,100	\$0.058	\$12.11	6,015	\$5,334	\$0.973	\$52,434
Totals	698,492	281	\$85,719	\$0.068	\$11.963	24,242	\$23,480	\$0.969	\$109,199

The following graphs present the monthly electric, and natural gas consumption data for each building.

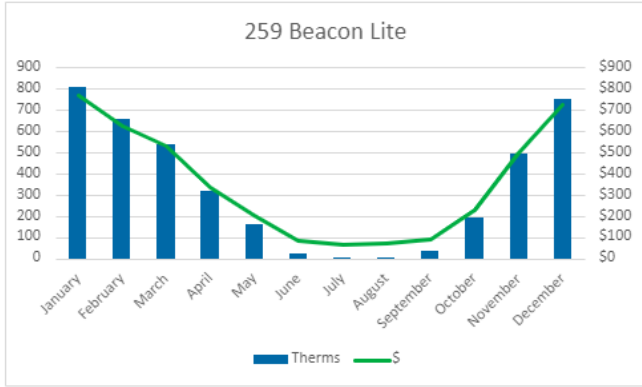
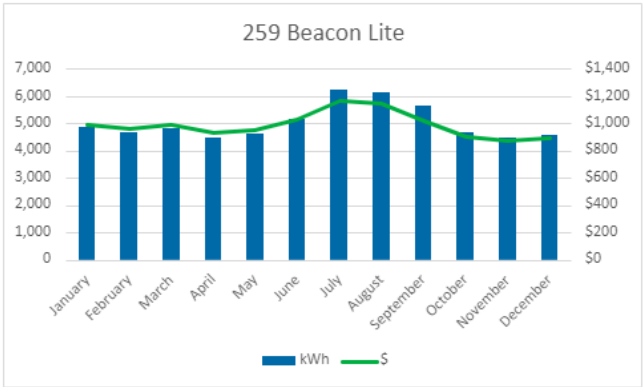
Baseline Period Utility Consumption



Graph 1 – Town Hall and Police Utility Consumption Billing

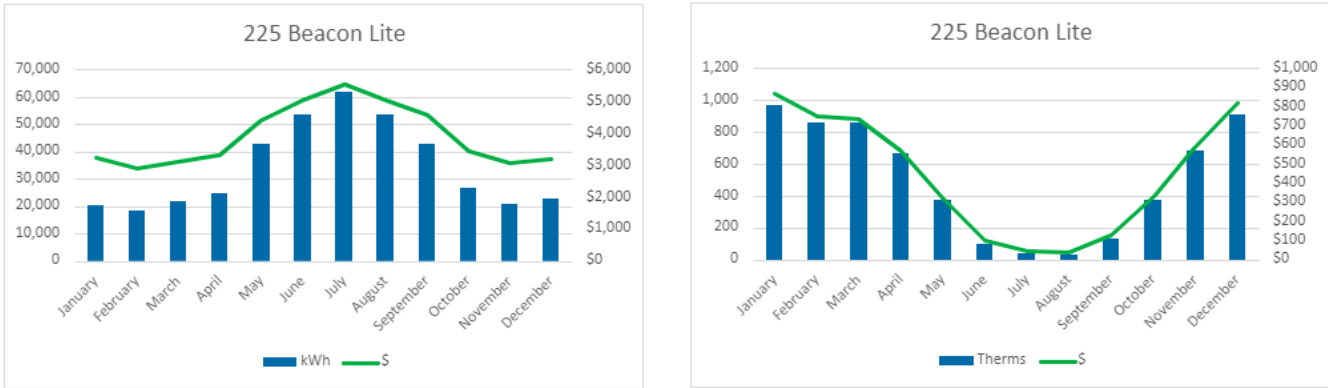


Graph 2 – Public Works Utility Consumption Billing



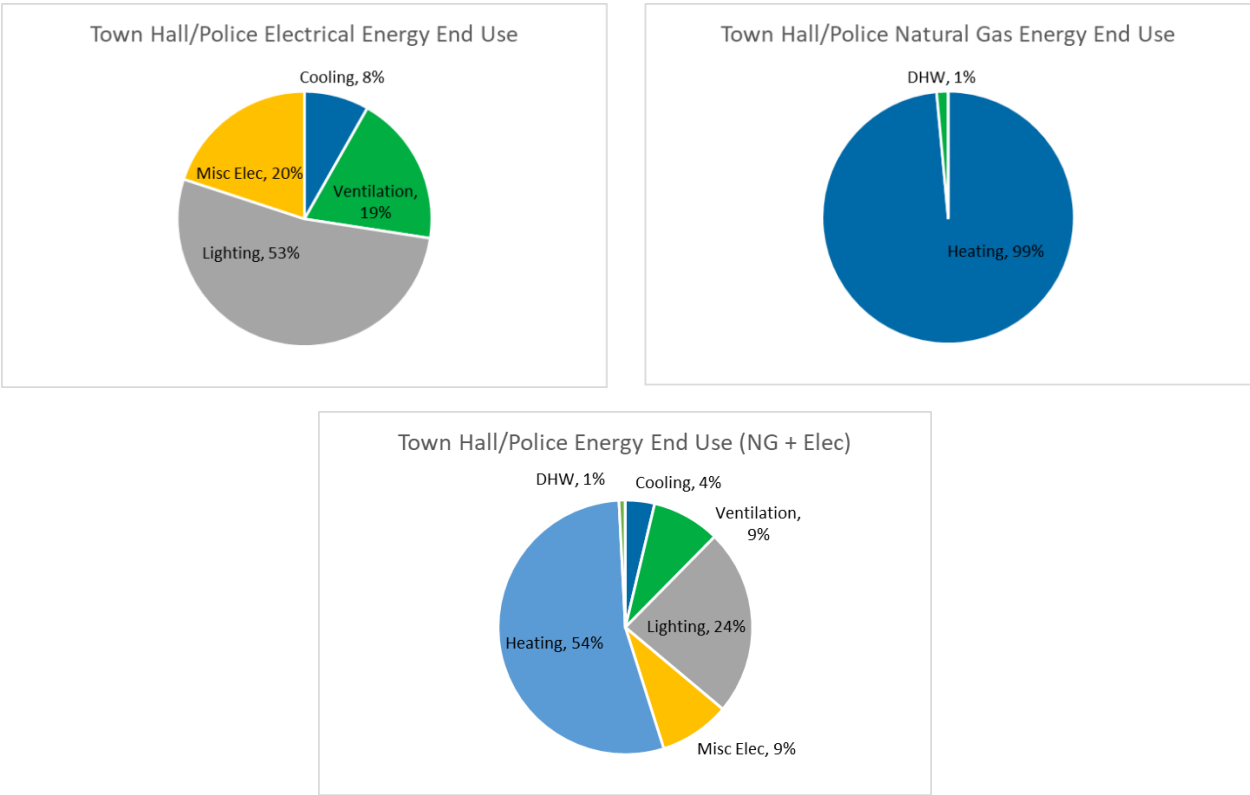
Graph 3 – 259 Beacon Lite Utility Consumption Billing

Baseline Period Utility Consumption



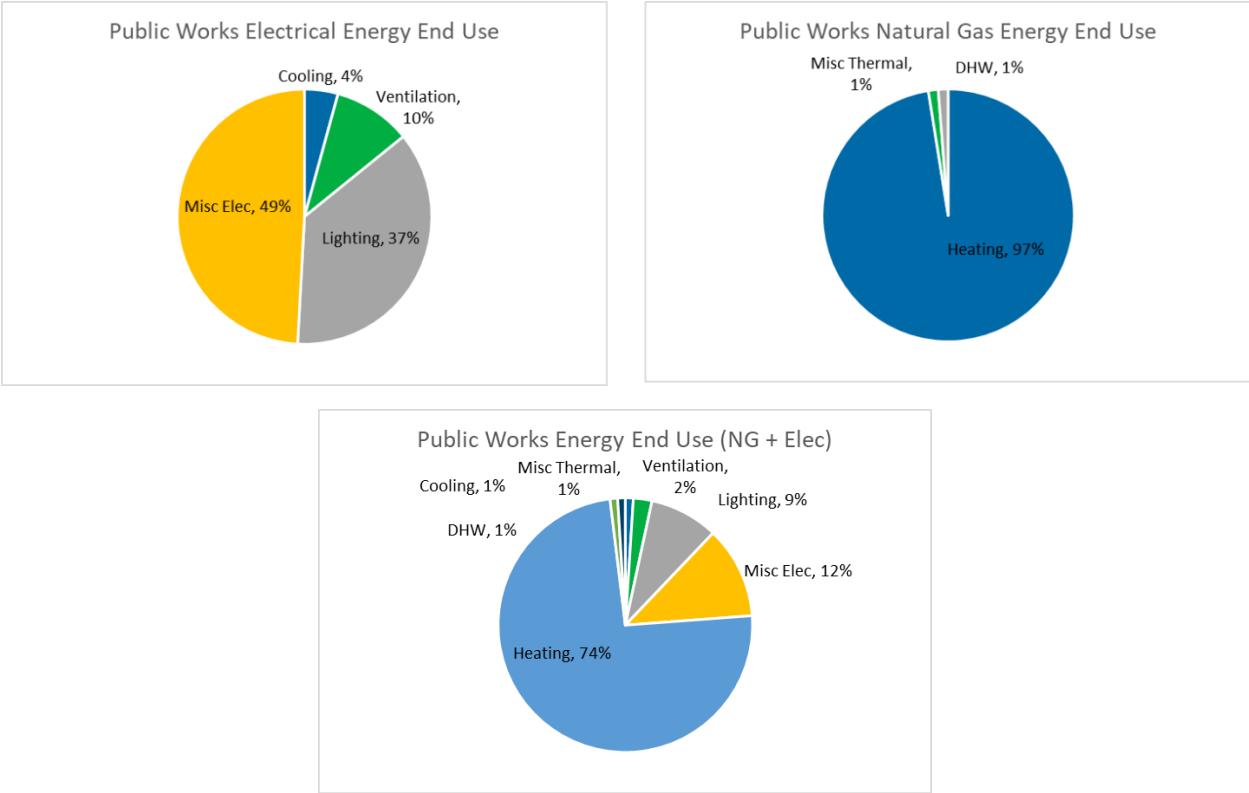
Graph 4 – 225 Beacon Lite Utility Consumption Billing

The following pie charts depict the end use profiles for each building. Three pie charts are listed – the first one depicting electrical energy end use profile, the second one depicting natural gas/propane end use profile, and the third one depicting a combined end use profile. The end use categories are classified into Cooling, Ventilation, Lighting, Misc. Elec, Space Heating, and Domestic Hot Water.

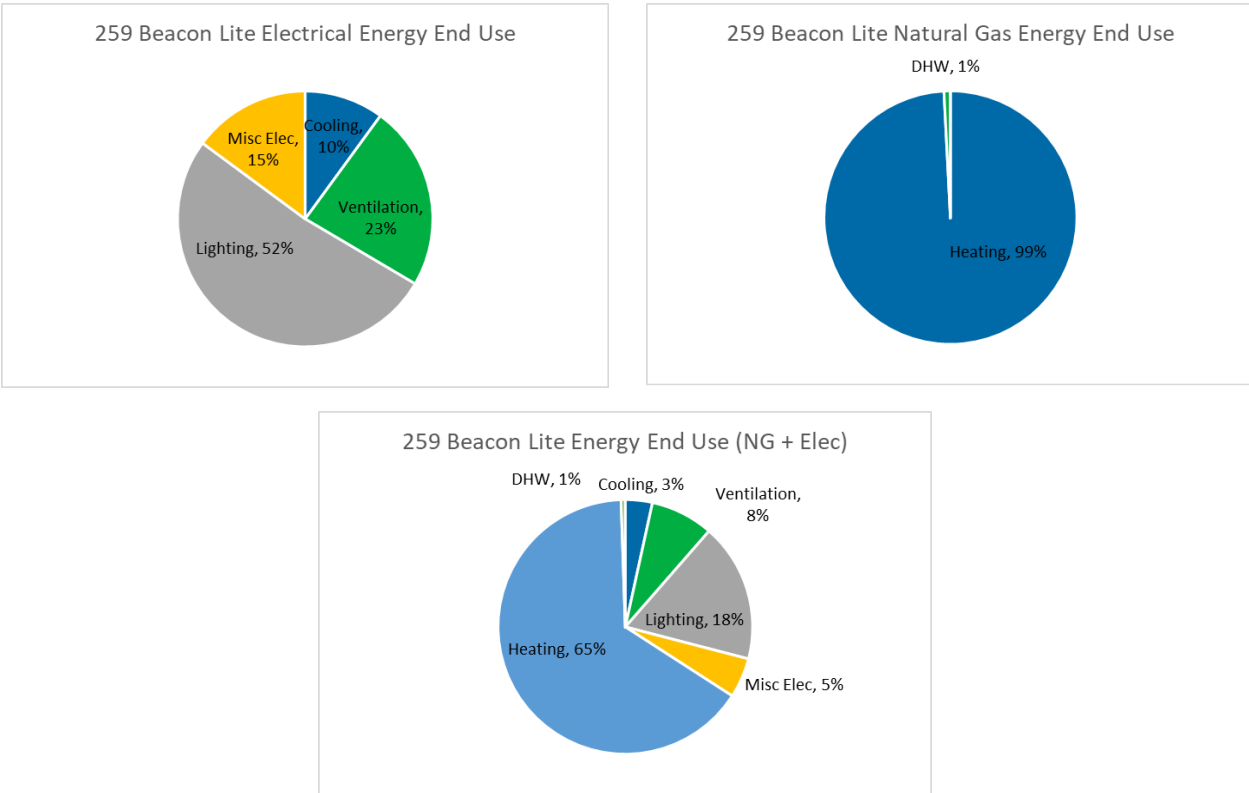


Graph 5 – Town Hall and Police End Use Profiles

Baseline Period Utility Consumption

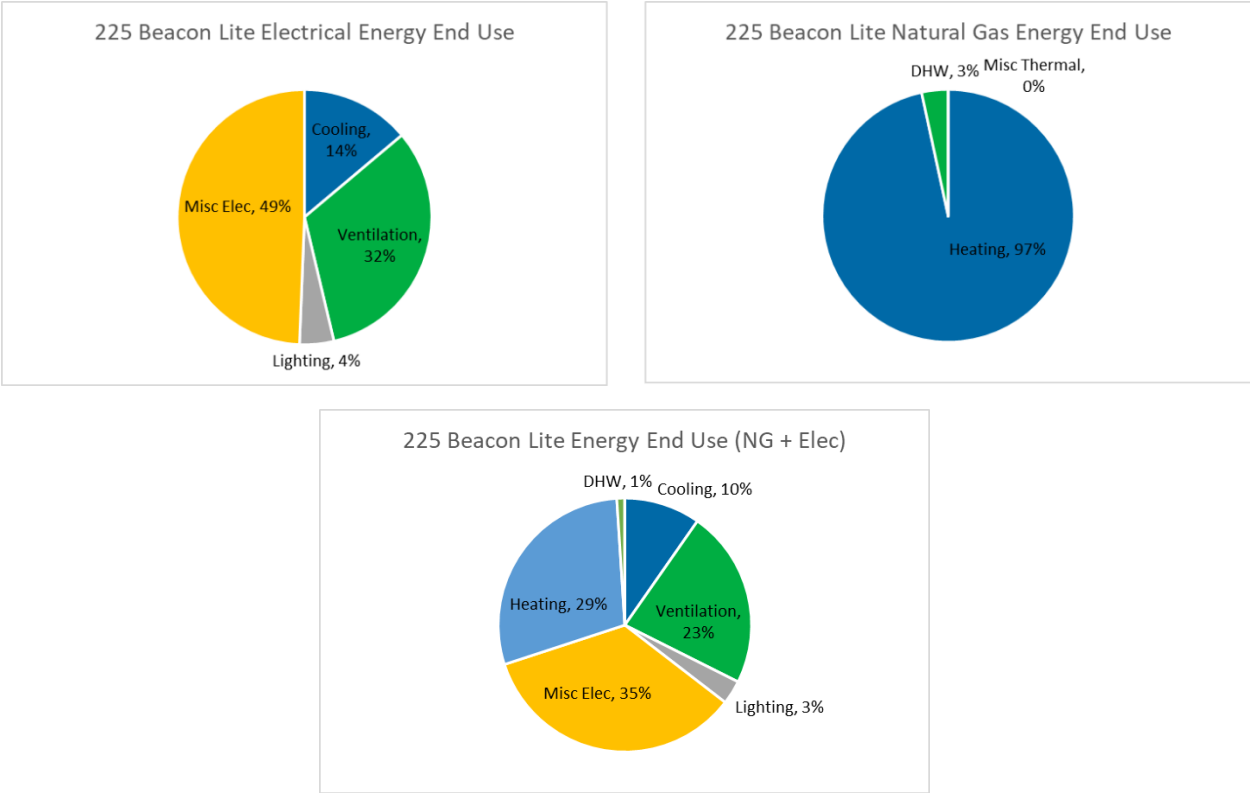


Graph 6 – Public Works End Use Profiles



Graph 7 – 259 Beacon Lite End Use Profiles

Baseline Period Utility Consumption



Graph 8 – 225 Beacon Lite End Use Profiles

3.6. Rate Escalation

Historically, the long run cost of utilities has generally risen year-over-year and can be factually supported based on the projections supplied by both the U.S. Department of Energy and historical billing. It is not possible to predict and model the exact year-to-year change in utility rate, but an average annual increase has been used to project cost avoidance and is typically conservative when compared to the Consumer Price Index (CPI).

To capture the effect of increasing prices, the following agreed upon escalation rates shown in table below have been used to calculate cost avoidance:

Table 10 - Escalation Rates

PROPERTY NAME	ELECTRIC (\$/kWh)	NATURAL GAS (\$/Therm)
All Sites	4.0%	4.0%

Scope of Work

4. Scope of Work

This section details the scope of work for the measures to be installed.

Table 11 – Project Scope Matrix

Property Name	ECM 1	ECM 2	ECM 3	ECM 4	ECM 5	ECM 6	ECM 7	ECM 8
	Lighting - LED	Building Envelope - Exterior Sealing/Door Sweeps	HVAC - Packaged Unit Upgrades	HVAC - VVT Systems	Orchestrate - Wireless HVAC Controls	Orchestrate - Energy Tracer	Orchestrate - Facility Management	Solar - Rooftop Photovoltaic
Monument Town Hall/Police	X	X		X	X	X		X
Public Works	X	X			X	X		
259 Beacon Lite	X	X	X		X	X		X
225 Beacon Lite Rd	X	X			X	X		
Town Building-wide							X	

4.1. ECM 1 –LED Lighting

Scope of Work:

Veregy shall provide the necessary material, components, and labor to complete installation, retrofit, and replacement of the existing lighting systems with new lighting technology to reduce energy consumption without reducing the lighting levels below the standards and practices established by the Illuminating Engineering Society of North America (IESNA). Work shall include disposal of retrofitted material, including mercury containing lamps and PCB containing ballasts.

4.2. ECM 2 – Building Envelope – Exterior Sealing/Door Sweeps

Scope of Work:

Veregy will locate and seal gaps in the building envelope system to reduce infiltration/ex-filtration. Gaps will be identified by visual inspection, camera, and air flow measurements:

- Doors will be fitted with new weather-stripping, sealant and door sweeps,
- Exterior and interior penetrations will be sealed,
- Piping and electrical penetrations will be sealed,
- Window frames will be sealed, and
- Wall seams will be sealed, as needed.

The proposed weather-stripping consists of an extruded aluminum carrier with a frame form insert. It will be installed using a compression fit that allows flexibility should minimal shifting of the door occur. The weather-stripping will be applied at the sides and across the top of the doorframe. A sweep will be installed on the bottom of the door. Astragals are the weather-stripping material used to cover the gap between two doors. Door weather-stripping material has a mill finish.

Door weather-stripping will be sealed after installation using a paintable, silicon acrylic sealant. Latches will be checked to ensure they close and lock properly. Doors will also

Scope of Work

be checked for damage, such as old screw holes and penetrations. When found, penetrations will be sealed to minimize air infiltration/ex-filtration.

Table 12 – Building Envelope Overall Scope

Quantity	Envelope Improvements
0.37	Sq/ft - Penetrations sealed with polyurethane sealant
93	LF - Wall cracks, window/door frames and vents sealed with polyurethane sealant
26	Sets of weather-strip DF
26	Door sweeps
2	Astragals (weather-strip for center of double door)
8	Sets of weather-strip DF (OH Door)
5	Door sweeps (OH Door)

Exclusions:

- Removal of Asbestos Containing Materials, Lead Containing Materials or any other hazardous/suspect materials.
- Removal of Caulking, Coatings, Mastics, Flashings, Insulation or any other materials unless clearly specified.
- Repair or installation of Brick or other Masonry Materials or Systems.
- Repair or installation of Window or Door Systems, unless clearly identified.
- Repair or installation of any Structural Systems.

4.3. ECM 3 – HVAC – Packaged Unit Upgrades

Scope of Work:

Veregy shall permit, procure, and install (5) new higher efficiency gas pack rooftop units (RTUs) to replace the existing (5) gas pack RTUs at 259 Beacon Lite. The scope includes:

- Provide labor for the high voltage electric disconnect for (5) existing and connect (5) new roof top units.
- Provide labor for the disconnect of gas service, low voltage wiring and refrigerant reclamation of (5) existing RTU's and remove from the roof with a crane and recycle per EPA requirements.
- Provide (5) new Carrier 48FCEA, or equivalent, RTU's and install them at the original locations.
- Furnish and install (1) new NEMA 3R fusible disconnect at each unit.
- Provide labor and materials to install gas lines.
- Provide unit start up and commissioning.

Exclusions:

- Controls or control components (unless noted)
- Any item not specifically included above is not covered in this proposal

4.4. ECM 4 – HVAC – VVT Systems

Scope of Work:

Scope of Work

Veregy shall furnish and install a Variable Volume, Variable Temperature (VVT) control system on RTU #7 and RTU #9 at Town Hall/Police. The following rooms will be controlled by the VVT control systems, based on the mechanical plans provided:

- RTU #7:
 - Office 229, Planner Office 230, Planner Office 231, Office 224, Accounts Office 222, Office 221, Foyer 219
- RTU # 9:
 - Police Investigation 214, Interview 215, Un-named room, Sergeants Offices 216, Chief Office 217, Conf 218

The scope includes procuring and installing:

- Zone Dampers: (14) VVT dampers on the supply air duct distribution system
- Zone Coordinator: (2) bypass dampers, one on each RTU with Controller and Duct Static Pressure Transducer
- VVT Controller: (1) Panel Mounted Smart Building Hub with NEMA 1 Enclosure

Exclusions/Clarifications:

- Assumes that the work areas below the ceiling will be accessible
- Any item not specifically included above is not covered in this proposal

4.5. ECM 5, 6, 7 – Orchestrate

Overview:

The following services will be included at each site, as indicated with “X”:

Table 13 - Orchestrate Module Scope

Orchestrate Module Scope	Building Automation	Utility Mgmt.	Facility Mgmt.	Solar Mgmt.
Monument Town Hall/Police	X	X		X
Public Works	X	X		
259 Beacon Lite	X	X		X
225 Beacon Lite Rd	X	X		
Town Building-wide			X	

Scope of Work per Orchestrate Service:

Building Automation:

General:

Provide material, programming, and installation services required to replace or upgrade the existing building automation system. Where applicable, new Pelican, or equivalent, wireless thermostats will be installed to communicate with a new Niagara 4, or similar, supervisory system. In addition, the building automation system will be integrated to, and made available through, the Orchestrate facility integration software platform.

System Monitoring:

Scope of Work

For each building included in the Control Service, the operation of the HVAC system(s) will be monitored for one (1) year following the completion date of the project. During this year, the building automation programming will be fine-tuned for optimum operation and any comfort complaints will be resolved in a timely manner. At the end of the first-year monitoring, the owner will have the option to renew a monitoring and technical service contract, this is represented as the “Orchestrate Fee” under the Cash Flow.

Niagara 4 Software Installation and Integration

As part of the system integration, a new central server running Niagara 4, or equivalent, supervisory software will be provided and installed. Niagara provides a simple programming interface and central integration platform. The Niagara 4 supervisory system will be installed on a rack mounted server and host all histories, alarms, graphics, and custom programming required for proper system operation. At the Owner’s discretion, a cloud hosted server can be provided in lieu of on-site rack mounting.

Envysion - HTML5 Based Graphics

As part of the Control system upgrade, a custom graphical user interface will be implemented that can be used to access the Niagara 4, or equivalent, supervisory software in a user-friendly manner. The interface will consist of custom 3D models and floor plans for each building covered under the project as well as an organization-wide site map. All major mechanical equipment will be made available through the interface along with associated histories, critical control points and visual alarm indication. In addition, the interface will accommodate any custom integrations covered in the scope of work.

Energy Saving Algorithms and BAS Optimization

For each building included in the Control service, all major control sequences affecting central equipment will be investigated. Programming will be replaced or optimized as necessary. The purpose of control sequence modification is to increase HVAC system efficiency. Control strategies may include:

1. Implementing optimized schedules to ensure HVAC equipment only runs when and where the building is occupied.
2. Optimum Start and stop logic to ensure that the HVAC equipment turns on at the right time (not too early or late) to get spaces to the correct temperature by the time the space is occupied.
3. Verify ventilation standards and reset outdoor air intakes where possible.
4. Optimize setpoints and scheduling to minimize unnecessary heating and cooling loads.

New Direct Digital Controls

Summary:

As part of the building automation upgrade, Veregy will provide and install new wireless thermostats to replace existing control systems where noted in this scope of work. The

Scope of Work

manufacturer of the new controllers will provide open (vendor-neutral) controllers that can be purchased from a wide range of distributors. All new controllers will communicate via BACnet/IP (an open protocol) and can be programmed with freely available software.

New wireless thermostats will be designed, installed, and commissioned for each central piece of HVAC equipment. Existing field devices (temperature sensors, wells, current sensors, etc.) required for equipment operation may be reused unless they are found to be defective. Defective devices will be replaced as needed for proper and safe operation of equipment.

Mini-splits will remain on their own (stand-alone) controls but have remote temperature sensors installed so temperature can be monitored and an alarm generated on a high temperature event.

Exhaust fans required for proper operation of the HVAC system will be controlled with new current transducers and control relays.

Facility Management – FMX and Integration:

To facilitate communication with the staff about heating and cooling optimizations as well as provide automated scheduling and alarming for building automation equipment, FMX (a cloud-based maintenance management system), will be provided and integrated into the new Niagara, or equivalent, supervisory server. This integration will provide an advanced scheduling and alarming module capable of the following:

- Automatically schedule HVAC equipment based on FMX schedules and resources.
- Push alarms from the building automation system to the FMX application.
- Enable equipment maintenance request and issue tracking.
- Enable automatic Preventative Maintenance scheduling and alerts/reminders.
- Enable staff to communicate with technical service personnel and provide feedback on energy optimizations or building operation.

In addition, the following FMX specific modules will be made available for use:

- Healthy Buildings Module and Dashboard
- Planned Maintenance
- Reporting and Analytics
- Maintenance Requests
- Single Sign On

Utility Management – EnergyTracer:

Utility bill information will be made available through the EnergyTracer application and integrate into the Orchestrate platform. Utility bills will be automatically updated monthly and provide EUI and energy performance reporting through a user friendly, cloud-based, web application.

Scope of Work

Solar Management – Gridcap:

The Orchestrate platform will be expanded to provide additional analytics and control services dedicated to photovoltaic (solar) distributed generation resources. Orchestrate will be configured to provide the following functionality.

Automated Load Balancing and Optimization

Through the use of the Orchestrate platform, solar generation resources will be linked to the new building automation system to limit and control facility peaks during on (and off) peak times of solar production.

4.6. ECM 8 – Solar – Rooftop Photovoltaic

Scope of Work:

The scope of work is based on the high-level design provided by Veregy:

Table 14 – Solar Scope

Site	Utility	# of Panels	Solar System Size (kW-DC)	Array Location	Interconnection Method
259 Beacon Lite	MVEA	48	28.32	Rooftop	Load Side
Town Hall/Police	MVEA	96	56.64	Rooftop	Line Side
Total			84.96		

At 259 Beacon Lite, Veregy shall:

- Procure and install photovoltaic equipment, including modules (48) Jinko JKM 590W, (1) Chint Power Systems inverter [(1) CPS SCA25KTL 208V], Lightlevel DAS monitoring system, all electrical equipment, ballasted racking, as shown in preliminary single line diagrams.
- Procure and install all AC equipment as determined by engineering and shown on final single line diagram, including a 100A non-fused utility disconnect, 100A non-fused service disconnect, 100A meter socket, and point of interconnection equipment. New 800A I-Line MDP panel, 800A CT cabinet, (6) 125A breakers for existing loads. Utility meter to be furnished and installed by Mountain View Electric Association (MVEA).
- Project management and site supervision for the duration of construction.
- Furnish and install required AC conduit, cabling, terminations, third party hi-pot testing and special inspections as required by local authority having jurisdiction (Town of Monument) and MVEA.
- Furnish and install all DC wiring and stringing.
- Grounding and labeling of equipment and conduits per NEC and Town OF Monument's requirements.
- Sawcut, removal and off-site haul away of concrete and asphalt as necessary for this scope of work.
- Plan for on-site storage and rental equipment. Veregy will work with the Town of Monument to utilize a central storage location based on availability.
- Provide temporary toilets, dumpsters on site during construction.

At Town Hall/Police, Veregy shall:

Scope of Work

- Procure and install photovoltaic equipment, including modules (96) Jinko JKM 590W, (1) Chint Power Systems inverter [(1) CPS SCA50KTL], Lightlevel DAS monitoring system, all electrical equipment, flush mount racking, as shown in preliminary single line diagrams.
- Procure and install all AC equipment as determined by engineering and shown on final single line diagram, including a 200A fused utility disconnect, 200A non-fused service disconnect, 200A meter socket, 75 kVA step-down transformer, and point of interconnection equipment. Utility meter to be furnished and installed by Mountain View Electric Association (MVEA).
- Project management and site supervision for the duration of construction.
- Furnish and install required AC conduit, cabling, terminations, and testing such as third party hi-pot testing and special inspections as required by local authority having jurisdiction (Town of Monument) and MVEA.
- Furnish and install all DC wiring and stringing.
- Grounding and labeling of equipment and conduits per NEC and Town of Monument's requirements.
- Verify UL Certification on switchgear after interconnection, obtain re-certification as directed from MVEA and Town of Monument for line side interconnection.
- Sawcut, removal and off-site haul away of concrete and asphalt as necessary for this scope of work.
- Furnish and install concrete for Housekeeping/transformer pads.
- Plan on-site storage and rental equipment. Veregy to work with district to utilize a central storage location based on availability.
- Provide temporary toilets, dumpsters on site during construction.

Exclusions:

- Prevailing wages.
- All hard dig/drilling (Drilling into water or sand is considered hard dig).
- Any unforeseen site conditions including underground utilities not marked or located by private locate/blue stake.
- Planting of any new trees or bushes.
- Roof work related to sealing of penetrations.
- Re-roofing.

Component Specifications:

- PV Modules: Jinko 590W JKM590N-72HL4-BDV, or equivalent.
- String Inverters: CPS SCA25-60-DO/US-208-480, or equivalent.
- Lightlevel DAS monitoring system.
- Veregy shall have the right to be able to substitute a particular product or material defined in the scope of work with an equivalent product or material, if necessary.

4.7. Source of Operational & Maintenance Savings

The installation of the LED lighting will allow the Town of Monument to reduce operational and maintenance costs and time. LED lighting has a longer useful life than the existing lighting fixtures; therefore, there are material and internal labor savings by not needing to buy new lamps, ballasts, and fixtures over the warranty period and useful life of the LED lighting. The implementation of a CMMS will facilitate communication with the facility staff about heating and cooling optimizations as well as provide

Scope of Work

automated scheduling and alarming for building automation equipment. The cloud-based maintenance management system will be provided and integrated into the new Niagara supervisory server and provide an advanced scheduling and alarming module capable of the following:

- Automatically schedule HVAC equipment based on facility management schedules and resources.
- Push alarms from the building automation system to the facility management application.
- Enable equipment maintenance request and issue tracking.
- Enable automatic Preventative Maintenance scheduling and alerts/reminders.
- Enable staff to communicate with technical service personnel and provide feedback on energy optimizations or building operation.

Table 16 shows a breakdown of the expected operational and maintenance cost savings. The savings will be de-escalated by 3.0% annually and only taken for 16 years, as that is the expected useful life of the affected measures.

Table 15 – O&M Savings for Term of Project

Year	O&M Savings	Year	O&M Savings
1	\$6,028	9	\$7,637
2	\$6,209	10	\$7,866
3	\$6,395	11	\$7,630
4	\$6,587	12	\$7,401
5	\$6,785	13	\$7,179
6	\$6,989	14	\$6,963
7	\$7,198	15	\$6,754
8	\$7,414	16	\$6,552
Total			\$47,578

4.8. Training

Contractor will follow the training guidelines stated below for all installed measures:

Demonstration and Instructions:

1. Contractor will provide one demonstration of the operation and maintenance of the installed equipment to the Political Subdivision's personnel. The demonstration will be scheduled at the parties' mutual convenience and will be completed prior to the sign off for substantial completion of the project.

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2. Contractor will demonstrate start-up, operation, control, adjustment, troubleshooting, servicing, maintenance, and seasonal operation and shutdown of each measure installed with the following clarifications:

Additional requests for training beyond the above stated will be billable at Contractor's most current published time and material rates.

4.9. Warranty

Veregy warrants that the design, engineering, and installation services it performs will be consistent with good engineering practices and that such work is warranted to be free from defects in materials and workmanship for a period of one year from the date of execution of the Notice of Substantial Completion by the Town of Monument. Any manufacturer's warranties which exceed this one-year period shall be assigned to the Town of Monument to the extent allowed by the manufacturer.

Customer may purchase extended warranty coverage for any equipment installed under this Agreement as long as the annual cost of the project, inclusive of the extended warranty coverage, does not exceed the guarantees savings value, should this agreement be subject to rules or laws requiring annual savings to exceed annual costs.

Scope of Work

Table 16 – Measure Warranties

#	ENERGY CONSERVATION MEASURE (ECM)	WARRANTY LENGTH			
		1 Year	5 Year	10 Year	25 Year
1	Lighting - LED		Non-Linear LED Lamps and LED Luminaries	Linear LED lamp and electronic LED driver	
2	Building Envelope - Exterior Sealing/Door Sweeps	Full Labor and Material			
3	HVAC - Packaged Unit Upgrades		Manufactures warranty of all Compressors		
4	HVAC - VVT Systems	Full Labor and Material			
5	Orchestrate - Wireless HVAC Controls	Full Labor and Material			
6	Orchestrate - Energy Tracer	Full Labor and Material			
7	Orchestrate - Facility Management	Full Labor and Material			
8	Solar - Rooftop Photovoltaic			Solar Module and Inverter Workmanship	Solar Module Power Output

OWNER RESPONSIBILITY

Veregy will pass to the customer the manufacturers provided warranty. The customer shall have the following responsibilities during the warranty period:

1. Contacting the manufacturer to report product failures and to schedule manufacturer replacement of that product and possible request of RMA (Return Material Authorization) of failed product.
2. Properly storing any removed failed material until manufacturer's response to customer warranty request is processed and manufacturer determines if an RMA will or will not be required for failed material to be sent back to manufacturer.
3. Provide labor, equipment, and incidental material in failed product replacement.
4. Replace failed product to manufacturer's specifications and to comply with NEC regulations to ensure remaining warranty period compliance.

This warranty does not extend to cover any insurable loss or damage, nor to cover ordinary wear, abuse, or neglect. During the warranty period, either the Tenant, Owner or the General Contractor may initiate warranty service.

5. Measurement & Verification Plan

This section describes the Measurement & Verification (M&V) plans to be used to verify each measure's savings. The intent of M&V is quantifying the energy, water, and cost savings resulting from improvements in energy- and water-consuming systems. The objective of M&V is to determine what the usage of the existing equipment would have been if no improvement had been performed and compare it to what the actual performance period usage was. This is the verified energy, water, and cost savings. To determine what the usage of the existing equipment would have been if no improvement had been performed, the baseline usages are adjusted to reflect non-key operating condition changes, as key operating conditions are those that are directly affected by the improvements. The process used to make those adjustments varies on the Option selected, which often depends on the measure being implemented, the amount of risk or uncertainty in the expected savings, and cost-effectiveness.

The objective of the M&V plan is to describe how the savings generated by the ECMs installed in the facilities will be quantified and validated. The verified savings will be determined using the Measurement & Verification options denoted in Table 22.

Adjustments to energy savings due to changes in building occupancy, weather data and utility rate schedules, etc. may be made. The unit costs of energy will be applied to the energy savings calculated by this Measurement & Verification plan. Avoided cost electric rate and rate plan natural gas and water rates will be used as a basis for determining the unit cost of energy presented in Section 3.5. A guaranteed savings reconciliation report will be submitted to the Customer after each guarantee period. In general,

Savings = Baseline Energy Use – Post Installation Energy Use ± Baseline Adjustments

5.1. Measurement & Verification Approaches

The Measurement & Verification methodologies proposed for these ECMs are based on the International Performance Measurement and Verification Protocol (IPMVP). IPMVP outlines four Options to verify the savings associated with the implementation of measures. An additional acceptable approach is a calculated and stipulated approach. The five M&V Options are:

1. Option A – Retrofit Isolation: Key Parameter Measurement
2. Option B – Retrofit Isolation: All Parameter Measurement
3. Option C – Whole Building
4. Option D – Calibrated Simulation
5. Option E – Calculated/Stipulated

IPMVP Option A – Retrofit Isolation: Key Parameter Measurement

This approach is intended for measures where the impacted equipment consumption can be isolated from the system, a one-time or instantaneous measurement is suitable, and key parameters are not complex or excessively difficult to measure. Savings are determined by field measuring key operating parameter(s). Parameters not selected for

M&V Plan

field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications or engineering judgments which define the energy use of the ECMs affected system(s). Documentation or justification of the estimated parameter is contained within the plan.

IPMVP Option B – Retrofit Isolation: All Parameter Measurement

This approach is intended for measures where the impacted equipment consumption can be isolated from the system, short term or continuous metering is necessary, and the impact of the measure is too small to be detected using Option C. Savings are determined by field measuring all operating parameters.

IPMVP Option C – Whole building

This approach is intended for projects with multiple measures, where the savings are greater than 10% of the baseline, and where the equipment cannot be isolated from the system. Savings are determined at the meter level, using utility data and key- and non-key-parameters. This typically involves multiple variable regression analysis of the baseline utility data. Routine and non-routine adjustments are then made to the baseline, based on the performance period's parameters, and compared to the actual performance period usage.

IPMVP Option D – Calibrated Simulation

This approach is intended for projects where savings are determined using a calibrated simulation/energy model. The simulation/energy model is calibrated with hourly and/or monthly utility data and/or end-use metering.

Option E – Calculated/Stipulated

This approach is intended for measures where the key- and non-key-parameters are known in advance and used in a calculation or analysis method that will determine the outcome and when it is cost prohibitive to perform intensive M&V. Key- and non-key-parameters can include, but are not limited to, operational efficiency, manufacturer's measurements, industry standard efficiencies, or operating hours. Both client and contractor agree to the inputs and outcome(s) of the analysis methodology. Based on the agreement, the calculated savings will be achieved upon completion of measure implementation and that no further measurements or calculations will need to be performed.

5.2. Measurement & Verification Option Selections

Table 17 - M&V Table

ECM #	ECM Description	M&V Option	Utility Type	Pre-Implementation M&V (Baseline)	Post-Implementation M&V	M&V Key Parameter(s)	Contractually Agreed Upon Variables
Lighting - LED							
1	Replace existing lamps and ballasts with fixtures both inside and outside of buildings.	A	Electric (kW/kWh)/ Natural Gas (therms)	Room-by-room audit establishing fixture types, operating hours, and watts. Sample fixtures will be identified and power (kW) will be measured.	Sample fixtures previously identified in the Pre-Implementation survey will be measured for power (kW) after installation.	Instantaneous Power (kW)	Hours of Operation
Building Envelope - Exterior Sealing/Door Sweeps							
2	Seal windows, doors, and exterior wall holes to limit infiltration/exfiltration.	A	Natural Gas (therms)	Baseline HVAC energy consumption disaggregated from analysis of utility information. Existing setpoints documented during survey and verified with administration.	Performs onsite inspections once annually and periodic review of Building Automation Systems (BAS) exception reports. Equipment will be verified to ensure hardware is not materially different from the scope of work.	Crack Area	Temperature Setpoints/ Occupancy Schedule/ Hours of Operation/ Building Loads/ Weather
HVAC - Packaged Unit Upgrades							
3	Replace HVAC equipment with new, correctly sized equipment.	C	Electric (kW/kWh)/ Natural Gas (therms)	Efficiency ratings provided by manufacturer following accepted testing methods.	Assure that all new systems are operating correctly and per accepted parameters.	Temperature Setpoints/ Occupancy Schedule	Manufacturers Efficiency Rating
Orchestrate - Wireless HVAC Controls							
5	Utilize an on-going Building Automation System (BAS) to continually scan and adjust space utilization for energy reduction.	C	Electric (kWh)/ Natural Gas (therms)	Utilize bill analysis and baseline HVAC energy consumption disaggregated from analysis of utility information. Existing setpoints documented during survey and verified with administration.	Perform onsite inspections once annually and periodic review of BAS exception reports. Equipment will be verified to ensure hardware is not materially different from the scope of work.	Electric kW/ Temperature Setpoints/ Occupancy Schedule	City Utilization
Solar - Rooftop Photovoltaic							
6	Install photovoltaic solar systems	B	Electric (kWh)	Utility Billing Review	Inverter System Data Collection	Solar System Trend Data	Weather Data

5.3. Measurement & Verification Plan Descriptions

5.3.1 ECM 1 – Lighting – LED

Overview of M&V Plan

The M&V plan for this ECM is based on IPMVP Option A.

Savings Verification Methodology

Under IPMVP Option A, the key parameter will be the instantaneous power in kilowatts (kW) used by each lighting fixture lamp and ballast configuration (LBC) at pre- and post-retrofit conditions. The measurements will be performed on a statistically significant quantity of pre- and post-retrofit fixtures. The stipulated parameter will be hours of operation.

The number of fixtures to be selected for measurement is based on the use of statistical sampling methods (described below) to ensure reasonable sample populations and confidence level in the results of the samples. The sample size will be determined using a confidence level of 80% with a precision of 20%.

Pre-Installation Measurement & Verification Activities

A room-by-room audit was performed documenting each fixture LBC and their locations to establish power draw (kW) per LBC. Prior to installation of new fixtures, measurements will be taken on selected LBC samples chosen. Established operating hours are assigned to the appropriate LBCs. Pre-retrofit baseline is calculated and then compared to utility information to confirm viability and establish disaggregated portion of total energy usage. The pre-retrofit baseline calculation is as follows:

Pre-Retrofit Lighting Baseline Energy Usage (kWh) = $\Sigma(\text{Existing Fixture Input kW} * \text{Existing Fixture Count} * \text{Existing Lighting Fixture Operational Hours})$

Pre-Retrofit Lighting Proposed Energy Usage (kWh) = $\Sigma(\text{Proposed Fixture Input kW} * \text{Proposed Fixture Count} * \text{Proposed Lighting Fixture Operational Hours})$

Cooling Interactive Effect Factor (kWh/kWh) = 1.06, per DEER

Gas Heating Interactive Effect Factor (Therm/kWh) = -0.00706, per DEER

Pre-Retrofit Lighting Energy Savings (kWh) = $\Sigma((\text{Pre-Retrofit Lighting Baseline Energy Usage} - \text{Pre-Retrofit Lighting Proposed Energy Usage}) * \text{Cooling Interactive Effect Factor})$

Pre-Retrofit Lighting Gas Heating Penalty (Therms) = $\Sigma((\text{Pre-Retrofit Lighting Baseline Energy Usage} - \text{Pre-Retrofit Lighting Proposed Energy Usage}) * \text{Gas Heating Interactive Effect Factor})$

Pre-Retrofit Peak Demand Savings (kW) = $[\Sigma(\text{Existing Interior Fixture Input kW} * \text{Existing Interior Fixture Count}) - \Sigma(\text{Proposed Interior Fixture Input kW} * \text{Proposed Interior Fixture Count})] * \text{Coincidence Diversity Factor (80\%)}$

Post-Installation Measurement & Verification Activities

M&V Plan

Post-installation measurements will be taken on the same selected LBC measured during the Pre-installation period. Verified savings will be the difference between the adjusted baseline usage and peak demand and the adjusted installed usage and peak demand. The following equations/parameters are used to make necessary adjustments and verify the lighting upgrade measure savings.

Lighting Baseline Adjustment Factor = $\Sigma(\text{Baseline Fixture Count} * \text{Average Pre-Installation kW Measurement}) / \Sigma(\text{Existing Fixture Count} * \text{Existing Fixture Input kW})$

Adjusted Lighting Baseline Energy Usage (kWh) = Pre-Retrofit Lighting Baseline Energy Usage * Lighting Baseline Adjustment Factor

Adjusted Lighting Baseline Peak Demand (kW) = Pre-Retrofit Baseline Peak Demand * Lighting Baseline Adjustment Factor

Lighting Installed Adjustment Factor = $\Sigma(\text{Installed Fixture Count} * \text{Average Post-Installation kW Measurement}) / \Sigma(\text{Installed Fixture Count} * \text{Proposed Fixture Input kW})$

Adjusted Lighting Installed Energy Usage (kWh) = Pre-Retrofit Lighting Proposed Energy Usage * Lighting Installed Adjustment Factor

Adjusted Lighting Installed Peak Demand (kW) = Pre-Retrofit Proposed Peak Demand * Lighting Installed Adjustment Factor

Verified Lighting Upgrade Energy Savings (kWh) = Adjusted Lighting Baseline Energy Usage - Adjusted Lighting Installed Energy Usage

Verified Lighting Upgrade Peak Demand Savings (kW) = Adjusted Lighting Baseline Peak Demand - Adjusted Lighting Installed Peak Demand

The equipment installed as a part of this ECM will be inspected annually to verify that it is in place and operating as specified and that manufacturer's recommended maintenance is being performed. In addition, interviews will be performed with property staff to determine whether the equipment remains in place and is operating as intended to provide verification of proper operation.

Any changes to building schedules and occupancy hours are the responsibility of the Customer and may result in baseline adjustments for the calculation of verified savings. Changes will be noted when found and the Customer will be informed.

Energy consumption savings were calculated through spreadsheet calculations. The savings for this ECM are set forth in the table below.

Table 18 – Annual Lighting Savings

Lighting - LED	Savings
Electricity (kWh)	104,501
Demand (kW)	27
Natural Gas (therms)	-738

5.3.2 ECM 2 – Building Envelope – Exterior Sealing/Door Sweeps

Overview of M&V Plan

The M&V plan for this ECM is based on IPMVP Option A.

Savings Verification Methodology

The energy savings derived from this measure are a result of the heating and cooling systems (chillers and boilers) not having to work as hard to achieve the desired environmental conditions. The amount of savings is dependent on the existing building conditions and the amount of air leakage under the current operating conditions.

Energy savings are based on the ASHRAE crack method calculations. If the process reveals any variation in the as-built conditions, then savings will be adjusted accordingly. Determination of air current air leakage rates is based on many factors, including:

- Linear feet of cracks
- Square feet of openings
- Stack coefficient
- Shield class
- Average wind speed
- Heating or cooling set point
- Average seasonal ambient temperatures

The following equation is based on the ASHRAE crack method:

$$\dot{q} = 1.08 \times Q \times \Delta T$$

Where Q represents the airflow in cubic feet per minute (CFM) and is calculated in the following manner:

$$Q = A_{crack} \times \sqrt{(C_s \Delta T + C_w V^2)}$$

In this equation, A represents the crack area in square inches to be reduced. The other values in the equation are standard for these buildings and are based upon shelter class, height, and local wind speed.

- C_w = wind coefficient = 0.0104 average
- V = wind speed = 8.8 average mph
- C_s = stack coefficient = 0.0299 (two-story typical)

- ΔT = temperature difference = $T_{out} - T_{in}$

ΔT is calculated by subtracting the average outdoor air temperature per hour from the indoor temperature, using 24 data points per month to accurately account for weather variances, and subsequently calculating airflow and heat loss for each set of data. Therefore, 288 data points are used, and Δt is the number of hours each data point represents. The total heat loss is calculated as follows:

$$q = \sum_{x=1}^{288} 1.08 \times A_{crack} \times \sqrt{(C_s(T_{out} - T_{in}) + C_w V^2)} \times (T_{out} - T_{in}) \times \Delta t$$

Savings due to insulation improvements:

Steady-state, one dimensional heat flow through insulation systems is governed by Fourier's law:

$$q = -k \times A \times \frac{dT}{dx} \times \text{Hrs}/1\text{MMBBTU}$$

Where:

- q = rate of heat flow, Btu/hr
- A = cross sectional area normal to heat flow, ft²
- k = thermal conductivity of the insulation material, Btu-in/h ft²°F
- dT/dx = temperature gradient, °F/in

Note that changes in occupancy hours, heating and cooling set points and weather conditions will all affect the savings potential of this envelope improvement measure. An increase in operating hours or the heating set point will reduce the savings potential, but at a rate substantially less than heating costs would have been affected prior to the implementation of these strategies.

If any of these parameters could not be determined from these sources, the most likely parameter based on standard engineering practices and experience was determined. Key parameters that affect baseline energy use include system size, system efficiency, and operating hours. Building operating data were provided by the facility staff.

Baseline M&V Activities

Baseline analysis and site observations were used for establishing the baseline energy use. Site observations consist of characteristics of baseline equipment including equipment type, size, and runtime hours, and building characteristics.

Post-Installation M&V Activities

Crack area data will be collected to verify size following installation of weatherization equipment. Any changes to building schedules, occupancy hours, and building loads are the responsibility of the Customer and may result in a baseline adjustment for the calculation of verified savings. The Customer will be informed of changes found. Any modification of the equipment, or changes from its intended function are the

responsibility of the Customer. The savings for this ECM are set forth in the table below.

Table 19 – Annual Building Envelope Savings

Building Envelope - Exterior Sealing/Door Sweeps	Savings
Electricity (kWh)	0
Natural Gas (therms)	2,119

5.3.3 ECM 3 – HVAC – Packaged Unit Upgrades

Overview of Measurement & Verification Plan

The M&V plan for this ECM is based on Option C.

Savings Verification Methodology

A spreadsheet was created to model the building cooling and heating load profiles. The building loads were derived from natural gas usage history and were used to estimate equipment usage times to calibrate the baseline models.

The spreadsheet model used data from the following sources:

- Building Survey Data (building areas, construction, and HVAC equipment capacities and other data)
- Weather data from Colorado Springs, CO
- Utility Usage Data from billing records
- Discussions with facility personnel (occupancy hours, set points, number of occupants, operating hours of equipment, general equipment conditions)

If any of these parameters could not be determined from these sources, the most likely parameter based on standard engineering practices and experience was determined. Key parameters that affect baseline energy use include system efficiency, weather, operating hours, building populations, and building heating & cooling loads. Building operating and occupant data were provided by the Customer staff.

Baseline M&V Activities

Baseline analysis and site observations were used for establishing the baseline energy use. Site observations consist of characteristics of baseline HVAC equipment including equipment type, size, occupied and unoccupied hours, temperatures, and summarized schedules and temperatures of the HVAC.

Post-Installation Measurement & Verification Activities

The equipment and associated controls systems installed as a part of this ECM will be inspected annually to verify that it is in place and operating as intended and that manufacturer's recommended maintenance is being performed. In addition, periodic

M&V Plan

monitoring of trend data from the control system will be performed to verify that the equipment continues to run without change or manual overriding. Monitoring of these systems will require access to these systems both on-site and remotely. If the data is not made available, a physical inspection of the equipment and interviews with facility staff to determine whether the equipment remains in place and is operating as intended will be considered sufficient to provide verification of proper operation. Any changes to building schedules, occupancy hours, or setback and setup temperatures are the responsibility of the Customer and may result in a baseline adjustment for the calculation of verified savings. The Customer will be informed when changes are found. Some of the key parameters that will be trended include:

- Temperature set points during occupied and unoccupied hours
- Occupancy Hours
- Outside air temperature

A statistically appropriate multi-variable regressions analysis of the utility data will be performed to determine the savings associated with this project. The variables used to determine the baseline regression will be Cooling Degree Days (CDD), Heating Degree Days (HDD), Relative Humidity (RH), and Operating Schedules during the baseline period. Once the baseline regression model is determined, the associated performance period variables will be used with the baseline model to determine how many energy units would have been used if the project had not happened. This is then compared to the actual performance period usage to determine the total savings for each site. Measures that follow other IPMVP options will be subtracted from this to determine the measure savings. The savings for this ECM are set forth in the table below.

Table 20 - Annual HVAC – Packaged Unit Upgrades Savings

HVAC - Packaged Unit Upgrades	Savings
Electricity (kWh)	3,394
Demand (kW)	1
Natural Gas (therms)	200

5.3.4 ECM 5 – Orchestrate – Wireless HVAC Controls

Overview of Measurement & Verification Plan

The M&V plan for this ECM is based on Option C.

Savings Verification Methodology

A spreadsheet was created to model the building cooling and heating load profiles. The building loads were derived from electric & gas usage history and were used to estimate equipment usage times to calibrate the baseline models.

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The spreadsheet model used data from the following sources:

- Building Survey Data (building areas, construction, and HVAC equipment capacities and other data)
- Weather data from Colorado Springs, CO
- Utility Usage Data from billing records
- Discussions with facility personnel (occupancy hours, set points, number of occupants, operating hours of equipment, general equipment conditions)

If any of these parameters could not be determined from these sources, the most likely parameter based on standard engineering practices and experience was determined. Key parameters that affect baseline energy use include system efficiency, weather, operating hours, building populations, and building heating & cooling loads. Building operating and occupant data were provided by the Customer staff.

Baseline M&V Activities

Baseline analysis and site observations were used for establishing the baseline energy use. Site observations consist of characteristics of baseline HVAC equipment including equipment type, size, occupied and unoccupied hours, temperatures, and summarized schedules and temperatures of the HVAC.

Post-Installation Measurement & Verification Activities

The equipment and associated controls systems installed as a part of this ECM will be inspected annually to verify that it is in place and operating as intended and that manufacturer's recommended maintenance is being performed. In addition, periodic monitoring of trend data from the control system will be performed to verify that the equipment continues to run without change or manual overriding. Monitoring of these systems will require access to these systems both on-site and remotely. If the data is not made available, a physical inspection of the equipment and interviews with facility staff to determine whether the equipment remains in place and is operating as intended will be considered sufficient to provide verification of proper operation. Any changes to building schedules, occupancy hours, or setback and setup temperatures are the responsibility of the Customer and may result in a baseline adjustment for the calculation of verified savings. The Customer will be informed when changes are found. Some of the key parameters that will be trended include:

- Temperature set points during occupied and unoccupied hours
- Occupancy Hours
- Outside air temperature

A statistically appropriate multi-variable regressions analysis of the utility data will be performed to determine the savings associated with this project. The variables used to determine the baseline regression are Cooling Degree Days (CDD), Heating Degree Days (HDD), Relative Humidity (RH), and Operating Schedules during the baseline period. The associated performance period variables will be used with the baseline model to determine how many energy units would have been used if the project had not happened. This is then compared to the actual performance period usage to determine

Installation Plan

the total savings for each site. Measures that follow other IPMVP options will be subtracted from this to determine the measure savings. The savings for this ECM are set forth in the table below.

Table 21 - Annual Orchestrate – Wireless HVAC Controls Savings

Orchestrate - Wireless HVAC Controls	Savings
Electricity (kWh)	8,502
Demand (kW)	3
Natural Gas (therms)	518

5.3.6 ECM 8 – PV Solar

Overview of M&V Plan

The M&V plan for this ECM is based on IPMVP Option B.

Savings Verification Methodology

Commencing on the Commercial Operation Date of the System, each system is conservatively estimated to produce 95% of the calculated, weather-adjusted, three-year rolling average production. Weather-adjustment means the irradiance measured by the System's weather stations relative to the predicted annual irradiance of a system by the US Department of Energy's NREL Version 1 PV Watts.

A spreadsheet was created to analyze photovoltaic solar and battery storage systems. The spreadsheet model used data from the following sources:

- Building Survey Data (building areas, construction, and other key data)
- Weather data from Colorado Springs, CO
- Utility Usage Data from billing records
- Discussions with facility personnel (occupancy hours operating hours of equipment)

If any of these parameters could not be determined from these sources, the most likely parameter based on standard engineering practices and experience will be determined. Key parameters that affect baseline energy use include system efficiency, weather, operating hours, building populations, and building heating & cooling loads. Building operating and occupant data were provided by the Customer staff.

Baseline M&V Activities

Baseline analysis and site observations were used for establishing the baseline energy use. Spreadsheet calculations were performed to estimate solar generation.

Post-Installation Measurement & Verification Activities

Installation Plan

Solar inverter kWh production data will be collected to verify solar generation following installation and integration. Any changes to building schedules, occupancy hours, and solar system setup are the responsibility of the Customer and may result in a baseline adjustment for the calculation of verified savings. The Customer will be informed of changes found. Any modification of the equipment, or changes from its intended function are the responsibility of the Customer. The savings for this ECM are set forth in the table below.

Table 22 - Annual Solar Production

Year	Production (kWh)
1	117,068
2	116,483
3	115,901
4	115,321
5	114,744
6	114,171
7	113,600
8	113,032
9	112,467
10	111,904
11	111,345
12	110,788
13	110,234
14	109,683
15	109,135
16	108,589
17	108,046

Installation Plan

6. Installation Plan

Veregy will act as the construction manager overseeing and coordinating the detailed design and installation of the facility improvement measures. The management approach is site-specific for the affected buildings. A series of meetings with the building managers are held to develop key requirements that will be necessary to implement the work. This information is then articulated to all of the subcontractors estimating the project in an Instructions to Bidders document that is issued with the bid documents and included in their subcontract agreement. By following this process there are no surprises down the road to the building managers or those performing the work. An overview of the process is described below.

6.1. Construction Process

Daily Work Schedules

Veregy typically plans for all work to be completed during normal business hours, Monday through Friday 6am to 5pm for most construction activities. Off hours and weekend work may be required during shutdowns of any of the systems as required to minimize any impacts to the building occupants. A coordination meeting with the building managers will be held to determine the extent off hours work so that that it can be accounted for in the instructions to bidders.

Site Logistics

A detailed site logistics plan will be included in the instructions to bidders (ISB). This plan is developed in conjunction with the building managers and includes designated parking (or protocols) areas for Veregy and associated subcontractors, loading and unloading areas and constraints such a timing of deliveries etc. as well as the designation of site laydown and storage areas. This plan would also include any traffic and pedestrian control requirements as may be necessary to complete the work.

Progress Meetings

Veregy will set up routine coordination meetings with all of the subcontractors as appropriate for the phase of work occurring. Additionally, bi-weekly meetings will be held with the owners' representatives and Veregy to review progress to date and the project schedule, pending system outages and other work requiring close coordination as wells as system design questions and related issues.

Other Services from Veregy

Veregy will provide detailed engineering, engineering design review, construction management, on-site superintendent, permitting, commissioning, and training of facility personnel on new equipment and systems.

EPC SCHEDULE C GUARANTEE

Guarantee

“Guarantee” means the warranty and guarantee made by the ESCO in **EPC Article 14** that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in this **EPC Schedule C** which shall be equal to or greater than the Political Subdivision’s annual payments used to repay the project funding, as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in ESCO directly remunerating the Political Subdivision the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the Governing Body’s consent, which shall not be unreasonably withheld, ESCO may implement additional Utility Cost-Savings Measures or FIMs, at no cost to the Political Subdivision, which may generate additional annual cost savings in future years of the Performance Period to offset future Guaranteed Annual Cost Savings shortfall.

Guarantee Period

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO as set forth in **EPC Schedule D**.

Guaranteed Annual Cost Savings

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings, Guaranteed Annual Operations and Maintenance Cost Savings, and Annual Vehicle Fleet Operational and Fuel Cost Savings guaranteed by ESCO resulting from the Project that shall occur for each year of the Guarantee Period pursuant to this **EPC Schedule C**. Guaranteed Annual Utility Cost Savings shall be determined by ESCO’s Measurement and Verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in this **EPC Schedule C**.

Guaranteed Annual Operations and Maintenance Cost Savings

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the Political Subdivision’s operation and maintenance budget.

Guaranteed Annual Utility Cost Savings

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in **Schedule C**.

Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings

“Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings” means measurable and verifiable

ESCO guarantees that the Project shall result in Guaranteed Annual Cost Savings to the Political Subdivision, as indicated, for each year of the Guarantee Period, as presented in the following **Table C1**.

EPC SCHEDULE C

GUARANTEE

Table C1: Guaranteed Annual Cost Savings

Year	Guaranteed Annual Utility Cost Savings	Guaranteed Annual O&M Cost Savings	Guaranteed Annual Cost Savings
1	\$30,149	\$6,028	\$36,178
2	\$31,277	\$6,209	\$37,486
3	\$32,447	\$6,395	\$38,842
4	\$33,661	\$6,587	\$40,248
5	\$34,920	\$6,785	\$41,705
6	\$36,227	\$6,989	\$43,215
7	\$37,583	\$7,198	\$44,781
8	\$38,990	\$7,414	\$46,404
9	\$40,450	\$7,637	\$48,086
10	\$41,965	\$7,866	\$49,830
11	\$43,536	\$7,630	\$51,166
12	\$45,167	\$7,401	\$52,568
13	\$46,860	\$7,179	\$54,038
14	\$48,616	\$6,963	\$55,579
15	\$50,438	\$6,754	\$57,192
16	\$52,329	\$6,552	\$58,881
Totals	\$644,613	\$111,587	\$756,200

EPC SCHEDULE C GUARANTEE

Table C2: Baseline Rates and Annual Escalation Rates :

Year	Electricity kWh	Electricity kW	Natural Gas	M&V	Orchestrate Fee
Baseline Rates	\$0.050034 - \$0.123182	\$0 - \$17.79	\$0.800021508 - \$0.972782322	\$5,000	\$7,736
Year 1 Escalator (%)	4.0%	4.0%	4.0%	0.0%	0.0%
Year 2 Escalator (%)	4.0%	4.0%	4.0%	3.0%	3.0%
Year 3 Escalator (%)	4.0%	4.0%	4.0%	3.0%	3.0%
Year 4 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 5 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 6 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 7 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 8 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 9 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 10 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 11 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 12 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 13 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 14 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 15 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 16 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 17 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 18 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 19 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%
Year 20 Escalator (%)	4.0%	4.0%	4.0%	-	3.0%

EPC SCHEDULE C GUARANTEE

Table C3: Proposed Unit Savings and Guaranteed Annual Cost Savings for Project
For Year 1 by ECM

Utility Cost Savings Measure or FIM	Total energy savings (MMBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)	Electricity savings (MMBtu/yr)	Natural gas savings (Therms/yr)	Other energy savings (MMBtu/yr)	Total energy and water cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Lighting - LED	283	104,501	27	357	-738	-74	\$10,873	\$10,873
Building Envelope - Exterior Sealing/Door Sweeps	212	0	0	0	2,119	212	\$2,000	\$2,000
HVAC - Packaged Unit Upgrades	32	3,394	1	12	200	20	\$613	\$613
HVAC - VVT Systems	-91	2,815	0	10	-1,002	-100	\$0	\$0
Orchestrate - Wireless HVAC Controls	81	8,502	3	29	518	52	\$1,574	\$1,574
Orchestrate - Energy Tracer	0	0	0	0	0	0	\$0	\$0
Orchestrate - Facility Management	0	0	0	0	0	0	\$0	\$0
Solar - Rooftop Photovoltaic	399	117,068	0	399	0	0	\$15,089	\$15,089
Total savings	916	236,281	31	806	1,097	110	\$30,149	\$30,149
	Notes MMBtu=10 ⁶ Btu.							
	*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.							

EPC SCHEDULE D

MEASUREMENT AND VERIFICATION SERVICES PLAN

M&V Services

"M&V Services" means Services or activities relating to the measurement and verification by the ESCO of the efficiency and effectiveness of the Project, pursuant to this EPC Contract and the CEO Measurement and Verification Policy as applied.

This schedule shall use the following documents as a standard for presentation and reporting purposes.

EPC M&V Policy: Should the Political Subdivision wish to extend M&V services beyond the Guarantee Period per the M&V Term definition, the future additional annual costs to the Political Subdivision are presented in the table below. If the extended M&V costs beyond the Guarantee Period are not included in the Maximum Contract Price, they will be funded separately by the Political Subdivision.

Year	Guaranteed Annual Cost Savings	Annual Cost for M&V Services (Option A)	Annual Cost for M&V Services (Option B)	Annual Cost for M&V Services (Option C)	Annual Cost for M&V Services (Option D)	Annual Cost for M&V Services (Total)	M&V Cost Percent of Guaranteed Annual Savings
1	\$36,178	\$1,500	\$0	\$3,500	\$0	\$5,000	14%
2	\$37,486	\$1,545	\$0	\$3,605	\$0	\$5,150	14%
3	\$38,842	\$1,591	\$0	\$3,713	\$0	\$5,305	14%
4	\$40,248	\$0	\$0	\$0	\$0	\$0	0%
5	\$41,705	\$0	\$0	\$0	\$0	\$0	0%
6	\$43,215	\$0	\$0	\$0	\$0	\$0	0%
7	\$44,781	\$0	\$0	\$0	\$0	\$0	0%
8	\$46,404	\$0	\$0	\$0	\$0	\$0	0%
9	\$48,086	\$0	\$0	\$0	\$0	\$0	0%
10	\$49,830	\$0	\$0	\$0	\$0	\$0	0%
11	\$51,166	\$0	\$0	\$0	\$0	\$0	0%
12	\$52,568	\$0	\$0	\$0	\$0	\$0	0%
13	\$54,038	\$0	\$0	\$0	\$0	\$0	0%
14	\$55,579	\$0	\$0	\$0	\$0	\$0	0%
15	\$57,192	\$0	\$0	\$0	\$0	\$0	0%
16	\$58,881	\$0	\$0	\$0	\$0	\$0	0%
Total	\$756,200	\$4,636	\$0	\$10,818	\$0	\$15,455	2%

EPC SCHEDULE E

CODE COMPLIANCE REQUIREMENTS

Code Compliance Requirement

It is the intent of this schedule to initially determine the requirements for code review, construction permits, and the cost for said items with the building official and the code authority. An EPC project might include replacement of existing systems; it is not within the ESCO's or Principal Representative's authority to waive any code compliance or local permit requirements. The code official should be contacted after the list of recommended measures is developed to confirm the requirements and the potential cost of code work. While the code review agents are expected to conduct their work with due diligence, this in no way relieves the ESCO and any contractors from their obligations to design and construct the project in conformance with the adopted codes nor is it intended to transfer any duties, obligations, or liabilities of the design and construction teams to the code review agents.

Below is an example of a table to indicate code compliance requirements and cost. The total cost is indicated on EPC Schedule F.

Utility Cost Savings/FIM Measure	Code required (Y/N)	Documentation review cost (\$)	Field inspection/permit cost (\$)
Lighting - LED	N	\$0	\$0
Building Envelope - Exterior Sealing/Door Sweeps	N	\$0	\$0
HVAC - Packaged Unit Upgrades	N	\$50	\$685
HVAC - VVT Systems	N	\$0	\$0
Orchestrate - Wireless HVAC Controls	N	\$0	\$0
Orchestrate - Energy Tracer	N	\$0	\$0
Orchestrate - Facility Management	N	\$0	\$0
Solar - Rooftop Photovoltaic	Y	\$3,534	\$3,491
Total cost		\$3,584	\$4,176

Detail of Schedule of Values					Totals of Work Completed and Stored to Date				
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
Measure #	Description of Work	Material	Labor and Other	Totals	Materials onsite, but not in place	WORK IN PLACE		Total Amount Due to Date	% Complete and in Place
				(C + D)		Material	Labor and Other	(F+G+H)	(I / E)
1	Lighting - LED	\$52,175	\$28,094	\$80,269				\$0	0%
2	Building Envelope - Exterior Sealing/Door Sweeps	\$14,560	\$17,796	\$32,356				\$0	0%
3	HVAC - Packaged Unit Upgrades	\$57,476	\$70,248	\$127,724				\$0	0%
4	HVAC - VVT Systems	\$61,984	\$75,758	\$137,742				\$0	0%
5	Orchestrate - Wireless HVAC Controls	\$85,026	\$69,567	\$154,593				\$0	0%
6	Orchestrate - Energy Tracer	\$818	\$4,634	\$5,452				\$0	0%
7	Orchestrate - Facility Management	\$7,387	\$9,029	\$16,416				\$0	0%
8	Solar - Rooftop Photovoltaic	\$362,308	\$296,434	\$658,741				\$0	0%
	IGA Audit Fee			\$9,200				\$0	0%
	Bonds			\$13,217				\$0	0%
	Permits / Code Compliance			\$7,759				\$0	0%
	FIXED LIMIT OF CONSTRUCTION	\$641,734	\$571,560	\$1,243,470	\$0	\$0	\$0	\$0	0%
	CONTIGENCY			\$78,257					
	MEASUREMENT & VERIFICATION FEE			\$15,455	\$0				
	AMENDMENTS/CHANGE ORDER DEDUCTIONS			\$0				\$0	#DIV/0!
	AMENDMENTS/CHANGE ORDER ADDITIONS			\$0				\$0	#DIV/0!
	PRESENT CONTRACT TOTALS (MCP)	\$641,734	\$571,560	\$1,337,181	\$0	\$0	\$0	\$0	0%

EPC Schedule G: Proposed Financial Cost and Cash Flow Analysis

The tables below are examples of information that should be included in the Projected Financial Cost and Cash Flow Analysis schedule. The presented information could be new on the table or copied/summarized from previous schedules. The ESCO should complete this table, or present equivalent information in any format provided that it presents all the required information.

Projected Financial Performance		
Investment Grade Audit (IGA)	\$8,125	IGA Contract, Exhibit B
Fixed Limit of Construction	\$1,243,470	Schedule F
Measurement & Verification Fee	\$15,455	Schedule D
Contingency	\$78,257	Schedule B
Maximum Contract Price (MCP) (total of items above)	\$1,337,181	
Rebates (minimum amount guaranteed by ESCO)	\$0	Schedule B
Political Subdivision Cash Contribution (one time, not annual)	\$250,000	Schedule F
Measurement & Verification Fee (Same as above, M&V is not Financed)	\$15,455	Schedule D
Other Political Subdivision Funds (gifts, grants, donations, etc.),	\$500,000	Schedule F
Total Amount Financed (MCP minus items above)	\$571,726	
Financial Term in Years	16	Other items
Projected Interest Rate	4.50%	Other items
Projected Escalation Rate	4.00%	Other items

CASH FLOW TABLE									
Year (1)	Annual Utility Cost Savings(2)	Annual Operational & Maintenance Cost Savings(3)	Total Rebates(4)	Total Program Savings(5)	Payment to Lessor(6)	Measurement and Verification Fee(7)	Orchestrate Fee	Total Program Costs(8)	Net Savings(9)
1	\$30,149	\$6,028	\$9,200	\$45,378	\$40,378	\$5,000	Included	\$45,378	\$0
2	\$31,277	\$6,209	\$183,144	\$220,630	\$207,744	\$5,150	\$7,736	\$220,630	\$0
3	\$32,447	\$6,395	\$0	\$38,842	\$25,570	\$5,305	\$7,968	\$38,842	\$0
4	\$33,661	\$6,587	\$0	\$40,248	\$32,041	\$0	\$8,207	\$40,248	\$0
5	\$34,920	\$6,785	\$0	\$41,705	\$33,252	\$0	\$8,453	\$41,705	\$0
6	\$36,227	\$6,989	\$0	\$43,215	\$34,508	\$0	\$8,707	\$43,215	\$0
7	\$37,583	\$7,198	\$0	\$44,781	\$35,813	\$0	\$8,968	\$44,781	\$0
8	\$38,990	\$7,414	\$0	\$46,404	\$37,167	\$0	\$9,237	\$46,404	\$0
9	\$40,450	\$7,637	\$0	\$48,086	\$38,572	\$0	\$9,514	\$48,086	\$0
10	\$41,965	\$7,866	\$0	\$49,830	\$40,030	\$0	\$9,800	\$49,830	\$0
11	\$43,536	\$7,630	\$0	\$51,166	\$41,072	\$0	\$10,094	\$51,166	\$0
12	\$45,167	\$7,401	\$0	\$52,568	\$42,172	\$0	\$10,397	\$52,568	\$0
13	\$46,860	\$7,179	\$0	\$54,038	\$43,330	\$0	\$10,708	\$54,038	\$0
14	\$48,616	\$6,963	\$0	\$55,579	\$44,549	\$0	\$11,030	\$55,579	\$0
15	\$50,438	\$6,754	\$0	\$57,192	\$45,832	\$0	\$11,361	\$57,192	\$0
Final year	\$52,329	\$6,552	\$0	\$58,881	\$28,005	\$0	\$11,701	\$39,706	\$19,175
Totals	\$644,613	\$111,587	\$192,344	\$948,544	\$770,034	\$15,455	\$143,881	\$929,369	\$19,175

Notes: edit/update notes for any additional columns									
(1) Years starting with the first Guarantee Period through end of Financing Term.									
(2) <i>Guaranteed Annual Utility Cost Savings</i> as per Schedule C.									
(3) <i>Guaranteed Annual</i> Operational and Maintenance Savings as per Schedule B.									
(4) <i>Total Estimated Rebates</i> .									
(5) <i>Total Guaranteed Annual Cost Savings</i> are the sum of Utility, O&M, and Vehicle Savings.									
(6) <i>Payment to Lessor</i> is based on a Project Interest Rate as indicated. Actual rate will be determined at closing.									
(7) <i>Annual Measurement and Verification Fee</i> as shown on Schedule D.									
(8) <i>Total Program Costs</i> are the sum of Columns (5, 6, and 7).									
(9) <i>Net Savings</i> equals <i>Total Program Savings</i> less <i>Total Program Costs</i> . Shall be positive each year as required by Statute.									

EPC SCHEDULE H

Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term

The table below is an example of the information and calculations to determine the Cost-Weighted Average Service Life of utility cost-savings equipment (**EPC Article 1-X (iv)**).

Utility Cost-Saving Measure or Facility Improvement Measure ⁽¹⁾	Construction Cost ⁽²⁾	Service Life ⁽³⁾	Source of Service Life Value ⁽⁴⁾	Average Service Life Value ⁽⁵⁾
Lighting - LED	\$87,515	12	DEER	0.8
Building Envelope - Exterior Sealing/Door Sweeps	\$35,277	10	DEER	0.3
HVAC - Packaged Unit Upgrades	\$139,255	15	DEER	1.6
HVAC - VVT Systems	\$150,177	15	DEER	1.7
Orchestrate - Wireless HVAC Controls	\$168,549	15	DEER	1.9
Orchestrate - Energy Tracer	\$5,944	0	DEER	0.0
Orchestrate - Facility Management	\$16,800	0	DEER	0.0
Solar - Rooftop Photovoltaic	\$718,210	25	Warranty	13.6
Total Construction Cost⁽⁶⁾	\$1,321,726			
Cost-Weighted Average Service of all ECM/FIMs⁽⁷⁾				19.8
Financing Agreement Term⁽⁸⁾				16

<i>Notes</i>
(1) Final Accepted List of Improvements
(2) Construction Cost as defined on the CEO Cost Estimating Tool
(3) Service Life (indicate source of service life by ECM on the following table)
(4) Provide an abbreviation of the source, then below this table the source full name, date of publication, and any additional information necessary to confirm the value
(5) Formula: Cost of Improvement multiplied by Service Life then divided by Total Construction Cost
(6) Total Construction Cost per CEO Cost Estimating Tool
(7) Total of ECM/FIM Individual Average Service Life Values
<i>Formula: Cost-Weighted Average Service Life = $\sum$ each ECM $\div$ total construction cost $\times$ service life</i>
(8) Financing Agreement Term from final Principal Representative financing documents
(Section 24-30-2001(1)(d),C.R.S. states that the maximum term of the payments shall be less than the Cost-Weighted Average Useful (service) Life of utility cost-savings equipment for which the contract is made, not to exceed 25 years)

EPC SCHEDULE I

RECORD OF REVIEWS (LOCAL GOVERNMENTS)

This review process is required for all Energy Performance Contracting (EPC) work with any state agencies or Political Subdivisions participating in the Colorado Energy Performance Contracting Program (CEPCP). This document outlines and tracks selected items reviewed by the Colorado Energy Office and/or its Consultants and the Office of the State Architect (OSA), as applicable, of the Investment Grade Audit (IGA) and EPC Project Proposal contract, the IGA Audit Report and EPC Project Proposal, and the EPC documents. These reviews are not legal reviews of the documents and do not replace the Political Subdivision's legal review. The financing proposal (bank loan, bonds, internal funds, or other financing method) is not included in the CEO/OSA review. State agencies shall consult with the State Treasury's office for any financial review/reporting requirements. Political Subdivisions shall perform their own review of the financing proposal.

INVESTMENT GRADE AUDIT CONTRACT (this review shall be completed by a CEPCP member, the Principal Representative of the Governing Body of the Political Subdivision, and, as necessary, the OSA, prior to the ESCO signing the IGA contract)

The IGA Contract review establishes:

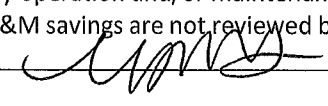
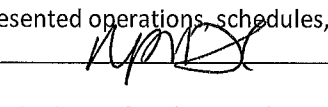
- Confirmation that the CEPCP-provided IGA contract and exhibits are being used;
- Scope of Work (IGA Exhibit A) if modified, was only modified within the generally historically allowed changes with approval of the client, the CEPCP reviewer, and OSA as applicable;
- ESCO cost and pricing elements are within the boundaries of the EPC base agreement contract with CEPCP program; and
- No additions, subtractions, or changes have been made to the IGA contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, and OSA as applicable.

CEPCP Reviewer: Charlie Stevens Date Completed: 11/6/2024
Reviewers Comments: _____

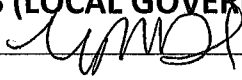
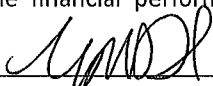
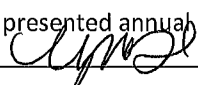
Client Reviewer: Madeline VanDenH Date Completed: 12/6/24
Reviewers Comments: _____

INVESTMENT GRADE AUDIT REPORT AND PROJECT PROPOSAL (This review shall be completed by a CEPCP member, the Principal Representative, and, as necessary, OSA, prior to finalizing the EPC Project Proposal for an EPC contract)

IGA report review addressed the following:

- IGA has met the minimum requirements as outlined in the CEPCP IGA Exhibit A, Scope of Work;
- Verifies compliance with all applicable legislation for state governments;
- Reviews existing operational assumptions and adds notes as necessary to the Principal Representative and ESCO verifying assumptions are confirmed by the Principal Representative;
- Confirms that adequate technical details follow appropriate methodologies and assumptions used to calculate savings (utility usage reduction) for each Utility Cost Savings Measure or FIM;
- Confirms costs document: engineering/design costs, contractor/vendor estimates, fees, estimated code compliance cost, etc.
- Principal Representative confirms that any operation and/or maintenance (O&M) savings proposed by the ESCO are acceptable. The sufficiency of O&M savings are not reviewed by the CEPCP;
 - Principal Representative Signature 
 - Date: 12/6/24
- Principal Representative confirms that presented operations, schedules, set points, etc. are acceptable.
 - Principal Representative Signature 
 - Date: 12/6/24
- Principal Representative confirms commissioning, M&V plans, and any non-verified calculated savings, are in compliance with the CEPCP and that the Principal Representative understands and accepts these items and schedules.

EPC SCHEDULE I
RECORD OF REVIEWS (LOCAL GOVERNMENTS)

- Principal Representative Signature 
- Date: 12/6/24
- Principal Representative confirms, when applicable, the Principal Representative's annual or one-time monetary contributions are included in the financial performance schedule. The sufficiency of such contributions is not reviewed by the CEPCP.
 - Principal Representative Signature 
 - Date: 12/6/24
- Principal Representative confirms acceptance of presented annual utility and inflation escalation rates.
 - Principal Representative Signature 
 - Date: 12/6/24

CEPCP Reviewer: Charlie Stevens

Date Completed: 11/6/2024

Reviewers Comments: _____

Principal Representative Reviewer: Madeline VanDenthoek

Date Completed: 12/6/24

Reviewers Comments: _____

ENERGY PERFORMANCE CONTRACT (this shall be completed by a CEPCP member, the Principal Representative, and as necessary, OSA, prior to the ESCO signing the contract)

The EPC review establishes the following:

- Confirms that the CEPCP provided EPC contract and schedules are being used;
- ESCO cost and pricing elements are within the boundaries of their EPC base agreement contract with CEPCP;
- No additions, subtractions, or changes have been made to the contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, a Principal Representative legal review, and Principal Representative Controller (or equivalent);
- If modified, all modifications, updates, additions to the schedules and exhibits are within the generally historically allowed changes. All changes are tracked until accepted by CEPCP reviewer and OSA as applicable; and
- Confirms the pro-forma schedule includes all known Principal Representative funds, utility rebates, other grant funds, and all potential cost through the length of the loan.

CEPCP Reviewer: Charlie Stevens

Date Completed: 11/6/2024

Reviewers Comments: _____

Principal Representative Reviewer:  Madeline VanDenthoek

Date Completed: 12/6/24

Reviewers Comments: _____

EPC SCHEDULE I

RECORD OF REVIEWS (LOCAL GOVERNMENTS)

OFFICE OF THE STATE ARCHITECT REVIEW

For all State Agency Contracts (Executive Departments and Institutions of Higher Education)

As indicated in the Letter of Delegation State Buildings Programs/Office of the State Architect to executive departments and institutions of higher education, OSA requires a review of the EPC contract and all its attached documents prior to the Principal Representative signing the EPC contract. The State Personnel Director or the State Personnel Director's designee (Office of the State Architect) has authorized the State to enter into a contract for energy analysis and recommendations pertaining to measures that would significantly increase utility and operations cost savings in the Premises, pursuant to **§24-30-2002, C.R.S.**

The OSA review includes;

- Confirmation that the CEPCP reviewer has completed and accepted the IGA Project Proposal, the utility savings guarantee, the measurement and verification plan, and all appropriate schedules;
- All additions, subtractions, or changes that were proposed to the contract have been tracked for review by the State Controller's Office and the State Attorney General's Office; and
- Modification of such agreements shall be limited to modifications historically permitted by OSA/State regarding project description; scope of work, payment provisions, etc., and does not include modification of standard "boilerplate" language in the contract except as otherwise agreed as between the parties.

OSA Reviewer: N/A

Date Completed:

Reviewers

Comments:

SCHEDULE J

CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS

Political Subdivisor Town of Monument

Project No./Name: Town of Monument Energy Performance Contracting (EPC)

A. CERTIFICATION STATEMENT CRS 8-17.5-101 & 102 (HB 06-1343, SB 08-193)

The Vendor, whose name and signature appear below, certifies and agrees as follows:

1. The Vendor shall comply with the provisions of CRS 8-17.5-101 et seq. The Vendor shall not knowingly employ or contract with an unauthorized immigrant to perform work for the State or enter into a contract with a subcontractor that knowingly employs or contracts with an unauthorized immigrant.
2. The Vendor certifies that it does not now knowingly employ or contract with and unauthorized immigrant who will perform work under this contract, and that it will participate in either (i) the "E-Verify Program", jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired to perform work under this contract.
3. The Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Vendor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate work for breach and the Vendor shall be liable for damages to the State.

CERTIFIED and AGREED to this _____ day of _____.
VENDOR:

Vendor Full Legal Name

BY: _____

Signature of Authorized Representative

Title

EPC SCHEDULE K
Certificate of Insurance (Including Professional Errors And Omissions
Liability Insurance)

To be completed following project acceptance.

EPC SCHEDULE L
Performance Bond (SC-6.22)

To be completed following project acceptance.

EPC SCHEDULE M
Labor and Material Payment Bond (SC-6.221)

To be completed following project acceptance.

EPC SCHEDULE N

Standards of Comfort

Contractor shall provide and ensure that each facility on the Premises maintains the following Standards of Comfort after completion of the Construction Project Work:

Lighting

Contractor will be performing a lighting retrofit project that will produce at a minimum light levels equivalent to current conditions. New lighting needs to meet IES design standards. In most cases the retrofits will produce improved light quality and increased lumen output.

Over

time, lumen depreciation and lamp/ballast failures may reduce the lighting levels in certain areas.

CLIENT assumes the responsibility for the normal maintenance of the systems and replacing equipment that is no longer providing adequate illumination once the equipment has passed its original warranty period.

EPC SCHEDULE O

Client Construction Specifications

Specific client construction specifications not provided. Project to follow procedures outlined in General Conditions, Schedule A and Schedule B, Scope of Work.

Comments:

Waiting on Political Subdivision for General Conditions

EPC SCHEDULE P
Contractors Intellectual Property

Software and other works purchased or developed by Contractor which is not specifically indicated as deliverables under this contract's Scope of Work will remain Contractor Intellectual Property per §1(O). Any software or property hosted by Contractor, to which Principal Representative may be granted access, remains Contractor Intellectual Property. Contractor is not expected to deliver, in part or whole, any of Contractor property not specifically indicated in the Scope of Work.

EPC SCHEDULE Q

System Start-up and Commissioning

All devices installed will be thoroughly commissioned either on a point-by-point basis or on a sampling basis as agreed to by the Political Subdivision. Political Subdivision personnel are invited to attend all start-up and commissioning activities. Full commissioning reports will be provided. The operating parameters of the installed equipment will be provided in the Operation and Maintenance Manuals. Commissioning of the installed systems is intended to verify that the systems are functioning according to design.

The final commissioning plan will be submitted shortly after the finalization of the design process. The commissioning plan will be submitted to the Political Subdivision for review and approval prior to the initiation of implementation.

The following is a list of steps that will be taken to commission the installed equipment.

- Design and specify the systems so that complete system commissioning can be performed.
- Produce commissioning forms for each system to be commissioned.
 - The sequence of operations will be put into a form that will allow the commissioning agent to check off each component of a system.
- Perform system commissioning with the owner, engineer, contractor and commissioning agent present.
- Complete documentation (Commissioning Report) to go along with the O&M.
- Completing the process with system training.

EPC SCHEDULE R

Contractor Training Responsibilities

Contractor will provide training on operation of all new equipment. Training is conducted simultaneously with construction and commissioning activities including but not limited to the HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals.

Training involving startup of the equipment will be conducted with manufacturer representatives and Contractor. All other training activities will be conducted by Contractor personnel unless previously approved by the Owner and Contractor. Location of training activities will be conducted at predetermined agreed upon locations pertinent to the type of training. Contractor will provide sign-up sheets and agendas for each session. All training performed by Contractor will meet minimum standards established by manufacturers.

The final training plan will be submitted shortly after the finalization of the design process. The training plan will be submitted to the Political Subdivision for review and approval prior to the initiation of implementation for any ECM.

EPC SCHEDULE S

Political Subdivision's Maintenance Responsibilities

As noted in Schedule R of this contract Contractor will provide training and documentation relative to all equipment installed under this performance contract prior to substantial completion of the project. Please find below a brief explanation of the Political Subdivision's anticipated maintenance and operational responsibilities by measure:

ECM 1 – LED Lighting

The Political Subdivision will be required to maintain the newly installed lighting system through the replacement of failed equipment with like originally installed equipment. Like original installed equipment shall be of a maximum wattage as defined in the Scope of Work.

ECM 2 – Orchestrate

The Political Subdivision is responsible for reporting to Contractor any changes made to the existing controls or set points.

ECM 3 – Needlepoint Bipolar Ionization

The Political Subdivision will be required to maintain the newly installed needlepoint bipolar ionization unit per the manufacturer's recommendations at the manufacturer's recommended intervals.

ECM 4 – Water Efficiency Upgrades

The Political Subdivision will be required to maintain the newly installed water systems through the replacement of failed equipment with like originally installed equipment. Like original installed equipment shall be of a maximum flow/flush rates as defined in the Scope of Work.

ECM 5 – PV Solar

The Political Subdivision will be required to maintain the newly installed solar panels and inverters per the manufacturer's recommendations at the manufacturer's recommended intervals.

Schedule T
Notice of Substantial Completion

Notice of Substantial Completion (per ECM / FIM)

Date of Notice _____

Local Government Entity: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that **Local Government Entity** accepts the installed equipment for ECM / FIM _____ and establishes a warranty period start date of _____.

Local Government Entity Name

By _____

Title _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by **Local Government Entity Name**.

Schedule U
Notice of Final Acceptance

Notice of Final Acceptance

Date of Notice _____

Local Government Entity: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that **Local Government Entity** accepts the Project and establishes a Performance Commencement Date of _____.

Local Government Entity Name

By _____

Title _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by **Local Government Entity Name**.