



MONUMENT TOWN COUNCIL REGULAR MEETING AGENDA

MONDAY, JULY 7, 2025 – 5:30 PM

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

Participate Via [Microsoft Teams](#)

Participate Via Telephone: 719-300-6099 ID 274 085 181#

[Council Packet](#)

1. Study Session Starting at 5:30 PM:

- a. Economic Development Goals and Objectives

2. Call Regular Meeting to Order at 6:30 PM, Pledge of Allegiance, Roll Call:

3. 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*)

4. Approval of the Consent Agenda:

- a. Agenda - July 7, 2025
- b. Meeting Minutes - June 16, 2025
- c. Invoices Over \$25K
- d. Resolution No. 39-2025 - A Resolution Approving a Contract With A-One Chipseal for the 2025 Capital Chipseal Projects - (*Andrew Archuleta*)

5. Presentations:

- a. Dark Sky - (*Dan Ungerleider*)

6. Ordinances: *Public Hearing(s) Required*

- a. Ordinance No. 12-2025 - An Ordinance Repealing and Readopting Title 13 of the Monument Municipal Code - (*Jennifer Phillips & Thomas Tharnish*)
- b. Ordinance No. 13-2025 - An Ordinance Repeal and Readopting Title 6 of the Monument Municipal Code - (*Jennifer Phillips*)
- c. Ordinance No. 14-2025 - An Ordinance Approving a Real Property Transfer from El Paso County and Entering Into Intergovernmental Agreement Accepting Obligations Related Thereto - (*Dan Ungerleider*)

7. Resolutions:

- a. Resolution No. 44-2025 - A Resolution Appointing A Member to the Planning Commission - (*Dan Ungerleider*)
- b. Resolution No. 45-2025 - A Resolution to Approve a Change Order to CXT for the Monument Lake Bathrooms - (*Cassie Olgren*)

c. Resolution No. 46-2025 - Resolution Approving Addendum to #1 To The Consulting Services Agreement with JDS-Hydro Consultants Inc., A Respec Company Dated 12/7/2020 - *(Thomas Tharnish)*

d. Resolution No. 47-2025 - A Resolution Approving and Engineering Services Agreement with JDS-Hydro Consultants Inc., a Respec Company to Design Two New Pipelines to the Monument Hill Tank - *(Thomas Tharnish)*

8. Discussion Items:

a. Contract Between the Town of Monument and Native Sun Construction for the Iron Removal Project at Well 11, 12, and 13 - *(Thomas Tharnish)*

b. Introduction of Neighborhood Commercial District in Consideration of Gold Canyon Property and Other Similar Properties - *(Dan Ungerleider)*

c. 2026 Pikes Peak Enterprise Zone Redesignation - *(Madeline VanDenHoek)*

9. 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.*

10. Future Agenda Item Authorization:

11. Council Comments:

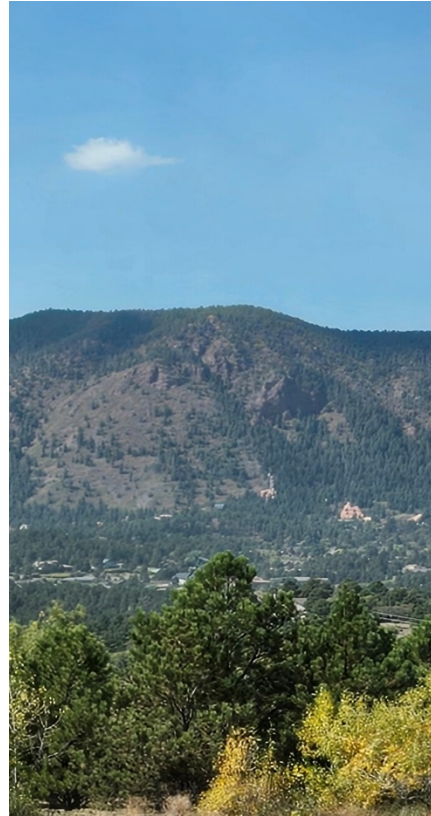
12. Executive Sessions:

a. Executive Session Pursuant to §24-6-402(4)(b), C.R.S. for a Conference with the Town Attorney to Receive Legal Advice on Specific Legal Questions Regarding Annexation - *(Town Attorney)*

13. Adjournment:

Economic Development

7/7/2025 - Town Council Workshop



Developing Economic Development Strategies for the **Town of Monument**

Tonight's Study Session Objectives

- Overview of Existing Economic Development Strategies
- Explore Core Principles in Local Economic Development Programming
- Review Key Objectives in Local Economic Development Programming
- Discuss Economic Development Goals for 2025/2026
- Next Steps



Developing the Town of Monument's Economic Development Strategies



Use Existing Town Tools

- **A Vision for Governance – Strategic Leadership Priorities**

Pillars to Govern By

- **ENSURE LONG TERM FINANCIAL HEALTH AND SUSTAINABILITY:** Take steps to support long-range financial health, forecasting and sustainability to ensure efficient and resilient town services and invest in the Monument community.
 - **STRENGTHEN COMMUNITY ENGAGEMENT:** Enhance community engagement, focused on strengthening communication and collaboration with Monument residents, neighboring communities and partners, and town administration.
 - **ENABLE RESPONSIBLE COMMUNITY DEVELOPMENT:** Establish clear and accountable plans, processes and procedures that create positive conditions for responsible and enduring community development and growth.
 - **REINFORCE A POSITIVE WORK CULTURE:** Continue to promote a positive and professional work culture within the town administration that attracts and retains top talent and further enhances the high-quality services provided to the Monument community.
- **Planning for the Future – Monument 2040**
What does the Town want to be in 20 years and how does it get there
 - **Planning For Fiscal Resiliency – Budgeting for Success**
Affording the desired level of service without breaking the bank



Explore Core Principles in Local Economic Development Programming

- **Collaboration** – bridge boundaries across diverse places, sectors, disciplines, identities, and interests.
- **Community-Driven Practice and Power** – empower and center those individuals and groups most directly affected by initiatives in every stage—planning, implementation, and evaluation.
- **Sustainability** – prioritize cultural, social, economic, and environmental impacts of both actions and inactions over time.
- **Local Focus** – support existing enterprises as the primary source of business expansion and local job growth, recognizing that a community's most valuable assets are those it already possesses.
- **Long-Term Investment** – evaluate economic development programs, investments, and subsidies based on their sustained benefits and overall community impact, rather than solely on short-term job or revenue increases.



Explore Core Principles in Local Economic Development Programming

- **Human Investment** – recognize the critical value of human resources in the information age, emphasize providing lifelong skills and learning opportunities.
- **Environmental and Corporate Responsibility** – ensure economic development initiatives maintain or improve environmental and public health and encourage enterprises to act as responsible civic partners within their operating communities.
- **Livable Communities** – promote business opportunities that facilitate walking, bicycling, and transit access to essential services.
- **Regional Collaboration** – acknowledge industries, transportation, and natural resources operate at a regional scale, requiring regional collaboration while respecting local character and identity.



Review Key Objectives in Local Economic Development Programming

- **Enhancing Competitiveness** – improve the local investment climate and increasing the productivity and competitiveness of local businesses, entrepreneurs, and workers.
- **Increasing Sustainable and Inclusive Growth** – ensure economic progress benefits all segments of the community, while also considering long-term environmental and social impacts.
- **Job Creation and Retention** – create new employment opportunities for all local residents and local business employees, and to retain existing jobs within the community.
- **Expanding the Tax Base and Revenue** – improve service delivery and the provision of enhanced public facilities by broadening the local authority's tax and revenue base.



Review Key Objectives in Local Economic Development Programming

- **Supporting Local Businesses and Entrepreneurship** – actively encourage the establishment of new enterprises, provide robust support for small and medium-sized businesses, and attract external investment.
- **Diversifying the Local Economy** – build economic resilience by providing diverse employment opportunities that align with the existing local human resource base.
- **Improving Quality of Life** – prioritize a holistic approach that encompasses better services, enhanced facilities, and an overall improvement in the well-being of residents.
- **Good Governance** – encourage transparent, efficient, and accountable local government involvement in economic development processes.



Discuss Economic Development Goals for 2025-2026

- Smart, strategic community development
- Partnerships
- Communication/Marketing
- Strategic Planning & Financing



Smart, strategic community development

Strategic Objectives:

- Be proactive and build a broadly held local vision -
 - Complete Monument 2040 Comprehensive Plan by December 2026 which will prepare the Town for development and embrace change. This is a multi-faceted and long-term approach.
- Update Town Codes related to business attraction, expansion and retention by December 2026
- Engage the community to build the future - Create Economic Development Citizens Committee - by September 2025
- Create opportunities to build tomorrow's community leaders - by December 2026



Partnerships

Strategic Objectives:

- Build and maintain partnerships - take a regional approach by identifying opportunities and partnerships beyond the Town boundaries, including public private partnerships – On-going
- Business Retention & Expansion – Visit businesses to gather information on their experiences and needs – on going
- Collaborate with the new Polaris Hotel and other hotels nearby to add Monument to their list of attractions and destinations by December 2025



Communication/Marketing

Strategic Objectives:

- Develop a communications plan that highlights Monuments assets through media, radio, social media, articles, etc. - by December 2025
 - Publish Economic Development success stories
 - Measure and celebrate business successes - new businesses, expansions, anniversaries, etc.
 - Reinvigorate the public art program with a marketing campaign to bring new awareness
- Identify Monument's location as an economic development strategy - access to trails, hiking, biking, lake, fishing, paddleboarding, etc. By December 2025



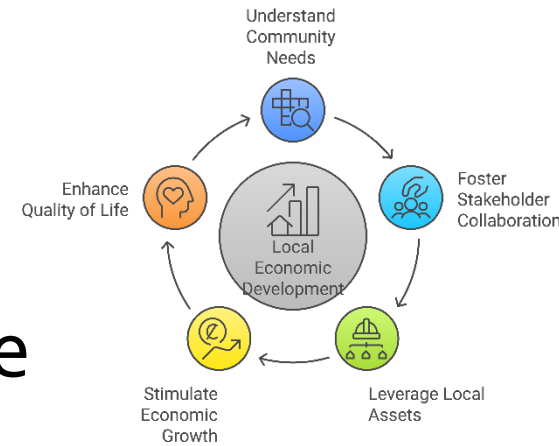
Strategic planning and financing

Strategic Objectives:

- Engage/track the State's Front Range Passenger Rail Project - seek opportunities to initiate discussions for a train station in Monument – very long term, but begin engagement in 2025
 - A passenger service rail linking Pueblo, Colorado Springs and Fort Collins to Denver—a 173-mile corridor that contains the majority of Colorado's population—will benefit all Coloradans. The project would be the transportation "spine" along the Front Range.
- Work with CDOT to envision opportunities for the Park and Ride property – begin engagement by September 2025
- Create a strategy for identifying grant opportunities for pre-identified initiatives - proactive grant administration - by December 2025



Developing the Town of Monument's Economic Development Strategies – Next Steps



- Create a Local Economic Development Committee
 - **Vision:**

The vision of the Monument Economic Development Committee is a healthy, vibrant, and sustainable economic environment within the Town of Monument.
 - **Mission:**

The mission of the Monument Economic Development Committee is to recommend to Town Council plans of action to grow and support economic activity in the Town.
- Establish Defined 2025-2026 Goals and Strategic Objectives



MONUMENT TOWN COUNCIL MINUTES

Monday, June 16, 2025 - 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 Mitch LaKind called 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 Councilmembers and Staff were present for the meeting:

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

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)*
- None submitted.

3. Approval of the Consent Agenda:

- a. Agenda - June 16, 2025
 - b. Meeting Minutes - June 2, 2025
 - c. Resolution No. 39-2025 - A Resolution Approving a Contract With A-One Chipseal for the 2025 Capital Chipseal Projects - *(Andrew Archuleta)*
- Resolution was removed from the consent agenda until the contract states the

dollar amount of contract is not to exceed \$100,000. Archuleta to modify and resubmit Resolution.

d. Approving Jacobs Engineering Group Work Order No. 12 for the Development and Delivery of a Plat of Annexation for Beacon Lite Road for the Total Amount of \$29,085.00 - *(Dan Ungerleider)*

- Mayor Mitch LaKind asked to remove Resolution 39-2025 as it does not have language pertaining to "not exceed". Councilmember Marco Fiorito made a motion to approve the consent agenda as with the modification of removing Resolution 3-2025, the motion was seconded by Councilmember Laura Kronick. Roll call vote was taken and the motion passed Yes 6, No 0, Abstained 0.

4. Discussion Items:

- a. Interview Candidate(s) Seeking Town Council Appointment
- Mr. Chad Smith applied for Town Council Appointment; The Town Council conducted an interview.

5. Resolutions:

- a. Resolution No. 42-2025 - A Resolution Appointing One Councilmember At-Large To Fill A Vacancy for The Town of Monument - *(Tina Erickson)*
 - Councilmember Laura Kronick made a motion to approve Resolution No. 42-2025 and the motion was seconded by Mayor Pro Tem Steve King. Roll call vote was taken and the motion passed Yes 6, No 0, Abstained 0. Mr. Chad Smith was approved as Councilmember At-Large and the oath of office taken. Town Clerk Erickson gave the oath of office.
 - Council took brief recess to seat newly appointed Councilmemeber Smith at 6:47pm.
 - Council resumed meeting at 6:52pm.
- b. Resolution No. 40-2025 - A Resolution Authorizing an Agreement with Willdan Financial Services For Consultant Services to Conduct Cost Allocation Plan and Fee Study - *(Jennifer Phillips)*
 - Phillips presented Resolution No. 40-2025 as included in the Council packet. Phillips provides information about what the purpose of the cost allocation plan is and why a third party is necessary. Purpose of fee study: last fee study 2016 for user fees and charges. Fee study will be a policy and the Council can determine the fees. Councilmember Laura Kronick asked if the allocation process was previously conducted. Phillips indicates this would allow more spending

transparency. Mayor Pro Tem Steven King congratulates the staff on their dedication to improving the Town. Fiorito asked if the Town intends to have fees increases. Councilmember Sana Abbott made a motion to approve Resolution No. 40-2025 and the motion was seconded by Councilmember Laura Kronick. Roll call vote was taken and the motion passed Yes 7, No 0, Abstained 0.

c. Resolution No. 41-2025 - A Resolution Authorizing An Agreement With Willdan Financial Services For Consultant Services to Conduct Water Rate Study -(Jennifer Phillips)

- Phillips presented Resolution No. 41-2025 as included in the Council packets. Rate study is a financial analysis of future rates. It is an enterprise fund to examine costs, maintenance, capital improvements and full cost. Model will remain with Town. Councilmember Laura Kronick made a motion to approve Resolution No. 41-2025 and the motion was seconded by Mayor Pro Tem Steve King. Roll call vote was taken and the motion passed Yes 7, No 0, Abstained 0.

d. PUBLIC HEARING on Resolution No. 43-2025 - A Resolution Setting Forth Findings of Fact and Conclusions Regarding the Old Denver Road Annexation - (Dan Ungerleider)

- Ungerleider presented Resolution No. 43-2025 as included in the Council packet. Per Ungerleider, the annexation is in compliance. Mayor Mitch LaKind opened the public hearing for comment; No comments made; Mayor Mitch LaKind closed the public hearing. Councilmember Sana Abbott made a motion to approve Resolution No. 43-2025 and the motion was seconded by Mayor Pro Tem Steve King. Roll call vote was taken and the motion passed Yes 7, No 0, Abstained 0.

6. Ordinances: Public Hearing(s) Required

a. Ordinance No. 11-2025 - An Ordinance Annexing Certain Lands Known as The Old Denver Road Annexation to The Town of Monument, Colorado - (Dan Ungerleider)

- Ungerleider presented Ordinance No. 11-2025 as included in Council packet. Second, step to the annexation. Mayor Mitch LaKind opened the public hearing; No comments from public. Mayor Mitch LaKind closed the public hearing. Councilmember Marco Fiorito made a motion to approve Ordinance No. 11-2025 and the motion was seconded by Councilmember Chad Smith. Roll call vote was taken and the motion passed Yes 7, No 0, Abstained 0.

7. 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.

- Bill Wysong invites public for cafe with the Commissioner on June 21, 2025 at Wesley Owens from 9:30am to 11:00am.

8. Future Agenda Item Authorization:

- Town Manager commented on the Pikes Peak Office of Outdoor Recreation Alliance Presentation; new plan late July or early August.

9. Reports:

a. Town Manager's Monthly Report - *(Madeline VanDenHoek)*

- Town Manager highlighting the monthly report.
- Town Manager gives appreciation to staff and Council.
- Mayor Mitch LaKind made a motion to modify the agenda and re-order executive session and adjournment. The motion was seconded by Councilmember Laura Kronick. Roll call vote was taken and the motion passed Yes 7, No 0, Abstained 0.

10. Council Comments:

- Kronick made comment regarding public service and lack of community response. How she believes council should be paid.
- Boy scouts are present at council meeting to get badges in communication.
- Mayor Pro Tem King states how the community is being impacted by construction on Beacon Lite and how to respond to media questions. King request guidance from Attorney Bob Cole on how to respond to the media's questions to respond to this matter. Attorney Cole asked council members to speak to the council and get approval from them before answering and have well-thought-out answers. Kimple supports King to speak to the media and give history of issues. Kronick, Smith and Abbott supports.

12. Executive Session:

a. Executive Session Pursuant to §24-6-402(4)(b), C.R.S. for a Conference with the Town Attorney to Receive Legal Advice on Specific Legal Questions Regarding Triview Metropolitan District - *(Town Attorney)*

- Mayor LaKind made a motion to enter into executive session and the motion was seconded by Councilmember Marco Fiorito. Roll call vote was taken and the motion passed Yes 7, No 0, Abstained 0.
- The Council entered executive session at 8:04pm.
- The Council concluded executive session at 9:15 pm.

11. Adjournment:

- Mayor Mitch LaKind moved to adjourn the meeting prior to entering the executive session. The motion was passed unanimously, the meeting was adjourned 7:57 pm.

Respectfully Submitted,

Sylvia Simpson,
Deputy 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: 06/13/2025

Matter: Town of Monument-General-20028-0001

Responsible Attorney Robert Cole

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #7617	Balance: \$18,333.50					
06/13/2025	Invoice #7617	07/13/2025	\$18,333.50			\$18,333.50
Totals:			\$18,333.50	\$0.00	\$0.00	\$18,333.50

Matter: Town of Monument-Water-20028-0002

Responsible Attorney Robert Cole

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #7617	Balance: \$3,913.50					
06/13/2025	Invoice #7617	07/13/2025	\$3,913.50			\$3,913.50
Totals:			\$3,913.50	\$0.00	\$0.00	\$3,913.50

Matter: Town of Monument-Plannning-20028-0008

Responsible Attorney Robert Cole

Date	Activity	Due Date	Invoice Amount	Payments	Credit	Balance
Invoice #7617	Balance: \$2,841.00					
06/13/2025	Invoice #7617	07/13/2025	\$2,841.00			\$2,841.00
Totals:			\$2,841.00	\$0.00	\$0.00	\$2,841.00
Totals for all Client Matters:			\$25,088.00	\$0.00	\$0.00	\$25,088.00



MEMORANDUM

To: The Honorable Mayor and Town Council

From: Andrew S. Archuleta, Assistant Director of Public Works

Date: July 7th, 2025

RE: Resolution No. 39-2025 A Resolution Approving a Contract for the Chipseal Program

BACKGROUND: The Town of Monument Streets Department plans and budgets for a continuing paving maintenance program to keep our streets roadworthy and to limit the number of concerns due to deteriorating road conditions. As roads begin to deteriorate, we look at possible ways to expand the life of the road and one of the most practical and budget-friendly options is the perform a chipseal program which consists of cape sealing and slurry sealing. By performing this work, our maintenance on the proposed roads will be reduced and we will be able to expand the roads' life before we must pave it again.

DISCUSSION: The current plan is to move forward with this contract to be placed on the schedule for A-One Chipseal to complete our planned projects. A-One Chipseal is the selected contractor for many of the local districts for these types of maintenance projects. A-One Chipseal has access to the State Bid Process which allows us to not have to bid out this type of work this year referencing our current Contract and Purchasing Policy documents. We utilize a running 5-year plan to decide which streets have priority for paving or chip seal projects. The work completed in 2024 by A-One Chipseal was more than satisfactory and we would like to continue using them and continue with the planned 2025 Chipseal Program.

PROS/CON'S: **Pro's-** By moving forward with this resolution to approve the 2025 Chipseal Program, we can confirm with A-One Chipseal and get on their schedule to continue maintaining our roads and get more life out of them to reduce the amount of maintenance in the future. Using the same contractor as we had in the past allows for a smoother process because they are familiar with the area and familiar with our standards. **Con's-** By not approving this resolution, we would have to create a new RFP for the program, which would delay the start of the proposed work and could result in less work being completed or work that is not satisfactory from a company that we are not familiar with.

FISCAL IMPACT: The planned budget for the 2025 Capital Projects fund in line-item Asphalt Repairs is \$100,000.00 and the proposed price from A-One Chipseal is **\$98,416.68** with a not to exceed \$100,000.00.

STAFF RECOMMENDATION: Recommend passage of Resolution 39-2025, approving the contract for the 2025 Chipseal Program.

TOWN OF MONUMENT

RESOLUTION NO. 39-2025

**A RESOLUTION APPROVING A CONTRACT WITH A-ONE CHIPSEAL FOR THE
2025 CAPITAL CHIPSEAL PROJECTS**

WHEREAS, the Town's Streets Department has determined the need to move forward with the 2025 Capital Chip Seal Project for this year, and;

WHEREAS, the Town has determined the needs of Crestview Ct, Trumbell Ln and Vista Montana Ln to extend the life of the existing pavement, and;

WHEREAS, the Town staff has determined that A-One Chipseal has had multiple contracts and pricing from other government agencies and extended that pricing to us, which is allowed by our current contract and purchasing policy, and;

WHEREAS, Staff is recommending approval of the contract to A-One Chipseal for the 2025 Capital Chipseal Project.

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

The Town Council hereby approves a contract with A-One Chipseal for the 2025 Capital Chip Seal Projects. The total amount of this contract **\$98,416.68** with a total not to exceed **\$100,000.00** which is budgeted for the 2025 Capital Projects Fund.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 7th day of July 2025 by a vote of ____ for and ____ against.

TOWN OF MONUMENT

Mitch LaKind, Mayor

ATTEST:

Sylvia Simpson, Deputy Town Clerk



www.a-1chipseal.com

www.rockymountainpavement.com

Customer	Attention	Date
Town of Monument	Tom Martinez	06/25/25
645 Beacon St	(719) 884-8036	Proposal #
Monument, CO 80132-	tmartinez@tomgov.org	36388

Proposal for
Town of Monument - Various - Monument

Item#	Description	Qty/Unit	Unit Price	Total Price
Option# 1 2025 Maintenance				
01	Mobilization Mobilization to and from the jobsite.	1 HR	\$5,000.00	\$5,000.00
02	Slurry Seal Type II Slurry in place on existing asphalt pavement. *All labor, material, equipment, and traffic control necessary shall be furnished. *All work shall be done in accordance with the Standard Specifications for Slurry Seal Applications. *Slurry is a rigid product this product will have reflective cracking, scuffing and aggregate shedding. The benefits of this product are that it will reduce oxidation, slow water damage, extend the life of the pavement, and beautifies the surface area.	11,244 SY	\$3.47	\$39,016.68
03	Crackseal Clean and fill cracks with hot pour rubberized crack sealer. *Transition crack seal (concrete to asphalt) joint will be sealed unless otherwise stated. *All cracks 1/4" or greater will be sealed unless otherwise specified. *SETTLING OF CRACK SEAL MATERIAL MAY OCCUR. BUT DOES NOT AFFECT PERFORMANCE. *ALLIGATORED AREAS WILL NOT BE CRACK SEALED.	16,000 LBS	\$3.40	\$54,400.00
Accepted_____				Total for Option# 1 \$98,416.68

Total not to exceed \$100,000.00

Additional Charges If Required :

- *This Proposal is based on one Mobilization.
- *Additional mobilizations add \$950.00 and up.
- *Weekend Charge \$950 and up each day.
- *If existing asphalt or concrete is thicker than proposed depth additional cost will apply price per SY inch.
- *Concrete removal is based on existing concrete not having any reinforcement, if reinforcement is encountered additional charges will apply.

Striping: Sweeping:

- *Glass beads available at a charge of \$.25 per SF, must be notified prior to work.
- *There will be a trip charge of \$750.00 for returns due to vehicles in the lot or obstructions to job completion on scheduled date.

Notes:

- *Any soft or unstable areas will be corrected on an hourly basis at the direction of the Owner Representative.
- *We accept subgrade from +/- 0.10 foot with correct density and moisture content.
- *We cannot guarantee positive drainage on existing or proposed areas less than two percent (2%) fall/slope, consequently no warranty will be provided if these conditions exist.
- *Sprinkler systems need to be turned off one day prior to scheduled work and for the duration of the schedule work.
- *Prevailing Wages are not included, an additional 25% will be added to final cost if needed.
- *This work can be scheduled only after receipt of signed contract.
- *The signer of this contract serves as the authorized agent for the owner and binds the written contract to the owner.
- *Pricing for this quotation is applicable for 30 days from date of quote.
- *Final billing will be based on actual field measured quantities installed.
- *Due to current unstable oil markets the price of asphalt may change at time of paving.
- *Due to the volatility of labor, fuel, asphalt materials, trucking, subcontractors, and emulsions, pricing is subject to change. You will be notified of any increases to obtain approval prior to mobilization of crews. Thank you for your patience and understanding. We consider you a valuable customer and we will take every step to make this a last resort.
- *Any changes will be documented by AC supplier and a direct price increase will apply.
- *Performance and Payment bond. Add 1% to total price if Bond is required.
- *Rocky Mountain Pavement must truck over existing asphalt to complete our work and shall not be held liable or responsible for damage to existing lot due to necessary trucking.

**All Asphalt Patching, Concrete, and Subgrade Prep/Scarify work WILL require Utility Locating. Locates can take anywhere from 1-3 days to be completed per Colorado 811 guidelines.

**We cannot warranty any striping performed from October-April due to weather concerns.

- *Striping completed by LineLazer Airless Line Stripers with glass bead application available.
- *Traffic spec paint will be used.
- *Stencils are lined, centered and double coated.
- *Paint will not adhere permanently to crack fill.
- *Bid is based on all vehicles being removed from the parking lot. Notices to tenants and a tow truck are recommended.

Exclusions:

- *All polymer-modified asphalt.
- *Bonds (add 1%), permits, lab and field testing, engineering fees, surveying, striping, and utility adjustments.
- *Traffic Control.
- *Night Work.

See attached terms and conditions

Accepted by: _____ Date: _____ Estimator: *Jaime Walton*

Accepted by: _____ Date: _____
Authorized Agent(s)

Jaime Walton
(303) 591-6264
jaimew@asphaltrepair.com

Phone: 303.650.9653 Fax: 303.650.9669

2505 E 74th Ave - Denver, CO 80229

A-1 Chipseal Co. & Rocky Mountain Pavement, LLC is an Equal Employment Opportunity Employer.

Terms and Conditions

1. This contract (hereinafter referred to as the "Agreement") including the terms and conditions that follow, supersedes any prior understanding or written or oral agreement between the parties, and constitutes the entire agreement between the parties and any understanding or representation not contained herein is hereby expressly waived. It is expressly understood that no representative of the contractor has the power to modify the provisions hereof in any respect, that Contractor shall not be bound by, or liable to, Owner for any representation, promise or endorsement made by any agent or person in Contractor's employment to set forth in this Agreement, and no modification or amendment of this instrument shall be binding on the Contractor unless set forth in writing and signed by an authorized officer of the Contractor.

2. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives successors, and assigns, where permitted by this Agreement. Owner expressly agrees that this Agreement is binding upon it and is not subject to cancellation unless expressly agreed upon for any reason, as shown in the body of this Agreement, and that furthermore, notwithstanding the terms hereof, this Agreement shall not be binding upon Contractor until the credit of Owner is approved and accepted by Contractor.

3. Contractor shall not be liable for delays or damages occasioned by causes beyond his control, including but not limited to: the elements, labor strikes and other labor unrest, riots and other public disturbances, acts of God, accidents, material and supply shortages, and delays occasioned by suppliers not meeting shipping schedules.

4. If any provision is modified by statute or declared invalid, the remaining provisions shall nevertheless continue in full force and effect. The Owner and the Contractor agree that the Agreement shall be construed and governed by the laws of Colorado and that venue for any dispute or litigation arising out of this Agreement shall be in Adams County, Colorado.

5. Any alteration or deviation from the specifications, including those directed by the Owner, construction lender and any public body, that involves extra cost (subcontract, labor, materials) will be executed only upon the parties entering into a written change order, which Contractor may or may not execute at its discretion. Owner hereby authorizes Contractor to make any such repairs and agrees to be responsible for the cost of any such repairs and agrees to be responsible for the cost of any such additional work and materials necessary to complete the Job as described herein.

6. Contractor will provide and pay for all labor and materials necessary to complete the Project. Contractor is released from this obligation for expenses incurred when the Owner is in arrears in making progress payments.

7. Contractor will maintain worker's disability compensation insurance for his employees and comprehensive coverage liability insurance policies. Owner to carry insurance against fire, tornado, hail, vandalism and other casualty losses.

8. Contractor may substitute materials without notice to the owner in order to allow work to proceed, provided that the substituted materials are of no lesser quality than those listed in the specifications.

9. Contractor shall not be responsible for underlying materials of the pavement.

10. The parties agree that in the event of breach of any warranty, either expressed or implied, the liability of the Contractor shall be limited to the labor costs of replacing the defective work. The Contractor shall not be liable for any other damages either direct or consequential. Notwithstanding anything else to the contrary, the Contractor shall have no liability or responsibility for any damage to the structure, its contents, floors, carpets and walkways that is caused by the condition of tracking materials (sealcoat, crack filler, tar, etc.), caused by others besides employees, regardless of whether such damage occurs or is worsened during the performance of the job.

11. Any warranty, express or implied, is void if contract is not paid in full.

12. If any payment under this Agreement is not made when due, the Contractor may suspend work on the job until such time as all payments due have been made. Any failure to make payment is subject to a claim enforced against the property in accordance with applicable lien laws.

13. In the event the amount of Contract is not paid within 30 days from completion, the account shall be in default. The acceptor of this Agreement agrees to indemnify and hold harmless the Contractor from any costs of expenses incurred in the collection of the defaulted account, or in any part thereof, including attorney's fees, court cost, etc., and further agrees that the defaulted account, or in part thereof, including attorney's fees, court cost, etc., and further agrees that the defaulted account will bear interest at the rate of 1-1/2% per month, not to exceed 18% per year and not to exceed the maximum rate permitted by law, on the unpaid balance.

14. Owner agrees to indemnify and hold harmless the Contractor and its agents, managers, directors, officers and employees from and against claims, damages, losses and expenses arising out of or resulting from the performance of this Agreement, including claims relating to damages caused by other tradesman and claims related to environmental laws and hazardous materials, except to the extent that such damage, loss or expense is due to the gross negligence or willful misconduct of the party seeking indemnity.

15. This contract shall become binding when signed by all parties and the authorized office of the Contractor. Owner agrees that upon cancellation before work is started, or before material is delivered on the job, to be liable for 15% of gross amount of contract for restocking fees. Owner is liable for the full amount of contract in the event they cancel contract after work has started.

16. Credit Card payments (Visa and Mastercard) are accepted. A 2.9% processing fee will be applied to the invoice.

17. Any notice required or permitted under this Agreement may be given certified or registered mail at the addresses contained in the Agreement.

18. Owner further agrees that the equity in this property is security in this Contract. This Contract shall become binding only upon written acceptance hereof by the Contractor or by an authorized Agent of the contractor, or upon commencement of the work.

19. This Contract constitutes the entire understanding of the parties, and no other understanding, collateral or otherwise, shall be binding unless in writing signed by both parties.

20. The proposal will expire within 90 days from date unless extended in writing by the company. After 90 days, we reserve the right to revise our price in accordance with costs in effect at that time.

Lighting Education on Dark Sky

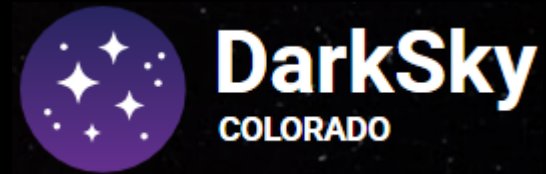
Steve de Seve

Lighting Manufacture Representative

14 years experience in Commercial lighting

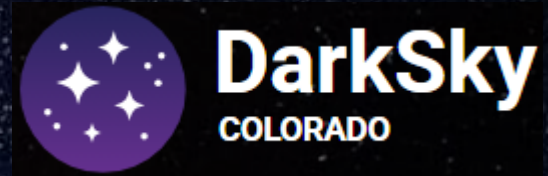
“How a Monument Dark Sky will Protect, Honor, and Restore the
Beauty of the Night Sky”





[Darkskycolorado.org](https://darkskycolorado.org)

**Did you know Colorado has more Certified
Dark Sky Places than almost any other state?**



Darkskycolorado.org

Crestone,
Colorado

Why Dark Skies Matter?



[Darkskycolorado.org](https://darkskycolorado.org)

1. The night sky plays a key role in virtually every domain of environmental conservation.

80 percent of migratory birds travel by night and rely on natural conditions of darkness to navigate. Some species even rely on starlight to aid orientation and navigation. Insects, mammals, amphibians, reptiles, and even plant life take cues from the natural rhythms of day and night. This influences growth, hunting, pollination, foraging, and mating.

2. The way the natural arc of day and night synchronizes our behavior and benefits our health is incredibly strange and beautiful.

The relationship between artificial light at night (ALAN) and melatonin, as well as the health effects of melatonin suppression, have been extensively studied. A growing body of research has linked artificial light at night (especially blue light from screens and LEDs) to a variety of negative health outcomes.



Lights Out Colorado is a collaborative effort by [DarkSky Colorado](#) and [Denver Audubon](#) to protect migrating birds in Colorado from the devastating effects of light pollution through public education.

The Problem

Every year in North America, between 3.5 and 4.0 billion birds take part in migrations of thousands of miles. More than 80% of them travel at night, navigating with the night sky.

Artificial lights can attract and disorient birds resulting in an inability to navigate to their destination expend already limited energy resources. The exhaustion can leave them vulnerable to threats, including predators, collisions with buildings, and inability to find food.

The Solution

Fortunately, the simple action of shielding or turning off lights can help birds navigate.

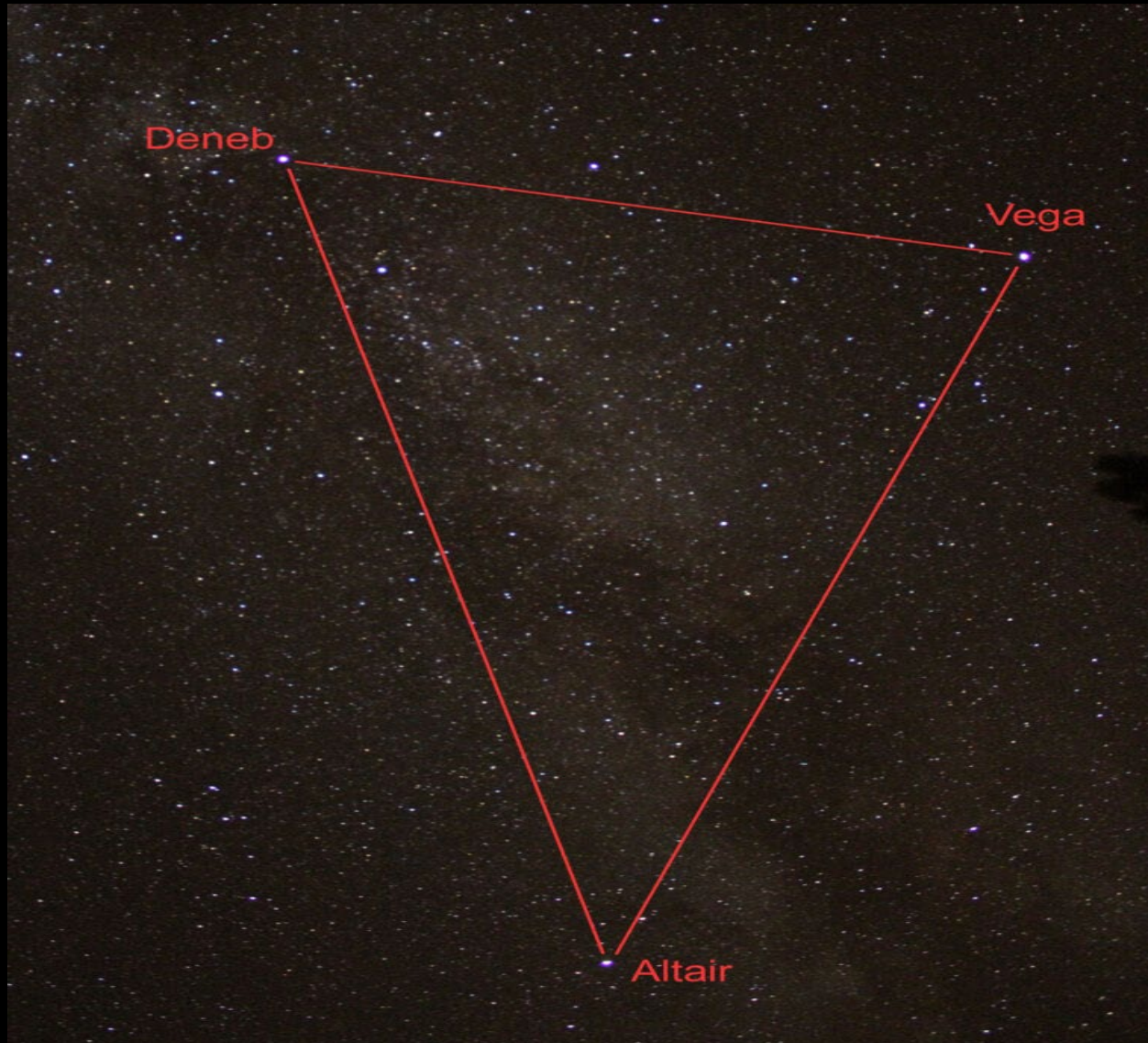
It is particularly important to take these measures as early in the evening as possible, as migrants begin their nocturnal migrations at dusk, during spring and fall migration periods. In addition to helping birds, these efforts have the additional benefits of reducing energy usage and saving money.

There are two simple actions people can take to have a big impact on birds:

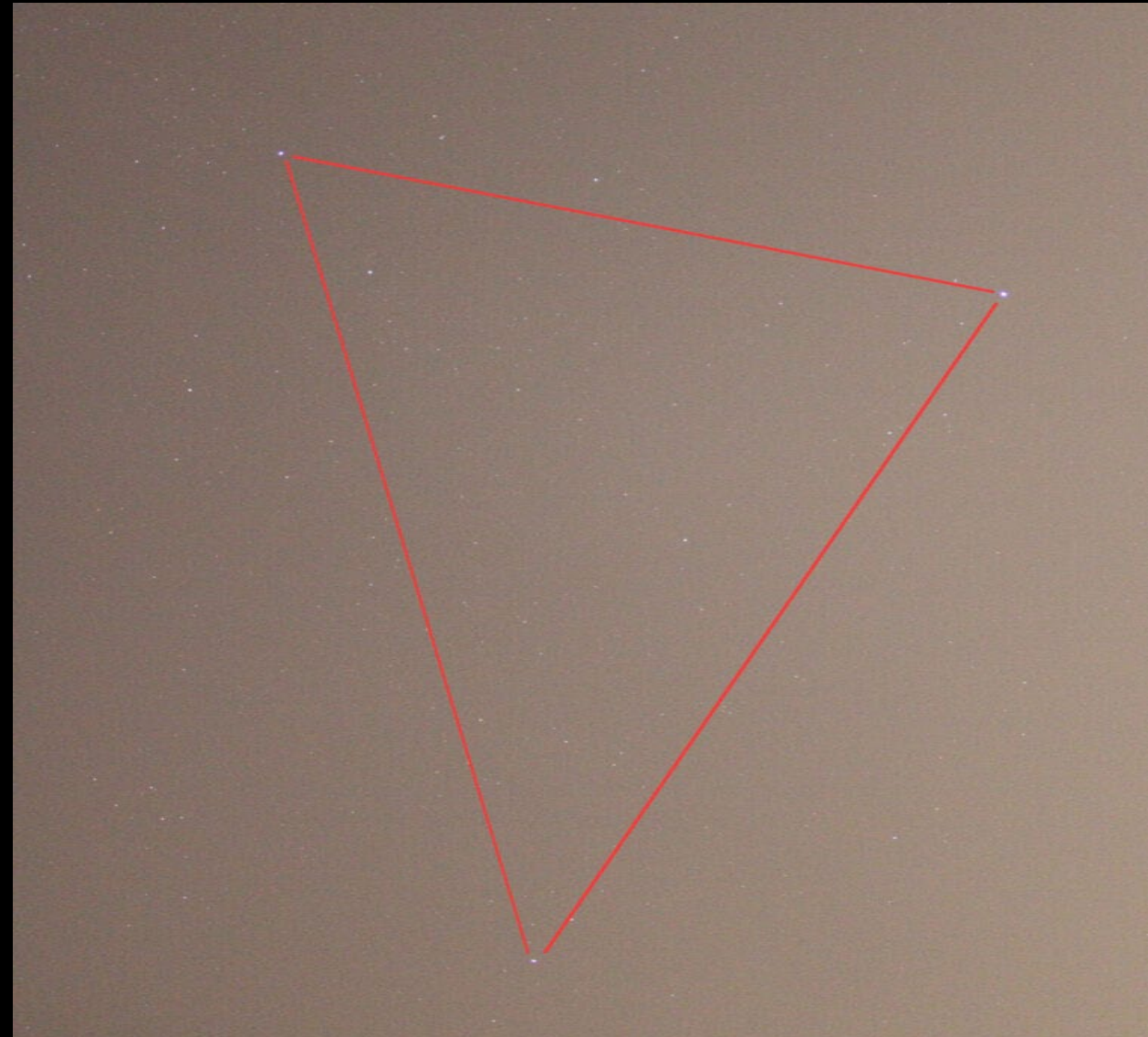
- Shield outdoor lights to prevent light from being emitted upwards.
- Turn off lights as early as possible during bird migration seasons (April-May and August-September).

DESTROYING THE NIGHT SKY WITH LIGHT POLLUTION

Look at the difference between 2 Arizona cites



The Summer Triangle near Flagstaff Arizona - 2020
(Tap or rollover image to see Summer Triangle)

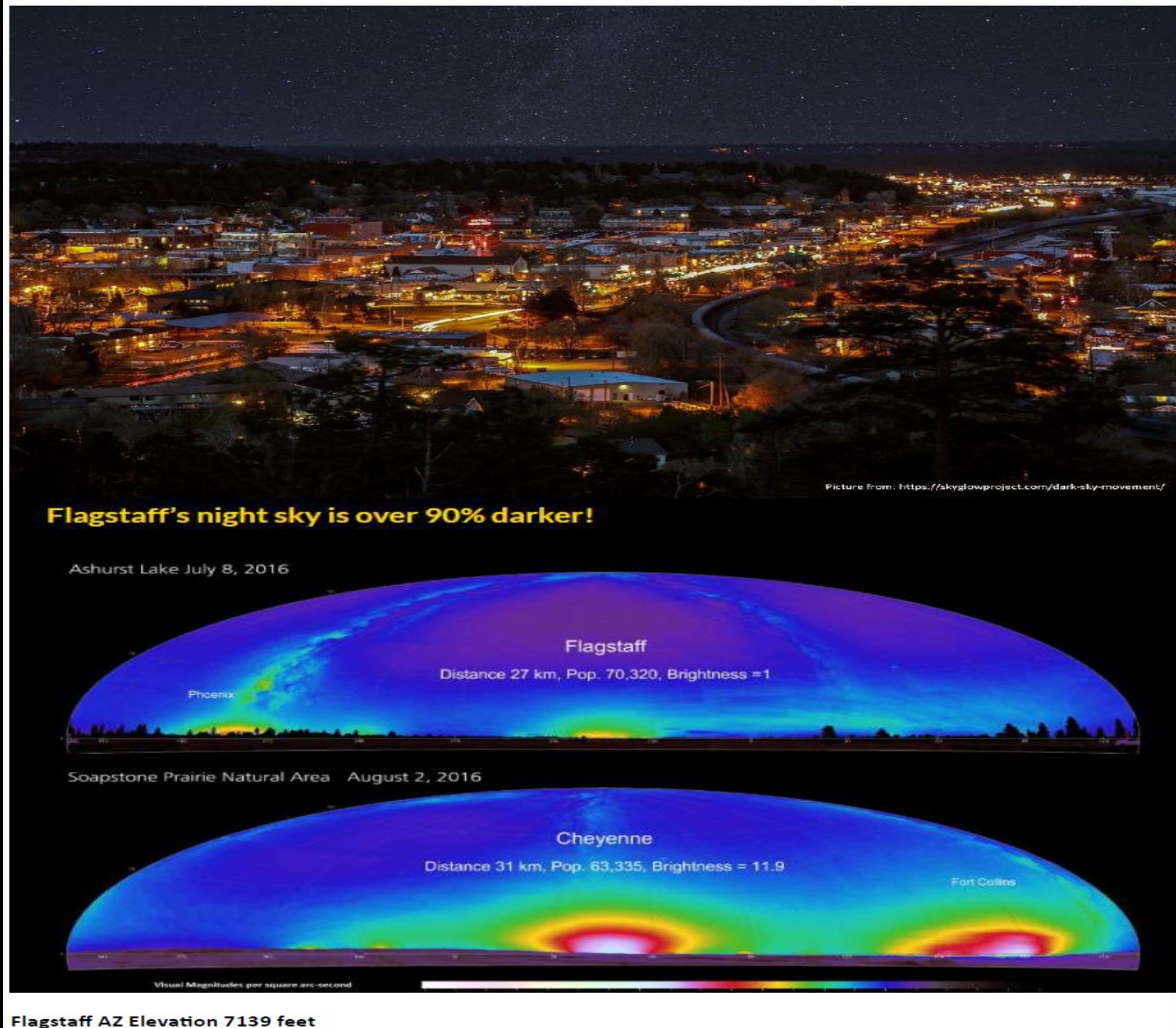


The Summer Triangle near Phoenix Arizona - 2020
(Tap or rollover image to see Summer Triangle)

What Is Light Pollution?

Light pollution is artificial light introduced into the natural night, especially where it is not needed or wanted. This unwanted light appears

- In the sky, causing sky glow, obscuring the stars and creating perpetual twilight
- Shining into your yard or through your windows into your house, causing “light trespass”
- Shining into your eyes, causing glare



Controlling Dark Sky light pollution as cities continue to grow

- 1) Flagstaff is at 7,100 elevation and operates at 2700K (**Amber color**). With a population of 76,500 you can still see the stars at night for their Lowell Observatory (Home of Pluto) and having the University of Northern Arizona.
- 2) Durango CO is at 6,500 elevation with a population of 20,000. This year, the city has implemented dark sky regulations to protect the night sky. Sec. 4-3-2-3 Lighting Allowance section E. **Correlated color temperature is limited to no more than 2700K per fixture.**
- 3) Other Colorado cities changing towards dark sky: **Boulder, CO** 9-9-16 Lighting Outdoor Color Temperature shall have a correlated color temperature **below 3000K.**
Larimer County, CO 14.10 Exterior Lighting: Kelvin properties located immediately adjacent to **publicly protected open spaces**, all lighting shall **no greater than 2700K**

Cities include: Bellvue, Berthoud, Drake, Estes Park, Fort Collins, Glen Haven, La Porte, Livermore, Loveland, Masonville, Red Feather, Timnath, Wellington, and Windsor.

Douglas County (Next to County Line) Only use lighting sources with correlated color temperature no higher than 3000K.

* Why is Monument which is over **7,100 elevation**, a population of **only 15,000**, and located at the highest point on the I25 corridor operating service stations, shopping centers, restaurants, fast food locations, residential properties, and street lighting at 5000k compared to Flagstaff, Durango, and other cities in Colorado?

SERVICE STATION LIGHTING

Flagstaff Gas Stations Cutting Overlighting



Across the country, lighting at service stations has escalated tremendously. New fixtures are brighter and have more blue-rich white light than ever. They tend to spread light everywhere, especially to the side, into motorist's eyes, into neighboring properties, and up into the night sky.

Service station owners, responding to stiff competitive pressures, are seeking to convince potential customers that their stations are “safer” or “more attractive” than the one across the street. Industry representatives selling the newer fixtures often describe the effect of these poorly shielded over-bright fixtures as “sparkle.”

The Flagstaff Dark Skies Coalition regularly receives complaints about service station glare. Glare interferes with the ability of motorists to safely see the nearby roadways, and may cause drivers to squint in attempts to detect pedestrians or hazards on the roadway. For older drivers this problem is especially severe.

Extreme lighting levels can hamper visibility to service station customers, too. This is particularly troublesome when leaving the brightly illuminated areas and re-entering the more moderately illuminated roadway with eyes that have become accustomed to the high lighting level.

A study by the Lighting Research Center at Rensselaer Polytechnic Institute found that the percentage of drivers turning in to a service station and the mean number of gallons of gasoline sold daily increased immediately following the change of lighting from glaring drop-lens, non-cutoff fixtures to fully shielded lighting fixtures. The study suggests that better lighting actually encourages drivers to use responsibly lit service stations.



WARNER ROBIN





This station has a lighting level about of about **eight footcandles, about one-tenth of the level of the typically overlit station**. A footcandle is the lighting level you would see one foot away from a typical candle. Roadways and parking lots are typically illuminated to 1-2 footcandles.



This station has a lighting level about of **about eight footcandles**, about one-tenth of the level of the typically overlit station. A footcandle is the lighting level you would see one foot away from a typical candle. **Roadways and parking lots are typically illuminated to 1-2 footcandles**. The Safeway service station below is lit to about **10 footcandles**. The lighting level under the **canopy** of the rebuilt Maverick station just north on U.S. 89 is about 9 footcandles.



Douglas County CO Sec. 1026 1(b) The total light output of other illuminated areas of a service station may not exceed **15 footcandles**.

Light Pollution Solutions

A wide-angle photograph of a night sky featuring the Milky Way galaxy. The galaxy's bright, pinkish-white band of stars and dust stretches diagonally from the upper left towards the lower right. The sky is filled with numerous individual stars. In the foreground, the dark silhouettes of evergreen trees are visible on the left and right sides. In the middle ground, a range of mountains is visible, with the central peak being the most prominent and covered in a layer of snow. The overall scene is dark, emphasizing the natural light from the stars.

Education is Essential to Success

Education about light pollution and the importance of a dark nighttime environment is an essential key to raise public awareness, which can lead to changes in policy and behavior.

Why is there so much bad light?

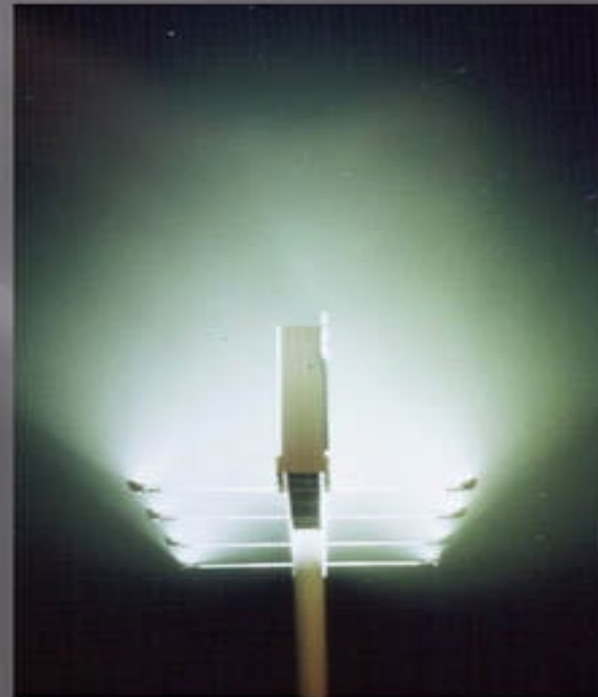
Mostly Due To:

Lack of awareness by:

- Builders, contractors, owners, and operators.
- The public.
- Governmental staff.

Lighting industry conflicts of interest.

Apathy and Inertia.

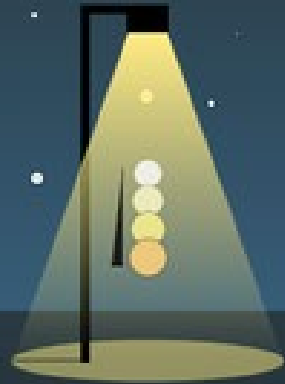


Dark Sky Friendly Lighting Takes Into Consideration Four Essential Design Principles:



> FULL CUTOFF SHIELDING

Choose a luminaire whose light is directed entirely towards the ground.



> COLOR

Use warm amber colored light sources.



> INTENSITY

Choose an adequate power for sensible and uniform lighting.



> PERIOD

Check the period and duration of use of exterior lighting.

DarkSky International offers certification that fixtures meet their standards for dark-sky quality. Such fixtures must be fully shielded and “minimize blue light,” which DSI standards implement only as a requirement that the CCT must be 3000K or less.



Examples of Acceptable / Unacceptable Lighting Fixtures

Unacceptable / Discouraged
Fixtures that produce glare and light trespass

Acceptable
Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night

Unacceptable / Discouraged

- Unshielded Floodlights or Poorly-shielded Floodlights
- Unshielded Wallpacks & Unshielded or Poorly-shielded Wall Mount Fixtures
- Drop-Lens & Sag-Lens Fixtures w/ exposed bulb / refractor lens
- Unshielded Bollards
- Unshielded Streetlight
- Unshielded Barn Light
- Louwered 'Marine' style Fixtures
- Unshielded 'Period' Style Fixtures
- Unshielded PAR Floodlights
- Drop-Lens Canopy Fixtures

Acceptable

- Full Cutoff Fixtures
- Fully Shielded Wallpack & Wall Mount Fixtures
- Fully Shielded Fixtures
- Full Cutoff Streetlight
- Fully Shielded Barn Light
- Fully Shielded Walkway Bollards
- Fully Shielded Decorative Fixtures
- Fully Shielded 'Period' Style Fixtures
- Shielded / Properly-aimed PAR Floodlights
- Flush Mounted or Side Shielded Under Canopy Fixtures

Illustrations by Bob Crayton © 2005. Rendered for the Town of Southampton, NY. Used with permission.

Color of Light

Color Temperature (Kelvin)

1000k 2000k 3000k 4000k 5000k 6000k 7000k 8000k 9000k 10000k



Intensity of Light Lumens & Foot Candles

- **Lumens** measure the **amount of visible light emitted from a source of light**.
- **Foot Candles** measure the **intensity of light on a surface**.

Lumens & FootCandles



Controlled Period of Illumination

DUAL MOTION SENSOR COVERAGE

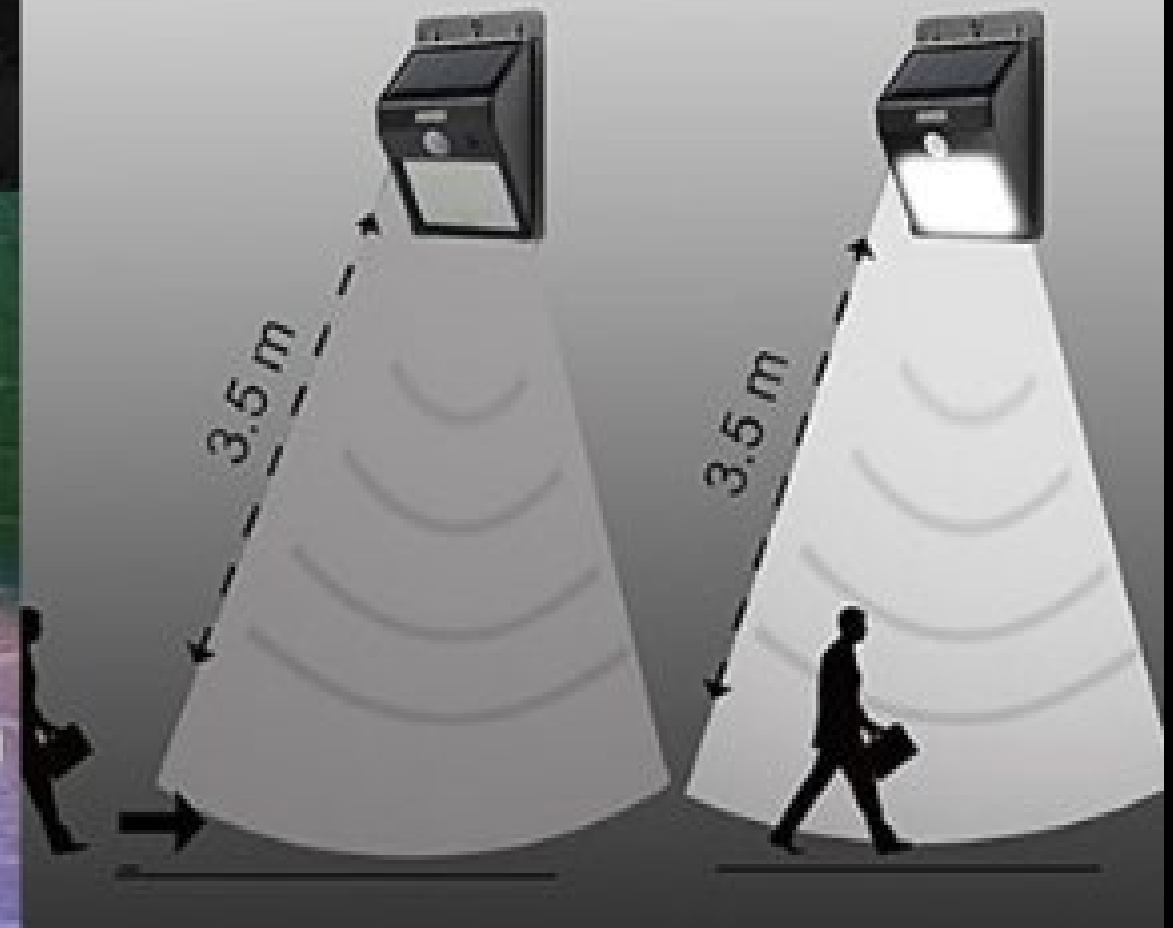
180° coverage detection, sensor distance to 5-6m



Only turns on at night



Automatic motion sensor



www.mvea.coop



Steve,

Yes, Tri-State does offer rebates for pole mounted lighting.

Pole Mounted LED's have a project cap of **\$20,000**. Anticipated incentives are subject to Tri-States review and application information. An itemized invoice with per item costs is required to participate in the program.

Take care.

DeeAnna Horn

Energy Services Representative

Mountain View Electric Association, Inc.

Falcon Office

11140 E. Woodmen Road, Falcon, CO 80831

Direct: (719) 494-2531

Pole counts for North Monument along W Hwy 105

4 Fixtures Town of Monument City Hall

13 Fixtures Dollar Tree

15 Fixtures Safeway Parking Lot

37 Fixtures Phillips 66 Service Station

12 Fixtures Mc Donalds

4 Fixtures Jarita Loco Restaurant

Total 85 approximately

Pole Mounted Lighting

LED Replacement	Incentive per item (up to 25% of cost per item, not to exceed incentive price listed below)	Product Model Number	Product Description	Quantity Installed	Cost per Fixture	Installation date	MVEA Account number
29,000 Lumens and Greater	\$475.00						
13,00- 28,999 Lumens	\$200.00						
7,000 to 12,999 Lumens	\$130.00						
5,000 to 6,999 Lumens	\$80.00						
3,000 to 4,999 Lumens	\$55.00						
2,100 to 2,999 Lumens	\$44.00						

Questions





MEMORANDUM

TO: The Mayor and Town Council
FROM: Jennifer Phillips, Finance Director
DATE: July 7, 2025
RE: Adoption of Ordinance 12-2025 Repealing and Readopting Title 13 of the Monument Municipal Code

BACKGROUND:

The Town of Monument voters approved the Home Rule Charter in November 2022. The Town must update the Municipal Code to conform to the Charter. Other procedural and administrative updates are also being proposed to modernize and align the Code with current Town practices as the Municipal Code is updated.

DISCUSSION

Title 13 of the Monument Municipal Code addresses Public Services. Chapter 13.04 specifically addresses the water service system. Town staff and the Town Attorney have reviewed and revised Title 13. Attached to this memorandum are both the edited version of Title 13 with deleted text shown in strikeout format and added text shown in underlined text as well as a final version.

The reasons for many of the changes include conforming terminology to the Charter; making capitalization, phraseology, formatting, and punctuation consistent; removing duplicative provisions; adding definitions; expanding control, enforcement, and protection of the Town's water system; and removing fee structures from the Code, instead establishing all fees by Resolution for better long-term flexibility.

RECOMMENDATION: Staff have submitted Ordinance 12-2025 approving the repealing and readopting of Title 13 of the Monument Municipal Code.

Repealing and Readopting Title 13 of the Monument Municipal Code

July 7, 2025

Town Council Meeting



OVERVIEW

- Purpose
- Process
- Summary of Changes
- Recommendation



PURPOSE

- Conform with Home Rule Charter
- Update Monument Municipal Code
- Remove all fees
- Align with Town practices
- General clean-up



PROCESS

- Staff reviewed existing Title 13
- Provided recommended edits to Town Attorney
- Town Attorney finalized



SUMMARY OF CHANGES – SECTION 13.04

- Section 13.04.010 – added definitions
- Section 13.04.030 – rates and fees will be set by resolution
- Section 13.04.031 – delineates powers and duties of Public Works Director
- Section 13.04.060 – all water accounts shall be under owner's name



SUMMARY OF CHANGES – SECTION 13.04

- Section 13.04.080 – standards regarding design, installation and operation of potable water systems by resolution
- Section 13.04.090 – unlawful to misrepresent ownership
- Section 13.04.120 – language to enact emergency measures
- Section 13.04.170 – adds conditions and limitations of use for Town's water system



SUMMARY OF CHANGES – SECTION 13.08

- Section 13.08.020 – increased tap fee change from 9% to 20%
- Section 13.08.060 – requires annexation to receive water service
- Section 13.08.070 – adds language related to utility billing and collection process
- Section 13.08.080 – adds process related to delinquent accounts



SUMMARY OF CHANGES – SECTION 13.08

- Section 13.08.100 – clarifies language related to disconnection and reinstatement of water service
- Section 13.08.101 – adds process for owner disputes
- Section 13.08.160 – adds language for Water Activity Enterprise



SUMMARY OF CHANGES – SECTIONS 12 & 16

- Section 13.12 – removed – no wastewater system
- Section 13.16.040 – changes authority from Mayor to Public Works Director to investigate cross connections, hazards and discontinue service



RECOMMENDATION

Approve Ordinance 12-2025 repealing and readopting Title 13 of the Monument Municipal Code



TOWN OF MONUMENT

ORDINANCE NO. 12-2025

**AN ORDINANCE REPEALING AND READOPTING
TITLE 13 OF THE MONUMENT MUNICIPAL CODE**

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, the Council has determined that it is necessary to repeal and readopt Title 13 of the Monument Municipal Code (“Code”) to bring it into conformance with the Charter and provide general updates; and

WHEREAS, this Ordinance was introduced by title, considered at a public hearing, and voted upon at the regular meeting of the Town Council on July 7, 2025.

**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. Repeal and Readopt Title 13 of the Monument Municipal Code. Title 13 of the Code as set forth in Exhibit A, attached hereto and incorporated herein, is repealed and readopted with underlined text being added and stricken text being deleted.

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

Section 4. 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 5. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 6. 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 7th day of July, 2025 by a vote of _____ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

|

EXHIBIT A
TO ORDINANCE NO. 12-2025

Title 13

PUBLIC SERVICES

Chapter 13.04 - WATER SERVICE SYSTEM GENERALLY

13.04.010 Definitions.

As used in this ~~chapter~~Title:

“Commercial unit” means any other use not defined as residential ~~and~~ including those structures requiring a business license to operate including, but not limited to, ~~those~~ businesses licensed to operate within ~~the~~ Town limits.

“Meter” means a device that measures and records the quantity or rate of water.

“Operator in Responsible Charge” means the Public Works Director or their designee, designated as the Town employee in charge of the water system who is the direct contact for the State if there are any water quality, water treatment, security, or other issues with the water system.

“Owner” means the person or entity who holds legal title to the property and has the right to own and control the property.

“Plat” means the plan, map, or chart of a piece or area of land with actual or proposed features.

“Residential use” means the use of water for the purpose of supplying either a home, apartment, or other living unit for purposes of housing one or more persons.

“Single-Family Residential Equivalents” means the wastewater loading created by an average size single family residence.

“Tap” means a connection to the service line of the Town’s water or sewer main.

“Tenant” means a person who has the right to occupy a property unit by agreement, either written or oral or with landlord approval to the exclusion of others.

“Tributary” means water that is physically connected to a natural surface stream or river.

“Non-tributary” means water that is not physically connected to a natural surface stream or river.

“Water system” means the Town water supply system.

13.04.020 Creation of water department.

There is created and established a Town water department ~~of the Town~~, for the purpose of ~~the management~~, ~~maintaining~~en~~ance~~, ~~car~~inge ~~for~~, and operating ~~on~~ ~~of~~ the Town water works ~~of the Town~~.

13.04.030 ~~Board of trustees~~Town Council—Powers—~~Public works committee~~.

~~A. — The board of trustees~~Town Council or its duly appointed representative~~and the Public Works Director shall have control and management of all things pertaining to the Town water works system, and the board or its representative~~Public Works Director as the case may be, shall perform all acts ~~that may be~~ necessary for the prudent, efficient, and economical management and protection of the water ~~workssystem~~. ~~The board shall have the power by resolution to prescribe such other and further rates, rules and regulations as it may deem necessary for the administration, management and protection of the water works. Resolutions adopting the rates, rules and regulations shall be on file with the office of the Town Clerk and available for public inspection during normal business hours. The duly authorized representative of the board shall have full power to enforce such rules and regulations as are adopted pursuant to this provision.~~The fees, rates, and charges described in this Title for furnishing water utility service shall be set in amounts approved by resolution of the Town Council. Such resolution may impose additional fees and charges not specifically described herein. Whenever any such fee, rate, or charge is inconsistent with any fee, rate, or charge previously adopted, whether by ordinance or resolution, the most recently adopted fee, rate, or charge shall control. The resolution adopting the fees, rates, or charges shall be posted on the Town's website.

13.04.031 Public Works Director – Powers and Duties.

- A. The Public Works Director shall, under the direction of the Town Manager, have charge of all Town water works systems, and it shall be their duty to supervise the water system and maintain and control the system as directed by the Town Manager.
- B. The Public Works Director shall have control of the laying of all water lines. The Director shall generally supervise the installation of all taps and service pipes or other connections with the water system and regulate the water supply to all water consumers. The Director shall also have charge of and be responsible for all tools, machinery, pipes, meters, fixtures, plumbing material, and all other apparatus and appliances owned by the Town or used by the Town in the maintenance and operation of the water system, and shall keep account of all such material and the manner in which the material is used, kept, or disposed of.
- C. The Public Works Director shall report to the Town Manager monthly, or more often if required, of their doings as Director, the condition of the water system, and suggestions concerning the water system as the nature of the service may require.
- D. The Public Works Director may delegate to any Town employee permission to operate the water valves within the Town's water system. No other persons shall be authorized to operate the Town's water system including water valves. Any person found operating water valves without approval of the Public Works Director shall be subject to fines and will be required to reimburse to the Town the costs of all damage to property, the water system, and any other costs.

13.04.040 Receipts and deposits.

The ~~Utility Billing Technician~~Finance staff shall keep a correct account of all receipts, make out all bills for the same, and deposit the proceeds so collected with the Town ~~Treasurer~~ to the credit of the Town's water works fund of the Town, and in accordance with the Town Council ~~direction of the board.~~

13.04.050 Inspections.

Whenever ~~in the judgment of the board of trustees~~Town or its duly appointed representative, it is deemed necessary, ~~the board's~~a Town representative ~~and/or their designee, carrying proper credentials of their office,~~ may inspect the premises or buildings of any water consumer ~~for the purpose of to~~ examining the condition of all pipes, motors, meters, and water fixtures or the manner in which the water is used. If such entry is denied, the Town shall have recourse to every remedy provided by law to secure entry, up to and including disconnecting/shutting off water service until entry is permitted, upon notice to the Owner by the Town. The ~~representative~~Town shall be vigilant to protect and remedy all abuses, whether from waste or other improper use of water.

13.04.060 Application for water use.

Application for ~~the~~ use of water shall be made to the ~~Utility Billing Technician~~Finance staff by the ~~O~~owner or agent of the property to be benefited, designating the location of the property and stating the purpose for which the water may be required. Water taps proposed for use which are not associated with a specific building must be approved by the Town ~~board~~Council.

All accounts for water shall be kept in the name of the Owner of the property and not in the name of any Tenant. The Owner solely, or his legally authorized agent, shall be held responsible for water rents.

13.04.070 Tap regulations.

No tap shall be made without ~~the~~ written approval ~~of by~~ the ~~board of trustees~~Public Works Director or ~~its~~their duly appointed representative, and all tap fees must be paid to the Planning department ~~Utility Billing Technician to commensurate~~concurrent with issuance of a building permit.

Pikes Peak Regional Building Department must issue a permit within ~~ninety (90)~~ days after the Town has issued a permit for the same address.

- A. If the applicant has not received a valid permit from Pikes Peak Regional [Building] Department within ~~ninety (90)~~ days of the ~~Monument~~Town permit date, all fees and ~~fifty (50%) percent~~ of water tap fees are forfeited to the Town.
- B. Any extension granted by Pikes Peak Regional Building Department will be honored by the Town.
- C. If climatic conditions as set forth in Town policies prohibit excavation, the Town ~~w~~Water ~~d~~Department may grant an extension.

13.04.080 Design and installation standards for potable water distribution systems.

A.—The Town Council may, by resolution, adopt, amend, and repeal standards for design, installation, and operation of the potable water system. All Standards in effect as of July 7, 2025 remain in effect until repealed by resolution. The entirety of the document entitled Section 7—Water Utility Policies and Standards of the Triview Metropolitan District Design Criteria and Construction Specifications Manual (“Standards”) is adopted by reference, with the following revisions and exceptions, where applicable:

- 1.——Where the document refers to “District,” replace with “Town.”

2. ~~Where the document refers to “District Representative,” replace with “Town Engineering Inspector”~~
 3. ~~Where the document refers to “District Manager,” replace with “Director of Development Services.”~~
 4. ~~Where the document refers to “Plant Investment Fee,” replace with “tap fee.”~~
- B. ~~The Town may adopt standards or policies that differ from those which are stated in the Standards if these standards or policies are in some way not applicable, including but not limited to the following:~~
1. ~~Submittal and review/approval of engineering plans;~~
 2. ~~Submittal and review of as-built drawings;~~
 3. ~~Approval process for plans and site development construction;~~
 4. ~~Location and agenda for preconstruction meeting;~~
 5. ~~Requirement for a provisional acceptance letter;~~
 6. ~~Line oversizing policies;~~
 7. ~~Water meter purchase procedures;~~
 8. ~~Deletion of any requirements determined to be not applicable.~~

~~Minor revisions to any portion of the Standards may be made administratively as deemed necessary by, and with the approval of, the Director of Development Services, who shall consider the intent and purpose of the regulations, and only make those changes which do not alter the basic intent and purposes of the Standards as approved by the Board of Trustees.~~

13.04.090 Unlawful misrepresentation.

It shall be unlawful for any person not a legal or equitable owner of a specific property receiving or requesting Town utility services for such real property to represent upon a utility services application and agreement that such person is a legal or equitable owner of the real property receiving or requesting Town utility services.

13.04.110 Watering procedures.

~~In order to~~ To stagger the demand on the ~~Town’s~~ water system during the irrigation season, beginning May 15th and ending September 30th, watering shall be restricted as follows:

- A. Odd numbered building addresses are permitted to use water for ~~the~~ watering of lawns on Mondays, Wednesdays, and Fridays. Even-numbered building addresses are permitted to use water for ~~the~~ watering of lawns on Tuesdays, Thursdays, and Saturdays. No watering is permitted on Sundays.
- B. The ~~Board of Trustees~~ Town Council, by resolution, may modify or suspend the restrictions set forth in this ~~s~~Section.

13.04.120 Emergency watering provisions.

- A. Emergency watering restrictions prohibits specific outside uses of water during emergency situations except with a special exceptions granted by either the ~~Town~~

~~Board,~~ Town Manager, or ~~his or her designee~~Public Works Director. All the following are considered Prohibited uses of water~~are as follows~~:

1. Lawn watering and, watering of trees, shrubs, and gardens.;
2. Washing ~~of~~ vehicles except commercial car washes.;
3. Washing exterior buildings including exterior windows.;
4. Hosing down parking lots.;
5. Hosing down driveways and roadways for dust control.;
6. Recreational purposes.;
7. Commercial haulers.;
8. Road construction, and well drilling.;
9. Supply by the Town to any Other water supplier, such as special districts and sanitation districts and municipalities, unless limited by terms of a written agreement.

B. Emergency water restrictions can be declared by the Town ~~Board~~Council or any two of the following:

1. The Mayor.;
2. The Director of Public Works or their appointee.;
3. The Town Manager or their appointee.

C. In the event the current demand exceeds the system's operational capabilities for a duration of 72 hours, as determined by the Town's Operator in Responsible Charge, the Town shall implement emergency measures to manage and mitigate water usage to ensure public health and safety. Triggering conditions shall include, but are not limited to, any of the following:~~An emergency water restriction may be imposed when the Town's storage tank reaches condition red and cannot be replenished within a reasonable period of time:~~

1. Failure of wells or pumps, including a malfunction or breakdown of any wells or pump stations and/or key components that significantly reduce the water supply.
2. Inoperable water treatment plants, including incidents that render water treatment facilities inoperable due to mechanical failures, contamination concerns, or other safety issues.
3. Water main breaks, including any break in the water main that results in significant water loss or impacts service delivery to consumers.
4. Natural disasters, including events such as floods, fires, earthquakes, tornadoes, or other natural disasters that could impact the water system or infrastructure integrity.

5. Prolonged system stress, including continued high demand scenarios that place undue stress on the existing water system.

*Condition red	=	Tank level is 0' to 9'
Condition yellow	=	Tank level is 9' to 12'
Condition green	=	Tank level is 12' to 18'

D. Notice of emergency water restrictions will ~~include the following:~~be posted on the Town's website.

1. ~~Notification of local radio and television stations;~~

2. ~~Posting on Town website and other available forms of social media.~~

13.04.130-Water rights—Conveyances.

All water rights, ~~both tributary, not nontributary~~ and nontributary, associated with property annexed to the Town shall be conveyed to the Town immediately upon annexation. All water rights associated with property proposed for rezoning or platting (including replatting) shall be conveyed by special warranty deed to the Town immediately upon approval of the rezoning or filing of any plat and the conveyance noted on the face of the plat. All conveyances shall be free and clear of all liens and encumbrances. All applications for annexation, rezoning, final Planning Unit Development site plan amendment, platting, or replatting shall be accompanied by a current title insurance commitment with copies of all documents referenced therein. After the water deed is recorded, the commitment shall be updated to establish that the conveyance was free and clear of all liens and encumbrances. No development approvals will be issued by the Town prior to ~~the~~ receipt of the water deed. The annexor or developer shall also assign to the Town its consent to withdrawal ~~of~~ the groundwater by the Town using forms approved by the State Engineer. If the Town adjudicates the water rights, the expense of adjudication shall be borne by the annexor or developer in accordance with the terms of any applicable agreement executed between the Town, developer, and all parties holding an ownership interest in the water or any overlying property. In addition to conveyance of water rights as above set forth, developer and all parties holding an ownership interest shall be required as part of the public land dedication obligation of the property to convey such well sites as are ~~deemed reasonably necessary by the Town~~ together with easements for water lines ~~as are~~ responsibly reasonably necessary by the Town. Such well sites shall be approximately two acres in size and shall preferably be rectangular in size with the requirement that the width be at least ~~two hundred (200)~~ feet and the length ~~be two hundred ninety-five (295)~~ feet. It shall be deemed reasonable to require one well site for each ~~three hundred (300)~~ single-family equivalents ("SFEs") or a fraction of ~~three hundred (300)~~ SFEs.

13.04.140 Water usage.

The quantity of water required to support the Town's water service commitment shall be calculated at 0.50 acre-feet per year per single-family equivalent, ("SFE"), which includes in-house and irrigation use. A multi-family equivalent (~~MFE~~) is 0.375 acre-feet per year. Irrigation usage for common areas within residential or non-residential communities, and for landscaped (pervious) areas within nonresidential sites shall be limited to 1.5 acre-feet per year per irrigated acre. ~~See Appendix WA.10 of this Code for detailed information regarding the submittal of plans and calculations to support this maximum irrigation usage.~~

Applications for approval for water usage under the ~~se regulations~~ Code shall comply with the ~~Town of Monument/Triview Metropolitan District Water Utility Policies and Standards, latest edition, and the water standards contained in the most recent edition of Appendix WA.10 of these regulations.~~

At the time of approval of each subdivision plat, the aggregate water usage calculated for the proposed development shall be indicated on the subdivision plat. Water usage which cannot be ascertained at the time of subdivision shall be deferred and determined at the time a site plan is approved by the Town. Water usage is based on usage of potable water from the municipal system. If at the time of subdivision approval the subdivider has established the availability of treated effluent to meet a portion of the nonpotable water usage for the approved development, the water usage attributed to the development shall be reduced by the amount of such treated effluent usage. However, if such use is to be approved, the annexor/developer shall bear all costs of constructing a dual pipeline and any and all other ancillary costs associated with allow~~ing~~ ancee of such use. An ~~“SFE” or “single family equivalent,”~~ as that term is used in this ~~s~~Section, shall be determined by reference to the following ~~on page 10, subsection 1, of the Monument/Triview Water Utility Policies and Standards, and reprinted here as follows:~~

Non-Residential Water Service Tap Size (Inches)	Number of Single Family Residential Equivalents (SFE)
3/4"	1.0
1"	1.9
1 1/2"	4.4
2"	8.1
3"	19
4"	35
6"	84
8"	154
10"	250
12"	368

13.04.150 Required water supply.

Development approvals may be withheld by the Town if the water usage attributable to the proposed development exceeds the water supply attributable to the development. If the water supply is insufficient, the Town, in its sole discretion, may allow the annexor/developer to secure additional water rights to satisfy the requirements for the proposed ~~use-proposed~~. Such additional water rights must support the withdrawal of water through either existing municipal water production facilities or facilities to be developed and placed in use to service the proposed development. Such additional rights which are designed to make up any shortfall must be acceptable to the Town, in its sole and complete discretion.

13.04.160 In-lieu fees.

~~In At~~ the ~~Town's~~ sole discretion ~~of the Town~~, the Town may accept a fee in lieu of water rights in the event the water rights associated with the proposed development are insufficient. The ~~Board of Trustees~~ Town Council, by resolution, ~~from time to time~~, shall establish the cost per acre-foot which shall be utilized to calculate the amount of such fee. The in-lieu fee shall be paid prior to final plat recordation.

13.04.170 Conditions and limitations of use of the water system.

- A. Except as otherwise expressly provided in this Code, the provisions of this Title shall apply to water service supplied to all water system customers, both within and outside the Town's corporate limits.
- B. It shall be unlawful for any person to use, excavate, connect to, open, alter, or otherwise disturb any portion of the water system, except in accordance with the provisions of this Title.
- C. The Finance Director and Public Works Director may develop and implement written rules, regulations, and policies to implement this Title, subject to Town Manager approval.
- D. Except as provided in this Title, it shall be unlawful for any person to use or occupy any building within the Town unless such building is connected to the water system in accordance with the requirements of this Title.
- E. Notwithstanding the requirements of this Title, any building which is supplied with water using an adequate, safe, and adjudicated well may continue to use such well to provide water. If the well subsequently fails such that it cannot provide adequate and safe water, such building shall then be connected to the water system.
- F. This Title shall not create any duty to any person with regard to the enforcement or nonenforcement of this Title. No person shall have any civil remedy against the Town or its officers, employees, or agents for any damage arising out of or in any way connected with the adoption, enforcement, or nonenforcement of this Title. Nothing in this Title shall be construed to create any liability, or to waive any of the immunities, limitations on liability, or any other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., or to waive any immunities or limitations on liability otherwise available to the Town, its officers, employees, or agents.
- G. No person shall resell water received from the water system. No water from the water system may be used on or at any premises other than the water using property specified in the application for water service submitted to the Town. This Section does not apply to bulk water sold by the Town.
- H. The Town is not responsible or liable for damage from any cause whatsoever to service connections, fixtures, and water using appliances, and no person is entitled to damages or payment of refunds because of temporary or permanent pressure changes or stoppage of the flow of water through the water system. Dirt and debris can enter the water lines for any number of reasons under normal water system

operations, and no person is entitled to damages because of dirt or debris entering such person's service line or connection.

- I. Water pressure and water flow in a main may vary as part of the normal water system operations. The Town reserves the right at any time, without notice, to modify water pressure or shut off the water in a main as part of its operation, repair, replacement, modification, and maintenance of the water system. The Town is not responsible for damage resulting from pressure changes or stoppage of the flow of water through the water system, regardless of how the pressure change or stoppage was caused.
- J. Any person who damages the water system is liable to the Town for the actual and necessary costs incurred by the Town in repairing such damages.
- K. To the fullest extent permitted by law, any person who, as a result of their negligent, intentional, or willful wrongful act causes any damage to any user of the water system shall indemnify, hold harmless, and defend the Town with respect to such damage, except to the extent such damage results from the negligent, intentional, or willful wrongful act of the Town, its officers, employees, or agents. "Damage" means each and every injury, wound, wrong, hurt, harm, fee, damage, cost, outlay, expenditure, or loss of any and every nature including, but not limited to, injury or damage to any property or right; injury, damage, or death to any person or entity; attorney fees, witness fees, expert witness fees, and expenses; and all other costs and expenses of litigation. This indemnity provision is to be interpreted to require a person to indemnify, hold harmless, and defend the Town only to the extent of the proportionate share of negligence or fault attributable to such person.

Chapter 13.08 WATER RATES AND CHARGES

Article 1. Water Rates and Charges Generally

13.08.010 ~~Water M~~metering of water.

All water sold by the Town shall be metered by meters which shall be installed inside of the building, unless the ~~board of trustees~~ Town Council or ~~their~~ its duly appointed representatives ~~shall~~ give written permission to locate the meter in a curb box.

13.08.020 Tap fees.

Upon application for a water service connection within the Town, and generally with an application for a land use permit, an applicant shall pay to the Town a fee in cash or other certified funds based on the current rate/fee schedule as adopted by resolution and posted on the Town's website ~~herein stated schedule of fees~~. ~~This~~ fee schedule is ~~shall be~~ based on the required meter and connection size as ~~determined by the schedule on page 10, subsection 1, of the Monument/Triview Water Utility Policies and Standards and reprinted~~ set forth in Section 13.04.140 of this Code.

- ~~A. The water impact fee structure for single-family equivalents (SFEs), commercial, industrial, and residential uses including single-family, multifamily (indoor consumption only), irrigation only meters, multiple family, and mobile home parks~~

located within the Town of Monument Water Department service area are as follows:

Domestic (Potable) Water Impact Fees*						
Water Service Size (inches)	2016	2017	2018	2019	2020	2021
— ³ / ₄ (Typical SFE)	\$15,000	\$16,350	\$17,820	\$19,420	\$21,170	\$23,080
1	\$26,670	\$29,070	\$31,680	\$34,520	\$37,640	\$41,030
1½	\$60,000	\$65,400	\$71,280	\$77,680	\$84,680	\$92,320
2	\$80,000	\$87,200	\$95,040	\$103,570	\$112,910	\$123,090
3	\$180,000	\$196,200	\$213,840	\$233,040	\$254,040	\$276,960
4	\$320,000	\$348,800	\$380,160	\$414,290	\$451,630	\$492,730
Multi-Family Units (Indoor Consumption Only, with Separate Irrigation Service)						
³ / ₄ (MFU)	\$9,000	\$9,800	\$10,700	\$11,700	\$12,800	\$14,000

* Irrigation use, or combined indoor and outdoor use.

Irrigation-Only Impact Fees						
Service Size (inches)	2016	2017	2018	2019	2020	2021
³ / ₄	\$15,000	\$16,350	\$17,820	\$19,420	\$21,170	\$23,080
1	\$26,670	\$29,070	\$31,680	\$34,520	\$37,640	\$41,030
1½	\$60,000	\$65,400	\$71,280	\$77,680	\$84,680	\$92,320
2	\$88,000	\$95,920	\$104,550	\$113,960	\$150,540	\$180,650
3	\$240,000	\$261,600	\$285,120	\$310,720	\$338,720	\$369,280
4	\$426,670	\$465,070	\$506,880	\$552,390	\$602,170	\$656,500

The connection charges, or ~~water impact (tap)~~ fees, imposed for each lot and service tap in a new development or subdivision, which are assessed at the time of construction for that specific lot, ~~will~~ shall be ~~dependent upon the~~ those fees ~~structure~~ in place at the date the final development plat is recorded for that specific development or subdivision. If the water tap fees are amended and

lowered during a ~~forty-eight~~48-month time period following the date the final plat is recorded, ~~then~~ the applicable ~~connection charge~~ tap fee ~~will shall~~ be the lower amount. If the water tap fees are amended and raised during the same ~~forty-eight~~48-month period, ~~then~~ the applicable ~~connection charge~~ tap fee ~~will shall~~ not be more than a ~~nine~~20% percent annual increase above the fee structure in place at on the date the final plat ~~was~~ recorded.

~~Should If~~ an applicant desires a meter/pipe size over four inches, the applicant may apply to the Town for approval of such meter/pipe size, and the Town shall determine each such application and the requisite fee associated therewith on a case-by-case basis.

The ~~above-stated~~ fees do not include any of the meters and appurtenances, the service line, or any installation costs or inspection fees, which costs shall be the sole responsibility of the applicant.

BA. ~~Charge.~~ Monthly service charges shall be ~~applicable-applied~~ to all existing and future taps ~~now outstanding or purchased subsequent to the effective date of the ordinance codified in this chapter and~~ which are ~~not~~ connected to the ~~present distribution~~water system. Charges will be billed at the rates set forth by resolution and posted on the Town's website ~~tabulated in Section 13.08.060~~. Billing for new taps will commence on the first day of the month next following issuance of the taps of [or] the effective date of said ordinance, whichever comes first.

CB. Tap fees for all users outside the ~~Town of Monument~~ Water Department service area will be determined by the applicable water service provider and are charged 1.5 times the regular rate.

DC. ~~Legal Description.~~ If not part of a land use permit for a property with an approved site plan, an application for a water tap shall include a precise legal description of the property to which the tap will be applied. The approved tap shall not be transferred to any other property or location.

13.08.030 Service line regulations.

Notwithstanding the following in this ~~s~~Section, ~~(1)~~ the Town may approve a looped water line serving a single undivided parcel, and a ~~(2)~~ commercial development with multiple utility connections on a single lot under single ownership may retain those connections.

A "principal and accessory building," as defined in this ~~e~~Code, on a single unsubdivided parcel may be serviced by a single water service line; provided, that all applicable Town fees have been paid for such service; ~~and further provided, that~~ no more than ~~thirty~~(30) water fixture units are served, and ~~that~~ such water fixture units can be served by the existing service (tap size). To be eligible for water service, all use of the property must be in compliance with the Town zoning regulations, however, water service to property as of June 17, 2019 ~~All new uses upon such parcel shall be permitted uses under the Town zoning regulations; provided, however, that all uses made upon such parcel prior to the effective date of the ordinance codified in this chapter may continue so long as it is not increased nor the use for which it is provided is changed so that it is not in compliance with the Town zoning regulations.~~ Any resubdivision of such parcel ~~will shall~~ require ~~necessitate~~ installation of a separate water service line for each lot created by resubdivision. All service lines shall be installed at a depth of at least ~~sixty~~(60) inches below the surface of the ground. Each service line shall contain a curb stop valve where the water may be

turned off to the entire parcel. The curb stop valve shall be located at or as near as possible to the property line.

13.08.040 Waste of water prohibited.

Customers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. Hydrants, urinals, water closets, bath-tubs, irrigation, and other fixtures must not be left running for any purpose other than the use for which they were intended. In addition to the penalty provided in this eCode for code violations, the water supply may be turned off where any such waste occurs. ~~Ifn the event~~ the Town is unable to contact the ~~eOwner~~ or the ~~owner's~~ representative of a property that has a water leak, and the Town is unable to shut off the water to the property, the Town ~~has the authority to may~~ hire a contractor at the ~~eOwner's~~ expense to ~~have repair~~ the leak ~~repaired~~ to prevent wasting the Town's water supply.

13.08.050 Reserved.

13.08.060 Service charges and water rates.

- A. ~~Service Charges.~~ All owners of property with an existing water tap shall be subject to a service charge, ~~;~~ with the exception of bulk water customers.

Service charges shall be as set forth by resolution and posted on the Town's website.

Base Rate	
Meter Size	Rate
3/4"	\$31.85
1"	56.71
1 1/2"	127.43
2"	226.49
3"	509.68
4"	905.94

- B. ~~Service Charges Outside the Municipal Water Service Boundaries (Town).~~ Service to areas outside the Town's boundaries is at the sole discretion of the Town Council. The Town Council may require any property outside the Town boundaries to annex to the Town as a condition of receiving service. All properties outside the Town's water service boundaries requesting service to convert an existing water tap, or to obtain a new water tap, for the Town to convey water utility shall be subject to a service charge, except for bulk water customers. The base rate for properties outside the Town's water service boundaries shall be not less than 1.5 times the standard rate for services.

Service charges outside the municipal water service boundaries shall be ~~charged as set forth by resolution and posted on the Town's website.~~ by the meter size as follows:

Base Rate 1.5 Times the Standard Rate for Services Outside the Town's Municipal Service Boundary	
Meter Size	Rate
¾"	\$47.78
1"	85.07
1½"	191.15
2"	339.24
3"	764.52
4"	1,358.91

C. ~~Water Rates.~~ All water rates shall be set forth by resolution and posted on the Town's website.~~sold by the Town shall be sold at the following rates:~~

- ~~1. Residential/Commercial, mobile home parks, and multifamily units with residential billing status in the Town; excluding Tri View and Village Center Metropolitan Districts:~~

Volumetric Rate for Residential/Commercial Rates Per Gallon	
Blocks	Rate
0—3,000g	\$0.013
3,001—6,000g	0.014
6,001—12,000g	0.015
12,001—24,000g	0.016
24,001g+	0.017

~~2/ Outside Municipal Boundary Rate:~~

Volumetric Rate Showing 1.5 Times the Standard Rate for Residential/Commercial Services Outside the Town's Municipal Service Boundary. Rates are Listed on a Per Gallon Unit.	
Blocks	Rate
0—3,000g	\$0.020
3,001—6,000g	0.021
6,001—12,000g	0.023
12,001—24,000g	0.024

24,001g+	0.026
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3. ~~Bulk Water Rates:~~

Bulk Water Rate for Residential and Residential Usage Outside of Service Area	
Blocks	Rate
0—3,000g	\$0.016
3,001—6,000g	0.023
6,001—12,000g	0.025
12,001—24,000g	0.027
24,001g+	0.029

Bulk Water Rate for Commercial/Government and Contractors	
Blocks	Rate
0—3,000g	\$0.030
3,001—6,000g	0.032
6,001—12,000g	0.034
12,001—24,000g	0.036
24,001g+	0.038

13.08.070 ~~Water bills and payment~~Utility billing and collection – Purpose.

All water bills shall be due on or before the date stated on the water billings. The purpose of the billing procedures is to provide uniform systems for billing and collecting service charges, surcharges, fees, penalties, and other applicable provisions of this Code to ensure timely, complete payment of all utility charges arising from utility services supplied to customers or from charges assessed under this Chapter and provide customers with adequate notice and opportunity to dispute the correctness of utility charges prior to termination of utility service for nonpayment.

13.08.080 Delinquent payments.

Water rents must be paid monthly in arrears at the Town Hall or via the Town's online payment service. If the water rents are not paid on or before the 20th of the month, the water rent shall be considered delinquent and a late penalty shall be added and collected as part of the water rate, and if not paid by the 20th day of the following month, a shut off penalty charge and an additional late penalty shall be added and collected as part of the water rate in addition to having the water turned off the first Wednesday of the following month. An additional penalty shall be added for shutting off the water. If the Owner/Tenant of the property turns on the water or causes

the water to be turned on after it has been shut off at the curb cock, the water for the property shall be turned off at the main and the Owner shall be fined. All penalties shall be as set forth by resolution and posted on the Town's website.

All water rents and rates shall be a charge and lien upon the property to which the water is delivered from the date the same became due and until paid. The Owner of every property, premises, or lot shall be liable for all water delivered to or taken and used upon their premise, which lien and liability may be enforced by the Town by an action at law or suit to enforce said lien. If from any cause any sums owing for water rent and rates shall become delinquent, the water may be shut off. ~~In case there shall be any~~If a water rent bill is delinquent and the supply has been turned off, the water shall not be turned on ~~again~~ until all ~~such~~ delinquent water ~~rents~~ payments have been ~~paid~~ made or payment arrangements have been approved by the ~~Finance~~ Director of ~~Public Works~~. Change of ownership or occupancy shall not affect the application of this Section. This Section shall apply to water users both within and outside the corporate limits of the Town.

Notice of lien shall be prepared and filed by the Town Clerk with the Clerk and Recorder of the County at any time after payment of the utility charges are delinquent, provided that notice of lien shall not be recorded until all administrative appeals provided in this Chapter have concluded. Such notice of lien shall include all the following:

- A. Name(s) of the Owner(s) of the property.
- B. Legal description of the property as stated on the County Assessor's website and number and street address of the property.
- C. Nature of the lien.
- D. That notice of lien is given pursuant to Section 13.08.080 of the Town Code.

A copy of the notice shall be mailed to the billing address of the Owner.

In addition, the Town Manager or their designee may certify the utility charges, assessments, and costs to the County Treasurer, to be placed upon the tax list for the current year and collected in the manner as other taxes are collected, with an administrative lien fee added to defray the cost of collection as adopted by resolution and posted on the Town's website. All State laws for assessing and collecting general taxes shall apply, including the laws for the sale of property for taxes and redemption of the same. Upon payment or collection of the delinquent account, the Town shall promptly record a release of lien.

If an Owner has a delinquent account, the Owner may enter into a three-month payment agreement interest free. If an Owner enters into a three-month payment agreement, the Town will waive the late fees prospectively if the account holder does not default on the agreement. If payment is not received in accordance with the agreement by the 21st of the third month, the agreement will be in default, the Town shall assess the prospectively waived late fees, a shut off fee will be added to the account, and the water services to the property will be shut off immediately. If the account is closed or final billed, the full balance due is payable in full immediately.

13.08.090 Nonpayment over thirty daysReserved.

All water bills in excess of thirty (30) days may result in termination of service, or other penalty, including, but not limited to filing or recording of a notice of unpaid assessments or notice of lien.

13.08.100 Disconnection and Rreinstatement of service.

~~No water reconnects or disconnects will be done after three thirty p.m., unless authorized by the Public Works Director, as the Public Works Department is open from seven a.m. to three thirty p.m.~~ The Town shall disconnect utility service for nonpayment of utility charges, including delinquent charges, only between the hours of 9:00 a.m. and 3:00 p.m., Monday through Thursday.

A. No disconnections shall be permitted on a legal holiday or on the day before a legal holiday. No disconnection shall be permitted on a day when the low temperature for the next 24 hours, as reported by the National Weather Service for the Monument area, is forecasted to be below zero degrees Fahrenheit.

~~A.B.~~ To avoid a service disconnection, all delinquent charges must be paid in full at the Town Hall or via the Town's online payment service by the date indicated on the notice of intent to disconnect. A disconnect service charge shall be imposed on each delinquent account disconnected from service, and repeat offenders within a 12-month period shall be assessed a graduated reconnection fee as set forth by resolution and posted on the Town's website. The property shall not be reconnected unless and until all outstanding utility service charges, penalties, and fees are paid in full. Only cash, money order, certified check, or electronic payments ~~will~~ shall be accepted ~~on to bring the account current and qualify the Owner for a reconnect. For repeat offenders in a twelve-month period the following reconnect fee schedule will be assessed:~~

1st reconnect:	-\$50.00
2nd reconnect:	\$100.00
3rd reconnect and thereafter:	\$150.00

The El Paso County Health Department ~~will~~ shall be notified immediately if a business or an apartment building is disconnected.

13.08.101 Owner dispute and administrative appeal.

A. The Town water department may informally adjust or correct the utility billing or charges for good cause shown, including for incorrect or unsubstantiated meter readings, data input error, or erroneous Single-Family Residential Equivalent assessments. If an Owner requests an adjustment prior to the bill due date and the utility bill is reduced, the due date of the utility bill for the purpose of imposing late charges shall be extended an additional five days from the date the Town water department adjusts the billing and mails or delivers notice of the adjustment to the Owner.

B. Upon issuance of a notice to disconnect, an Owner shall be entitled to formally appeal the correctness of all or part of the utility bill, provided that the dispute was not the subject of a prior dispute or resolution. The procedure for appealing a disputed utility bill shall be as follows:

1. Within 10 days of the date of the notice to disconnect or rejection notice, the Owner shall notify the Finance Director or their designee, in writing, that the Owner disputes all or part of the amount(s) shown on the utility bill,

or the notice to disconnect or the other grounds for disconnection, stating as completely as possible the basis for the dispute.

a. If the Finance Director or their designee determines the dispute is untimely or the Owner previously disputed the correctness of all or part of the amount(s) disputed, the Finance Director or their designee shall mail notice to the Owner stating the present dispute is untimely or invalid. The Town shall then proceed as if the Owner had not notified the Town of the present dispute.

2. If the Finance Director or their designee determines the dispute is timely and valid, the Town shall, within five business days after receipt of Owner's notice, set a time for a formal hearing before the Town Manager or their designee ("hearing official"). If the original time set for the hearing does not work for the Owner, the Owner shall provide the Finance Director with alternative times for the hearing and coordinate an alternative mutually agreeable time for the hearing.

3. Unless agreed to by the Owner, the formal hearing shall be held within 10 business days of the Finance Director's receipt of the Owner's written dispute.

4. At the formal hearing, both the Town and the Owner shall be entitled to present all evidence that is, in the hearing official's sole discretion, relevant and material to the dispute, and to examine and cross-examine witnesses. The water department may develop rules and procedures governing appeal hearings which must be approved by the Town Manager. All formal hearings shall be audio recorded.

5. Based on the record established at the formal hearing, the hearing official shall, within five days of the close of the formal hearing, issue a written decision formally resolving the dispute. Such decision shall be final and binding upon the Town and the Owner and shall constitute final administrative action by the Town. The official decision shall be mailed or delivered to the Owner.

6. Owner's failure to meet any submittal deadline or attend the appeal hearing, except for good cause shown, shall constitute abandonment of the appeal. The hearing official may extend any deadline or hearing date for up to 10 business days, for good cause shown, upon request of either the Owner or the Town.

C. An Owner's use of the dispute and appeal procedure shall not relieve the Owner of their obligation to timely and completely pay all other undisputed utility, penalty, or late charges which are the subject of the dispute. The Town shall not disconnect the utility services of any Owner with an outstanding dispute or appeal until after the hearing official's decision has been rendered.

13.08.110 ~~Abandonment of taps~~Reserved.

~~Any property owner who does not pay for the use of water or who does not pay the minimum water service fees for a period of two consecutive years or more shall be deemed to have~~

~~abandoned the waterline and water tap. Thereafter, water service shall be provided only upon payment of the tap fee then in effect and the installation of a new service line and stop cock which meets all specifications set forth in this code.~~

13.08.120 Tap use and fund escrow.

Upon approval of an application for a water tap and payment of the required fee ~~therefore,~~ the ~~owner of the property~~ to which the tap is applied shall be required to start construction, of the building(s) ~~or buildings~~ which will utilize such tap, within ~~ninety (90)~~ days of the tap approval ~~of such tap or otherwise~~ the tap shall be forfeited to the Town and all tap fees paid therefore shall be returned, ~~except minus that a fifty dollar (\$50.00) fee will be retained by the Town from the fee refund~~ to cover the cost of processing the tap application and monitoring compliance with this ~~chapter.~~

13.08.130 Tap fee transfer.

A tap fee will pass with title to the lot or parcel of property in question unless a contrary agreement has been approved by the ~~Board of Trustees~~ Town Council prior to ~~the~~ transfer of the land. The ~~Board~~ Town Council will consider requests to transfer to contiguous parcels within a block or legal description on a case-by-case basis.

13.08.140 Tap fees required on private water lines.

Water tap fees ~~will~~ shall be charged to all users requiring Town water service except uses owned by the Town. Exceptions to this ~~s~~Section require Town ~~board~~ Council approval.

13.08.150 Abandonment of water taps.

~~From and after November 15, 1998, t~~The Town will not recognize the existence of any water tap unless a tap fee has been paid ~~pursuant to the provisions of Section 13.08.020 and unless either a service charge or water charge is paid on account of for such water tap pursuant to the provisions of Section 13.08.060.~~ Nonpayment of ~~either a service charge or water charge as set forth above,~~ for a period exceeding ~~twelve (12)~~ 24 months shall be deemed prima facie evidence of abandonment of any water tap. Thereafter, water service shall be provided only upon payment of the tap fee then in effect and installation of a new service line and stop cock which meets all specifications set forth in this Code. Any tap for which a water tap fee and service charge was paid that was not recognized by formal action of the Town Council based on evidence of the existence of such tap presented no later than November 15, 1998 is deemed abandoned.

- ~~A. Any person claiming existence of a pre-existing water tap or prepayment for a water tap must present satisfactory evidence of the existence of such tap on or before November 15, 1998. Evidence of the existence of such tap shall be presented to the Town Manager who will review the facts and circumstances surrounding the claim and pass along for appropriate action to the Board of Trustees with regard to the recognition or non-recognition of the existence of such water tap or prepayment of a water tap.~~
- ~~B. In the event a tap is recognized pursuant to the procedures of subsection A of this section, no tap fee shall be charged on account of such tap; provided however, that after such recognition regular monthly payments or either a service charge or water charge shall be made. If such service charge or water charge is not made, the tap shall be subject to abandonment pursuant to the provisions of this section.~~

Article II. Town Water Department as Water Activity Enterprise

13.08.160 Water enterprise activity.

The Town water department is established, ~~to be effective~~ as of January 1, 2000, as a water activity enterprise, as that term is defined in Section 37-45.1-102(4), C.R.S., to be known as the Town of Monument Water Activity Enterprise ("Water Activity Enterprise"). ~~as amended, and as such the~~ The water department Water Activity Enterprise and its governing body shall have, ~~subject only to express contrary provisions of any Charter which may be adopted by the Town,~~ all rights, privileges, authority, and powers available to water activity enterprises under Article 45.1 of Title 37, C.R.S. ~~as amended. The Water Activity Enterprise fund shall at all times be treated as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution. Nothing in this Article shall limit in any way the legal authority of the Town Council, as the governing body of the Water Activity Enterprise, to determine how to budget, appropriate, and spend all revenues received from or related to the operation of the water system. To the fullest extent permitted by law, all revenues received by the Water Activity Enterprise arising from or related to the operation of the water system may be budgeted, appropriated, and spent by the Town Council in its legislative discretion.~~

13.08.170 Limitations.

The ~~water department~~ Water Activity Enterprise and its governing body shall be subject to such limitations as ~~may be~~ specifically set forth in Article 45.1 of Title 37, C.R.S., ~~as amended~~

13.08.180 Governing body.

The ~~Town Council shall be the~~ governing body of the Water Activity Enterprise. ~~water department shall be the board of trustees of the Town.~~

13.08.190 Definitions.

All definitions set forth in Section 37-45.1-102, C.R.S., ~~as amended~~, are incorporated into this ~~e~~Chapter by this reference and such terms, as used in this ~~e~~Chapter, shall have the same meaning as given to such terms in ~~said~~ Section 37-45.1-102, C.R.S.

13.08.200 Property.

The property of the ~~water department~~ Water Activity Enterprise shall include, but ~~not necessarily be~~ is not limited to all the following:

- A. The water fund, as established and maintained pursuant to ~~the State~~ laws ~~of the state~~ and ~~the Town~~ ordinances, ~~of the Town~~;
- B. Any water acquisition and preservation fund, as established and maintained pursuant to ~~the State~~ laws ~~of the state~~ and ~~the Town~~ ordinances, ~~of the Town~~;
- C. All Town water rights ~~of the Town~~ of any type, character, or nature, and all water stock rights and stock certificates in ditches and ditch companies owned or later acquired by the Town.;
- D. All contracts and contract rights relating to past, present, or future water activities of or by the Town water department.;
- E. All revenues associated with and derived from the past, present, or future conduct of water activities by the ~~water department~~ Water Activity Enterprise, including,

but not limited to, revenues from rates, charges, surcharges, fee assessments, penalty assessments, and the like, collected and to be collected pursuant to the Town's or the ~~water department's~~ Water Activity's Enterprise's ordinances, rules, regulations, and policies pertaining to water activities, provided, that the ~~water department~~ Water Activity Enterprise shall not accept grants from the ~~s~~State and/or Colorado local government which aggregate more than ~~ten (10%) percent~~ of the department's total annual revenues in any fiscal year.

F. All Town augmentation rights ~~of the Town~~ of any type, character, or nature.

13.08.210 Accounting.

Revenues and expenditures of the ~~water department~~ Water Activity Enterprise shall be accounted for separately from other Town revenues and expenditures, ~~of the Town and shall be excluded from any and~~ and shall be subject to all limitations and restrictions upon the collection, keeping, and expenditure of revenues imposed by Section 20 of Article X of the Colorado Constitution, and ~~shall also be~~ excluded from the calculations of any base used for calculating any ~~and~~ spending or revenue limit applicable to the Town under Section 20 of Article X of the Colorado Constitution.

13.08.220 No tax.

To the extent ~~it~~ deems necessary, the governing body of the Water Activity Enterprise ~~water utility enterprise~~ shall exercise the Town's legal authority relating to the ~~system enterprise~~, but shall not levy a tax to support activities of the Water Activity Enterprise.

13.08.230 ~~Actions ratified~~Reserved.

~~All actions (not inconsistent with the provisions of this chapter) heretofore taken by the board of trustees or the Town manager or employees of the Town directed toward the operation of the system as an "enterprise" under Section 20 of Article X of the Colorado Constitution are ratified, approved and confirmed.~~

13.08.240 Revenue bonding authority.

~~Subject only to such limitations and restrictions as may be provided for in any Charter which may be adopted by the Town, t~~ The Town water department shall have such revenue bonding authority as is provided for ~~at in~~ Section 37-45.1-104, C.R.S., other State statutes, ~~of the state~~ and the Constitution of Colorado, including, but not limited to, Article XX and Section 6(3) of Article XI of the Colorado Constitution.

Chapter 13.12 - WASTEWATER TREATMENT SYSTEM

13.12.010 ~~Wastewater discharge limitations.~~Reserved.

- ~~A. It is unlawful for any person to discharge or deposit or cause or allow to be deposited, any waste or wastewater which fails to comply with the limitations imposed by this section.~~
- ~~B. No discharger into the wastewater treatment system shall augment his or her use of process water or otherwise dilute his or her discharges a partial or complete substitute for adequate treatment to achieve compliance with these standards.~~

~~C. As used in this chapter, the following terms shall have the meaning designated in this subsection:~~

- ~~1. "Total metal" means the sum of the concentrations of copper (Cu), nickel (Ni), total chromium (Cr) and zinc (Zn).~~
- ~~2. "Discharge rate" means that volume of effluent from the user which has been determined by the Town to be representative of process effluent from that user.~~

~~D. For users with a discharge rate of less than ten thousand (10,000) gallons per average operating day, the following limitations shall apply, except that at no time shall the maximum concentration exceed two times the maximum average concentration per operating day.~~

Pollutant and/or Property	Maximum Average Concentration Per Operating Day (mg/l)
Cn (Cyanide), amendable to Chlorination	2.0
Cr (+6) (Hexavalent Chromium)	.25
Cd (Cadmium)	1.0
Pb (Lead)	.8

~~E. For users with a discharge rate of greater than ten thousand (10,000) gallons per average operating day, the following limitations shall apply, except that at no time shall the maximum average concentration exceed two times the maximum average concentration per operating day:~~

Toxicant	Maximum Average Concentration at any time (mg/l)
Arsenic	.1
Barium	5.0
Beryllium	1.0
Boron	1.0
Chlorinated hydrocarbons; including, but not limited to pesticides, herbicides and algacides	.02
Cresols	2.0
Fluorides	25.0
Formaldehyde	5.0
Manganese	1.0

Mercury	.05
Organic Solvents	50.0
Phenols	1.0
Selenium	2.0
pH	<5.5→9.5
Temperature (F)	<150
Oil & Grease	100
Total Suspended Solids (mg/l)	25.0
Chloride	10,000.0
Sulfate	1,000.0

13.12.020 Point of discharge—Limitation~~Reserved~~.

~~It is unlawful for any person to discharge any substance directly into a manhole or other opening within the wastewater collection system, other than through an approved service line.~~

13.12.030 Disposal limitations~~Reserved~~.

- ~~A.—— It is unlawful for any person to dispose of waste at the Tri-Lakes Wastewater Treatment Facility where such wastes have been collected and/or held in a tank or other container and where such wastes fails to comply with any limitations set out in Sections 13.12.010 through 13.12.030.~~
- ~~B.—— The Town shall endeavor to identify and compile a record of those sources which produce or may produce wastes which are, or may be, in violation of the limitations imposed by this chapter. Any records shall be available to any person during business hours. The limitations imposed by this chapter shall apply without regard to the existence, substance or availability of such records.~~

13.12.040 Regulatory action—Specific powers of Town~~Reserved~~.

~~If wastewater containing any substance described in Sections 13.12.010 through 13.12.030 are discharged or proposed to be discharged into the wastewater collection system of the Town or to any wastewater tributary thereof, the Town may take action necessary to:~~

- ~~A.—— Prohibit the discharge of such wastewater;~~
- ~~B.—— Require a discharger to demonstrate that in-plant modifications will reduce or eliminate the discharge of such substances in conformity with this chapter;~~
- ~~C.—— Require treatment, including storage facilities or flow equalization necessary to reduce or eliminate the objectionable characteristics or substance so that the discharge will not violate this chapter;~~
- ~~D.—— Require the person making, causing or allowing the discharge to pay any additional cost or expense incurred by the Town for handling and treating excess loads imposed on the Tri-Lakes Wastewater Treatment Facility; or~~

- E. ~~Take such other or further remedial action as may be deemed to be desirable or necessary to achieve the purposes of this chapter.~~

13.12.050 ~~Regulatory actions—General powers of town~~Reserved.

~~Any actual or threatened discharge of wastewater containing substances limited or prohibited by this chapter into the wastewater collection system of the town which, by the determination of the Town, presents an imminent or substantial endangerment to the health or welfare of persons or to the environment, or to which causes interference with the normal operation of the Tri-Lakes Wastewater Treatment Facility, may be immediately halted or eliminated by the Town. The Town may halt or eliminate such discharges by means of any procedure of measure authorized by this chapter for enforcement of discharge limitations and prohibitions, or by means of physical disconnection from the wastewater collection system or other discontinuance of wastewater treatment service. Such discharges may be halted or eliminated without regard to the compliance of the discharge with other provisions of this chapter.~~

13.12.060 ~~Pretreatment facilities—Submission of plans~~Reserved.

~~Where pretreatment or equalization of wastewater flows prior to discharge into any part of the collection and/or treatment system is required, plans, specifications and other pertinent data or information relating to such pretreatment of flow control facilities shall first be submitted to the Town for review and approval. Such approval shall not exempt the discharge of such facilities from compliance with any applicable code, ordinance, rule, regulation or order of any governmental authority. Any subsequent alterations or additions to such pretreatment or flow control facilities shall not be made without due notice to and prior approval of the Town.~~

13.12.070 ~~Pretreatment facilities—Operations~~Reserved.

~~If pretreatment or control of wastewater flow is required, such facilities shall be maintained in good working order and operated as efficiently as possible by the owner or operator at his or her own cost and expense, subject to the requirements of this chapter and all other applicable codes, ordinances, laws, rules and regulations.~~

13.12.080 ~~Admission to property~~Reserved.

~~Whenever it shall be necessary for the purposes of this chapter, the Town or agent thereto, upon presentation of credentials, may enter upon any property or premises at reasonable times, including at any time during the operating day of the user, for the following purposes:~~

- ~~A. Copying any records required to be kept under the provisions of this chapter;~~
- ~~B. Inspecting any monitoring equipment or method; and/or~~
- ~~C. Sampling any discharge of wastewater into the wastewater collection system.~~

~~The occupant of such property or premises shall render all proper assistance in such activities.~~

13.12.090 ~~Accidental discharge~~Reserved.

~~Each industrial user shall provide adequate protection as approved by the Town from accidental discharge of prohibited materials or other wastes regulated by this chapter. Facilities and procedures to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or operator's own cost and expense.~~

Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Town for review, and shall be approved by same before installation of the accidental discharge protection. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify his or her facility as necessary to meet the requirements of this chapter.

13.12.100 Accidental discharge—Report required~~Reserved~~.

If a facility has an accidental slug discharge, the owner or user of the facility responsible for such discharge shall immediately notify the Town so that corrective action may be taken to protect the Tri-Lakes Wastewater Treatment Facility. In addition, a written report addressed to the Town detailing the date, time and cause of the accidental discharge and corrective action taken to prevent future discharges, shall be filed by the responsible person within five days for the occurrence of the noncomplying discharge.

13.12.110 Accidental discharge—Failure to report~~Reserved~~.

It is unlawful for any person to fail to report any accidental discharge which violates the prohibitions and limitations of this chapter, as provided in Section 13.12.090.

13.12.120 Discharge reports~~Reserved~~.

- A. ~~Every significant industrial user shall file an annual discharge report on forms provided by the Town. Unless otherwise required by the Town, discharge reports shall be filed not later than thirty (30) days after receipt of report forms from the Town. The Town may require any other industrial user discharging or proposing to discharge into the wastewater collection system to file such periodic reports.~~
- B. ~~The discharge report shall indicate the current status of the user and shall include, but, in the discretion of the Town, shall not be limited to, nature or process, volume, rate of flow, mass emission rate, production quantities, hours of operation, concentrations of controlled substances or other information which relates to the generation of waste. Such reports may also include the chemical constituents and quality of liquid materials stored on site even though they are normally discharged. In addition to discharge reports, the Town may require information in the form of self-monitoring reports of which the format, frequency and contents shall be specified by the Town.~~
- C. ~~Every industrial user shall file an amended discharge report two weeks prior to any planned significant change in operations, wastewater constituents or wastewater characteristics. If such significant change occurs unknowingly or is unplanned, an amended discharge report shall be filed within seven days after such change becomes known. A significant change shall mean a change which will be in effect for a period of thirty (30) days or more and shall include but is not limited to:~~
 - 1. ~~Change in the number of shifts, an additional processing operation, any new regulated substance used which may be discharged;~~
 - 2. ~~Twenty-five (25) percent increase or decrease in the wastewater flow or production volume;~~
 - 3. ~~Any other change which may alter the average normal wastewater characteristics by a factor of 1.5 or more.~~

13.12.130 ~~Records and monitoring~~Reserved.

- ~~A. All industrial users who discharge or propose to discharge wastewaters to the Tri-Lakes Wastewater Treatment Facility shall maintain such records of production and related factors, effluent flows and amounts or concentrations of controlled substances as are necessary to demonstrate compliance with the requirements of this chapter and any applicable state or federal pretreatment standards or requirements.~~
- ~~B. Such records shall be made available upon request of the Town or its agent thereto. In addition, all industrial users who discharge or propose to discharge wastewaters to the Tri-Lakes Wastewater Treatment Facility shall provide the information requested by the Town or agent thereto on a wastewater discharge questionnaire; such questionnaire shall be established and revised by the Town from time to time as the Town deems necessary.~~
- ~~C. Should the Town deem it necessary to fulfill the purpose of this code, the Town shall maintain the following option:~~
- ~~1. The Town or agent thereto, shall monitor all discharge requirements set forth herein as frequently as needed but not less than every other month, six times per year. The costs entailed by the Town to effect monitoring, analysis and labor shall be paid by the individual industrial user and/or owner operating facility.~~
 - ~~2. The owner or operator of any premises or facility discharging industrial wastewater into the Tri-Lakes Wastewater Treatment Facility shall install, at his or her own expense, suitable monitoring equipment which isolates appropriate wastewater discharges into the wastewater collection system and facilitates accurate observation, sampling and measurement of appropriate discharges. Such equipment shall be maintained in proper working order and kept safe and accessible at all times for the Town or agent thereto.~~
- ~~D. All monitoring equipment, provided by the Town, agent, owner or operator shall be located and maintained on the industrial user's premises outside of the building. The Town may allow facilities to be constructed in the easement with the approval of the Town agency having jurisdiction over such easement, and located so that it will not be obstructed by public utilities, landscaping or parked vehicles and is accessible at all times by the Town or agent thereto.~~
- ~~E. When more than one user is able to discharge into a common service line, the Town may require installation of separate monitoring equipment for each user. When there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user, the Town may require that separate monitoring facilities be installed for each separate discharge.~~
- ~~F. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the Town's requirements and all applicable construction standards and/or specifications.~~

13.12.140 ~~Inspection—Sampling and analysis~~Reserved.

- A. ~~Compliance determinations with respect to Sections 13.12.010 through 13.12.030, may be made on the basis of either instantaneous grab samples or composite samples of wastewater. Such samples shall be taken at a point or points which the Town deems to be suitable for obtaining a representative sample of that discharge. Composite samples may be taken over a twenty-four (24) hour period, or over a longer or shorter time span, as determined by the Town, to meet specific circumstances.~~
- B. ~~Laboratory analysis of industrial wastewater samples shall be performed in accordance with the current edition of Standard Methods for Chemical Analysis of Water and Wastewater published by the U.S. Environmental Protection Agency or the Annual Book of Standards, Part 23, Water, Atmospheric Analysis, published by the American Society for Testing and Materials. Analysis of those pollutants not covered by these publications shall be performed in accordance with procedures approved by the Town. The test results of laboratory analysis performed by an authorized agent shall be presumed to be correct unless shown otherwise by competent evidence.~~
- C. ~~Sampling of industrial wastewater for the purpose of determining compliance with respect to Sections 13.12.010 through 13.12.030, will be performed by the Town or agent thereto, at such intervals as the Town deems necessary. However, it is the goal of this chapter that the Town conduct sampling or cause such sampling to be conducted for all major contributing industries at least six times per year.~~

13.12.150 ~~Wastewater discharge permit requirements~~Reserved.

~~All significant industrial users proposing to connect to or discharge into any part of the Tri-Lakes Wastewater Treatment System, shall obtain a discharge permit thereof. All existing significant industrial users connected to or discharging into any part of the Tri-Lakes Wastewater Treatment System shall obtain a wastewater discharge permit within ninety (90) days from and after the effective date of this chapter. A separate permit is required for each facility on a separate platted lot with a separate service connection.~~

13.12.160 ~~Discharge permit—Application~~Reserved.

- A. ~~Users seeking a wastewater discharge permit shall complete and file with the Town an application on the form prescribed by the Town. In support of this application, the user shall be required to submit the following information:~~
- ~~1. Name, address and user classification number of the application;~~
 - ~~2. Average daily discharge rate of wastewater;~~
 - ~~3. Wastewater constituents and characteristics, including, but not limited to those set forth in Sections 13.12.010 through 13.12.030 as determined by an analytical laboratory approved by the Town;~~
 - ~~4. Time and duration of discharge;~~
 - ~~5. Average and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any;~~
 - ~~6. Site plans, floor plans, mechanical and plumbing plans and details to show all service lines and appurtenances by size, location and elevation;~~

- ~~7. Description of activities, facilities and plant processes on the premises, including all materials and types of materials which are, or could be discharged into the wastewater collection system;~~
 - ~~8. Each product produced by type, amount and rate of production;~~
 - ~~9. Number and type of employees, and hours of work; and~~
 - ~~10. Any other information deemed by the Town to be necessary to evaluate the permit application.~~
- ~~B. There is established a wastewater discharge permit application charge of fifty dollars (\$50.00) for each permit application. Such charge shall be payable by the applicant at the time the application is submitted.~~
- ~~C. The Town shall evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the Town may issue a wastewater discharge permit subject to the terms and conditions provided in this section.~~

13.12.170 Discharge permit—IssuanceReserved.

- ~~A. The Town shall issue a wastewater discharge permit to the applicant if the Town finds that all of the following conditions are met:~~
- ~~1. The proposed discharge of the applicant is in compliance with the prohibitions and limitations of Sections 13.12.010 through 13.12.030;~~
 - ~~2. The proposed discharge of the applicant would permit the normal and efficient operation of the Tri-Lakes Wastewater Treatment System; and~~
 - ~~3. The proposed discharge of the applicant would not result in a violation by the Town of the terms and conditions set forth in the NPDES permit for the Tri-Lakes Wastewater Treatment Facility.~~
- ~~B. If the Town finds that the condition set out in subsection (A)(1) of this section is not met, the Town may issue a wastewater discharge permit to the applicant if the conditions set out in subsection (A)(2) and (3) are met and if the applicant submits, and the Town approves, a schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented to insure compliance with the provisions of this chapter.~~

13.12.180 Discharge permit—Denial—HearingReserved.

- ~~A. In the event an application for a wastewater discharge permit is denied, the Town shall notify the applicant in writing of such denial. Such notification shall state the grounds for such denial with that degree of specificity which will inform the applicant of the measures or actions which must be taken by the applicant prior to issuance of a permit.~~
- ~~B. Upon receipt of notification of denial of a permit application, the applicant may request and shall be granted a hearing to be held by the Town. At such hearing the applicant shall have the burden of establishing that the conditions set out in Section 13.12.170 have been met and that a permit should be issued.~~
- ~~C. The Town may conduct the hearing and take the evidence or may designate a representative to:~~

1. ~~Issue in the name of the Town notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;~~
 2. ~~Take the evidence;~~
 3. ~~Transmit a report of the evidence and hearing, including transcripts and other evidence, to the Town together with recommendations for action thereon.~~
- D. ~~Testimony taken at any public hearing shall be under oath and recorded stenographically or electronically. The transcript as recorded shall be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.~~
- E. ~~Upon review of the evidence by the Town, the Town shall make written findings of fact. Thereupon the Town may direct an order to issue a wastewater discharge permit, or give such other or further orders and directions as are necessary and appropriate.~~
- F. ~~Any party to the hearing aggrieved or adversely affected by an order of the Town, may appeal such order to the District Court in and for the County of El Paso, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.~~

13.12.190 Discharge permit—ConditionsReserved.

~~Wastewater discharge permits shall be expressly subject to all provisions of this code and all other regulations, user charges and fees established by the Town. The conditions of wastewater discharge permits shall be uniformly enforced in accordance with this chapter and applicable to state and federal regulations. Permit conditions may include the following:~~

- A. ~~The unit charge or schedule of user charges and fees for the wastewater to be discharged to the system;~~
- B. ~~Reporting requirements to indicate chemicals purchased, used, disposed and method for disposal, including a description of and limitations placed upon the discharge point;~~
- C. ~~Limits on rate, time and characteristics, including average and maximum wastewater constituents and characteristics, of discharge or requirements for flow regulations and equalization;~~
- D. ~~Requirements for installation of inspection and sampling facilities and specifications for a monitoring program;~~
- E. ~~Requirements for maintaining and submitting technical reports and plant records relating to wastewater discharges, and qualities or general characteristics of wastewater tank contents;~~
- F. ~~Daily average and daily maximum discharge rates or other appropriate conditions, when substances subject to limitations and prohibition are proposed or present in the user's wastewater discharge;~~
- G. ~~Compliance schedules; and/or~~
- H. ~~Other conditions to ensure compliance with this chapter;~~
- I. ~~Upon request by the Town, all records kept pursuant to this chapter shall be submitted to the Town for review.~~

13.12.200 Discharge permit—DurationReserved.

~~Permits shall be issued for a specified time period, not to exceed three years. A permit may be issued for a period of less than one year, or may be stated to expire on a specific date. If the user is not notified by the Town thirty (30) days prior to the expiration of the permit, the permit shall automatically be extended for one year only. The terms and conditions for the permit may be subject to modification and change by the Town during the life of the permit, as limitations or requirements as identified in Section 13.12.010 through 13.12.030 are modified and changed. The user shall be informed of any proposed changes in his or her permit at least sixty (60) days prior to the effective date of change. Any such change or new condition in the permit shall include a reasonable time schedule for compliance.~~

13.12.210 Discharge permit—TransferReserved.

~~Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation.~~

13.12.210 Discharge permit—RevocationReserved.

~~Any violation of the conditions of a permit of this chapter or of applicable state and/or federal regulations shall be reason for revocation of such permit. Grounds for revocation of a permit include, but are not limited to, the following:~~

- ~~A. Failure of a user to accurately report the wastewater constituents and characteristics of his or her discharge;~~
- ~~B. Failure of the user to report significant changes in operations or wastewater constituents and characteristics;~~
- ~~C. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or~~
- ~~D. Violation of the conditions of the permit.~~

13.12.230 Notification of violationReserved.

~~Whenever the Town finds that any person has violated or is violating this code, or any prohibition, limitation or requirement contained in this chapter, the Town may serve upon such person two written notices stating the nature of the violation and providing a reasonable time, not to exceed thirty (30) days, for the satisfactory correction thereof. A meeting with the Town may be scheduled at the request of the violating person or Town to discuss the violation and/or a satisfactory correction schedule.~~

13.12.240 Show-cause hearingReserved.

- ~~A. Upon a finding by the Town that a person has caused or permitted an unauthorized discharge or that any such unauthorized discharge has not been corrected by timely compliance with a correction schedule, whether, with or without a meeting with the Town, the Town may order any person who causes or allows such unauthorized discharge to show cause to the Town why service should not be terminated. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the Town regarding the violation, and directing the offending party to show cause before the Town why an order should not be made directing the termination of service. The notice of the hearing shall be served personally or~~

by certified mail at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation. The Town may conduct the hearing and take the evidence, or may designate a representative to:

1. — Issue in the name of the Town, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing;
2. — Take the evidence;
3. — Transmit a report of the evidence and hearing to the Town, including transcripts and other evidence, together with recommendations for action thereof.

B. — Upon review of the evidence by the Town, the Town shall make a written findings of fact. Thereupon the Town may:

1. — Issue an order stating that no unauthorized discharge has occurred and directive that service shall not be terminated therefor;
2. — Issue an order stating that an unauthorized discharge has occurred and directing that, following a specified time period, the wastewater treatment service of the offending party be discontinued unless:
 - a. — Adequate treatment facilities, devices of other appurtenances shall have been installed;
 - b. — Existing treatment facilities, devices or other appurtenances are properly operated or maintained, or
 - c. — Issue such other or further orders and directives as are necessary and appropriate.

13.12.250 ~~Disclosure—Availability to public~~Reserved.

Except as otherwise provided in this chapter, all records, reports, data or other information supplied by any person as a result of any disclosure required by this chapter shall be available to the public for inspection.

13.12.260 ~~Trade secrets—Confidentiality~~Reserved.

- A. — The provisions of Section 13.12.250 shall not be applicable to any information designated as a trade secret by the person supplying such information. Material designated as a trade secret may include but shall not be limited to processes, operations, style of work or apparatus or confidential commercial or statistical data.
- B. — Information designated as a trade secret pursuant to subsection A of this section shall remain confidential and shall not be subject to public inspection. Such information shall be available only to officers, employees or authorized representatives of the Town charged with enforcing the provisions of this chapter.
- C. — It is unlawful for any officer, employee or authorized representative of the Town to divulge in any manner or to any extent not authorized by judicial order or other provisions for the law information supplied pursuant to any requirement of this chapter, when such information has been designated as a trade secret pursuant to subsection A of this section. In addition to any other penalties that may be imposed,

~~any officer, employee or authorized representative of the Town who violates the provisions of this section shall be subject to discharge from the employ of the Town.~~

~~13.12.270 Public notice of significant violation~~Reserved.

~~On or before the first day of June of each year, the Town shall publish on its website and post a notice on the bulletin board located in the lobby area of Town Hall, of all significant violations which occurred subsequent to preceding annual notice. The annual notice shall include, but not be limited to, the name of the violator, date of violation, and the general nature of the violation.~~

Chapter 13.14 - SANITARY SEWER COLLECTION SYSTEM SPECIFICATIONS

13.14.010 ~~[Adopted.]~~Reserved.

~~A complete set of Sanitary Sewer Collection System Specifications adopted by the Town is available at the Development Services Department at Town Hall.~~

Chapter 13.16 – CROSS-CONNECTION CONTROL

13.16.010 ~~Cross-connection control general policy~~—Purpose.

- A. To protect the public water systems from ~~the possibility of~~ contamination ~~or and~~ pollution by isolating within its customers' internal distribution system(s) ~~or and its customers'~~ private water system(s) ~~such~~ contaminants or pollutants which could backflow or back-siphon into the public water systems.;
- B. To ~~promote the~~ eliminateion ~~or and~~ control ~~of~~ existing cross-connections, actual or potential, between ~~its~~ customers' in-plant potable water system(s) and nonpotable water systems, plumbing fixtures, and industrial piping systems.;
- C. To provide for ~~the maintenance of~~ a continuing program of cross-connection control which will systematically and effectively prevent ~~the~~ contamination ~~or and~~ pollution of the potable water system.

13.16.020 Definitions.

As used in this ~~e~~Chapter:

~~“Agency” means the Town of Monument and vested with the authority and responsibility for the enactment and enforcement of this chapter.~~

~~“Approved” means accepted by the agency-Town as meeting the applicable specification stated or cited in this ~~e~~Chapter, or as suitable for the proposed use.~~

~~“Approved backflow prevention device” means a device that has been manufactured in full conformance with the standards established by the American Water Works Association’s C506-78 Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices and have completely met the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California established by the Specifications of Backflow Prevention Devices #69-2, dated March, 1969 or the most current issue.~~

“Auxiliary water supply” means any water supply on or available to the premises other than the purveyor’s approved public potable water supply. These auxiliary waters may include water from another purveyor’s public potable water supply or any natural source(s) such as a well, spring, river, stream, harbor, etc., or used waters or industrial fluids. These waters may be polluted or contaminated or may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

~~“Double check valve assembly” means an assembly of two independently operating approved check valves with tightly closing shut-off valves on each side of the check valve. The entire assembly shall meet the design and performance specifications and approval of a recognized and agency approved testing establishment for backflow prevention devices. To be approved, these devices must be readily accessible for in-line maintenance and testing.~~

“Back pressure” means backflow caused by a pump, elevated tank, boiler, or means that could create pressure within the system greater than the supply pressure.

“Back siphonage” means the flow of water or other liquids, mixtures, or substances into the distribution pipes of a potable water ~~supply~~ system from any source other than its intended source caused by the sudden reduction of pressure in the potable water ~~supply~~ system.

“Certified inspector/~~and~~ tester” means a person who has passed a ~~s~~State-approved and/or sponsored testing and inspection course and who is listed by the ~~s~~State as a certified inspector/tester.

“Check valve” means a self-closing device ~~which is~~ designed to permit the flow of fluids in one direction and to close if there is a reversal of flow.

~~“Colorado Department of Health Cross-Connection Control Manual” means a manual that has been published by the state addressing cross-connection control practices which will be used as a guidance document for the agency in implementing a cross-connection control program.~~

“Contamination” means an impairment of the quality of the potable water by sewage, industrial fluids, or waste liquids, compounds, or other materials to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.

“Critical level” means the critical level C-L or C/L marking on a backflow prevention device or vacuum breaker which is a point conforming to approved standards and established by the testing laboratory (usually stamped on the device by the manufacturer), which determines the minimum elevation above the flood level rim of the fixture or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or the bottom of any such approved device shall constitute the critical level.

“Controlled cross-connections” means a connection between a potable water system and a nonpotable water system with an approved backflow prevention device properly installed that continuously affords the protection commensurate with the degree of hazard.

“Cross-connection” means any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water ~~supply~~ system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, sewage, or the waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements,

jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices through which, or because of which, backflow could occur are considered ~~to be~~ cross-connections.

~~Cross-Connections, Controlled. “Controlled cross-connections” means a connection between a potable water system and a non-potable water system with an approved backflow prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.~~

~~“Mayor” or “manager” means the mayor or Town administrator of the Town or his or her duly authorized representative.~~

~~“Degree of hazard” means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.~~

~~“Double check valve assembly” means an assembly of two independently operating approved check valves with tightly closing shut-off valves on each side of the check valve. The entire assembly shall meet the design and performance specifications and approval of a recognized and Town-approved testing establishment for backflow prevention devices. To be approved, these devices must be readily accessible for in-line maintenance and testing.~~

~~“Flood-level rim” means the edge of the receptacle from which water overflows.~~

~~Hazard, Degree of. “Degree of hazard” means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.~~

~~Hazard, Health. “Health hazard” means any condition, device, or practice in the water supply system and its operation which could create, or, in the judgment of the Town engineer, may create a danger to the health and well-being of the water consumer. An example of a health hazard is a structural defect, including cross-connections, in a water supply system.~~

~~Hazard, Plumbing. “Plumbing hazard” means a plumbing type cross-connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation or backflow prevention device. Unprotected plumbing type cross-connections are considered to be a health hazard.~~

~~Hazard, Pollutonal. “Pollutonal hazard” means an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system but which constitute a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances, but would not be dangerous to health.~~

~~Hazard, System. “System hazard” means an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.~~

~~“Industrial fluids system” means any system containing a fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration such as that would constitute a health, system, pollutonal, or plumbing hazard if introduced into an approved water supply. This may include, but is not ~~be~~ limited to, polluted or contaminated waters; all types of process waters and used waters originating from the public potable water system which may have deteriorated in sanitary quality; chemicals in fluid form, plating acids and alkalies, circulated cooling waters connected to an open cooling tower and/or cooling towers that~~

are chemically and biologically treated and stabilized with toxic substances; contaminated natural waters such as from wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, etc.; oils, gases, glycerine, paraffins, caustic and acid solutions, and other liquid and gaseous fluids used in industrial or other purposes or for fire-fighting purposes.

“Nonpotable water” means water that is not safe for human consumption or that is of questionable potability.

“Plumbing hazard” means a plumbing type cross-connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation, or backflow prevention device. Unprotected plumbing type cross-connections are considered a health hazard.

“Pollution” means the presence of any foreign substance (organic, inorganic, radiological, or biological) in the water that may degrade the water quality so as to constitute a hazard or impair its usefulness.

“Pollutional hazard” means an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer’s potable water system but which constitute a nuisance or are aesthetically objectionable or could cause damage to the system or its appurtenances but would not be dangerous to health.

“Potable water” means water free from impurities in amounts sufficient to cause disease or harmful physiological effects. The bacteriological, chemical, and radiological quality shall conform with all sState of Colorado Ddrinking wWater quality Rregulations, policies, and guidelines.

~~“Submerged inlet” means a water pipe or extension thereto from a public water supply terminating in a tank, vessel, fixture or appliance which may contain water of questionable quality, waste or other contaminant and which is unprotected against backflow. “System hazard” means an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer’s potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.~~

“Vacuum breaker, atmosphere nonpressure type” means a vacuum breaker designed ~~so as~~ not to not be subjected to static line pressure or installed where it would be under pressure for not more than ~~twelve (12)~~ hours in any ~~twenty-four (24)~~ hour period.

“Vacuum breaker, pressure type” means a vacuum breaker designed ~~so as not to~~ not be subjected to static line pressure.

“Water-service connection” means the terminal end of a service connection from the public potable water system, i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer’s water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. There shall be no unprotected take-offs from the service line ahead of any meter or backflow prevention device located at the point of delivery to the customer’s water system. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the public potable water system.

13.16.030 Defining the water systemRequirements.

A.——The water system ~~shall be considered as made up~~ consists of two parts: the utility system and the consumer system.

- AB. The utility system shall consist of the source facilities and the distribution system; and ~~shall include~~ all ~~those water system~~ facilities ~~of the water system~~ under the Town's ~~the complete control of the utility~~, up to the point where the customer's system begins.
- BC. The source facilities shall include all components of the facilities utilized in the production, treatment, storage, and delivery of water to the distribution system.
- CD. The distribution system shall include the network of conduits used for ~~the~~ delivering of water from the source to the customer's system.
- DE. The customer's system shall include those parts of the facilities beyond the termination of the ~~utility~~ Town's distribution system ~~which are utilized in to~~ conveying utility-delivered domestic water to points of use.

13.16.040 Policy.

- A. No water service connection shall be installed or maintained by the water purveyor unless the water supply is protected as required by ~~s~~State laws and regulation and this ~~e~~Code. Service of water to any premises shall be discontinued by the water purveyor if a backflow prevention device required by the ~~e~~Code is not installed, tested, and maintained, ~~or~~ if it is found that a backflow prevention device has been removed or, bypassed, or if an unprotected cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected.
- B. The customer's system ~~should~~ shall be open for inspection at all reasonable times to authorized representatives of the ~~mayor~~ Public Works Director, or Town administrator Manager, or their designee to determine whether cross-connections or other structural or sanitary hazards, including violations of these ~~regulations~~ Code, exist. When such a condition becomes known, the ~~Mayor~~ Public Works Director or Town administrator shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with ~~s~~State statute and ~~agency statutes~~ this Code relating to plumbing and water supplies and the regulations adopted pursuant thereto.
- C. An approved backflow prevention device shall be installed depending on the degree of hazard. ~~Such a~~ The device shall be installed at or near the property line or immediately inside the building being served; but, in all cases, before the first branch line leading off the service line wherever the following conditions exist:
1. In case of premises having an auxiliary water supply which is not or may not be of the same bacteriological or chemical quality and which is not acceptable as an additional source by the Town engineer, ~~the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.~~
 2. In the case of premises on which any industrial fluids or any other objectionable substance is handled in ~~such a fashion as to a~~ manner that creates an actual or potential hazard to the public water system, ~~the public~~

~~system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.~~ This shall include ~~the handling of processed~~ waters and waters originating from the utility system which have been subject to deterioration in quality.

3. In the case of premises having: ~~(i)~~ internal cross-connections that cannot be permanently corrected and controlled; ~~or (ii)~~ intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross-connection exist; ~~the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line.~~

D. The type of protective device required under ~~subsections A, B and C~~ of this Ssection shall depend upon the degree of hazard which exists as follows:

1. In the case of any premises where there is an auxiliary water supply as stated in subsection A of this ~~s~~Section and ~~it which~~ is not subject to any of the following ~~rules~~subsections, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device.
2. In the case of any premises where there is water or a substance ~~that which~~ would be objectionable but not hazardous to health; if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.
3. In ~~the~~ cases of any premises where there is any material dangerous to health which is handled in ~~such a fashion as to a manner that~~ creates an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap prevention device. Examples of premises where these conditions will exist include, ~~but are not limited to,~~ sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals, mortuaries, and plating plants.
4. In the case of any premises where there are uncontrolled cross-connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device at the service connection.
5. In the case of any premises where, because of security requirements or other prohibitions or restrictions it is impossible or impractical to make a complete in-plant cross-connections survey, the public water system shall be protected ~~against backflow or back-siphonage from the premises by the installation of~~ a backflow prevention device in the service line. In this case, maximum protection will be required; ~~that is and,~~ an approved air-gap separation or an approved reduced pressure principle backflow prevention device shall be installed in each service to the premises.

- E. Any backflow prevention device required ~~inby~~ this ~~s~~Section shall be of a model and size approved by the Town engineer. ~~The term “approved backflow prevention device” means a device that has been manufactured in full conformance with the standards established by the American Water Works Association entitled: AWWA C506-78 ;hg; Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices; and, have met completely the laboratory and field performance specifications of the Foundation for Cross Connection Control and Hydraulic Research of the University of Southern California established by:~~
- ~~—Specifications of Backflow Prevention Devices #69-2, dated March, 1969 or the most current issue.~~

~~The AWWA and FCCC&HR Standards and specifications have been adopted by the Town. Final approval shall be evidenced by a certificate of approval issued by an approved testing laboratory certifying full compliance with the American Water Works Association standards and Foundation for Cross Connection Control & Hydraulic Research Specifications. The ~~following Foundation for Cross Connection Control & Hydraulic Research University of Southern California~~ testing laboratory in University Park, Los Angeles, California has been qualified by the Town engineer to test and certify backflow preventers.~~

~~Foundation for Cross Connection Control & Hydraulic Research University of Southern California, University Park, Los Angeles, California 90007~~

Testing laboratories other than the laboratory listed above will be added to an approved list as they are qualified by the Town engineer. Backflow preventers which may have been subjected to back pressure or back siphonage that have been fully tested and ~~have been~~ granted a certificate of approval by the qualified laboratory and ~~are~~ listed on the laboratory's current list of approved devices may be used without further testing or qualification.

- F. It shall be the duty of the customer/-user at any premises where backflow devices are installed to have certified inspections and operational tests made at least once a year. ~~In those instances where~~ When the Town engineer deems the hazard ~~to be~~ great enough, ~~he or she~~ they may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user and ~~shall~~ be performed by a certified inspector/tester. These devices shall be repaired, overhauled, or replaced at the expense of the customer/-user whenever ~~the a devices~~ are is found ~~to be~~ defective. Records of such tests, repairs, and overhauls shall be kept and made available to the Town engineer. ~~The attached form shall be submitted to the agency within thirty (30) days after the device has been tested and/or inspected.~~

13.16.050 ~~Existing cross-connections~~ Reserved.

~~Within a reasonable time following the adoption of the regulation, existing cross-connections between a public water system and any secondary water system shall be eliminated or protected by means of an approved backflow preventer. The following will install devices within one year; sewage treatment plants, hospitals, mortuaries and industrial establishments that manufacture materials that can exhibit health hazards.~~

13.16.060 Specific system requirements.

~~Irrigation Systems.~~ The following guidelines ~~relating shall apply~~ to backflow prevention devices for irrigation systems ~~shall apply~~:

- A. Atmospheric vacuum breakers shall be installed after the last control valve of each sprinkler circuit and at the minimum of six inches above the highest irrigation head. The atmospheric vacuum breaker shall be installed only on irrigation circuits with heads that will not return any pressure in the circuit when the circuit control valve is closed.
- B. Pressure vacuum breakers shall be installed at the beginning of each irrigation circuit and at a minimum of ~~twelve (12)~~ inches above the highest irrigation head on the circuit. Individual irrigation circuits having quick coupling valves or other similar type heads that will permit pressure to be retained in the circuit shall have a pressure vacuum breaker installed as a minimum requirement for each circuit. Irrigation systems using the subsurface drip method shall have a pressure vacuum breaker on each circuit. A pressure vacuum breaker may not be installed where a double check valve assembly, reduced pressure principle backflow prevention device, or air-gap separation is required.
- C. A double-check valve assembly may be installed to serve multiple irrigation circuits in lieu of vacuum breakers on each individual irrigation circuit.
- D. A reduced pressure principle backflow preventer or air-gap separation shall be required before any piping network in which fertilizers, pesticides, and other chemicals or toxic contaminants are injected or siphoned into the irrigation system.

13.16.070 Fire systems.

Water systems for fighting fire, derived from a supply that cannot be approved as safe or potable for human use shall, whenever practicable, be kept wholly separate from drinking water pipelines and equipment. In cases where the domestic water system is used for both drinking and fire-fighting purposes, approved backflow prevention devices shall be installed to protect ~~such~~ individual drinking water lines ~~as are~~ not used for fire-fighting purposes. It ~~is declared that it is~~ shall be the responsibility of the person(s) ~~or persons~~ causing the introduction of the unapproved or unsafe water into the pipelines to see: ~~(i)~~ that a procedure ~~be is~~ developed and carried out to notify and protect users of this piping system during the emergency; ~~(ii)~~ and ensure that special precautions ~~be are~~ taken to disinfect thoroughly and flush out all pipelines which may have become contaminated before they are again used to furnish drinking water. In the event the means of protection of water consumers is by disinfection of the auxiliary fire-fighting supply, the installation and its use shall be thoroughly reliable.

When disinfecting ~~gon of~~ the auxiliary supply itself ~~is depended upon~~ to render the water safe, the means of applying the disinfectant ~~under this regulation~~ shall be automatic with operation of the pump(s) ~~or pumps~~ employed with the dangerous water in question. Adequate supplies of chlorine or its compounds must be kept on hand at all times. Chlorine dosing equipment shall be tested daily and kept in good condition.

The public water supply must be protected against backflow from dual domestic fire systems.

Title 13

PUBLIC SERVICES

Chapter 13.04 - WATER SERVICE SYSTEM GENERALLY

13.04.010 Definitions.

As used in this Title:

“Commercial unit” means any other use not defined as residential including those structures requiring a business license to operate including, but not limited to, businesses licensed to operate within Town limits.

“Meter” means a device that measures and records the quantity or rate of water.

“Operator in Responsible Charge” means the Public Works Director or their designee, designated as the Town employee in charge of the water system who is the direct contact for the State if there are any water quality, water treatment, security, or other issues with the water system.

“Owner” means the person or entity who holds legal title to the property and has the right to own and control the property.

“Plat” means the plan, map, or chart of a piece or area of land with actual or proposed features.

“Residential use” means the use of water for the purpose of supplying either a home, apartment, or other living unit for purposes of housing one or more persons.

“Single-Family Residential Equivalents” means the wastewater loading created by an average size single family residence.

“Tap” means a connection to the service line of the Town’s water or sewer main.

“Tenant” means a person who has the right to occupy a property unit by agreement, either written or oral or with landlord approval to the exclusion of others.

“Tributary” means water that is physically connected to a natural surface stream or river.

“Non-tributary” means water that is not physically connected to a natural surface stream or river.

“Water system” means the Town water supply system.

13.04.020 Creation of water department.

There is created and established a Town water department for the purpose of managing, maintaining, caring for, and operating the Town water works.

13.04.030 Town Council—Powers.

The Town Council and the Public Works Director shall control and manage all things pertaining to the Town water works system, and the Public Works Director shall perform all acts necessary for the prudent, efficient, and economical management and protection of the water system. The fees, rates, and charges described in this Title for furnishing water utility service shall

be set in amounts approved by resolution of the Town Council. Such resolution may impose additional fees and charges not specifically described herein. Whenever any such fee, rate, or charge is inconsistent with any fee, rate, or charge previously adopted, whether by ordinance or resolution, the most recently adopted fee, rate, or charge shall control. The resolution adopting the fees, rates, or charges shall be posted on the Town's website.

13.04.031 Public Works Director – Powers and Duties.

- A. The Public Works Director shall, under the direction of the Town Manager, have charge of all Town water works systems, and it shall be their duty to supervise the water system and maintain and control the system as directed by the Town Manager.
- B. The Public Works Director shall have control of the laying of all water lines. The Director shall generally supervise the installation of all taps and service pipes or other connections with the water system and regulate the water supply to all water consumers. The Director shall also have charge of and be responsible for all tools, machinery, pipes, meters, fixtures, plumbing material, and all other apparatus and appliances owned by the Town or used by the Town in the maintenance and operation of the water system, and shall keep account of all such material and the manner in which the material is used, kept, or disposed of.
- C. The Public Works Director shall report to the Town Manager monthly, or more often if required, of their doings as Director, the condition of the water system, and suggestions concerning the water system as the nature of the service may require.
- D. The Public Works Director may delegate to any Town employee permission to operate the water valves within the Town's water system. No other persons shall be authorized to operate the Town's water system including water valves. Any person found operating water valves without approval of the Public Works Director shall be subject to fines and will be required to reimburse to the Town the costs of all damage to property, the water system, and any other costs.

13.04.040 Receipts and deposits.

The Finance staff shall keep a correct account of all receipts, make out all bills for the same, and deposit the proceeds so collected with the Town to the credit of the Town's water fund in accordance with Town Council direction.

13.04.050 Inspections.

Whenever the Town deems necessary, a Town representative and/or their designee, carrying proper credentials of their office, may inspect the premises or buildings of any water consumer to examine the condition of all pipes, motors, meters, and water fixtures or the manner in which the water is used. If such entry is denied, the Town shall have recourse to every remedy provided by law to secure entry, up to and including disconnecting/shutting off water service until entry is permitted, upon notice to the Owner by the Town. The Town shall be vigilant to protect and remedy all abuses, whether from waste or other improper use of water.

13.04.060 Application for water use.

Application for use of water shall be made to the Finance staff by the Owner or agent of the property to be benefited, designating the location of the property and stating the purpose for

which the water may be required. Water taps proposed for use which are not associated with a specific building must be approved by the Town Council.

All accounts for water shall be kept in the name of the Owner of the property and not in the name of any Tenant. The Owner solely, or his legally authorized agent, shall be held responsible for water rents.

13.04.070 Tap regulations.

No tap shall be made without written approval by the Public Works Director or their duly appointed representative, and all tap fees must be paid to the Planning department concurrent with issuance of a building permit.

Pikes Peak Regional Building Department must issue a permit within 90 days after the Town has issued a permit for the same address.

- A. If the applicant has not received a valid permit from Pikes Peak Regional Building Department within 90 days of the Town permit date, all fees and 50% of water tap fees are forfeited to the Town.
- B. Any extension granted by Pikes Peak Regional Building Department will be honored by the Town.
- C. If climatic conditions as set forth in Town policies prohibit excavation, the Town water department may grant an extension.

13.04.080 Design and installation standards for potable water distribution systems.

The Town Council may, by resolution, adopt, amend, and repeal standards for design, installation, and operation of the potable water system. All Standards in effect as of July 7, 2025 remain in effect until repealed by resolution.

13.04.090 Unlawful misrepresentation.

It shall be unlawful for any person not a legal or equitable owner of a specific property receiving or requesting Town utility services for such real property to represent upon a utility services application and agreement that such person is a legal or equitable owner of the real property receiving or requesting Town utility services.

13.04.110 Watering procedures.

To stagger the demand on the water system during the irrigation season, beginning May 15th and ending September 30th, watering shall be restricted as follows:

- A. Odd numbered building addresses are permitted to use water for watering lawns on Mondays, Wednesdays, and Fridays. Even-numbered building addresses are permitted to use water for watering lawns on Tuesdays, Thursdays, and Saturdays. No watering is permitted on Sundays.
- B. The Town Council, by resolution, may modify or suspend the restrictions set forth in this Section.

13.04.120 Emergency watering provisions.

- A. Emergency watering restrictions prohibit specific outside uses of water during emergency situations except with a special exception granted by either the Town

Manager or Public Works Director. All the following are considered prohibited uses of water:

1. Lawn watering and watering of trees, shrubs, and gardens.
 2. Washing vehicles except commercial car washes.
 3. Washing exterior buildings including exterior windows.
 4. Hosing down parking lots.
 5. Hosing down driveways and roadways for dust control.
 6. Recreational purposes.
 7. Commercial haulers.
 8. Road construction and well drilling.
 9. Supply by the Town to any other water supplier, such as special districts and municipalities, unless limited by terms of a written agreement.
- B. Emergency water restrictions can be declared by the Town Council or any two of the following:
1. The Mayor.
 2. The Director of Public Works or their appointee.
 3. The Town Manager or their appointee.
- C. In the event the current demand exceeds the system's operational capabilities for a duration of 72 hours, as determined by the Town's Operator in Responsible Charge, the Town shall implement emergency measures to manage and mitigate water usage to ensure public health and safety. Triggering conditions shall include, but are not limited to, any of the following:
1. Failure of wells or pumps, including a malfunction or breakdown of any wells or pump stations and/or key components that significantly reduce the water supply.
 2. Inoperable water treatment plants, including incidents that render water treatment facilities inoperable due to mechanical failures, contamination concerns, or other safety issues.
 3. Water main breaks, including any break in the water main that results in significant water loss or impacts service delivery to consumers.
 4. Natural disasters, including events such as floods, fires, earthquakes, tornadoes, or other natural disasters that could impact the water system or infrastructure integrity.
 5. Prolonged system stress, including continued high demand scenarios that place undue stress on the existing water system.
- D. Notice of emergency water restrictions will be posted on the Town's website.

13.04.130 Water rights—Conveyances.

All water rights, tributary and nontributary, associated with property annexed to the Town shall be conveyed to the Town immediately upon annexation. All water rights associated with property proposed for rezoning or platting (including replatting) shall be conveyed by special warranty deed to the Town immediately upon approval of the rezoning or filing of any plat and the conveyance noted on the face of the plat. All conveyances shall be free and clear of all liens and encumbrances. All applications for annexation, rezoning, final Planning Unit Development site plan amendment, platting, or replatting shall be accompanied by a current title insurance commitment with copies of all documents referenced therein. After the water deed is recorded, the commitment shall be updated to establish that the conveyance was free and clear of all liens and encumbrances. No development approvals will be issued by the Town prior to receipt of the water deed. The annexor or developer shall also assign to the Town its consent to withdrawal the groundwater by the Town using forms approved by the State Engineer. If the Town adjudicates the water rights, the expense of adjudication shall be borne by the annexor or developer in accordance with the terms of any applicable agreement executed between the Town, developer, and all parties holding an ownership interest in the water or any overlying property. In addition to conveyance of water rights as above set forth, developer and all parties holding an ownership interest shall be required as part of the public land dedication obligation of the property to convey such well sites as are together with easements for water lines deemed reasonably necessary by the Town. Such well sites shall be approximately two acres in size and shall preferably be rectangular in size with the requirement that the width be at least 200 feet and the length 295 feet. It shall be deemed reasonable to require one well site for each 300 single-family equivalents ("SFEs") or a fraction of 300 SFEs.

13.04.140 Water usage.

The quantity of water required to support the Town's water service commitment shall be calculated at 0.50 acre-feet per year per single-family equivalent, ("SFE"), which includes in-house and irrigation use. A multi-family equivalent is 0.375 acre-feet per year. Irrigation usage for common areas within residential or non-residential communities, and for landscaped (pervious) areas within nonresidential sites shall be limited to 1.5 acre-feet per year per irrigated acre.

Applications for approval for water usage under the Code shall comply with the Town.

At the time of approval of each subdivision plat, the aggregate water usage calculated for the proposed development shall be indicated on the subdivision plat. Water usage which cannot be ascertained at the time of subdivision shall be deferred and determined at the time a site plan is approved by the Town. Water usage is based on usage of potable water from the municipal system. If at the time of subdivision approval the subdivider has established the availability of treated effluent to meet a portion of the nonpotable water usage for the approved development, the water usage attributed to the development shall be reduced by the amount of such treated effluent usage. However, if such use is to be approved, the annexor/developer shall bear all costs of constructing a dual pipeline and any and all other ancillary costs associated with allowing such use. An SFE as that term is used in this Section, shall be determined by reference to the following schedule:

Non-Residential Water Service Tap Size (Inches)	Number of Single Family Residential Equivalents (SFE)
3/4"	1.0

1"	1.9
1½"	4.4
2"	8.1
3"	19
4"	35
6"	84
8"	154
10"	250
12"	368

13.04.150 Required water supply.

Development approvals may be withheld by the Town if the water usage attributable to the proposed development exceeds the water supply attributable to the development. If the water supply is insufficient, the Town, in its sole discretion, may allow the annexor/developer to secure additional water rights to satisfy the requirements for the proposed use. Such additional water rights must support the withdrawal of water through either existing municipal water production facilities or facilities to be developed and placed in use to service the proposed development. Such additional rights which are designed to make up any shortfall must be acceptable to the Town, in its sole and complete discretion.

13.04.160 In-lieu fees.

In the Town's sole discretion, the Town may accept a fee in lieu of water rights in the event the water rights associated with the proposed development are insufficient. The Town Council, by resolution, shall establish the cost per acre-foot which shall be utilized to calculate the amount of such fee. The in-lieu fee shall be paid prior to final plat recordation.

13.04.170 Conditions and limitations of use of the water system.

- A. Except as otherwise expressly provided in this Code, the provisions of this Title shall apply to water service supplied to all water system customers, both within and outside the Town's corporate limits.
- B. It shall be unlawful for any person to use, excavate, connect to, open, alter, or otherwise disturb any portion of the water system, except in accordance with the provisions of this Title.
- C. The Finance Director and Public Works Director may develop and implement written rules, regulations, and policies to implement this Title, subject to Town Manager approval.
- D. Except as provided in this Title, it shall be unlawful for any person to use or occupy any building within the Town unless such building is connected to the water system in accordance with the requirements of this Title.

- E. Notwithstanding the requirements of this Title, any building which is supplied with water using an adequate, safe, and adjudicated well may continue to use such well to provide water. If the well subsequently fails such that it cannot provide adequate and safe water, such building shall then be connected to the water system.
- F. This Title shall not create any duty to any person with regard to the enforcement or nonenforcement of this Title. No person shall have any civil remedy against the Town or its officers, employees, or agents for any damage arising out of or in any way connected with the adoption, enforcement, or nonenforcement of this Title. Nothing in this Title shall be construed to create any liability, or to waive any of the immunities, limitations on liability, or any other provisions of the Colorado Governmental Immunity Act, Section [24-10-101](#) *et seq.*, C.R.S., or to waive any immunities or limitations on liability otherwise available to the Town, its officers, employees, or agents.
- G. No person shall resell water received from the water system. No water from the water system may be used on or at any premises other than the water using property specified in the application for water service submitted to the Town. This Section does not apply to bulk water sold by the Town.
- H. The Town is not responsible or liable for damage from any cause whatsoever to service connections, fixtures, and water using appliances, and no person is entitled to damages or payment of refunds because of temporary or permanent pressure changes or stoppage of the flow of water through the water system. Dirt and debris can enter the water lines for any number of reasons under normal water system operations, and no person is entitled to damages because of dirt or debris entering such person's service line or connection.
- I. Water pressure and water flow in a main may vary as part of the normal water system operations. The Town reserves the right at any time, without notice, to modify water pressure or shut off the water in a main as part of its operation, repair, replacement, modification, and maintenance of the water system. The Town is not responsible for damage resulting from pressure changes or stoppage of the flow of water through the water system, regardless of how the pressure change or stoppage was caused.
- J. Any person who damages the water system is liable to the Town for the actual and necessary costs incurred by the Town in repairing such damages.
- K. To the fullest extent permitted by law, any person who, as a result of their negligent, intentional, or willful wrongful act causes any damage to any user of the water system shall indemnify, hold harmless, and defend the Town with respect to such damage, except to the extent such damage results from the negligent, intentional, or willful wrongful act of the Town, its officers, employees, or agents. "Damage" means each and every injury, wound, wrong, hurt, harm, fee, damage, cost, outlay, expenditure, or loss of any and every nature including, but not limited to, injury or damage to any property or right; injury, damage, or death to any person or entity; attorney fees, witness fees, expert witness fees, and expenses; and all other costs and expenses of litigation. This indemnity provision is to be interpreted to require

a person to indemnify, hold harmless, and defend the Town only to the extent of the proportionate share of negligence or fault attributable to such person.

Chapter 13.08 WATER RATES AND CHARGES

Article 1. Water Rates and Charges Generally

13.08.010 Water metering.

All water sold by the Town shall be metered by meters which shall be installed inside of the building, unless the Town Council or its duly appointed representatives give written permission to locate the meter in a curb box.

13.08.020 Tap fees.

Upon application for a water service connection within the Town, and generally with an application for a land use permit, an applicant shall pay to the Town a fee in cash or other certified funds based on the current rate/fee schedule as adopted by resolution and posted on the Town's website. The fee schedule shall be based on the required meter and connection size as set forth in Section 13.04.140 of this Code.

The connection charges, or tap fees, imposed for each lot and service tap in a new development or subdivision which are assessed at the time of construction for that specific lot shall be those fees in place at the date the final development plat is recorded for that specific development or subdivision. If the water tap fees are amended and lowered during a 48-month time period following the date the final plat is recorded, the applicable tap fee shall be the lower amount. If the water tap fees are amended and raised during the same 48-month period, the applicable tap fee shall not be more than a 20% percent annual increase above the fee structure in place on the date the final plat was recorded.

If an applicant desires a meter/pipe size over four inches, the applicant may apply to the Town for approval of such meter/pipe size, and the Town shall determine each such application and the requisite fee associated therewith on a case-by-case basis.

The fees do not include any of the meters and appurtenances, the service line, or any installation costs or inspection fees, which costs shall be the sole responsibility of the applicant.

- A. Monthly service charges shall be applied to all existing and future taps which are connected to the water system. Charges will be billed at the rates set forth by resolution and posted on the Town's website. Billing for new taps will commence on the first day of the month next following issuance of the taps.
- B. Tap fees for all users outside the water department service area will be determined by the applicable water service provider and are charged 1.5 times the regular rate.
- C. If not part of a land use permit for a property with an approved site plan, an application for a water tap shall include a precise legal description of the property to which the tap will be applied. The approved tap shall not be transferred to any other property or location.

13.08.030 Service line regulations.

Notwithstanding the following in this Section, the Town may approve a looped water line serving a single undivided parcel, and a commercial development with multiple utility connections on a single lot under single ownership may retain those connections.

A “principal and accessory building,” as defined in this Code, on a single unsubdivided parcel may be serviced by a single water service line, provided that all applicable Town fees have been paid for such service, no more than 30 water fixture units are served, and such water fixture units can be served by the existing service (tap size). To be eligible for water service, all use of the property must be in compliance with the Town zoning regulations, however, water service to property as of June 17, 2019 may continue so long as it is not increased nor the use for which it is provided is changed so that it is not in compliance with the Town zoning regulations. Any resubdivision of such parcel shall require installing a separate water service line for each lot created by resubdivision. All service lines shall be installed at a depth of at least 60 inches below the surface of the ground. Each service line shall contain a curb stop valve where the water may be turned off to the entire parcel. The curb stop valve shall be located at or as near as possible to the property line.

13.08.040 Waste of water prohibited.

Customers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. Hydrants, urinals, water closets, bathtubs, irrigation, and other fixtures must not be left running for any purpose other than the use for which they were intended. In addition to the penalty provided in this Code for code violations, the water supply may be turned off where any such waste occurs. If the Town is unable to contact the Owner or the representative of a property that has a water leak, and the Town is unable to shut off the water to the property, the Town may hire a contractor at the Owner’s expense to repair the leak to prevent wasting the Town’s water supply.

13.08.050 Reserved.

13.08.060 Service charges and water rates.

- A. All owners of property with an existing water tap shall be subject to a service charge, with the exception of bulk water customers. Service charges shall be as set forth by resolution and posted on the Town’s website.
- B. Service to areas outside the Town’s boundaries is at the sole discretion of the Town Council. The Town Council may require any property outside the Town boundaries to annex to the Town as a condition of receiving service. All properties outside the Town’s water service boundaries requesting service to convert an existing water tap, or to obtain a new water tap, for the Town to convey water utility shall be subject to a service charge, except for bulk water customers. The base rate for properties outside the Town’s water service boundaries shall be not less than 1.5 times the standard rate for services. Service charges outside the municipal water service boundaries shall be as set forth by resolution and posted on the Town’s website.

- C. All water rates shall be set forth by resolution and posted on the Town's website.

13.08.070 Utility billing and collection – Purpose.

All water bills shall be due on or before the date stated on the water billings. The purpose of the billing procedures is to provide uniform systems for billing and collecting service charges, surcharges, fees, penalties, and other applicable provisions of this Code to ensure timely, complete payment of all utility charges arising from utility services supplied to customers or from charges assessed under this Chapter and provide customers with adequate notice and opportunity to dispute the correctness of utility charges prior to termination of utility service for nonpayment.

13.08.080 Delinquent payments.

Water rents must be paid monthly in arrears at the Town Hall or via the Town's online payment service. If the water rents are not paid on or before the 20th of the month, the water rent shall be considered delinquent and a late penalty shall be added and collected as part of the water rate, and if not paid by the 20th day of the following month, a shut off penalty charge and an additional late penalty shall be added and collected as part of the water rate in addition to having the water turned off the first Wednesday of the following month. An additional penalty shall be added for shutting off the water. If the Owner/Tenant of the property turns on the water or causes the water to be turned on after it has been shut off at the curb cock, the water for the property shall be turned off at the main and the Owner shall be fined. All penalties shall be as set forth by resolution and posted on the Town's website.

All water rents and rates shall be a charge and lien upon the property to which the water is delivered from the date the same became due and until paid. The Owner of every property, premises, or lot shall be liable for all water delivered to or taken and used upon their premise, which lien and liability may be enforced by the Town by an action at law or suit to enforce said lien. If from any cause any sums owing for water rent and rates shall become delinquent, the water may be shut off. If a water bill is delinquent and the supply has been turned off, the water shall not be turned on until all delinquent water payments have been made or payment arrangements have been approved by the Finance Director. Change of ownership or occupancy shall not affect the application of this Section. This Section shall apply to water users both within and outside the corporate limits of the Town.

Notice of lien shall be prepared and filed by the Town Clerk with the Clerk and Recorder of the County at any time after payment of the utility charges are delinquent, provided that notice of lien shall not be recorded until all administrative appeals provided in this Chapter have concluded. Such notice of lien shall include all the following:

- A. Name(s) of the Owner(s) of the property.
- B. Legal description of the property as stated on the County Assessor's website and number and street address of the property.
- C. Nature of the lien.

D. That notice of lien is given pursuant to Section 13.08.080 of the Town Code.

A copy of the notice shall be mailed to the billing address of the Owner.

In addition, the Town Manager or their designee may certify the utility charges, assessments, and costs to the County Treasurer, to be placed upon the tax list for the current year and collected in the manner as other taxes are collected, with an administrative lien fee added to defray the cost of collection as adopted by resolution and posted on the Town's website. All State laws for assessing and collecting general taxes shall apply, including the laws for the sale of property for taxes and redemption of the same. Upon payment or collection of the delinquent account, the Town shall promptly record a release of lien.

If an Owner has a delinquent account, the Owner may enter into a three-month payment agreement interest free. If an Owner enters into a three-month payment agreement, the Town will waive the late fees prospectively if the account holder does not default on the agreement. If payment is not received in accordance with the agreement by the 21st of the third month, the agreement will be in default, the Town shall assess the prospectively waived late fees, a shut off fee will be added to the account, and the water services to the property will be shut off immediately. If the account is closed or final billed, the full balance due is payable in full immediately.

13.08.090 Reserved.

13.08.100 Disconnection and reinstatement of service.

The Town shall disconnect utility service for nonpayment of utility charges, including delinquent charges, only between the hours of 9:00 a.m. and 3:00 p.m., Monday through Thursday.

- A. No disconnections shall be permitted on a legal holiday or on the day before a legal holiday. No disconnection shall be permitted on a day when the low temperature for the next 24 hours, as reported by the National Weather Service for the Monument area, is forecasted to be below zero degrees Fahrenheit.
- B. To avoid a service disconnection, all delinquent charges must be paid in full at the Town Hall or via the Town's online payment service by the date indicated on the notice of intent to disconnect. A disconnect service charge shall be imposed on each delinquent account disconnected from service, and repeat offenders within a 12-month period shall be assessed a graduated reconnection fee as set forth by resolution and posted on the Town's website. The property shall not be reconnected unless and until all outstanding utility service charges, penalties, and fees are paid in full. Only cash, money order, certified check, or electronic payments shall be accepted to bring the account current and qualify the Owner for a reconnect.

The El Paso County Health Department shall be notified immediately if a business or an apartment building is disconnected.

13.08.101 Owner dispute and administrative appeal.

- A. The Town water department may informally adjust or correct the utility billing or charges for good cause shown, including for incorrect or unsubstantiated meter readings, data input error, or erroneous Single-Family Residential Equivalent assessments. If an Owner requests an adjustment prior to the bill due date and the utility bill is reduced, the due date of the utility bill for the purpose of imposing late charges

shall be extended an additional five days from the date the Town water department adjusts the billing and mails or delivers notice of the adjustment to the Owner.

- B. Upon issuance of a notice to disconnect, an Owner shall be entitled to formally appeal the correctness of all or part of the utility bill, provided that the dispute was not the subject of a prior dispute or resolution. The procedure for appealing a disputed utility bill shall be as follows:
1. Within 10 days of the date of the notice to disconnect or rejection notice, the Owner shall notify the Finance Director or their designee, in writing, that the Owner disputes all or part of the amount(s) shown on the utility bill, or the notice to disconnect or the other grounds for disconnection, stating as completely as possible the basis for the dispute.
 - a. If the Finance Director or their designee determines the dispute is untimely or the Owner previously disputed the correctness of all or part of the amount(s) disputed, the Finance Director or their designee shall mail notice to the Owner stating the present dispute is untimely or invalid. The Town shall then proceed as if the Owner had not notified the Town of the present dispute.
 2. If the Finance Director or their designee determines the dispute is timely and valid, the Town shall, within five business days after receipt of Owner's notice, set a time for a formal hearing before the Town Manager or their designee ("hearing official"). If the original time set for the hearing does not work for the Owner, the Owner shall provide the Finance Director with alternative times for the hearing and coordinate an alternative mutually agreeable time for the hearing.
 3. Unless agreed to by the Owner, the formal hearing shall be held within 10 business days of the Finance Director's receipt of the Owner's written dispute.
 4. At the formal hearing, both the Town and the Owner shall be entitled to present all evidence that is, in the hearing official's sole discretion, relevant and material to the dispute, and to examine and cross-examine witnesses. The water department may develop rules and procedures governing appeal hearings which must be approved by the Town Manager. All formal hearings shall be audio recorded.
 5. Based on the record established at the formal hearing, the hearing official shall, within five days of the close of the formal hearing, issue a written decision formally resolving the dispute. Such decision shall be final and binding upon the Town and the Owner and shall constitute final administrative action by the Town. The official decision shall be mailed or delivered to the Owner.
 6. Owner's failure to meet any submittal deadline or attend the appeal hearing, except for good cause shown, shall constitute abandonment of the appeal. The hearing official may extend any deadline or hearing date for up to 10

business days, for good cause shown, upon request of either the Owner or the Town.

- C. An Owner's use of the dispute and appeal procedure shall not relieve the Owner of their obligation to timely and completely pay all other undisputed utility, penalty, or late charges which are the subject of the dispute. The Town shall not disconnect the utility services of any Owner with an outstanding dispute or appeal until after the hearing official's decision has been rendered.

13.08.110 Reserved.

13.08.120 Tap use and fund escrow.

Upon approval of an application for a water tap and payment of the required fee, the Owner to which the tap is applied shall be required to start construction of the building(s) which will utilize such tap within 90 days of the tap approval otherwise the tap shall be forfeited to the Town and all tap fees paid therefore shall be returned, minus a \$50.00 fee retained by the Town to cover the cost of processing the tap application and monitoring compliance with this Chapter.

13.08.130 Tap fee transfer.

A tap fee will pass with title to the lot or parcel of property in question unless a contrary agreement has been approved by the Town Council prior to transfer of the land. The Town Council will consider requests to transfer to contiguous parcels within a block or legal description on a case-by-case basis.

13.08.140 Tap fees required on private water lines.

Water tap fees shall be charged to all users requiring Town water service except uses owned by the Town. Exceptions to this Section require Town Council approval.

13.08.150 Abandonment of water taps.

The Town will not recognize the existence of any water tap unless a tap fee has been paid and a service charge is paid for such water tap. Nonpayment of a service charge for a period exceeding 24 months shall be deemed prima facie evidence of abandonment of a water tap. Thereafter, water service shall be provided only upon payment of the tap fee then in effect and installation of a new service line and stop cock which meets all specifications set forth in this Code. Any tap for which a water tap fee and service charge was paid that was not recognized by formal action of the Town Council based on evidence of the existence of such tap presented no later than November 15, 1998 is deemed abandoned.

Article II. Town Water Department as Water Activity Enterprise

13.08.160 Water enterprise activity.

The Town water department is established as of January 1, 2000, as a water activity enterprise, as that term is defined in Section 37-45.1-102(4), C.R.S., to be known as the Town of Monument Water Activity Enterprise ("Water Activity Enterprise"). The Water Activity Enterprise and its governing body shall have all rights, privileges, authority, and powers available to water activity enterprises under Article 45.1 of Title 37, C.R.S. The Water Activity Enterprise fund shall at all times be treated as an enterprise within the meaning of Article X, Section 20 of

the Colorado Constitution. Nothing in this Article shall limit in any way the legal authority of the Town Council, as the governing body of the Water Activity Enterprise, to determine how to budget, appropriate, and spend all revenues received from or related to the operation of the water system. To the fullest extent permitted by law, all revenues received by the Water Activity Enterprise arising from or related to the operation of the water system may be budgeted, appropriated, and spent by the Town Council in its legislative discretion.

13.08.170 Limitations.

The Water Activity Enterprise and its governing body shall be subject to such limitations as specifically set forth in Article 45.1 of Title 37, C.R.S.

13.08.180 Governing body.

The Town Council shall be the governing body of the Water Activity Enterprise.

13.08.190 Definitions.

All definitions set forth in Section 37-45.1-102, C.R.S., are incorporated into this Chapter by this reference and such terms, as used in this Chapter, shall have the same meaning as given to such terms in Section 37-45.1-102, C.R.S.

13.08.200 Property.

The property of the Water Activity Enterprise shall include, but is not limited to all the following:

- A. The water fund, as established and maintained pursuant to State laws and Town ordinances.
- B. Any water acquisition and preservation fund, as established and maintained pursuant to State laws and Town ordinances.
- C. All Town water rights of any type, character, or nature, and all water stock rights and stock certificates in ditches and ditch companies owned or later acquired by the Town.
- D. All contracts and contract rights relating to past, present, or future water activities of or by the Town water department.
- E. All revenues associated with and derived from the past, present, or future conduct of water activities by the Water Activity Enterprise, including, but not limited to, revenues from rates, charges, surcharges, fee assessments, penalty assessments, and the like, collected and to be collected pursuant to the Town's or the Water Activity's Enterprise's ordinances, rules, regulations, and policies pertaining to water activities, provided that the Water Activity Enterprise shall not accept grants from the State and/or Colorado local government which aggregate more than 10% of the department's total annual revenues in any fiscal year.
- F. All Town augmentation rights of any type, character, or nature.

13.08.210 Accounting.

Revenues and expenditures of the Water Activity Enterprise shall be accounted for separately from other Town revenues and expenditures, and shall be subject to all limitations and restrictions upon the collection, keeping, and expenditure of revenues imposed by Section 20 of

Article X of the Colorado Constitution, and excluded from the calculations of any base used for calculating any spending or revenue limit applicable to the Town under Section 20 of Article X of the Colorado Constitution.

13.08.220 No tax.

To the extent deemed necessary, the governing body of the Water Activity Enterprise shall exercise the Town's legal authority relating to the enterprise, but shall not levy a tax to support activities of the Water Activity Enterprise.

13.08.230 Reserved.

13.08.240 Revenue bonding authority.

The Town water department shall have such revenue bonding authority as is provided for in Section 37-45.1-104, C.R.S., other State statutes, and the Constitution of Colorado, including, but not limited to, Article XX and Section 6(3) of Article XI of the Colorado Constitution.

Chapter 13.12 - WASTEWATER TREATMENT SYSTEM

13.12.010 Reserved.

13.12.020 Reserved.

13.12.030 Reserved.

13.12.040 Reserved.

13.12.050 Reserved.

13.12.060 Reserved.

13.12.070 Reserved.

13.12.080 Reserved.

13.12.090 Reserved.

13.12.100 Reserved.

13.12.110 Reserved.

13.12.120 Reserved.

13.12.130 Reserved.

13.12.140 Reserved.

13.12.150 Reserved.

13.12.160 Reserved.

13.12.170 Reserved.

13.12.180 Reserved.

13.12.190 Reserved.

13.12.200 Reserved.

13.12.210 Reserved.

13.12.210 Reserved.

13.12.230 Reserved.

13.12.240 Reserved.

13.12.250 Reserved.

13.12.260 Reserved.

13.12.270 Reserved.

Chapter 13.14 - SANITARY SEWER COLLECTION SYSTEM SPECIFICATIONS

13.14.010 Reserved.

Chapter 13.16 – CROSS-CONNECTION CONTROL

13.16.010 Purpose.

- A. To protect the public water systems from contamination and pollution by isolating within its customers' internal distribution system(s) and private water system(s) contaminants or pollutants which could backflow or back-siphon into the public water systems.
- B. To eliminate and control existing cross-connections, actual or potential, between customers' in-plant potable water system(s) and nonpotable water systems, plumbing fixtures, and industrial piping systems.
- C. To provide for a continuing program of cross-connection control which will systematically and effectively prevent contamination and pollution of the potable water system.

13.16.020 Definitions.

As used in this Chapter:

“Approved” means accepted by the Town as meeting the applicable specification stated or cited in this Chapter, or as suitable for the proposed use.

“Approved backflow prevention device” means a device that has been manufactured in full conformance with the standards established by the American Water Works Association's C506-78 Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices and have completely met the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California established by the Specifications of Backflow Prevention Devices #69-2, dated March, 1969 or the most current issue.

“Auxiliary water supply” means any water supply on or available to the premises other than the purveyor's approved public potable water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source(s) such as a well, spring, river, stream, harbor, etc., or used waters or industrial fluids. These waters may be polluted

or contaminated or may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

“Back pressure” means backflow caused by a pump, elevated tank, boiler, or means that could create pressure within the system greater than the supply pressure.

“Back siphonage” means the flow of water or other liquids, mixtures, or substances into the distribution pipes of a potable water system from any source other than its intended source caused by the sudden reduction of pressure in the potable water system.

“Certified inspector/tester” means a person who has passed a State-approved and/or sponsored testing and inspection course and who is listed by the State as a certified inspector/tester.

“Check valve” means a self-closing device designed to permit the flow of fluids in one direction and to close if there is a reversal of flow.

“Contamination” means an impairment of the quality of the potable water by sewage, industrial fluids, or waste liquids, compounds, or other materials to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.

“Critical level” means the critical level C-L or C/L marking on a backflow prevention device or vacuum breaker which is a point conforming to approved standards and established by the testing laboratory (usually stamped on the device by the manufacturer) which determines the minimum elevation above the flood level rim of the fixture or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or the bottom of any such approved device shall constitute the critical level.

“Controlled cross-connections” means a connection between a potable water system and a nonpotable water system with an approved backflow prevention device properly installed that continuously affords protection commensurate with the degree of hazard.

“Cross-connection” means any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, sewage, or the waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices through which, or because of which, backflow could occur are considered cross-connections.

“Degree of hazard” means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

“Double check valve assembly” means an assembly of two independently operating approved check valves with tightly closing shut-off valves on each side of the check valve. The entire assembly shall meet the design and performance specifications and approval of a recognized and Town-approved testing establishment for backflow prevention devices. To be approved, these devices must be readily accessible for in-line maintenance and testing.

“Flood level rim” means the edge of the receptacle from which water overflows.

“Health hazard” means any condition, device, or practice in the water system and its operation which could create or, in the judgment of the Town engineer, may create a danger to the health and well-being of the water consumer. An example of a health hazard is a structural defect, including cross-connections, in a water system.

“Industrial fluids” means any system containing a fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration that would constitute a health, system, pollutional, or plumbing hazard if introduced into an approved water supply. This may include, but is not limited to, polluted or contaminated waters; all types of process waters and used waters originating from the public potable water system which may have deteriorated in sanitary quality; chemicals in fluid form, plating acids and alkalies, circulated cooling waters connected to an open cooling tower and/or cooling towers that are chemically and biologically treated and stabilized with toxic substances; contaminated natural waters such as from wells, springs, streams, risers, bays, harbors, seas, irrigation canals or systems, etc.; oils, gases, glycerine, paraffins, caustic and acid solutions, and other liquid and gaseous fluids used in industrial or other purposes or for firefighting purposes.

“Nonpotable water” means water that is not safe for human consumption or that is of questionable potability.

“Plumbing hazard” means a plumbing type cross-connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air-gap separation, or backflow prevention device. Unprotected plumbing type cross-connections are considered a health hazard.

“Pollution” means the presence of any foreign substance (organic, inorganic, radiological, or biological) in the water that may degrade the water quality so as to constitute a hazard or impair its usefulness.

“Pollutional hazard” means an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer’s potable water system but which constitute a nuisance or are aesthetically objectionable or could cause damage to the system or its appurtenances but would not be dangerous to health.

“Potable water” means water free from impurities in amounts sufficient to cause disease or harmful physiological effects. The bacteriological, chemical, and radiological quality shall conform with all State drinking water quality regulations, policies, and guidelines.

“System hazard” means an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer’s potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

“Vacuum breaker, atmosphere nonpressure type” means a vacuum breaker designed to not be subjected to static line pressure or installed where it would be under pressure for not more than 12 hours in any 24 hour period.

“Vacuum breaker, pressure type” means a vacuum breaker designed to not be subjected to static line pressure.

“Water service connection” means the terminal end of a service connection from the public potable water system, i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer’s water system. If a meter is installed at the end

of the service connection, then the service connection shall mean the downstream end of the meter. There shall be no unprotected take-offs from the service line ahead of any meter or backflow prevention device located at the point of delivery to the customer's water system. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the public potable water system.

13.16.030 Defining the water system.

The water system consists of two parts: the utility system and the consumer system.

- A. The utility system shall consist of the source facilities and the distribution system and includes all water system facilities under the Town's complete control, up to the point where the customer's system begins.
- B. The source facilities shall include all components of the facilities utilized in the production, treatment, storage, and delivery of water to the distribution system.
- C. The distribution system shall include the network of conduits used for delivering water from the source to the customer's system.
- D. The customer's system shall include those parts of the facilities beyond the termination of the Town's distribution system utilized to convey utility-delivered domestic water to points of use.

13.16.040 Policy.

- A. No water service connection shall be installed or maintained by the water purveyor unless the water supply is protected as required by State laws and regulation and this Code. Service of water to any premises shall be discontinued by the water purveyor if a backflow prevention device required by the Code is not installed, tested, and maintained, if it is found that a backflow prevention device has been removed or bypassed, or if an unprotected cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected.
- B. The customer's system shall be open for inspection at all reasonable times to authorized representatives of the Public Works Director, Town Manager, or their designee to determine whether cross-connections or other structural or sanitary hazards, including violations of the Code, exist. When such a condition becomes known, the Public Works Director shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with State statute and this Code.
- C. An approved backflow prevention device shall be installed depending on the degree of hazard. The device shall be installed at or near the property line or immediately inside the building being served but in all cases, before the first branch line leading off the service line wherever the following conditions exist:
 - 1. In case of premises having an auxiliary water supply which is not or may not be of the same bacteriological or chemical quality and which is not acceptable as an additional source by the Town engineer.

2. In the case of premises on which any industrial fluids or any other objectionable substance is handled in a manner that creates an actual or potential hazard to the public water system. This shall include handling processed waters and waters originating from the utility system which have been subject to deterioration in quality.
 3. In the case of premises having internal cross-connections that cannot be permanently corrected and controlled, or intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross-connection exist.
- D. The type of protective device required under this Section shall depend upon the degree of hazard which exists as follows:
1. In the case of any premises where there is an auxiliary water supply as stated in subsection A of this Section and which is not subject to any of the following subsections, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device.
 2. In the case of any premises where there is water or a substance which would be objectionable but not hazardous to health if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.
 3. In the case of any premises where there is any material dangerous to health which is handled in a manner that creates an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap prevention device. Examples of premises where these conditions will exist include, but are not limited to, sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals, mortuaries, and plating plants.
 4. In the case of any premises where there are uncontrolled cross-connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device at the service connection.
 5. In the case of any premises where, because of security requirements or other prohibitions or restrictions it is impossible or impractical to make a complete in-plant cross-connections survey, the public water system shall be protected by installing a backflow prevention device in the service line. In this case, maximum protection will be required and an approved air-gap separation or an approved reduced pressure principle backflow prevention device shall be installed in each service to the premises.
- E. Any backflow prevention device required by this Section shall be of a model and size approved by the Town engineer. Final approval shall be evidenced by a certificate of approval issued by an approved testing laboratory certifying full compliance with the American Water Works Association standards and Foundation

for Cross Connection Control & Hydraulic Research specifications. The Foundation for Cross Connection Control & Hydraulic Research University of Southern California testing laboratory in University Park, Los Angeles, California has been qualified by the Town engineer to test and certify backflow preventers. Testing laboratories other than the laboratory listed above will be added to an approved list as they are qualified by the Town engineer. Backflow preventers which may have been subjected to back pressure or back siphonage that have been fully tested and granted a certificate of approval by the qualified laboratory and listed on the laboratory's current list of approved devices may be used without further testing or qualification.

- F. It shall be the duty of the customer/user at any premises where backflow devices are installed to have certified inspections and operational tests made at least once a year. When the Town engineer deems the hazard great enough, they may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user and be performed by a certified inspector/tester. These devices shall be repaired, overhauled, or replaced at the expense of the customer/user whenever a device is found defective. Records of such tests, repairs, and overhauls shall be kept and made available to the Town engineer.

13.16.050 Reserved.

13.16.060 Specific system requirements.

The following guidelines shall apply to backflow prevention devices for irrigation systems:

- A. Atmospheric vacuum breakers shall be installed after the last control valve of each sprinkler circuit and at the minimum of six inches above the highest irrigation head. The atmospheric vacuum breaker shall be installed only on irrigation circuits with heads that will not return any pressure in the circuit when the circuit control valve is closed.
- B. Pressure vacuum breakers shall be installed at the beginning of each irrigation circuit and at a minimum of 12 inches above the highest irrigation head on the circuit. Individual irrigation circuits having quick coupling valves or other similar type heads that will permit pressure to be retained in the circuit shall have a pressure vacuum breaker installed as a minimum requirement for each circuit. Irrigation systems using the subsurface drip method shall have a pressure vacuum breaker on each circuit. A pressure vacuum breaker may not be installed where a double check valve assembly, reduced pressure principle backflow prevention device, or air-gap separation is required.
- C. A double-check valve assembly may be installed to serve multiple irrigation circuits in lieu of vacuum breakers on each individual irrigation circuit.
- D. A reduced pressure principle backflow preventer or air-gap separation shall be required before any piping network in which fertilizers, pesticides, and other chemicals or toxic contaminants are injected or siphoned into the irrigation system.

13.16.070 Fire systems.

Water systems for fighting fire derived from a supply that cannot be approved as safe or potable for human use shall, whenever practicable, be kept wholly separate from drinking water pipelines and equipment. In cases where the domestic water system is used for both drinking and firefighting purposes, approved backflow prevention devices shall be installed to protect individual drinking water lines not used for firefighting purposes. It shall be the responsibility of the person(s) causing the introduction of the unapproved or unsafe water into the pipelines to see that a procedure is developed and carried out to notify and protect users of this piping system during the emergency and ensure that special precautions are taken to disinfect thoroughly and flush out all pipelines which may have become contaminated before they are again used to furnish drinking water. In the event the means of protection of water consumers is by disinfection of the auxiliary firefighting supply, the installation and its use shall be thoroughly reliable.

When disinfecting the auxiliary supply itself to render the water safe, the means of applying the disinfectant shall be automatic with operation of the pump(s) employed with the dangerous water in question. Adequate supplies of chlorine or its compounds must be kept on hand at all times. Chlorine dosing equipment shall be tested daily and kept in good condition.

The public water supply must be protected against backflow from dual domestic fire systems.



MEMORANDUM

TO: The Mayor and Town Council
FROM: Jennifer Phillips, Finance Director
DATE: July 7, 2025
RE: Adoption of Ordinance 13-2025 Repealing and Readopting Title 6 of the Monument Municipal Code

BACKGROUND:

The Town of Monument voters approved the Home Rule Charter in November 2022. The Town must update the Municipal Code to conform to the Charter. Other procedural and administrative updates are also being proposed to modernize and align the Code with current Town practices as the Municipal Code is updated.

On February 6, 2023, the Town signed an agreement with the Humane Society of the Pikes Peak Region (HSPPR) for Animal Services. Under this agreement, HSPPR provides animal law enforcement services by enforcing the Town Code and State Statutes related to domestic animals within the entire area of the Town. The agreement also provides for HSPPR to provide animal sheltering services. The total cost of the base year agreement was \$40,891. The 2023 budget was \$31,744 and the 2024 budget was \$25,118. The budgeted cost for 2025 remains \$25,118 and no increase is expected for 2026. The agreement is an annual agreement that can be extended for up to nine (9) additional one (1) year options.

DISCUSSION

Title 6 of the Monument Municipal Code addresses Animals. Chapter 6.04 specifically addresses Animals Generally. Town staff and the Town Attorney have reviewed and revised Title 6. Attached to this memorandum are both the edited version of Title 13 with deleted text shown in strikeout format and added text shown in underlined text as well as a final version.

The reason for many of the changes is to align with the Town practice, make proper designations, simplify the Code by referring to an incorporated document instead of incorporating all portions of said document and correct formatting.

RECOMMENDATION: Staff have submitted Ordinance 13-2025 approving the repealing and readopting of Title 6 of the Monument Municipal Code.

Repealing and Readopting Title 6 of the Monument Municipal Code

July 7, 2025

Town Council Meeting



OVERVIEW

- Purpose
- Process
- Summary of Changes
- Recommendation



PURPOSE

- Conform with Home Rule Charter
- Update Monument Municipal Code
- Remove all fees
- Refer to State Statutes
- General clean-up



PROCESS

- Staff reviewed existing Title 6
- Provided recommended edits to Town Attorney
- Town Attorney finalized



SUMMARY OF CHANGES – SECTION 6.04

- Section 6.04.040 – removed language related to livestock
- 6.04.050 – removed
- Section 6.04.070 - removed



SUMMARY OF CHANGES – SECTION 6.08

- Section 6.08.010 – El Paso County Pet Animal Control/Dog Licensing Rules and Regulations
 - Definition: Declared Dangerous Dog
 - Unlawful to possess Declared Dangerous Dog in Town limits
 - Unlawful to Early Release impounded dangerous dog



SUMMARY OF CHANGES – SECTION 6.08

- Section 6.08.011-6.08.038 Removed
- Section 6.08.010 – adopting El Paso County rule and regulations. Change to Declared Dangerous Dog
- Section 6.08.040 – Maximum Dog Limitation
 - Current is 6, recommend 4
 - Grandfathering option incorporated



RECOMMENDATION

Approve Ordinance 13-2025 repealing and readopting Title 6 of the Monument Municipal Code



**TOWN OF MONUMENT
ORDINANCE NO. 13-2025**

**AN ORDINANCE REPEALING AND READOPTING
TITLE 6 OF THE MONUMENT MUNICIPAL CODE**

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, the Council has determined that it is necessary to repeal and readopt Title 6 of the Monument Municipal Code (“Code”) to bring it into conformance with the Charter and provide general updates; and

WHEREAS, this Ordinance was introduced by title, considered at a public hearing, and voted upon at the regular meeting of the Town Council on July 7, 2025

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. Repeal and Readopt Title 6 of the Monument Municipal Code. Title 6 of the Code as set forth in Exhibit A, attached hereto and incorporated herein, is repealed and readopted with underlined text being added and stricken text being deleted.

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

Section 4. 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 5. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 6. 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 of application 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 7th day of July, 2025 by a vote of _____ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

EXHIBIT A
TO ORDINANCE NO. 13-2025

Title 6
ANIMALS

Chapter 6.04 ANIMALS GENERALLY

6.04.010 Reserved.

6.04.020 Reserved.

6.04.030 Premises kept clean.

Animals may be kept within the Town upon compliance with the following requirements:

- A. All fecal waste shall be removed as necessary from premises and placed in closed fly tight containers at least every three to seven days. A Town representative may order more frequent removal depending on the number and size of the animals on the property. The contents of the containers shall be removed as necessary to prevent the contents from becoming a nuisance.
- B. The premises upon which animals are kept shall be maintained in a clean and sanitary condition and are subject to inspection at all reasonable hours by a Town representative or a representative of the El Paso County Health Department.
- C. Any person who owns or controls any lot, barn, stable, shed, building, or other place where domestic fowl or animals are kept shall keep the building and premises in a clean and sanitary condition and remove all manure from the premises at least once a week.

6.04.040 Reserved.

6.04.050 Cruelty to animals.

Pursuant to Parts 1 and 2, Article 16, Title 31, C.R.S., as amended, the Town adopts by reference the entirety of Section 18-9-202, C.R.S. regarding cruelty to animals. Anything defined in Section 18-9-202, C.R.S., as illegal or prohibited is deemed illegal or prohibited in the Town and punishable under the same provisions.

6.04.060 Poisoning domesticated animals.

It is unlawful for any person to poison or distribute poison in any manner whatsoever with the intent to or for the purpose of poisoning any domesticated animal.

6.04.070 Reserved.

Chapter 6.08 ANIMALS SPECIFICALLY

6.08.010 Pet animal control/dog licensing rules and regulations.

The El Paso County Pet Animal Control/Dog Licensing Rules and Regulation (“Rules and Regulations”) are hereby adopted by reference, with the following revisions and exceptions where applicable:

- A. There is added a definition for the following: “Declared dangerous dog” means a dog that has been found to be a dangerous dog by the County court, or other proper jurisdiction, after a complaint and proceeding regarding the disposition of the dog as set forth in the Rules and Regulations.
- B. Where the Rules and Regulations state that it shall be unlawful to own, possess, harbor, keep, have a financial or property interest in, or have custody or control over a declared dangerous dog in Town limits.
- C. Where the Rules and Regulations relate to and permit Early Release, there shall be no early release of a dog impounded as a dangerous dog. Such dogs may only be released following disposition of impoundment as set forth in the Rules and Regulations and only if at the conclusion of such proceeding, the dog is not a declared dangerous dog.

6.08.011 Reserved.

6.08.012 Reserved.

6.08.013 Reserved.

6.08.014 Reserved.

6.08.015 Reserved.

6.08.016 Reserved.

6.08.017 Reserved.

6.08.018 Reserved.

6.08.019 Reserved.

6.08.020 Reserved.

6.08.021 Reserved.

6.08.022 Reserved.

6.08.023 Reserved.

6.08.024 Reserved.

6.08.025 Reserved.

6.08.026 Reserved.

6.08.027 Reserved.

6.08.028 Reserved.

6.08.029 Reserved.

6.08.030 Reserved.

6.08.031 Reserved.

6.08.032 Reserved.

6.08.033 Reserved.

6.08.034 Reserved.

6.08.035 Reserved.

6.08.036 Reserved.

6.08.037 Reserved.

6.08.038 Reserved.

6.08.040 Maximum dog limitation.

The maximum number of dogs which may be kept on a single premise shall not exceed four over the age of four months, except in properly zoned and licensed kennels. Any resident who had six registered dogs as of July 1, 2025 will be permitted to keep their existing registered dogs provided they continue to comply with all other applicable animal Codes, statutes, and regulations. This exemption is specific to the individual and specific registered dogs owned by the resident as of July 1, 2025 and does not extend to any future pets acquired after July 1, 2025. The specific, registered dog is grandfathered in, not the property or the Owner. If an animal is declared a dangerous dog, it no longer qualifies as a grandfathered animal under this Section.

6.08.050 Prohibited pet animals.

It shall be unlawful to possess native wildlife as defined and set forth in Section 33-6-109, C.R.S. It shall also be unlawful for any person to own, have custody of, sell, or in any other manner traffic any of the following animal species:

- A. All poisonous snakes and poisonous reptiles.
- B. Nonhuman primates.
- C. Any species of feline other than ordinary domesticated house cats.
- D. Bears of any species.
- E. All crocodilians.
- F. Raccoons, porcupines, skinks, badgers, or other like species.
- G. Foxes, wolves, coyotes, or other species of canines other than dogs.
- H. Any other wild animal or wildlife not indigenous to the State or not classified as a pet or domesticated animal.

Alleged domestication of any prohibited animal shall not affect its status under this Section. In the event of uncertainty about whether a particular animal is a prohibited animal, it shall be presumed prohibited until proven otherwise by a preponderance of the evidence to the satisfaction of the Municipal Court.

Nothing herein shall prohibit either of the following bona fide activities:

- A. A wildlife rehabilitator, falconer, or scientific collection permit holder currently licensed by the Colorado Parks and Wildlife, so long as the licensee or permit holder complies with all applicable Code and Town zoning ordinance provisions.
- B. A veterinary hospital operated by a veterinarian currently licensed by the State which complies with all applicable Code and Town zoning ordinance provisions.

6.08.060 Chickens.

Keeping chickens is allowed within the following constraints:

- A. Chickens are permitted only in SFD-1 and SFD-2 zone districts. Chickens are prohibited in all other zone districts.
- B. The maximum number of chickens permitted on one lot is four.
- C. Roosters and other types of poultry including, but not limited to, ducks, turkeys, geese, pheasants, and guinea fowl, are prohibited within Town limits.
- D. Chickens must be kept in a chicken coop and run in the rear yard.
- E. The chicken coop and run must provide all chickens on the lot with adequate shelter against the elements and be reasonably predator proof.
- F. The size of the chicken coop and run combined is limited to 120 square feet in area and six feet in height. The chicken coop must be set back a minimum of ten feet from the side and rear property lines.
- G. The chicken coop must provide a minimum area of four square feet per chicken. The chicken run must provide a minimum area of six square feet per chicken.

- H. The chicken coop and run must be fully screened from view from public rights-of-way and adjacent properties by a six-foot opaque wood fence.
- I. Retail sale of eggs or chickens, breeding chickens, and slaughtering chickens is prohibited.
- J. The area and building(s) used for keeping chickens shall always be kept in a clean and sanitary condition.

**TOWN OF MONUMENT
ORDINANCE NO. 13-2025**

**AN ORDINANCE REPEALING AND READOPTING
TITLE 6 OF THE MONUMENT MUNICIPAL CODE**

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, the Council has determined that it is necessary to repeal and readopt Title 6 of the Monument Municipal Code (“Code”) to bring it into conformance with the Charter and provide general updates; and

WHEREAS, this Ordinance was introduced by title, considered at a public hearing, and voted upon at the regular meeting of the Town Council on July 7, 2025

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.

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

Section 4. 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 5. Effective Date. This Ordinance shall become effective and be in full force and effect ten (10) days after final publication.

Section 6. 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 of application 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 7th day of July, 2025 by a vote of _____ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

**EXHIBIT A
TO ORDINANCE NO. 13-2025**

**Title 6
ANIMALS**

Chapter 6.04 ANIMALS GENERALLY

6.04.010 Reserved.

6.04.020 Reserved.

6.04.030 Premises kept clean.

Animals may be kept within the Town upon compliance with the following requirements:

- ~~1A.~~ All fecal waste shall be removed as necessary from premises and placed in closed fly_tight containers, at least every three to seven days. ~~The Code Enforcement Officer has the authority to~~ A Town representative may order more frequent removal depending on the number and size of the animals on the property. The contents of the containers shall be removed as necessary to prevent the contents from becoming a nuisance.
- ~~2B.~~ The premises upon which animals are kept shall be maintained in a clean and sanitary condition and ~~shall be~~ subject to inspection at all reasonable hours by ~~the Code Enforcement Officer~~ a Town representative or a representative of the El Paso County Health Department.
- ~~3C.~~ Any person who owns or controls any lot, barn, stable, shed, building, or other place where domestic fowl or animals are kept, shall keep the building and premises in a clean and sanitary condition and ~~shall~~ remove all manure from the premises at least once a week.

6.04.040 ~~Keeping or grazing of livestock~~Reserved.

- ~~A. The keeping of livestock, including, but not limited to, sheep, cattle, goats, pigs, and horses within the Town limits, requires a livestock permit issued by the Town. The Development Services Department may issue a livestock permit if it determines that the following requirements will be adhered to. The person grazing the livestock (the permittee) must apply for a livestock permit and provide the landowner's written consent. A grazing and livestock management plan, including a manure management plan, and any other information needed for documentation, shall be submitted which demonstrates that the following criteria are met:~~

 - ~~1. The livestock must be enclosed within a fence that can contain the animals.~~

2. ~~The livestock owner will manage the livestock such that there will not be excessive odor, noise, flies, and/or cause a health hazard or nuisance to surrounding lands or residents. All areas shall be managed in such a manner so as to protect surface water and groundwater. Drainage facilities and erosion control measures may be required to protect riparian areas and adjacent properties from runoff containing contaminants such as sediment or organic waste.~~
3. ~~Corrals, and containment areas such as windbreaks, shelters, or other areas where livestock gathers such as near water tanks or troughs shall be kept in a clean condition with regular removal of manure that is disposed of in a manner acceptable to the El Paso County Department of Health and Environment Services. Any manure that is spread should be fully composted to minimize the breeding of flies and to control odors. Manure shall not be stored over a well, near riparian areas, or buried.~~
4. ~~Animals may be allowed to graze until such time that no more than twenty-five (25) percent of the current pasture is devegetated. The remainder of the pasture should not have vegetation that is grazed down to a height less than three inches. Vegetation shall include native or introduced grasses and forbs.~~
5. ~~The permit is valid for a time period not to exceed twelve (12) months, and may be revoked by the Department of Development Services if it is determined that the animals have broken loose from the pasture and have entered another property or road three times during the time period of the grazing permit, and/or the keeping or grazing of animals does not adhere to the requirements herein or is otherwise causing a public nuisance. A written warning shall be issued for the first offense, a one hundred dollars (\$100.00) fine will be assessed for the second offense, and the permit for keeping livestock will be revoked for the third offense and the livestock must then be removed within thirty (30) days from the date when written notification is provided to the property owner. If a documented accident caused by another party occurs that damages a fence, it will not be counted as an offense if the landowner and/or permittee repairs the fence in a timely manner.~~

6.04.050 Cruelty to animals.

Pursuant to Parts 1 and 2, ~~of~~ Article 16, ~~of~~ Title 31, C.R.S., as amended, the Town ~~of Monument~~ adopts by reference the entirety of Section 18-9-202, C.R.S. regarding ~~C~~cruelty to ~~A~~animals. Anything defined in Section 18-9-202, C.R.S., as illegal or prohibited is deemed illegal or prohibited in the Town ~~of Monument~~ and punishable under the same provisions.

6.04.060 Poisoning domesticated animals.

It is unlawful for any person to poison or ~~to~~ distribute poison in any manner whatsoever with the intent to or for the purpose of poisoning any domesticated animals.

6.04.070 BirdsReserved.

~~It is unlawful for any person, at any time within the corporate limits of the Town, to frighten, shoot at, wound, kill, take, capture, ensnare, net trap or in any other manner molest or injure any robin, lark, whippoorwill, finch, sparrow, thrush, wren, martin, swallow, snow-bird, bob-o-link, red-winged blackbird, crow, raven, oriole, kingbird, mockingbird, song sparrow, or other song bird, or insectivorous bird; or in any manner molest or injure the nest, eggs or young of any such bird, or have in their possession the nest, eggs, young or body of such bird.~~

Chapter 6.08 ANIMALS SPECIFICALLY

6.08.010 Pet animal control/dog licensing rules and regulations ~~applicability.~~

~~The Rules and Regulations set forth in this Chapter (6.08) shall be applicable to all persons who shall own or keep a pet animal within the corporate limits of the Town of Monument. The El Paso County Pet Animal Control/Dog Licensing Rules and Regulation (“Rules and Regulations”) are hereby adopted by reference, with the following revisions and exceptions where applicable:~~

- ~~A. There is added a definition for the following: “Declared dangerous dog” means a dog that has been found to be a dangerous dog by the County court, or other proper jurisdiction, after a complaint and proceeding regarding the disposition of the dog as set forth in the Rules and Regulations.~~
- ~~B. Where the Rules and Regulations state that “it shall be unlawful to own, possess, harbor, keep, have a financial or property interest in, or have custody or control over a dangerous dog in El Paso County,” replace with “it shall be unlawful to own, possess, harbor, keep, have a financial or property interest in, or have custody or control over a declared dangerous dog in Town limits.”~~
- ~~C. Where the Rules and Regulations relate to and permit Early Release, there shall be no early release of a dog impounded as a dangerous dog. Such dogs may only be released following disposition of impoundment as set forth in the Rules and Regulations and only if at the conclusion of such proceeding, the dog is not a declared dangerous dog.~~

6.08.011 DefinitionsReserved.

~~Except as otherwise specifically indicated herein, the following definitions shall apply:~~

- ~~1. “Board” shall mean the Board of Trustees of the Town of Monument.~~
- ~~2. “Bodily Injury” shall mean an injury caused by a pet animal wherein at a minimum the skin is broken, exterior bleeding occurs, or medical treatment by a licensed physician is reasonably necessary.~~
- ~~3. “Control” for purposes of Section 6.08.017 of these Pet Animal/Dog Licensing Rules and Regulations shall mean: physical restraint of a pet animal by means of a leash, cord or similar tether not longer than fifteen (15) feet in length, or pen, cage, fence or motor vehicle.~~
- ~~4. “Dangerous Dog” shall mean a dangerous dog as defined by 2004 C.R.S. § 18-9-204.5(2)(b).~~

5. ~~“Designated Agent” shall mean the Humane Society of the Pikes Peak Region.~~
6. ~~“Health Officer” shall mean the person appointed as the health officer for El Paso County by the El Paso County Board of Health.~~
7. ~~“Keeper” shall mean any person who keeps or harbors a pet animal for less than thirty (30) days.~~
8. ~~“Owner” shall mean any person who keeps or harbors a pet animal for more than thirty (30) days.~~
9. ~~“Pet Animal”, as defined in 2004 C.R.S. § 30-15-101(3), shall mean and include any animal owned or kept by a person for companionship or protection or for sale to others for such purposes.~~
10. ~~“Peace Officer” shall mean any law enforcement officer as defined under part 9 of Article 1 of Title 18, C.R.S. 2004, whose jurisdiction includes the designated animal control area of the Town of Monument, and any commissioned officer, agent, or employee of the Humane Society of the Pikes Peak Region.~~
11. ~~“Running At Large” shall mean when a dog enters the property of another person without authorization of that person, or when a dog enters public property, and is not under control.~~

6.08.012 Reserved License required; anti-rabies vaccine required.

1. ~~Every person who lives within the Town of Monument and who owns one or more dogs which are more than four months old, except those persons to whom a valid pet shop or boarding kennel license has been issued by appropriate officials of the State of Colorado pursuant to 2002 C.R.S. § 25-4-702, shall obtain a license for each dog.~~
2. ~~No license shall be issued until the owner of a dog shall exhibit to the Board or its Designated Agent a valid anti-rabies vaccination certificate indicating that the dog has been vaccinated against rabies by a licensed veterinarian within the thirty-six (36) months preceding the date of application, and that such inoculation is still effective.~~
3. ~~At any time a dog becomes four months of age, or if a dog which is at least four months of age is brought into the designated animal control area of the Town of Monument, its owner shall obtain a license within the next succeeding thirty (30) days.~~
4. ~~Within thirty (30) days after a person brings a dog or cat into the designated animal control area of the Town of Monument, a person shall have the dog or cat inoculated with anti-rabies vaccine by a licensed veterinarian, unless he can demonstrate that the dog or cat has been previously inoculated (and that such inoculation is still effective) within the preceding thirty-six (36) months, in which case the previous inoculation shall be accepted.~~
5. ~~Notwithstanding subsections (2) and (4) above, all dogs and cats shall be inoculated with anti-rabies vaccine by a licensed veterinarian when they are at least four~~

months old, and shall receive a follow-up vaccination from a licensed veterinarian no later than when the dog or cat turns sixteen (16) months old.

6. ~~Although not required, any person desiring to license a cat may do so upon meeting the requirements of Sections 6.08.012 and 6.08.013 of these Rules and Regulations. The license fee shall be five dollars (\$5.00).~~
7. ~~Rabies vaccinations are required for all dogs and cats within the Town of Monument, and with respect to the rabies vaccination provisions under Section 6.08.012(4).~~

6.08.013 ~~Application for license~~Reserved.

An application for a license shall contain the following:

1. ~~A valid anti-rabies vaccination certificate as prescribed in Section 6.08.012, above;~~
2. ~~Age of the dog or cat;~~
3. ~~Sex of the dog or cat;~~
4. ~~Statement as to whether dog or cat has been spayed or neutered;~~
5. ~~A description of the dog or cat, including breed and color;~~
6. ~~Name of the dog or cat;~~
7. ~~Identification number for a dog (if the dog is a guide dog for the physically handicapped); and~~
8. ~~Name and address of the dog or cat's owner.~~

6.08.014 ~~License fees~~Reserved.

1. ~~Upon filing and acceptance by the Designated Agent of the Board of an application for a dog license, applicant shall pay a license fee as indicated below:~~

License Type	Regular	Senior Citizens
Altered 1 year	\$20.00	\$10.00
Altered 3 year	\$40.00	\$25.00
Unaltered 1 year	\$35.00	\$20.00
Unaltered 3 year	\$75.00	\$55.00

2. ~~No license fee shall be charged for guide dogs used by the blind, the partially blind, the deaf or the partially deaf.~~
3. ~~Licenses for spayed female or neutered male dogs shall only be issued upon presentation of a certificate signed by a veterinarian stating that the dog has been spayed or neutered.~~
4. ~~License fees shall not be prorated.~~
5. ~~Upon payment by the applicant of the requisite fee, the Designated Agent shall issue a receipt bearing the owner's name and address and the dog's license number, together with a metallic tag bearing the year of issue, the expiration date of the~~

license, County identification, and the license number corresponding to that shown on the receipt. The tag shall be worn by the dog at all times.

6. ~~Solely for the purposes of the collection and issuance of dog licenses, the Designated Agent shall be authorized to assign, delegate, and subcontract the collection and issuance of dog licenses to established and reputable veterinarians within El Paso County. All such assignments, delegations, and subcontracts shall be subject to the requirements and provisions contained herein, as the same may be amended from time to time, and the Designated Agent shall remain responsible for all such assignment, delegation, and subcontracting requirements, and the delivery of services as set forth herein. The Designated Agent shall periodically report to the Board or its authorized representative the names of the veterinarians authorized hereunder and of the status of the collection and issuance of County and Town dog licenses by such authorized veterinarians.~~

6.08.015 ReservedExpiration, transfer of license.

1. ~~All dog licenses shall expire either one year or three years from the date of issuance, depending upon the length of license purchased. New licenses must be obtained on or before the last day of the month in which the license shall expire. If the applicable fee for a new license is not paid before the first day of the succeeding month, a penalty of twenty dollars (\$20.00) shall be added thereto.~~
2. ~~Cat licenses shall expire one year from the date of issuance.~~
3. ~~No dog or cat license may be transferred from one owner to another, but the license may be transferred from one dog or cat to another dog or cat belonging to the same owner upon compliance with Section 6.08.013 hereof. An explanation as to the disposition of the previous licensed dog or cat is required.~~

6.08.016 ReservedDuplicate license.

In the event a license tag is lost, a duplicate shall be provided by the Designated Agent of the Board to the owner or keeper upon payment of five dollars (\$5.00) for each duplicate tag.

6.08.017 ControlReserved.

1. ~~It shall be the duty of any owner or keeper of a dog to keep such dog under control, as hereinabove defined, so as to prevent the dog from running at large, becoming a danger to persons or property, or trespassing on the property of another, except that for purposes of this Section, dogs actually working livestock, locating or retrieving wild game in season for a licensed hunter, or assisting law enforcement officers, or dogs being trained for any of such pursuits, shall not be deemed out of control or running at large.~~
2. ~~Any unsprayed female dog in the stage of estrus (heat) shall be confined during such period of time in a secure structure or enclosure of sufficient construction so as to prevent other dogs from gaining access to the confined dog; provided, however, that this subsection shall not prohibit the controlled breeding of such dog with another dog if the owner of such other dog consents to the breeding of the dogs.~~

3. — ~~Where, in the opinion of the Health Officer, his designated representative, or any peace officer, a dog or cat is suspected of being rabid, or where a dog or cat has bitten a person or another animal, such officer may confine the dog or cat in accordance with 2004 C.R.S. § 25-4-604.~~

6.08.018 ReservedDangerous dogs prohibited.

1. — ~~It shall be unlawful to own, possess, harbor, keep, have a financial or property interest in, or have custody or control over a dangerous dog in the Town of Monument.~~
2. — ~~Affirmative defenses to a violation of Section 6.08.017(1) are available as stated in 2004 C.R.S. § 18-9-204.5(3)(h).~~
3. — ~~This section shall be interpreted and enforced in conformity with 2004 C.R.S. § 18-9-204.5, or its successor or amended statute.~~
4. — ~~This subsection is inapplicable to any law enforcement officer using an animal while engaged in law enforcement activities.~~
5. — ~~Duty to Impound; Destruction of Dangerous Dog. It shall be the duty of a peace officer to impound a dog whose owner or keeper has been cited with a violation of this section if, in the opinion of the peace officer, such animal presents a clear and present danger to the public health or safety. Nothing in this section shall be construed to prevent a peace officer from taking whatever action is reasonably necessary to protect the peace officer or members of the public from injury or damage, or to prevent injury to any other animals in the community, including the immediate destruction of any dangerous dog without notice to the owner or keeper.~~
6. — ~~Impoundment; Disposition.~~
 - A. — ~~If a complaint has been filed in the Municipal Court against the owner or keeper of an impounded dangerous dog for charges under this section, the dog shall not be released except upon the order of a Municipal Judge under such conditions prescribed in Section 6.08.019 (Early Release). Such order shall require the owner or keeper to pay all impounding fees. Any dog which remains unclaimed for five days after its release as authorized by the court order may be disposed of at the discretion of the Designated Agent.~~
 - B. — ~~If reasonable efforts have been made to notify the owner or keeper of any proceeding regarding the disposition of their dog, and the owner or keeper of such dog fails to appear for any proceeding regarding the disposition of the dog, then the Municipal Court shall be empowered to proceed without further notice to the owner or keeper. At minimum, reasonable efforts shall consist of one or more of the following:~~
 - I. — ~~Personal service on the owner or keeper;~~
 - II. — ~~Notice delivered by certified mail, return receipt requested, to the last known address of the owner or keeper of the animal;~~
 - III. — ~~Notice posted at the last known residence of the owner or keeper;~~

- ~~IV. — Notice given to the owner or keeper by the court; or~~
- ~~V. — A promise to appear by the owner or keeper given to a Municipal Court judge in open session of court.~~
- ~~C. — If the owner or keeper fails to appear after efforts to notify the owner or keeper have been made, the Town Municipal Court is empowered to hold ex parte hearings to determine the disposition of the dog.~~
- ~~D. — If the court finds that reasonable grounds exist to believe that a dog may constitute a danger to any person or other animal in the community, the court may order such dog destroyed or held pending trial. If the court finds that a dog is not a danger, the court may order it released under conditions prescribed in Section 6.08.017 — Early Release.~~
- ~~E. — Any dog found to be in violation of the conditions of an early release order issued pursuant to Section 6.08.019(3)(C) of these Rules and Regulations or found to be a dangerous dog under this Section may be impounded or confined as herein provided.~~
- ~~F. — Surrender of a dog by the owner or keeper to a peace officer does not relieve an owner or keeper from prosecution or liability for any fines or fees imposed by this Section.~~
- ~~G. — Any dog declared to be dangerous pursuant to the provisions of this Section shall be required to be licensed as a dangerous dog.~~
- ~~I. — All applications for a dangerous dog license shall be made to the Designated Agent on the prescribed form. A fee of fifty (\$50.00) shall accompany the application. Five dollars (\$5.00) of such fee shall compensate the Designated Agent for processing the application and shall be nonrefundable.~~
- ~~II. — The Designated Agent may reject the application if the dog's owner or keeper cannot or will not comply with the following conditions:~~
- ~~(a) — Dog to be kept in fenced yard, at least six feet high, either chain-link or wooden privacy type fencing permitted:~~
- ~~(i) — Wooden fence may have no loose boards.~~
- ~~(ii) — Support posts must be mounted solid in the ground.~~
- ~~(iii) — No holes in fence.~~
- ~~(iv) — Chain link stretched at top and bottom so as not to sag or become loose at the bottom.~~
- ~~(v) — Any gate must be able to lock in such manner to prevent dog from accidentally being turned loose.~~
- ~~(vi) — Tops and bottoms of fencing must be secured so that dogs cannot climb out or jump over fence or dig out beneath fence.~~

~~(b) — In the alternative to subsection (6)(G)(II)(a), the owner or keeper may construct a kennel with both top and bottom covered with wire to keep the dog from climbing, jumping, or digging out of the kennel, and with the kennel gate being locked.~~

~~(c) — In all cases, shelter must be provided, consisting of a structure with at least three sides, a roof, and a floor, with available access to food and water when outside of the shelter.~~

~~III. — Any dangerous dog license issued pursuant to this section shall be in addition to any other license required by these Rules and shall be valid for one year. A dangerous dog license must be renewed annually by the dog's owner or keeper.~~

~~IV. — It shall be unlawful for the owner of a dangerous dog to fail to notify the Designated Agent of any sale or transfer of ownership of any dog licensed pursuant to this Section.~~

6.08.019 ReservedEarly release.

- ~~1. — If a complaint has been filed in municipal court against the owner of an impounded dog for a charge under Section 6.08.018(1), the dog shall only be released pursuant to a court order under Section 6.08.019(2). Any dog that remains unclaimed for five days after an early release order has been issued by the court may be disposed of at the discretion of the Executive Director of the Designated A~~
- ~~2. — Upon the filing of a consent for release by the Designated Agent, with notice to the complaining witness/victim as provided for in Section 6.08.019(3)(C), and after any hearing required by the court, the court may, based upon all of the facts and circumstances then before the court, order the Designated Agent to release the impounded dog to the owner, pending disposition of the underlying charges. Any order for early release shall include conditions requiring the following:~~
 - ~~A. — Owner shall maintain containment facilities upon Owner's property which have been inspected and approved by the Designated Agent;~~
 - ~~B. — The dog shall be confined to such containment facilities at any and all times the dog is not otherwise under the direct physical control of the owner, who shall remain responsible in all respects for the dog; and~~
 - ~~C. — Owner shall pay all fees related to the impounding of the dog; and~~
 - ~~D. — Any other conditions as the court finds appropriate.~~
- ~~3. — In order to implement the provisions for early release, the following procedures shall apply:~~
 - ~~A. — At the time of issuing a citation to an owner of a dog that is to be impounded pursuant to Section 6.08.018(1), or as soon thereafter as is reasonably practicable, the Designated Agent shall provide the owner with a notice of early release procedures and the conditions the owner must satisfy prior to requesting that the Designated Agent consider filing a consent for early~~

~~release with the court. Such notice shall contain the specifications for a containment facility, which must be constructed and maintained on the Owner's property to contain the dog in case an order for early release is granted by the court.~~

~~B. After construction of the containment facilities, the Owner shall submit a written request to the Designated Agent for inspection of such facilities. After an inspection of the containment facilities, and upon any further construction or reinforcement that the Designated Agent may require, if the Designated Agent determines in the exercise of its discretion that such containment facilities meet the specifications required, the Designated Agent may file a consent for early release with the Town of Monument Municipal Court. The consent may contain additional conditions for early release that the Designated Agent deems necessary and appropriate. The inspection report of the Designated Agent concerning the containment facilities shall be filed with the consent for early release.~~

~~C. Concurrently with the filing of a consent and report with the court, the Designated Agent shall personally deliver or post in a conspicuous place, with notation of the date of posting, or shall send by first class mail, a notice, a copy of the consent, and a copy of the report of the underlying incident to the complaining witness/victim. Such posting or mailing shall be upon or to the address, if any, that the complaining witness/victim provided to the Designated Agent. Such notice shall advise the complaining witness/victim of their right to file a written objection to early release of the subject dog with the Town of Monument Municipal Court within either three business days of the date of personal delivery or posting, or within five business days of the date of mailing, as applicable. The notice shall further state that an order for early release may be entered by the court if written objection is not timely filed, and that the court may enter an order for release conditions, deny early release, or set the matter for hearing if a written objection has been timely filed. The notice shall further advise the complaining witness/victim that if an order for early release is entered, the witness/victim may report any violations of the release conditions to the Designated Agent. Notwithstanding the foregoing, if the complaining witness/victim fails or refuses to provide an address to the Designated Agent at the time of the incident, the Designated Agent shall have no further obligation to send notice to the witness/victim. Notices required under this section shall be substantially in the form of the sample notices provided in Sections 6.08.035 and 6.08.03~~

6.08.020 ReservedImpoundment.

~~If any pet animal is found by any peace officer or resident of the Town of Monument anywhere in the designated animal control area of the Town of Monument other than at the home of its owner or keeper, and if such pet animal is not under the control of its owner or keeper or their agent as hereinafter defined, such pet animal may be impounded at the facility hereinafter designated, regardless of whether the pet animal is duly licensed or the identity of its owner or keeper is otherwise ascertainable.~~

6.08.021 Impoundment facilityReserved.

~~The facilities maintained by the Humane Society of the Pikes Peak Region shall serve as the impoundment facility for purposes of these Rules and Regulations.~~

6.08.022 Reserveddemption.

- ~~1. — Any impounded pet animal may be redeemed by its owner or keeper within five days of its impoundment upon payment of an impounding fee of forty dollars (\$40.00) plus an additional boarding fee of fifteen dollars (\$15.00) per day for each day or any part thereof that the pet animal is held. The boarding fee is twenty dollars (\$20.00) per day for dogs held for bite confinement or on dangerous charges. The owner or keeper of any impounded pet animal shall pay an impounding fee of sixty dollars (\$60.00) for each additional offense within a twelve-month period, plus the additional boarding fee as described herein. Any unlicensed dog may be redeemed by its owner or keeper within five days of its impoundment upon paying an impoundment fee of fifty dollars (\$50.00), plus an additional boarding fee of fifteen dollars (\$15.00) per day for each day or any part thereof that the dog is held. In the event an owner or keeper has a second or any subsequent incident of impoundment of an unlicensed dog within a twelve-month period, an impoundment fee of seventy dollars (\$70.00) plus the additional boarding fee as stated above will be charged. Any impoundment fees or costs are subject to Municipal Court review and modification if the impoundment occurred pursuant to a cited violation of this Chapter.~~
- ~~2. — Payment of impounding or boarding fees shall not be construed as payment of such fines as may be applicable for violation of the provisions of these Rules and Regulations, nor shall such payment be considered as being in lieu of license fees.~~
- ~~3. — No impounded dog which is required to be licensed or inoculated under the provisions of these Rules and Regulations may be redeemed until such licensing and inoculation is accomplished or ensured unless ordered by the Municipal Court during the course of proceedings on a cited violation of this Chapter.~~

6.08.023 ReservedNotice to owner or keeper.

~~When any pet animal is impounded pursuant to the provisions of these Rules and Regulations, the director of the designated impounding facility shall immediately make a reasonable effort to notify the pet animal's owner or keeper if his identity is ascertainable.~~

6.08.024 ReservedSale or other disposal of unredeemed pet animals.

~~Any owner or keeper of an impounded pet animal who does not claim or redeem the pet animal within the five-day impounding period shall forfeit all right, title and interest therein, and shall pay such impounding and boarding fees which are due and owing. Any impounded pet animal which is not claimed or redeemed during the five-day impounding period may be put up for~~

~~adoption in a manner consistent with the normal procedures of the Humane Society. Any impounded pet animal which is not adopted, claimed or redeemed may be humanely destroyed, removed and buried, or cremated, except that no pet animal, the identity and whereabouts of the owner or keeper of which is known or can be reasonably ascertained from a license tag or other identification worn by the pet animal, shall be destroyed until a reasonable effort has been made to so notify its owner or keeper.~~

6.08.025 ReservedUnlawful taking or release.

- ~~1. — It shall be unlawful for any person to take any pet animal from an enclosed lot, premises, or other building and deliver the pet animal to the impounding facility unless authorized to do so by the owner or keeper of the pet animal or as otherwise authorized by these Rules and Regulations.~~
- ~~2. — It shall be unlawful for any person to open or cause to be opened any closed lot, premises or building for the purpose of allowing a pet animal to run at large.~~

6.08.026 ReservedNoisy pet animals prohibited.

- ~~1. — It shall be unlawful for any person to own or keep a pet animal which, by any unreasonably loud and persistent barking, howling, baying, yelping, crowing, crying or other utterance, disturbs the peace and quiet of a neighborhood. For purposes of this Section, “neighborhood” shall mean the area within five hundred (500) feet of the exterior boundaries of the premises where the pet animal resides, and “disturb” shall mean to unreasonably annoy, perturb, or interfere with the quiet enjoyment of another’s premises.~~
- ~~2. — It shall be a defense to any violation of this section that the complainant provoked the pet animal whose noise is complained of.~~
- ~~3. — If a peace officer determines that a violation of this section has occurred, such officer shall issue a written warning of the violation to the owner or keeper of the pet animal. The owner or keeper shall be entitled to a period of three days after the date on which the written warning is issued to correct the violation. It is unlawful for an owner or keeper to permit the pet animal to persist or continue violating this section at the same residence following the three-day period.~~
- ~~4. — The warning process shall be as follows:
 - ~~A. — A written warning shall only be issued by a peace officer if there is at least one witness to the unreasonably loud and persistent nature of the noise. Either the officer or a complaining witness shall satisfy this requirement.~~
 - ~~B. — The warning shall cite this section, shall state that a complaint has been received, that the owner or keeper’s pet animal is disturbing the peace of another in the neighborhood, and shall identify the date and time of disturbance, the specific pet animal accused of disturbing the peace, the witness or witnesses to the disturbance, and shall specify that the disturbance occurred within the designated animal control area of the Town of Monument.~~~~

- C. ~~A warning is considered given for purposes of this section if it is posted on the owner or keeper's premises.~~
- D. ~~The Designated Agent shall keep records of all warnings given, and such records shall be prima facie evidence that such warnings were given.~~
- 5. ~~No person shall be convicted for violation of this section without testimonial or demonstrative evidence from at least one other person, and such evidence shall corroborate the complaining witness' allegation of unreasonably loud and persistent noise. Such corroborating witness shall not be the complainant nor a member of his or her household.~~
- 6. ~~Peace officers shall consider the time of day, location of noise, frequency of noise, and length of time for which noise persists in determining whether a violation of this section has occurred.~~

6.08.027 Reserved roadside sale of pet animals.

1. ~~It shall be unlawful for any person to sell a pet animal on any public street, road, highway, alley, or sidewalk. All private property is exempt from this regulation and activities related to pets and/or pet sales on private property shall be at the sole discretion of the property owner.~~

2. ~~This section does not apply to:~~

- A. ~~An agent of a business that is licensed by the Colorado Department of Agriculture to operate a pet store; or~~
- B. ~~An event primarily for the sale of agricultural livestock such as hoofed animals or animals or fowl commonly raised for food, dairy, or fiber products; or~~
- C. ~~A tax-exempt non-profit organization with the purpose of providing humane sanctuary or shelter for animals or non-profit charity events.~~

6.08.028 Reserved Improper care or treatment prohibited.

- 1. ~~No owner or keeper of a pet animal shall fail to provide that pet animal with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care, when necessary, and such other care as is customary and necessary for the pet animal's health and well-being, considering the species, breed and type of animal.~~
- 2. ~~No person shall beat, cruelly ill-treat, torment, overwork or otherwise abuse or needlessly kill a pet animal or cause, instigate or permit any dogfight, cockfight, bullfight or other combat between pet animals or between pet animals and humans, nor shall any person transport or confine a pet animal in or upon any vehicle in such a manner as to endanger the animal's health or life.~~
- 3. ~~No owner or keeper of a pet animal shall abandon such pet animal.~~
- 4. ~~A person may not restrain a dog by a fixed-point chain or tether for a period of time or under conditions that an animal control officer or animal cruelty investigator deems harmful or potentially harmful to the animal.~~

6.08.029 ReservedViolations; penalties.

1. ~~Any violation of any provision of these Rules and Regulations which does not result in bodily injury to any person or other animal shall be a Class Two petty offense punishable by a fine, as set forth in Exhibit "D" of these Rules and Regulations, for each separate offense, plus customary costs as applicable. The penalty assessment procedures contained in Section 16-2-201, C.R.S. 2002, shall be followed by any peace officer enforcing the provision of these Rules and Regulations.~~
2. ~~Any violation of any provision of these Rules and Regulations which results in bodily injury to any person or pet animal shall be a Class Two misdemeanor punishable pursuant to the provisions of 2004 C.R.S. § 18-1.3-501, as it now exists or may subsequently be amended.~~
3. ~~Nothing herein shall be construed to prevent impoundment of any pet animal under Section 6.08.019 of these Rules and Regulations.~~
4. ~~Violation of Section 6.08.018 of these Rules and Regulations shall carry such penalties as provided for under C.R.S. § 18-9-204.5, any amendments to such statute, or any successor statute. Where no penalty is provided by such statute, such violation shall be a Class Two petty offense as set forth in Section 6.08.029(1).~~
5. ~~For any violations listed in this Section, the Court may order restitution to be paid by the Defendant for injuries sustained by any person or other animal. The Court may also order payment of impoundment fees as the term of an adjudged sentence subject to current State limits on fees and restitution that may be ordered by the Municipal Court.~~
6. ~~Any violation of any condition of a court order for early release of a vicious dog as provided for in Section 6.08.019 of these Rules and Regulations shall be a Class Two petty offense punishable pursuant to the provisions of 2004 C.R.S. § 18-1.3-503, as it now exists or may subsequently be amended. Any violation shall also be the basis for seizure of the dog by the Designated Agent, as provided for in Section 6.08.018(5). In the event of any such seizure, the owner of the dog shall have no further right to request early release under Section 6.08.019.~~

6.08.030 EnforcementReserved.

~~The provisions of these Rules and Regulations shall be enforced by persons designated "peace officers" as hereinabove defined, except that a peace officer not certified under part 6 of Article 32 of Title 24, C.R.S. 1973, shall have no authority to enforce any resolution or statute other than these Pet Animal Control/Dog Licensing Rules and Regulations.~~

6.08.031 ReservedDisposition of fines and forfeitures.

~~All fines and forfeitures for violation of any provision of these Rules and Regulations and all monies collected by the Town of Monument for licenses shall be paid over to the County Treasurer immediately upon their receipt.~~

6.08.032 ReservedLiability for accident or subsequent disease from impoundment.

~~Neither the Board, its employees or agents, or persons authorized herein to enforce the provisions of these Rules and Regulations shall be held responsible for any accident or subsequent disease which may be suffered by a pet animal as a result of the administration or implementation of these Rules and Regulations.~~

6.08.033 CaptionsReserved.

~~The captions and section headings used throughout these Rules and Regulations are for convenience of reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction, or meaning of any provision to or the scope or intent of these Rules and Regulations.~~

6.08.034 SeverabilityReserved.

~~If any provision of these Rules and Regulations or the application thereof to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of these Rules and Regulations, or the application of such provision to parties or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each provision of these Rules and Regulations shall be valid and be enforced to the fullest extent permitted by law.~~

6.08.035 Early release noticeReserved.

~~The following language shall be used in all early release notices made pursuant to this chapter:~~

EARLY RELEASE NOTICE

Town of Monument Dangerous Dog Impound Procedure

~~Your dog has been impounded as a result of the issuance of Dangerous Dog charges under Section 6.08.018 of the Town of Monument Rules and Regulations for Pet Animal Control/Dog Licensing.~~

~~The Humane Society of the Pikes Peak Region cannot release your dog without a judicial process and release order.~~

~~Your dog may be eligible for early release. **In order to qualify you must comply with Humane Society requirements. The complaining party has a right to object to the early release request. Compliance with these requirements is not a guarantee your dog will be released. The municipal court will make the final decision.**~~

Requirements

- ~~1) — An enclosure inspection by the Humane Society is required as a condition of possible release. Please refer to the list of containment requirements provided by the Humane Society.~~
- ~~2) — You must agree to maintain the dog under direct physical control at all times the dog is not in the enclosure.~~

3) ~~If release is granted, any future violation of conditions or requirements occurring prior to disposition of this case constitutes a separate offense, allowing for issuance of a new citation and re-impoundment of the dog, with no further opportunity for release.~~

4) ~~Other:~~

~~If you wish to **request** early release of your dog, you must first comply with the above requirements and submit a **written request** to the Humane Society at 610 Abbott Ln., Colorado Springs, CO 80905, when your property is ready for inspection.~~

6.08.036 Reserved Notice to witness or victim.

~~The following language shall be used in all notices to a Witness or Victim made pursuant to this chapter:~~

~~NOTICE TO WITNESS OR VICTIM~~

~~DATE: _____ SUMMONS NO.: _____ ACTIVITY NO.: _____~~

~~Dear _____:~~

~~The purpose of this letter is to notify you that the owner of the dog charged with the dangerous dog violation for which you signed a complaint has requested consent for early release of the dog prior to disposition of the court case.~~

~~The Town of Monument Municipal Court Judge may approve the release of the dog.~~

~~If release is ordered, any future violation of conditions or requirements occurring prior to the disposition of the case constitutes a separate offense, allowing for re-impoundment of the dog with no further opportunity for release. Violations should be reported to the Humane Society at 719-302-8712.~~

~~As the complaining party, you have the right to file a written objection to the request for a release. This objection must be filed within:~~

~~___ Three business days of the date of personal delivery of this notice, or:~~

~~___ Five business days of the mailing or posting of this notice.~~

~~Written objection must be filed at the Monument Town Hall, 645 Beacon Lite Rd., Monument, CO 80132. If a written objection is not timely filed, an order for early release may be entered by the court. To file a written objection, you must reference the summons number above, provide your name and daytime telephone number, and specify your reasons for objection to early release of the dog. The court may enter an order for release with conditions, deny early release, or set the matter for a hearing.~~

~~For further information, you may contact the Field Services Department of the Humane Society at 719-302-8712.~~

6.08.037 Witness or victim objection to releaseReserved.

~~The following language shall be provided to assist any Witness or Victim who wishes to object to release of an animal under this Chapter. The following language is not required and the Court may consider an objection made in any form pursuant to this chapter:~~

OBJECTION TO RELEASE

DATE: _____ SUMMONS NO.: ____ ACTIVITY NO.: _____

Dear Judge:

I object to the release of the dog in this case for the following reasons:

Date: _____ Signature: _____

6.08.038 Reserved Fine schedule for violations of Monument Code Chapter 6.08.

The following schedule of fines is hereby imposed for violations of Monument Code Chapter 6.08: FINE SCHEDULE FOR VIOLATIONS OF MONUMENT CODE CHAPTER 6.08 PET ANIMAL CONTROL / DOG LICENSING RULES AND REGULATIONS

Section Violation	First Offense	Second Offense	Third Offense
6.08.012(1) License Required	\$45.00	\$75.00	\$100.00
6.08.012(4) Inoculation Required	\$45.00	\$75.00	\$100.00
6.08.012(7) Inoculation Required	\$45.00	\$75.00	\$100.00
6.08.017 Dog Control	\$45.00	\$75.00	\$100.00
6.08.018 Dangerous Dog	\$75.00	\$100.00	\$150.00
6.08.026 Noisy Pet	\$45.00	\$75.00	\$100.00
Other violations not resulting in bodily injury to any person or other animal and not enumerated above	\$25.00 per offense		
Any violation designated above beyond third offense fined at rate of third offense.			

6.08.040 Number of Maximum dogs limitationed.

The maximum number of dogs which may be kept on the a single premises shall not exceed four six after attaining over the age of four months, except in properly zoned and licensed kennels. Any resident who had six registered dogs as of July 1, 2025 will be permitted to keep their existing registered dogs provided they continue to comply with all other applicable animal Codes, statutes, and regulations. This exemption is specific to the individual and specific registered dogs owned by the resident as of July 1, 2025 and does not extend to any future pets acquired after July 1, 2025. The specific, registered dog is grandfathered in, not the property or the Owner. If an animal is declared a dangerous dog, it no longer qualifies as a grandfathered animal under this Section.

6.08.050 Prohibited pet animals.

In accordance with C.R.S. § 33-6-109, Illegal Possession of Wildlife, it shall be illegal unlawful to possess native wildlife as defined and set forth in Section 33-6-109, C.R.S. It shall also be unlawful for any person to own, have custody of, sell, or in any other manner traffic in any of the following animal species of animals:

- 1A. All poisonous snakes and poisonous reptiles.;

- ~~2B.~~ Nonhuman primates.
- ~~3C.~~ Any species of feline other than ordinary domesticated house cats.
- ~~4D.~~ Bears of any species.
- ~~5E.~~ All crocodilians.
- ~~6F.~~ Raccoons, porcupines, skinks, badgers, or other like species.
- ~~7G.~~ Foxes, wolves, coyotes, or other species of canines other than dogs.
- ~~8H.~~ Any other wild animal or wildlife ~~that is not~~ indigenous to the ~~s~~State or ~~is not~~ classified as a pet or domesticated animal.

Alleged domestication of any prohibited animal shall not affect its status under this ~~s~~Section. In the event of uncertainty about whether a particular animal is a prohibited animal, it shall be presumed prohibited until proven ~~not otherwise~~ by a preponderance of the evidence to the satisfaction of the ~~m~~Municipal ~~e~~Court.

Nothing herein shall prohibit ~~either of the following~~ bona fide activities ~~of the following~~:

- ~~1A.~~ A wildlife rehabilitator, falconer, or scientific collection permit holder currently licensed by the Colorado ~~Division of Wildlife Parks and Wildlife~~, so long as ~~such the~~ licensee or permit holder complies with all applicable ~~Town~~ Code and ~~Town Zoning O~~rdinance provisions.
- ~~2B.~~ A veterinary hospital operated by a veterinarian currently licensed by the ~~s~~State which complies with all applicable ~~Town~~ Code and ~~Town Zoning O~~rdinance provisions.

6.08.060 Chickens.

~~The k~~Keeping ~~of~~ chickens is allowed ~~pursuant within to~~ the following ~~constraints standards~~:

- ~~1A.~~ Chickens are permitted only in ~~the~~ SFD-1 and SFD-2 zone districts. Chickens are prohibited in ~~any all~~ other zone districts.
- ~~2B.~~ The maximum number of chickens permitted on one lot is four.
- ~~3C.~~ Roosters and other types of poultry including, but not limited to, ducks, turkeys, geese, pheasants, and guinea fowl, are prohibited within ~~the~~ Town limits.
- ~~4D.~~ Chickens must be kept in a chicken coop and run in the rear yard.
- ~~5E.~~ The ~~required~~ chicken coop and run must provide all chickens on the lot with adequate shelter against the elements and be reasonably predator proof.
- ~~6F.~~ The size of the chicken coop and run combined is limited to ~~one hundred twenty~~ (120) square feet in area and six feet in height. The chicken coop must be set back a minimum of ten ~~(10)~~ feet from the side and rear property lines.
- ~~7G.~~ The chicken coop must provide a minimum area of four ~~square~~ feet per chicken. The chicken run must provide a minimum area of six square feet per chicken.
- ~~8H.~~ The chicken coop and run must be fully screened from view from public rights-of-way and adjacent properties by a six-foot opaque wood fence.

- 9I. ~~The~~ Retail sale of eggs or chickens, ~~the~~ breeding ~~of~~ chickens, and ~~or the~~ slaughtering ~~of~~ chickens is prohibited.
- 10J. The area and building(s) used for ~~the~~ keeping ~~of the~~ chickens shall always be kept in a clean and sanitary condition ~~at all times~~.

MEMORANDUM

June 25, 2025

VIA EMAIL

TO: Town Council
Town of Monument

FROM: Douglas Stallworthy



RE: **AN ORDINANCE APPROVING A REAL PROPERTY TRANSFER FROM EL PASO COUNTY AND ENTERING INTO INTERGOVERNMENTAL AGREEMENT ACCEPTING OBLIGATIONS RELATED THERETO.**

SUMMARY

The property transfer that is the subject of Ordinance No 14-2025 is related to the Conexus development between Interstate 25 and the New Regional Sante Fe Trail. Pursuant to Section 14.6 of the Town Charter an ordinance is required to purchase, sell or exchange any interest in real property. As a part of the development Old Denver Road is being realigned to the east side of the Sante Fe Trail, resulting in Old Denver Road crossing the Santa Fe Trail in two locations (the "Subject Property").

The Sante Fe Trail is owned by El Paso County and this section was developed in 1983 with federal Land and Water Conservation Funds ("LWCF"). As a condition of accepting LWCF funds a restriction was placed on the property within the Sante Fe Trail project boundary that requires the property to be maintained and accessible for public recreation uses (the "Use Restriction"). Although the Conexus developer originally intended the Subject Property to be transferred to the developer and then dedicated to the Town, the Use Restriction has created complications that require a direct transfer from El Paso County to the Town to avoid private ownership. The State of Colorado and United States Department of Interior, National Park Service have confirmed that the transfer of the subject property and construction of the road crossings will not violate the Use Restriction.

The deed to transfer the Subject Property includes a notice of the Use Restriction and the Town will also be required to enter into an intergovernmental agreement with El Paso County acknowledging the Use Restriction and assuming stewardship obligations for those portions of the Santa Fe Trail that are being transferred to the Town. The El Paso County Board of County Commissioners approved the transfer of the Subject Property and the IGA by separate resolutions on June 24, 2025 and executed both documents on June 25, 2025.

THE NEW REGIONAL SANTE FE TRAIL

This portion of the New Regional Santa Fe Trail was developed as part of the Sante Fe Trail LWCF Project No. 08-00918 as the first phase of the New Regional Sante Fe Trail. The project included the trailhead, restrooms, and parking at Adams and Third Street, and approximately 4 miles of trail. The original project scope was for El Paso County to provide outdoor recreational facilities consisting of trails and support facilities for use by the general public at the Santa Fe Trail located between the Town of Monument and Baptist Road in El Paso County. The Subject Property is at the southern end of the Sante Fe Trail project.

LWCF RESTRICTION

1. The Deed Restriction

As this portion of the Sante Fe Trail was developed with LWCF funds, the Use Restriction encumbers the Subject Property. The Use Restriction restricts use of the Subject Property to public outdoor recreation uses. The deed to transfer the Subject Property gives notice of the Use Restriction with the following provision:

“Property acquired or developed with Land and Water Conservation Fund assistance shall be retained and used for public outdoor recreation in perpetuity. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation uses without notification to Colorado Parks and Wildlife, and the approval of the National Park Service pursuant to the LWCF Act (54 U.S.C. § 200305(f)(3)) and conversion requirements outlined in regulations (36 C.F.R. § 59.3).”

This restriction will be binding on the Subject Property in perpetuity, and will be included in any future transfer of the Subject Property.

2. Compliance With Deed Restriction

The State of Colorado and United States Department of Interior, National Park Service have confirmed by the letter entitled “Re: 08-00918 Santa Fe Trail conversion and recent rescission” dated March 24, 2024, that the construction of the road crossings and transfer of ownership to the Town are consistent with the Use Restriction, as the crossings will not prevent public access along the contiguous trail.

Based on the foregoing letter, the developer may construct the proposed road crossings without breaching the Use Restriction.

3. Stewardship and Compliance Agreement

As part of the LWCF approval the State of Colorado has requested that El Paso County and the Town enter into an intergovernmental agreement whereby the Town acknowledges and accepts the LWCF compliance responsibilities. Those compliance responsibilities include the Use

Restriction and require that the property is retained and used for public outdoor recreation in perpetuity and maintenance of the Subject Property in an attractive and inviting condition. Further obligations are summarized in the agreement. The except for the Use Restriction, the obligations are not onerous, especially as in this case the Subject Property will not include any buildings.

SUMMARY

The acceptance of the Subject Property will facilitate the desired realignment of Old Denver Road. As the construction of the road crossings has already been acknowledged by the State of Colorado and United States Department of Interior, National Park Service, there is minimal risk to the Town in accepting the Subject Property encumbered by the Use Restriction. In the future, there are mechanisms to remove the Use Restriction, however, there is no purpose in doing so at this moment.

Ordinance No. 14-2025

Santa Fe Trail Land Transfer and IGA

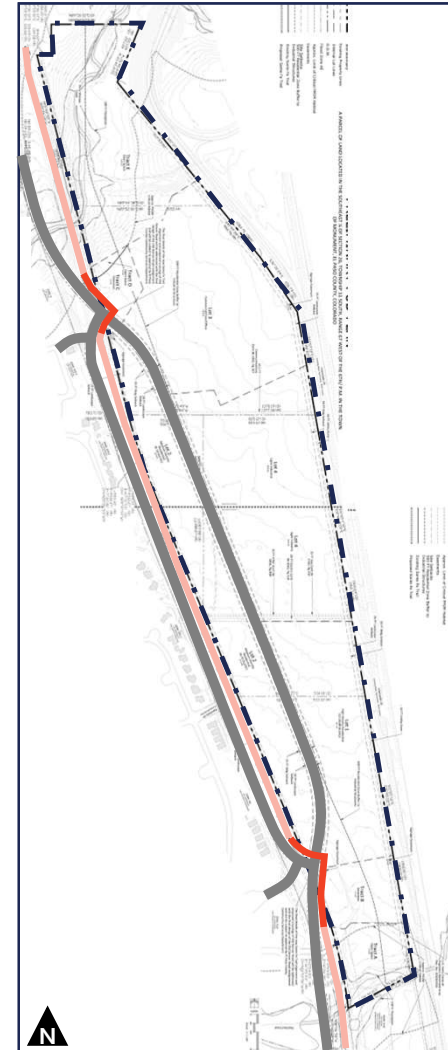
7/7/2025 Town Council



Conexus Filing No. 2

Old Denver Road Realignment

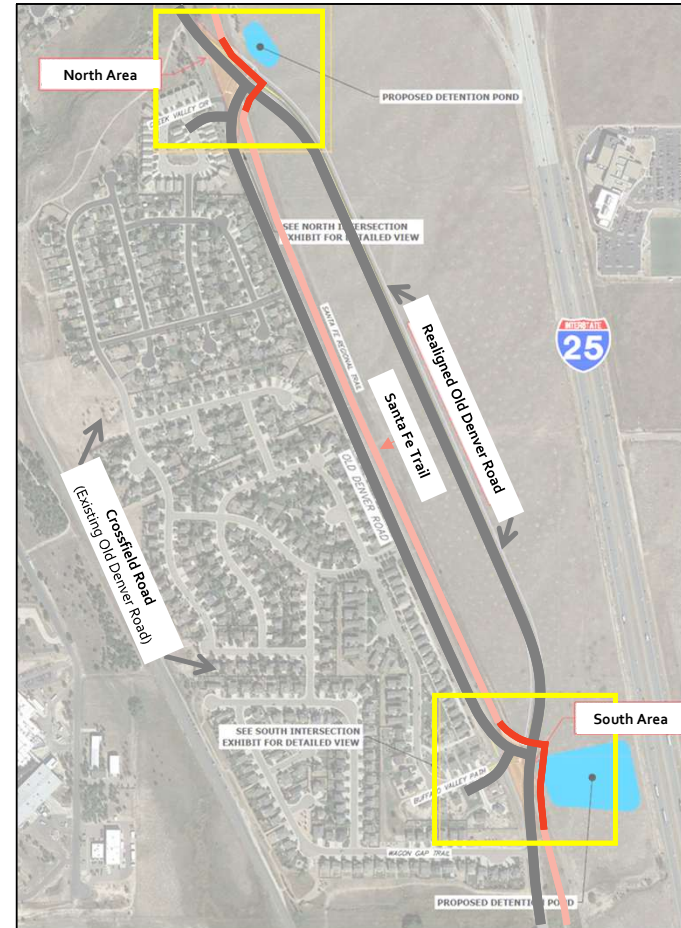
- Resolution 11-2022 approved the Preliminary Planned Unit Development and Final Planned Unit Development for Conexus Filing No. 2.
- The approved Preliminary Planned Unit Development defined a range of approved land uses, the location of land uses, and the development and design standards for the property.
- It also included the realignment of Old Denver Road through the Conexus Development, moving traffic away from the neighborhood to the west and creating Lot 2.



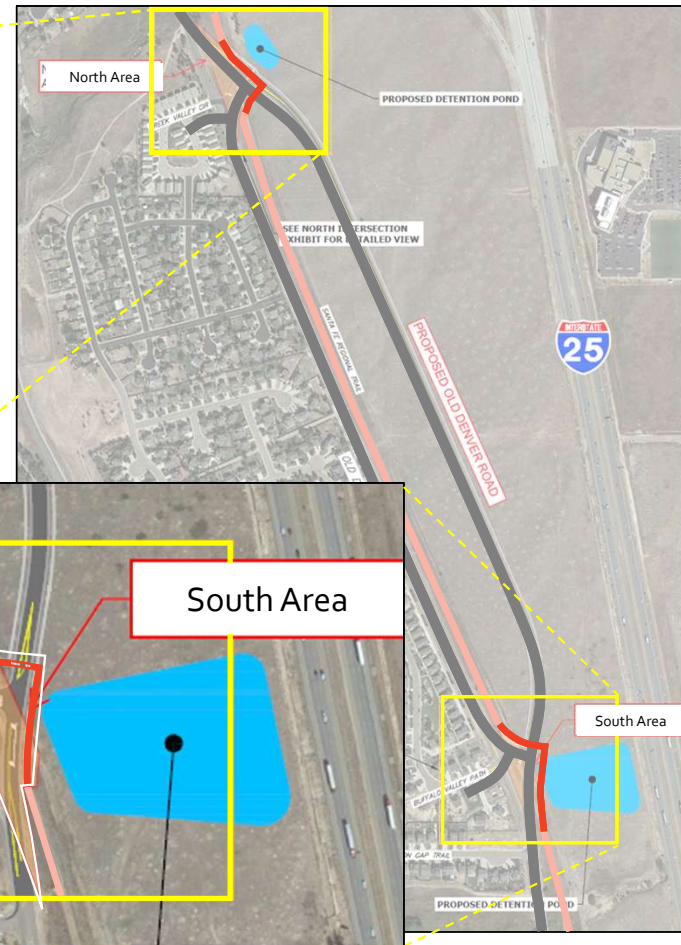
Maintaining

Santa Fe Trail

- The Santa Fe Trail (—) runs along the east side of Old Denver Road (—) and is owned by El Paso County.
- It was developed in 1983 with Federal Land and Water Conservation Funds (“LWCF”), condition upon the property be maintained and accessible for public recreation uses.
- The Old Denver Road realignment crosses the Santa Fe Trail twice, requiring a transfer of property from the County to the Town to accommodate perpendicular crosswalks at both locations (—).

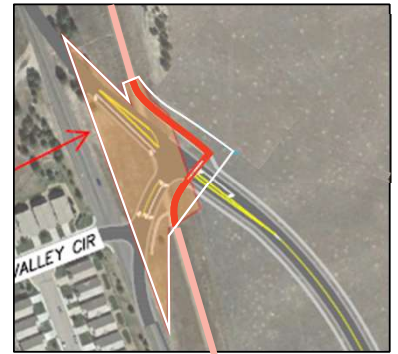


Creating Safe Trail Crosswalks



Deed To Transfer

- Original plan was to transfer from the **County** to **Conexus** and then to **Town**. Having a private party involved with the transfer made it difficult to maintain the required Federal Use Restrictions.
- A direct transfer from the **County** to the **Town** avoids private ownership and maintains the established Federal Use Restrictions via an Intergovernmental Agreement.
- The deed to transfer requires the Town enter into an IGA with the County acknowledging the Use Restriction and assuming stewardship obligations for the transferred area.
- This process has been confirmed in writing by: State of Colorado, United States Department of Interior, and National Park Service.



Intergovernmental Agreement (IGA)

- Negotiated by the Town and County Attorneys
- Approved by County Resolution and signed by County Board Chair Geitner on 6/14/2025
- Ordinance No 14-2025, is an ordinance approving a real property transfer from County and enter an IGA accepting the obligations to
 - Retain the recreational use and accessibility of those portions of the trail, and
 - Assume stewardship obligations for those portions of the Sant Fe Trail.
- Ordinance No. 14-2025 contains the following exhibits:
 - Exhibit A – Special Warranty Deed for the Crossing Parcels, executed by EPC on 6/25/2025
 - Exhibit B – Acknowledgement Letter from the State, dated 3/24/2025
 - Exhibit C – Intergovernmental Agreement re: Compliance and Stewardship of Certain Parts of the New Santa Fe Trail



Requested Action

A Motion to Approve Ordinance No. 14-2025 , An Ordinance Approving A Real Property Transfer From El Paso County and Entering Into An Intergovernmental Agreement Accepting Obligations Related Thereto.



TOWN OF MONUMENT

ORDINANCE NO. 14-2025

AN ORDINANCE APPROVING A REAL PROPERTY TRANSFER FROM EL PASO COUNTY AND ENTERING INTO INTERGOVERNMENTAL AGREEMENT ACCEPTING OBLIGATIONS RELATED THERETO

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, pursuant to Section 14.6 of the Charter, the Town Council of the Town (the “Town Council”) may by ordinance purchase, sell or exchange any interest in real property, except in the case of real property received by the Town by gift, donation, or dedication for the purposes of open space, park, or recreation, such property may not be sold, disposed of, or conveyed without an affirmative vote of the registered electors of the Town; and

WHEREAS, the Town has approved the Conexus Phases 2 & 3 Preliminary PUD Plan (“Phase 2 & 3 Preliminary PUD”) approved by the Town of Monument Resolution 11-2022, passed on February 22, 2022 and recorded June 29, 2022 at Reception No. 222088156 and Conexus Filing No. 2 Final Plat recorded September 15, 2022 at Reception No. 222715014 (“Filing 2 Final Plat”) for development of the Property, which is referred to herein as within the Conexus Filing 2 Final Plat, (the “Project”)

WHEREAS, the Project involves the realignment of a portion Old Denver Road from resulting in it crossing the New Santa Fe Regional Trail at two locations; and

WHEREAS, El Paso County, Colorado, a political subdivision of the State of Colorado (“County”) is the landowner of a certain parcel (APN 7126000009) of land in El Paso County which encompasses a portion of the New Santa Fe Regional Trail and said land was developed with federal Land and Water Conservation Funds (“LWCF”) by EPC in 1983; and

WHEREAS, the County desires to convey to the Town of Monument, via executed Special Warranty Deed, attached as Exhibit A hereto and incorporated herein, those two portions of the New Santa Fe Regional Trail that will be crossed by the Old Denver Road realignment (“Crossing Parcels”); and

WHEREAS, State of Colorado and United States Department of Interior, National Park Service have issued several letters regarding the compliance with LWCF restrictions placed on the Crossing Parcels, including that certain letter entitled “Re: 08-00918 Santa Fe Trail conversion and recent rescission” dated March 24, 2024, attached as Exhibit B

hereto and incorporated herein, which acknowledges construction of the road crossings and transfer of ownership to the Town; and

WHEREAS, the Town will assume the responsibilities of the County to comply with the LWCF restrictions as further described in the Intergovernmental Agreement Regarding Compliance and Stewardship of Certain Parcels of The New Santa Fe Regional Trail, attached as Exhibit C hereto and incorporated herein (the “IGA”); and

WHEREAS, the Town desires to accept the Crossing Parcels from the County and enter into the IGA with the County; and

WHEREAS, this Ordinance was introduced by title, considered at public hearing, and voted upon at the regular meeting of the Town Council on July 7, 2025.

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. Approval of Property Transfer. The Town accepts the transfer of the Crossing Parcels, as evidenced by the Special Warranty Deed attached hereto as Exhibit A, which deed is in all respects approved, authorized and confirmed.

Section 3. Approval of IGA. The Town approves the IGA attached hereto as Exhibit C, which is in all respects approved, authorized and confirmed.

Section 4. Authorization. The Mayor, the Town Manager, and the Town Clerk, are authorized to execute and record on behalf of the Town the IGA and any all deeds, agreements, easements, or other documents reasonably necessary to carry out the conveyance. The Town Manager, Town staff under the direction of the Town Manager, and the Town Attorney are authorized and directed to perform all actions reasonably necessary to carry out the Town’s obligations under the IGA.

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 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 7th day of July 2025, by a vote of _____ for and _____ against.

TOWN OF MONUMENT, COLORADO

By: _____
Mitch LaKind, Mayor

Attest:

Tina Erickson, Town Clerk

EXHIBIT A

Special Warranty Deed for Crossing Parcels

(Attached)

SPECIAL WARRANTY DEED

THIS DEED, made this 24th day of June, 2025, between the **COUNTY OF EL PASO, STATE OF COLORADO**, by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, whose legal address is 200 South Cascade Avenue, Colorado Springs, Colorado 80903 ("Grantor"); and **THE TOWN OF MONUMENT**, a home-rule municipality and body politic in the State of Colorado, whose legal address is 645 Beacon Lite Road, Monument, Colorado 80132 ("Grantee");

WITNESSETH, That Grantor, for and in consideration of the sum of Ten Dollars and Zero Cents (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm, unto Grantee, and Grantee's successors, and assigns forever, all the real property, together with all improvements, situate, lying and being in the County of El Paso, State of Colorado, described as follows:

See attached Exhibit A, legal description, and Exhibit B, legal depiction

and

See attached Exhibit C, legal description, and Exhibit D, legal depiction.

TOGETHER WITH all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of Grantor, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances; and being subject to the following deed restriction in perpetuity:

Property acquired or developed with Land and Water Conservation Fund assistance shall be retained and used for public outdoor recreation in perpetuity. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation uses without notification to Colorado Parks and Wildlife, and the approval of the National Park Service pursuant to the LWCF Act (54 U.S.C. § 200305(f)(3)) and conversion requirements outlined in regulations (36 C.F.R. § 59.3).

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto Grantee, and Grantee's successors, and assigns forever. Grantor, for Grantor and Grantor's successors, and assigns, does covenant and agree that Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of Grantee, and Grantee's successors,

and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under Grantor, except taxes and assessments for the year 2025, and the permitted exceptions as set forth in **EXHIBIT G**.

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____

Carrie Geitner, Chair

ATTEST

By: _____

County Clerk and Recorder 25-180



STATE OF COLORADO)
)
COUNTY OF EL PASO)

SS.

The foregoing Special Warranty Deed was acknowledged before me this 25th day of June, 2025, by Carrie Geitner, Chair, Board of County Commissioners of El Paso County, Colorado, and as attested to by Steve Schleiker, County Clerk and Recorder.

Witness my hand and official seal.

Notary Public

My Commission expires: 1-30-2026





EXHIBIT A

SHEET 1 OF 3

LEGAL DESCRIPTION

PARCEL OF LAND

A PARCEL OF LAND LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING

ALL BEARINGS ARE BASED UPON THE WESTERLY LINE OF LOT 2, CONEXUS FILING NO. 2 AS RECORDED UNDER RECEPTION NO. 222715014 OF THE RECORDS OF EL PASO COUNTY, COLORADO, RECORDED AS BEARING N24°14'29"W, WITH A DISTANCE OF 2656.42 FEET;

COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID LOT 2,

THENCE S24°14'29"E ALONG THE WESTERLY SUBDIVISION LINE OF SAID CONEXUS FILING NO. 2, A DISTANCE OF 51.54 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE S24°14'29"E ALONG SAID WESTERLY LINE, A DISTANCE OF 143.11 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2914.83 FEET, A CENTRAL ANGLE OF 00°26'17", WHOSE CHORD BEARS S24°00'39"E, 22.29 FEET, FOR A LENGTH OF 22.29 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1008.10 FEET, A CENTRAL ANGLE OF 04°00'53", WHOSE CHORD BEARS S02°19'52"W, 70.62 FEET FOR A LENGTH OF 70.64 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 149.42 FEET, A CENTRAL ANGLE OF 15°55'00", WHOSE CHORD BEARS S07°55'39"E, 41.38 FEET, FOR A LENGTH OF 41.51 FEET;

THENCE S73°58'45"W, A DISTANCE OF 10.00 FEET;

THENCE S56°11'23"W, A DISTANCE OF 5.17 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1104.27 FEET, A CENTRAL ANGLE OF 04°29'06", WHOSE CHORD BEARS S04°43'17"E, 86.42 FEET, FOR A LENGTH OF 86.44 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2094.21 FEET, A CENTRAL ANGLE OF 02°30'02", WHOSE CHORD BEARS S07°08'32"E, 91.39 FEET, FOR A LENGTH OF 91.40 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 160.20 FEET, A CENTRAL ANGLE OF 01°16'21", WHOSE CHORD BEARS S73°44'44"W, 3.56 FEET, FOR A LENGTH OF 3.56 FEET TO A POINT OF CURVE AND BEING ON THE EASTERLY RIGHT OF WAY OF OLD DENVER ROAD AS DESCRIBED UNDER RECEPTION NO. 208029077 OF SAID RECORDS;

THENCE ALONG SAID EASTERLY RIGHT OF WAY ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 863.02 FEET, A CENTRAL ANGLE OF 12°18'00", WHOSE CHORD BEARS N18°07'48"W, 184.91 FEET, FOR A LENGTH OF 185.27 FEET;



EXHIBIT A

SHEET 2 OF 3

THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY, N24°16'48"W, A DISTANCE OF 259.75 FEET TO A POINT OF CURVE;

THENCE LEAVING SAID RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 57.78 FEET, A CENTRAL ANGLE OF 05°05'15", WHOSE CHORD BEARS N65°34'03"E, 5.13 FEET FOR A LENGTH OF 5.13 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET; A CENTRAL ANGLE OF 15°26'31", WHOSE CHORD BEARS N73°21'11", 13.43 FEET, FOR A LENGTH OF 13.48 FEET TO A POINT OF CURVE;

TEHNCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 242.02 FEET, A CENTRAL ANGLE OF 04°57'28", WHOSE CHORD BEARS N81°04'27"E, 20.94 FEET, FOR LENGTH OF 20.94 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 45.00 FEET, A CENTRAL ANGLE OF 08°37'16", WHOSE CHORD BEARS N76°45'49"E, 6.76 FEET; FOR A LENGTH OF 6.77 FEET;

THENCE N25°25'28"W, A DISTANCE OF 91.22 FEET;

THENCE N64°20'33"E, A DISTANCE OF 10.00 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 120.00 FEET, A CENTRAL ANGLE OF 49°43'22", WHOSE CHORD BEAS S50°31'08"E, 100.90 FEET, FOR A LENGTH OF 104.14 FEET TO THE POINT OF BEGINNING;

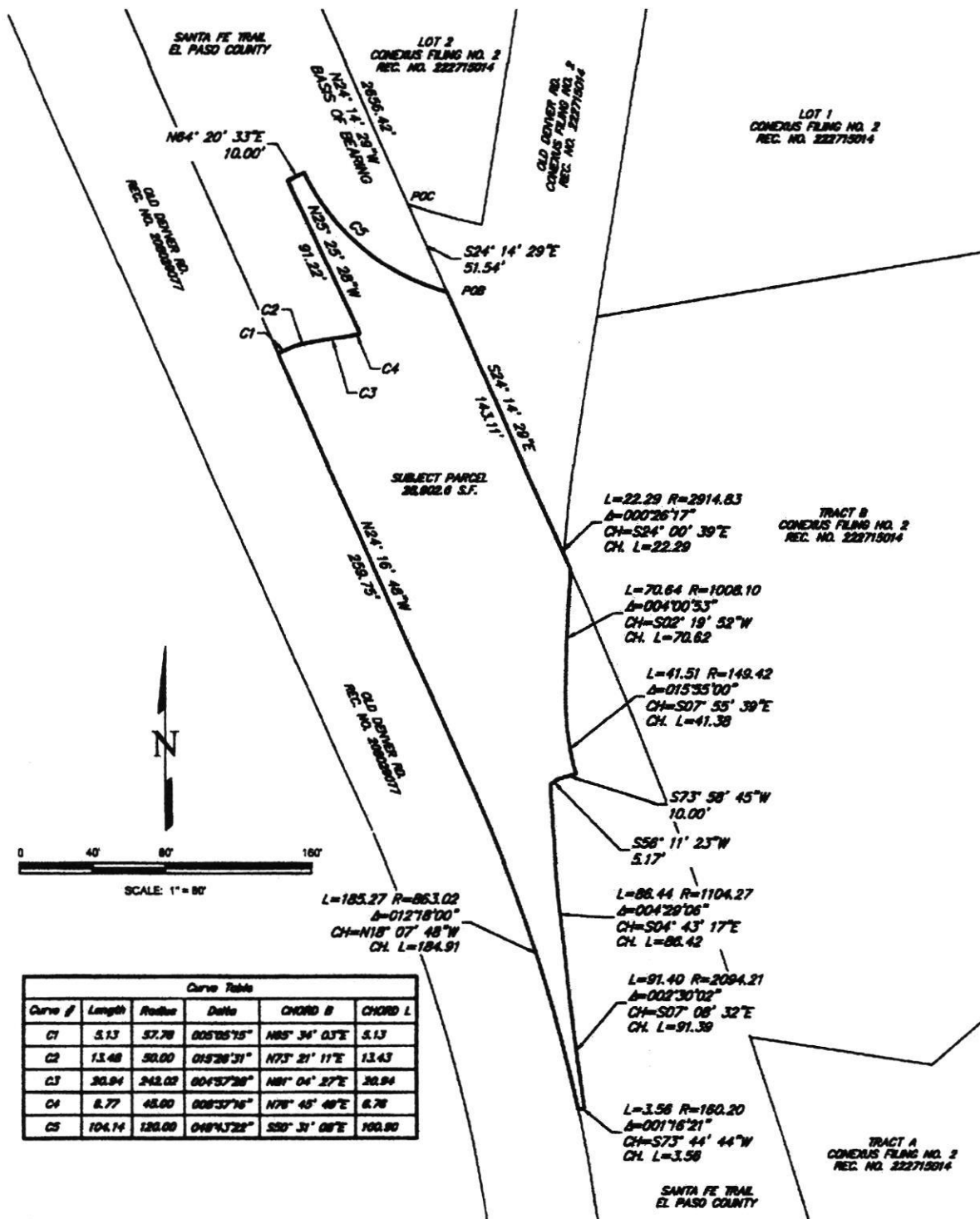
CONTAINING A CALCULATED AREA OF 28,902.6 SQUARE FEET MORE OR LESS.

MICHAEL J. MUIRHEID, PLS
COLORADO NO. 37909
FOR AND ON BEHALF OF CENTENNIAL LAND SURVEYING



EXHIBIT B

SOUTH SANTA FE TRAIL PARCEL



CENTENNIAL LAND SURVEYING 16115 NORTHCLIFF SQ. ELBERT, CO 80106 (719) 492-6540	PROJECT: CONEXUS F2 SOUTH SANTA FE TRAIL		
	DATE: 08/08/23	BY: MJM	CHKD: RS
	JOB NO. 211216	SHEET NO. 3 OF 3	



EXHIBIT C

SHEET 1 OF 3

LEGAL DESCRIPTION

PARCEL OF LAND

A PARCEL OF LAND LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING

ALL BEARINGS ARE BASED UPON THE WESTERLY LINE OF TRACT C, CONEXUS FILING NO. 2 AS RECORDED UNDER RECEPTION NO. 222715014 OF THE RECORDS OF EL PASO COUNTY, COLORADO, RECORDED AS BEARING N15°26'14"W, WITH A DISTANCE OF 177.23 FEET;

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID TRACT C,
THENCE S15°26'14"E ALONG THE WEST BOUNDARY OF SAID CONEXUS FILING NO. 2, A DISTANCE OF 130.16 FEET;

THENCE N51°58'47"W, A DISTANCE OF 5.53 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, A CENTRAL ANGLE OF 36°40'57", WHOSE CHORD BEARS N70°19'16"W, 6.29 FEET, FOR A LENGTH OF 6.40 FEET;

THENCE N88°39'44"W, A DISTANCE OF 7.78 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 102.61 FEET, A CENTRAL ANGLE OF 37°07'04", WHOSE CHORD BEARS S21°16'30"W, 65.32 FEET, FOR A LENGTH OF 66.47 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 29.46 FEET, A CENTRAL ANGLE OF 84°44'48", WHOSE CHORD BEARS S58°43'41"W, 39.71 FEET, FOR A LENGTH OF 43.58 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 320.41 FEET, A CENTRAL ANGLE OF 12°40'20", WHOSE CHORD BEARS S10°19'01"W, 70.72 FEET, FOR A LENGTH OF 70.87 FEET;

THENCE S89°22'13"W, A DISTANCE OF 4.01 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 287.50 FEET, A CENTRAL ANGLE OF 14°05'40", WHOSE CHORD BEARS S03°10'53"E, 70.54 FEET, FOR A LENGTH OF 70.72 FEET;

THENCE S77°23'47"W, A DISTANCE OF 10.51 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF OLD DENVER ROAD;

THENCE N21°54'47"W ALONG SAID EASTERLY RIGHT OF WAY, A DISTANCE OF 700.16 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 764.40 FEET, A CENTRAL ANGLE OF 21°24'25", WHOSE CHORD BEARS S41°05'35"E, 284.01 FEET, FOR A LENGTH OF 285.67 FEET;

THENCE S54°02'30"E, A DISTANCE OF 61.67 FEET;

THENCE N17°04'21"W, A DISTANCE OF 60.47 FEET;



EXHIBIT C

SHEET 2 OF 3

THENCE N73°44'59"E, A DISTANCE OF 10.00 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 35°43'46", WHOSE CHORD BEARS S34°06'54"E, 61.35 FEET, FOR A LENGTH OF 62.36 FEET:

THENCE S51°58'47"E, A DISTANCE OF 71.91 FEET TO A POINT ON THE WESTERLY LINE OF SAID TRACT C;

THECE S15°26'14"E ALONG SAID WESTERLY LINE, A DISTANCE OF 22.04 FEET TO A THE POINT OF BEGINNING;

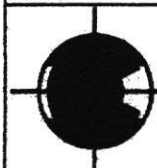
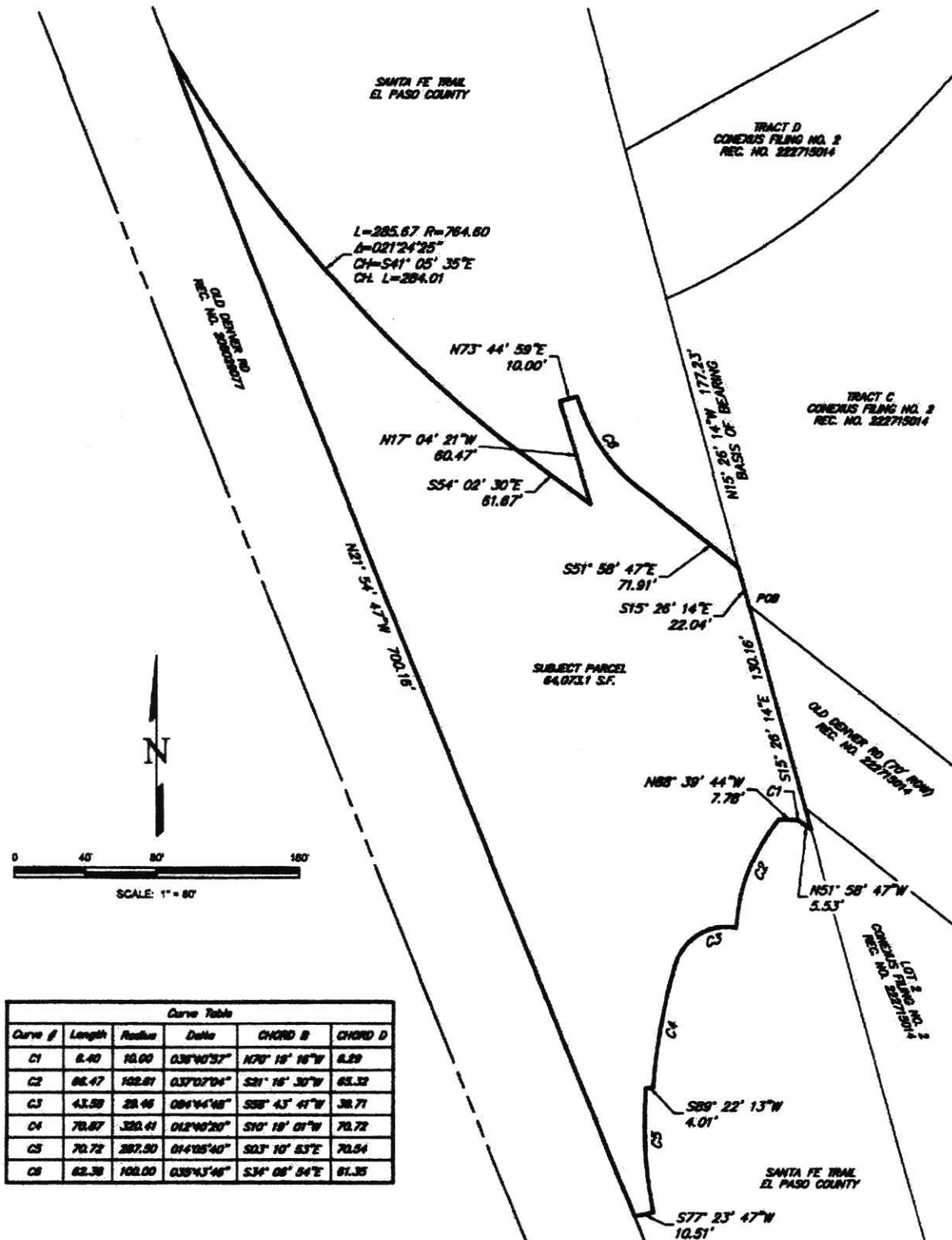
CONTAINING A CALCLULATED AREA OF 64,073.1 SQUARE FEET MORE OR LESS

MICHAEL J. MUIRHEID, PLS
COLORADO NO. 37909
FOR AND ON BEHALF OF CENTENNIAL LAND SURVEYING



EXHIBIT D

NORTH SANTA FE TRAIL PARCEL



CENTENNIAL
LAND SURVEYING

16115 NORTHCLIFF SQ.
ELBERT, CO 80106
(719) 492-6540

PROJECT:

CONEXUS F2
NORTH SANTA FE TRAIL

DATE: 08/08/23

BY: MJM

CHKD: RS

JOB NO. 211216

SHEET NO. 3 OF 3

EXHIBIT G
Permitted Title Exceptions

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part II
(Exceptions)

Order Number: SCB55118544-3

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
8. EXISTING LEASES AND TENANCIES, IF ANY.
9. ANY LOSS OR DAMAGE WHICH THE PROPOSED INSURED MAY INCUR BY REASON OF THE FAILURE TO COMPLY WITH THE LAWS AND REGULATIONS OF ANY STATE, COUNTY OR OTHER AUTHORITY RELATING TO THE SUBDIVISION OF THE LAND TO BE INSURED.
10. RIGHTS AND RESERVATIONS AS CONTAINED IN PATENTS OF THE UNITED STATES RECORDED JUNE 10, 1872 UNDER CERTIFICATE NOS. 1028 AND 645 AND JANUARY 20, 1880 UNDER CERTIFICATE NO. 254.

THE REFERENCED DOCUMENTS ARE STORED IN OUR SYSTEM AS IMAGE [69114166](#).

11. EASEMENTS GRANTED TO THE COLORADO TELEPHONE COMPANY, FOR COMMUNICATIONS LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED NOVEMBER 02, 1909, IN BOOK 440 AT PAGE [204](#), [205](#) AND [206](#)..
12. EASEMENTS GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, FOR COMMUNICATIONS LINES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED AUGUST 18, 1923, IN BOOK 692 AT PAGES [67](#) AND [68](#).
13. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN RIGHT OF WAY AGREEMENT RECORDED DECEMBER 11, 1961 IN BOOK 1892 AT PAGE [207](#).

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part II
(Exceptions)

Order Number: SCB55118544-3

14. THE EFFECT OF INCLUSION OF THE SUBJECT PROPERTY IN THE TRI-LAKES FIRE PROTECTION DISTRICT, NOW KNOWN AS THE TRI-LAKES MONUMENT FIRE PROTECTION DISTRICT AS EVIDENCED BY ORDER AND DECREE CREATING SAID DISTRICT, RECORDED JULY 18, 1977, IN BOOK 2941 AT PAGE 577.
15. RESERVATION OF ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS AND MINERAL RIGHTS AS SET FORTH IN WARRANTY DEED RECORDED NOVEMBER 18, 1981 IN BOOK 3504 AT PAGE 1, OR A SEVERANCE OF MINERALS EVIDENCED THEREBY, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
16. ANY TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CONTRACTS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AS EVIDENCED IN DEED RECORDED NOVEMBER 18, 1981 IN BOOK 3504 AT PAGE 1.
17. ANY WATER AND WATER RIGHTS, WELL AND WELL RIGHTS, DITCH AND DITCH RIGHTS AS SET FORTH IN DEED RECORDED SEPTEMBER 6, 1984 IN BOOK 3914 AT PAGE 643.
18. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH IN RESOLUTION NO. 88-230 REGARDING SANTA FE REGIONAL TRAIL MASTER PLAN RECORDED JULY 19, 1988 IN BOOK 5533 AT PAGE 820 AND ANY RIGHTS OF THE PUBLIC, STATE OF COLORADO AND COUNTY OF EL PASO TO ACCESS SAID TRAIL.

EXHIBIT B

Letter Re: 08-00918 Santa Fe Trail conversion and recent rescission

(Attached)



COLORADO

Parks and Wildlife

Department of Natural Resources

State Trails Program
13787 US Hwy. 85 N.
Littleton, CO 80125
303-791-1954 | trails@state.co.us

March 24, 2025

Hallie Groff
Supervisory Compliance Officer
Land and Water Conservation Fund (LWCF)
National Park Service
One Denver Federal Center, Building 50
Denver, CO 80225
c/o - hallie_groff@nps.gov

Dear Hallie,

Re: 08-00918 Santa Fe Trail conversion and recent rescission

The Department of Natural Resources, Colorado Parks and Wildlife (CPW) acknowledges receipt of your letter dated February 10, 2025, regarding the cancellation of the previously approved conversion of 1.8 acres and its replacement with 2.13 acres adjacent to the Santa Fe Trail near Monument, Colorado. Your letter indicates that the conversion approval issued on September 16, 2024 has been rescinded based on two key points:

1. El Paso County remaining the owner of the land
2. Recreation on park land remaining accessible to the public (36 C.F.R. § 59.3.a)
 - a. The road development not prohibiting public outdoor recreation use pursuant to the LWCF Act (54 U.S.C. § 200305(f)(3))

CPW agrees that recreation on park land will remain accessible to the public, as the realignment of Old Denver Road through the Santa Fe Trail at two separate points will accommodate both vehicles and pedestrians, ensuring contiguous trail use through the two new at-grade crossings. However, CPW would like to clarify that El Paso County will not remain the landowner of the two at-grade crossings. Instead, the intent is for the Town of Monument to assume ownership and management of the crossings as part of its ongoing Old Denver Road management responsibilities. El Paso County will remain the landowner for all LWCF land outside of the crossings.

With this clarification, the question of whether this constitutes a conversion needs to be revisited and discussed further between CPW and the National Park Service (NPS).



Jeff Davis, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: Dallas May, Chair · Richard Reading, Vice-Chair · Karen Bailey, Secretary · Jessica Beaulieu
Marie Haskett · Tai Jacober · Jack Murphy · Gabriel Otero · Murphy Robinson · James Jay Tutchton · Eden Vardy

In the meantime, El Paso County and Schuck Chapman, who have been patient throughout this process, intend to proceed with the transfer of the 2.13-acre replacement parcel regardless of the final determination on conversion status. They are seeking written confirmation from the NPS that this parcel will remain a viable replacement for the 1.8 acres impacted by the crossings - whether the project is ultimately determined to be a conversion now or in the future.

This confirmation is a priority for CPW, the county and developer, as it is best if settlement does not proceed without written confirmation. Without this assurance, there is concern that completing the transfer now could later affect the parcel's eligibility if the project is ultimately deemed a conversion. To prevent this uncertainty, CPW requests that the NPS consider this request with urgency while discussions regarding the conversion status continue.

CPW remains committed to working collaboratively to determine the best path forward, and looks forward to further discussions. Please let us know if any additional information is required.

Respectfully,

A handwritten signature in blue ink, appearing to read "F. Jacobs", is positioned above the typed name.

Fletcher Jacobs
State Liaison Officer (SLO)
Colorado Parks and Wildlife
303-791-1957 x 4129
fletcher.jacobs@state.co.us

EXHIBIT C

**Intergovernmental Agreement Regarding Compliance and Stewardship of Certain Parcels
of The New Santa Fe Regional Trail**

(Attached)

**INTERGOVERNMENTAL AGREEMENT
REGARDING COMPLIANCE AND STEWARDSHIP OF CERTAIN PARCELS OF THE NEW SANTA FE
REGIONAL TRAIL**

This Intergovernmental Agreement ("IGA") is entered into by and between the El Paso County, Colorado, a political subdivision of the State of Colorado ("EPC"), and the Town of Monument, a home-rule municipal corporation and political subdivision of the State of Colorado ("Monument"). EPC and Monument may be referred to collectively as "Parties" or individually as "Party".

RECITALS

WHEREAS, Article XIV, Section 18, of the Colorado Constitution, and C.R.S. § 29-1-201, et seq., provide for, and encourage, political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other; and

WHEREAS, EPC is the landowner of a certain parcel (7126000009) of land in El Paso County which encompasses a portion of the New Santa Fe Regional Trail and said land was developed with Land Water Conservation Funds ("LWCF") by EPC in 1983; and

WHEREAS, in compliance with the National Parks Service's LWCF Manual and LWCF laws, EPC and a developer, Conexus, LLC, have gained approvals for EPC to convey two portions of the New Santa Fe Regional Trail to the Town of Monument as part of Conexus LLC's development within the Town of Monument; and

WHEREAS, EPC desires to convey, or has conveyed, via Special Warranty Deed, those two particular portions of the New Santa Fe Trail to the Town of Monument of which are more particularly described and depicted in Exhibits A, B, C, and D, attached hereto and incorporated herein ("Crossing Parcels"); and

WHEREAS, another contextual depiction of the Crossing Parcels is also attached hereto and incorporated herein as Exhibit E; and

WHEREAS, EPC and Monument now desire to enter into this IGA to memorialize that the Crossing Parcels remain in LWCF inventory and subject to LWCF restrictions; and

WHEREAS, EPC and Monument have advised both the State of Colorado and National Parks Service of their intent to convey the Crossing Parcels and construct a vehicular roadway running through both parcels, that such use of the Crossing Parcels is permitted by the LWCF restrictions as recreation on the Crossing Parcels remains accessible to the public, and the road development will not prohibit outdoor recreation use.

NOW, THEREFORE, in consideration of the above recitals, EPC and Monument agree as follows:

1. INTENT AND PURPOSE

The intent and purpose of this IGA is to document the roles and responsibilities of El Paso County whose legal address is 200 South Cascade Avenue, Colorado Springs, CO 80903, and the Town of Monument, whose legal address is 645 Beacon Lite Road, Monument, CO 80132, with respect to the New Santa Fe Regional Trail, and more particularly the Crossing Parcels as part of obligations under the Land and Water Conservation Fund Act of 1965 (Public Law 88-578), enacted as positive law at 54 U.S.C. § 200301 et seq. (LWCF Act). This IGA ensures that the Town of Monument, who is assuming ownership of the Crossing Parcels, being portions of the New Santa Fe Regional Trail, is aware of and accepts the LWCF compliance responsibilities for those portions.

2. BACKGROUND AND INTRODUCTION

New Santa Fe Regional trail, located in El Paso County, Colorado, received LWCF grant funding in 1982 under grant number 08-00918 for the development of the New Santa Fe Regional Trail between Baptist Road and the Town of Monument. Due to the realignment of Old Denver Road, a portion of the property will be transferred from El Paso County to The Town of Monument. The Town of Monument will assume co-sponsor status and compliance responsibility for the transferred portion, as outlined in Exhibits A through D, while El Paso County retains compliance responsibility for the remaining portion.

Compliance responsibilities are listed in the LWCF Act but include (for example):

1. The property within the designated LWCF boundary area shall be retained and used for public outdoor recreation in perpetuity. The property shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of NPS pursuant to the LWCF Act (54 U.S.C. § 200305(f)(3)) and conversion requirements outlined in regulations (36 C.F.R. § 59.3).
2. The property shall be maintained so as to appear attractive and inviting to the public.
3. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards.
4. Any outdoor recreation facilities should comply with all State and Federal legislation (e.g., 42 U.S.C. § 6901 et. seq. and the National Institute for Occupational Safety and Health (NIOSH) as required and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.
5. Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.
6. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
7. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
8. A posted LWCF acknowledgement sign shall remain displayed at the project site.
9. The property shall be inspected every five years to ensure that the abovementioned standards are being met.

3. TERM AND TERMINATION

This Compliance and Stewardship Agreement is effective upon full execution and remains in effect in perpetuity unless the property is no longer subject to LWCF in the future. In the event the property is no longer subject to LWCF, the Parties may coordinate with the State of Colorado and National Parks Service to terminate of this IGA.

4. AMENDMENT

The Parties may, from time to time, request amendments to this IGA. Such amendments that are mutually agreed upon between the Parties, with consent from Colorado Parks and Wildlife, shall be in writing, and upon execution shall become part of this IGA. To be effective, any amendments must be signed by the Parties.

5. LIABILITY AND SOVEREIGN IMMUNITY

The Parties each agree to assume liability for its own employees', agents', and contractors' actions pursuant to this IGA. The Parties understand that liability of the Parties is controlled and limited by the Colorado Governmental Immunity Act ("CGIA"), C.R.S. § 24-10-101, *et seq.*, and that no provision of this IGA is intended to limit or modify the application of immunity.

6. GOVERNING LAW, VENUE

This IGA shall be governed by the laws of the State of Colorado with venue exclusively within the Fourth Judicial District, El Paso County, Colorado and for federal questions, venue exclusively within the United States District Court of Colorado in Denver.

7. THIRD-PARTY BENEFICIARIES

It is expressly understood and agreed that the enforcement of this IGA and all rights of action relating thereto shall be strictly reserved to the Parties. Nothing contained in this IGA shall give or allow any claim or right of action whatsoever by any other third person or entity.

8. EXTENT OF AGREEMENT, SEVERABILITY

This IGA, with attachments thereto, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral. Any amendments to this must be in writing and be signed by all of the Parties. If any portion of this IGA is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the Parties that the remaining portions of this IGA shall be of full force and effect.

9. ASSIGNABILITY AND TRANSFER

No Party to this IGA shall assign or otherwise transfer this IGA or any right or obligation hereunder without the prior written consent of the other Party.

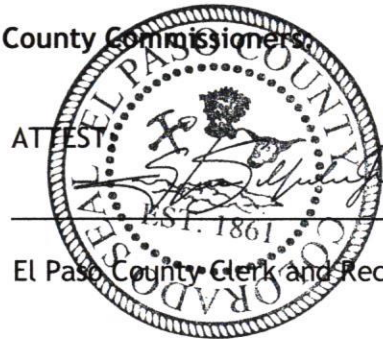
El Paso County, Colorado, by and through the Board of County Commissioners.

By: Carrie Geitner

Name: Carrie Geitner, Chair

Date: 06/24/2025

ATTEST:



El Paso County Clerk and Recorder

Town of Monument:

By: _____

Name: Mitch LaKind, Mayor

Date: _____

ATTEST:

Town Clerk



EXHIBIT A

SHEET 1 OF 3

LEGAL DESCRIPTION

PARCEL OF LAND

A PARCEL OF LAND LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING

ALL BEARINGS ARE BASED UPON THE WESTERLY LINE OF LOT 2, CONEXUS FILING NO. 2 AS RECORDED UNDER RECEPTION NO. 222715014 OF THE RECORDS OF EL PASO COUNTY, COLORADO, RECORDED AS BEARING N24°14'29"W, WITH A DISTANCE OF 2656.42 FEET;

COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID LOT 2,

THENCE S24°14'29"E ALONG THE WESTERLY SUBDIVISION LINE OF SAID CONEXUS FILING NO. 2, A DISTANCE OF 51.54 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE S24°14'29"E ALONG SAID WESTERLY LINE, A DISTANCE OF 143.11 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2914.83 FEET, A CENTRAL ANGLE OF 00°26'17", WHOSE CHORD BEARS S24°00'39"E, 22.29 FEET, FOR A LENGTH OF 22.29 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1008.10 FEET, A CENTRAL ANGLE OF 04°00'53", WHOSE CHORD BEARS S02°19'52"W, 70.62 FEET FOR A LENGTH OF 70.64 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 149.42 FEET, A CENTRAL ANGLE OF 15°55'00", WHOSE CHORD BEARS S07°55'39"E, 41.38 FEET, FOR A LENGTH OF 41.51 FEET;

THENCE S73°58'45"W, A DISTANCE OF 10.00 FEET;

THENCE S56°11'23"W, A DISTANCE OF 5.17 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1104.27 FEET, A CENTRAL ANGLE OF 04°29'06", WHOSE CHORD BEARS S04°43'17"E, 86.42 FEET, FOR A LENGTH OF 86.44 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2094.21 FEET, A CENTRAL ANGLE OF 02°30'02", WHOSE CHORD BEARS S07°08'32"E, 91.39 FEET, FOR A LENGTH OF 91.40 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 160.20 FEET, A CENTRAL ANGLE OF 01°16'21", WHOSE CHORD BEARS S73°44'44"W, 3.56 FEET, FOR A LENGTH OF 3.56 FEET TO A POINT OF CURVE AND BEING ON THE EASTERLY RIGHT OF WAY OF OLD DENVER ROAD AS DESCRIBED UNDER RECEPTION NO. 208029077 OF SAID RECORDS;

THENCE ALONG SAID EASTERLY RIGHT OF WAY ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 863.02 FEET, A CENTRAL ANGLE OF 12°18'00", WHOSE CHORD BEARS N18°07'48"W, 184.91 FEET, FOR A LENGTH OF 185.27 FEET;



EXHIBIT A

SHEET 2 OF 3

THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY, N24°16'48"W, A DISTANCE OF 259.75 FEET TO A POINT OF CURVE;

THENCE LEAVING SAID RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 57.78 FEET, A CENTRAL ANGLE OF 05°05'15", WHOSE CHORD BEARS N65°34'03"E, 5.13 FEET FOR A LENGTH OF 5.13 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET; A CENTRAL ANGLE OF 15°26'31", WHOSE CHORD BEARS N73°21'11", 13.43 FEET, FOR A LENGTH OF 13.48 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 242.02 FEET, A CENTRAL ANGLE OF 04°57'28", WHOSE CHORD BEARS N81°04'27"E, 20.94 FEET, FOR A LENGTH OF 20.94 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 45.00 FEET, A CENTRAL ANGLE OF 08°37'16", WHOSE CHORD BEARS N76°45'49"E, 6.76 FEET; FOR A LENGTH OF 6.77 FEET;

THENCE N25°25'28"W, A DISTANCE OF 91.22 FEET;

THENCE N64°20'33"E, A DISTANCE OF 10.00 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 120.00 FEET, A CENTRAL ANGLE OF 49°43'22", WHOSE CHORD BEARS S50°31'08"E, 100.90 FEET, FOR A LENGTH OF 104.14 FEET TO THE POINT OF BEGINNING;

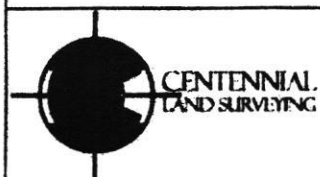
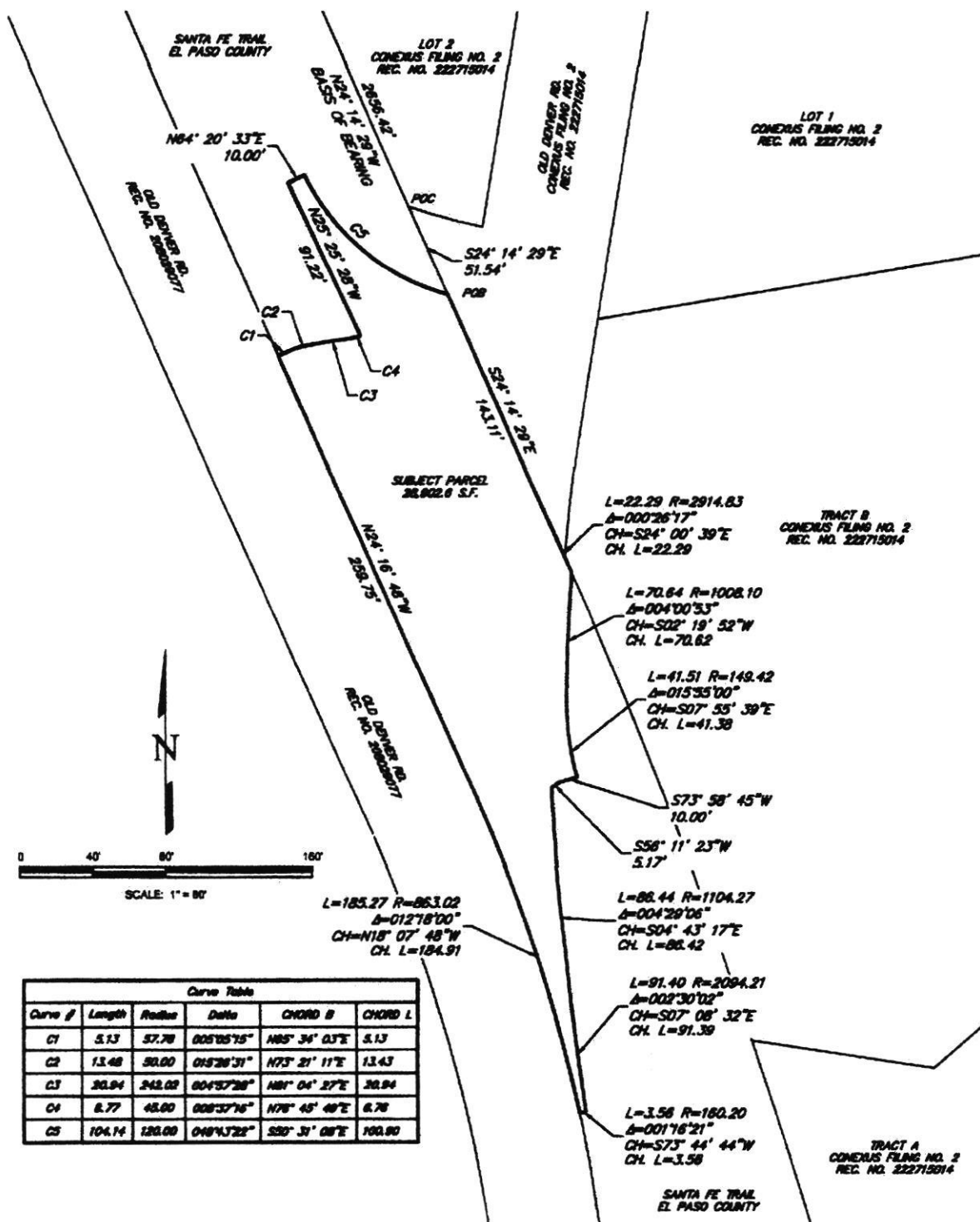
CONTAINING A CALCULATED AREA OF 28,902.6 SQUARE FEET MORE OR LESS.

MICHAEL J. MUIRHEID, PLS
COLORADO NO. 37909
FOR AND ON BEHALF OF CENTENNIAL LAND SURVEYING



EXHIBIT B

SOUTH SANTA FE TRAIL PARCEL



16115 NORTHCLIFF SQ.
ELBERT, CO 80106
(719) 492-6540

PROJECT:

**CONEXUS F2
SOUTH SANTA FE TRAIL**

DATE: 08/08/23

BY: MJM

CHKD: RS

JOB NO. 211216

SHEET NO. 3 OF 3



EXHIBIT C

SHEET 1 OF 3

LEGAL DESCRIPTION

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BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID TRACT C,
THENCE S15°26'14"E ALONG THE WEST BOUNDARY OF SAID CONEXUS FILING NO. 2, A DISTANCE OF 130.16 FEET;

THENCE N51°58'47"W, A DISTANCE OF 5.53 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, A CENTRAL ANGLE OF 36°40'57", WHOSE CHORD BEARS N70°19'16"W, 6.29 FEET, FOR A LENGTH OF 6.40 FEET;

THENCE N88°39'44"W, A DISTANCE OF 7.78 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 102.61 FEET, A CENTRAL ANGLE OF 37°07'04", WHOSE CHORD BEARS S21°16'30"W, 65.32 FEET, FOR A LENGTH OF 66.47 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 29.46 FEET, A CENTRAL ANGLE OF 84°44'48", WHOSE CHORD BEARS S58°43'41"W, 39.71 FEET, FOR A LENGTH OF 43.58 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 320.41 FEET, A CENTRAL ANGLE OF 12°40'20", WHOSE CHORD BEARS S10°19'01"W, 70.72 FEET, FOR A LENGTH OF 70.87 FEET;

THENCE S89°22'13"W, A DISTANCE OF 4.01 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 287.50 FEET, A CENTRAL ANGLE OF 14°05'40", WHOSE CHORD BEARS S03°10'53"E, 70.54 FEET, FOR A LENGTH OF 70.72 FEET;

THENCE S77°23'47"W, A DISTANCE OF 10.51 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF OLD DENVER ROAD;

THENCE N21°54'47"W ALONG SAID EASTERLY RIGHT OF WAY, A DISTANCE OF 700.16 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 764.40 FEET, A CENTRAL ANGLE OF 21°24'25", WHOSE CHORD BEARS S41°05'35"E, 284.01 FEET, FOR A LENGTH OF 285.67 FEET;

THENCE S54°02'30"E, A DISTANCE OF 61.67 FEET;

THENCE N17°04'21"W, A DISTANCE OF 60.47 FEET;



EXHIBIT C

SHEET 2 OF 3

THENCE N73°44'59"E, A DISTANCE OF 10.00 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 35°43'46", WHOSE CHORD BEARS S34°06'54"E, 61.35 FEET, FOR A LENGTH OF 62.36 FEET;

THENCE S51°58'47"E, A DISTANCE OF 71.91 FEET TO A POINT ON THE WESTERLY LINE OF SAID TRACT C;

THECE S15°26'14"E ALONG SAID WESTERLY LINE, A DISTANCE OF 22.04 FEET TO A THE POINT OF BEGINNING;

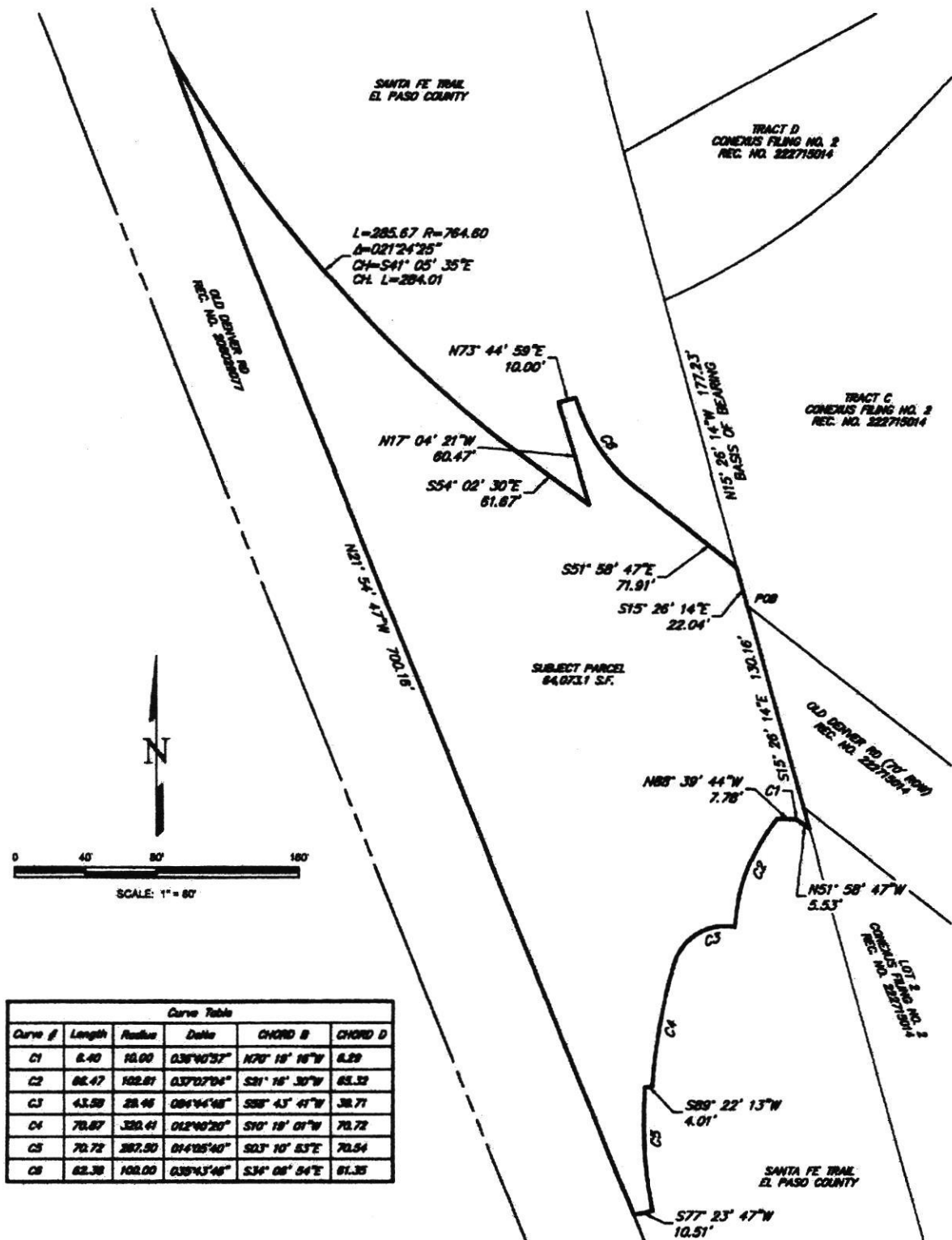
CONTAINING A CALCLULATED AREA OF 64,073.1 SQUARE FEET MORE OR LESS

MICHAEL J. MUIRHEID, PLS
COLORADO NO. 37909
FOR AND ON BEHALF OF CENTENNIAL LAND SURVEYING



EXHIBIT D

NORTH SANTA FE TRAIL PARCEL



CENTENNIAL LAND SURVEYING	16115 NORTHCLIFF SQ. ELBERT, CO 80106 (719) 492-6540		PROJECT: CONEXUS F2 NORTH SANTA FE TRAIL	
	DATE: 08/08/23	BY: MJM	CHKD: RS	
	JOB NO. 211216	SHEET NO. 3 OF 3		

Santa Fe Trail - North Intersection

LAND & WATER CONSERVATION FUND MAP



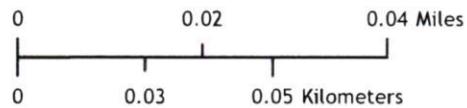
Exhibit E



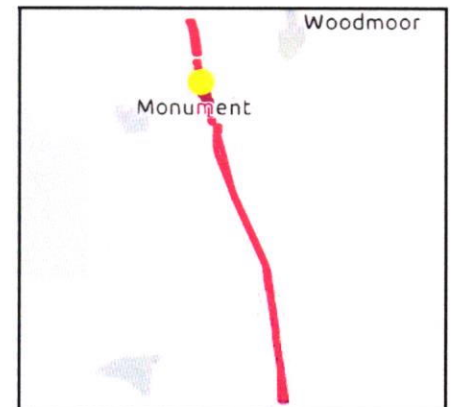
LWCF Boundary Area (EPC)



LWCF Land Transfer (Monument)



Property Name	Santa Fe Trail
Acres Lost	1.38
Grant ID	08-00918
Prop ID	663
Date Created	06/12/2025
Comments	Shows transfer of LWCF land (North Intersection ~1.38 acres) from El Paso County to the Town of Monument, which now assumes LWCF responsibilities per the 2025 IGA.

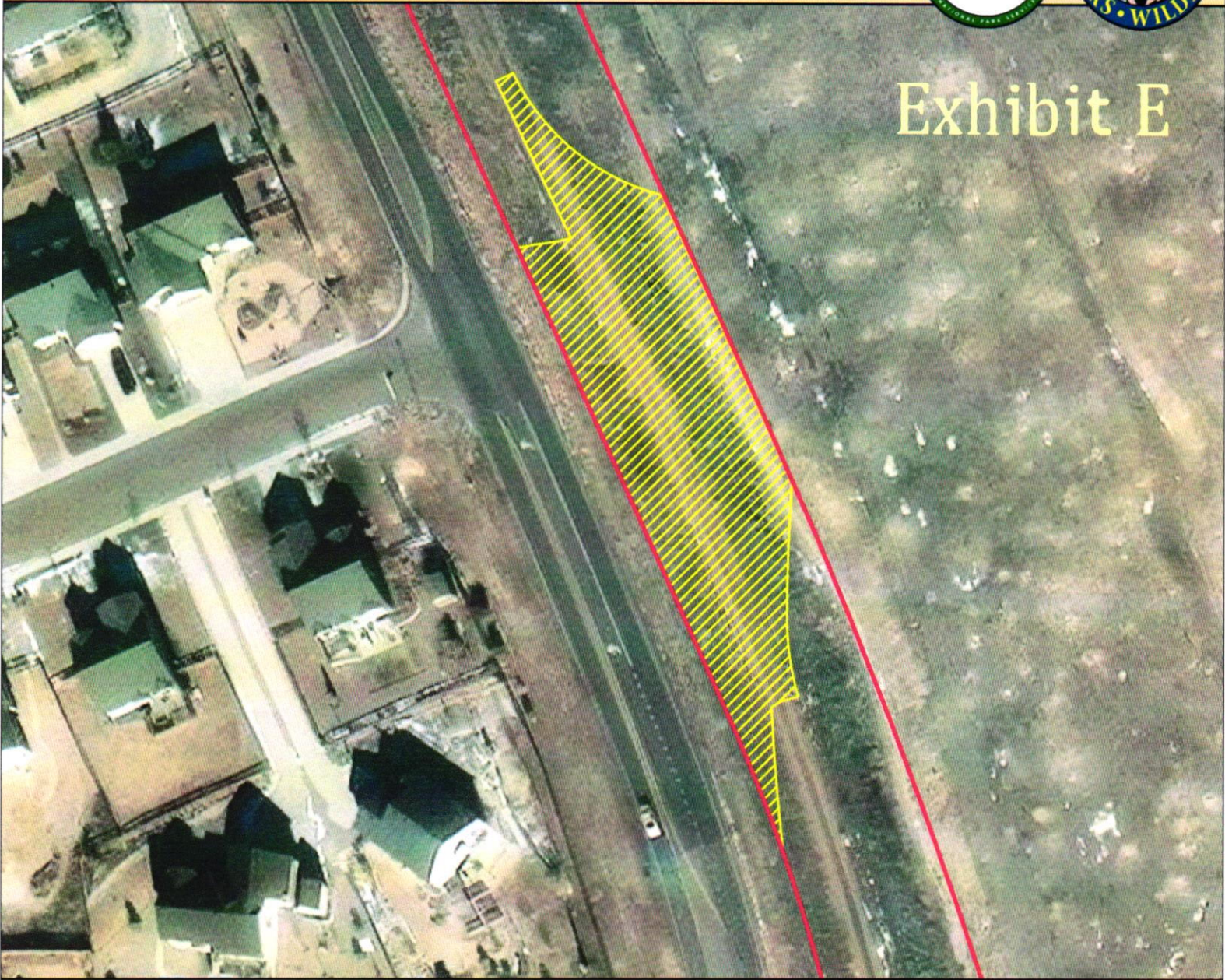


Santa Fe Trail - South Intersection



LAND & WATER CONSERVATION FUND MAP

Exhibit E

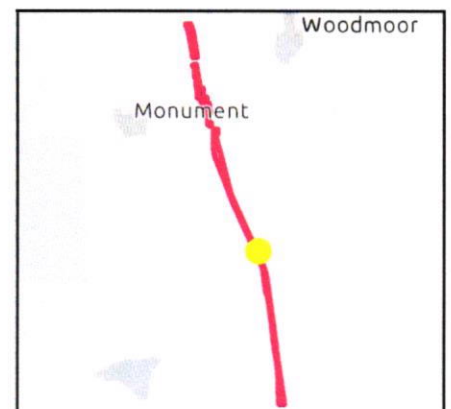
 LWCF Boundary Area (EPC) LWCF Land Transfer (Monument)

0 0.01 0.03 Miles

0 0.02 0.04 Kilometers



Property Name	Santa Fe Trail
Acres Lost	0.50
Grant ID	08-00918
Prop ID	663
Date Created	06/12/2025
Comments	Shows transfer of LWCF land (South Intersection ~0.50 acres) from El Paso County to the Town of Monument, which now assumes LWCF responsibilities per the 2025 IGA.



CERTIFICATE OF PUBLICATION

I, the duly qualified and Town Clerk of the Town of Monument, Colorado, do hereby certify the foregoing Ordinance No. 14-2025 was approved by the Town Council of the Town of Monument at its regular meeting held on the 7th day of July 2025, and was published on _____, 2025, 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 _____, 2025.

Tina Erickson, Town Clerk

(S E A L)

EXHIBIT A TO CERTIFICATE OF PUBLICATION

[Screenshot showing date and time of website publication]



TO: The Honorable Mayor and Town Council
FROM: Dan Ungerleider, AICP, Director of Planning
DATE: July 7, 2025
SUBJECT: Planning Commission Appointment – John Parr, Regular Member

BACKGROUND: The Town of Monument Planning Commission is to consist of seven (7) regular members and two (2) alternate members, the terms of which are staggered. Alternate members are utilized to ensure a quorum at each meeting and are appointed to serve as regular members in the absence of one or two regular Commissioners. All members are appointed for a two-year term.

As of January 6, 2025, the Town of Monument Planning Commission consists of seven (7) regular members and no alternate members. On May 1, 2025, the Town of Planning Department received an application from resident John Parr to serve as one (1) of the two (2) vacant alternate member positions. Mr. Parr's application is attached for consideration by Town Council. On May 28th I met with Mr. Parr and found that his enthusiasm for the community and his related long-running experience managing hospital construction/development makes him a formative candidate to serve on the Town's Planning Commission.

Planning Commission Chair Chad Smith was unanimously appointed to Council on June 16, 2027. Rather than appointing Mr. Parr as an alternate member, Staff is recommending he be appointed as a regular member, completing Planning Commissioner Smith's term and remaining three (3) terms.

STAFF RECOMMENDATION: Appointment of John Parr to serve as a Planning Commission member for a two-year term effective July 7 and expiring December 31, 2025. This proposed term expiration maintains staggered terms amongst all members.

REQUESTED ACTION: A motion to approve Resolution No. 42-2025, a resolution appointing John Parr to serve as a member of the Town of Monument Planning Commission for the remainder of a two-year term beginning July 7, 2025, and expiring December 31, 2025.

ATTACHMENTS:

1. Planning Commission Membership Roster – Updated 6/2/2024
2. John Parr, Planning Commission Appointment Application dated 5/1/2025
3. Resolution No. 35-2024 a resolution appointing John Parr as a member to the Planning Commission, term ending December 31, 2025

Attachment 1

Planning Commission Membership Roster
(Updated 7/7/2025)

Name	Term Expiration	Renewable (y/n)	Terms Remaining
Ray Egley, chair	12/31/2026	Y	2
Corey Petersen, member	12/31/2025	Y	3
Martin Trujillo, member	12/31/2026	Y	1
Daniel Ours, member	12/31/2026	N	NA
Cathy Green, member	12/31/2025	Y	3
Donna Hatch, member	12/31/2026	Y	3
John Parr, member¹	12/31/2025	Y	3
Vacant, alternative member			
Vacant, alternative member			

¹Assuming Appointment Approval on 7/7/2025

2.40.020 - Membership—Terms—Term limit—Vacancies.

The planning commission shall consist of seven regular members and two alternates. The term of each planning commission member and alternates shall be two years, ending December 31 of the year immediately following the year of his or her appointment, or until his or her successor is appointed. Terms shall be staggered with three members being appointed during the same year for terms of two years, and four members being appointed the following year for terms of two years. Members shall serve no more than four consecutive terms. Terms are considered consecutive unless they are at least a term apart. Current members who have served in excess of four consecutive terms shall serve until their current term expires.

Vacancies occurring otherwise than through the expiration of term shall be filled for the remainder of the unexpired term by appointment by the Board of Trustees.

(Ord. 27-2007 § 1; Ord. 21-2000 § 1; Ord. 6-97: prior code § 2-10-2)

(Ord. No. 04-2013, § 1, 2-4-2013; Ord. No. 12-2017, § 1, 6-19-17)



PLANNING COMMISSION APPOINTMENT APPLICATION

APPLICANT INFORMATION	
Name:	John Parr
Address:	[REDACTED]
Email:	[REDACTED]
Phone:	[REDACTED]

MINIMUM REQUIREMENTS		
Are you at least 18 years of age?	☒ Yes	☐ No
Are you a U.S. citizen?	☒ Yes	☐ No
Have you lived w/in Town limits for at least one year?	☒ Yes	☐ No

APPLICANT QUESTIONS

1. Please describe why you are interested in serving on the Planning Commission.

I have been a resident of Monument for 10 years and have grown deeply invested in the community and its future. The Planning Commission plays a crucial role in shaping the development and growth of Monument, and I am eager to contribute to this process. As a dedicated community member, I am committed to ensuring that our town evolves in a manner that preserves its unique character while accommodating necessary growth. My background in construction and my passion for community engagement make me well-suited for this position.

2. Have you ever served on a civic board, commission, or other similar body? If yes, please identify which one with your role and years served.

No

3. What are your qualifications for serving on the Planning Commission?

My qualifications for serving on the Planning Commission include extensive experience in the construction industry. Over the past four decades, I have been involved in numerous large-scale projects, including building hospitals, high-rises, and data centers. These projects have honed my skills in project management, problem-solving, and strategic planning. Additionally, my academic background in construction management provides a solid foundation for understanding the complexities of urban development and infrastructure.

4. What are your goals associated with serving in this capacity?

In addition to my construction background, I hold a degree in construction management. My ability to analyze complex issues, propose practical solutions, and work collaboratively

with diverse stakeholders will be valuable assets to the Planning Commission. My primary goal is to ensure that the development of our town aligns with the values and needs of its residents. I want to promote smart growth strategies that balance development with the preservation of our natural resources and the enhancement of our quality of life. By serving on the Planning Commission, I aim to facilitate transparent decision-making processes and engage in meaningful dialogues with community members to create a shared vision for Monument's future.

- 5. Does your schedule allow you to attend regular, special, and work session meetings? Typically, a minimum of a 15-day notice will be given.**

Yes

- 6. A resume may be submitted with this application but is not required.**

If you are not immediately selected for appointment on the Planning Commission, would you like your application kept on file for future consideration?	☒ Yes	☐ No
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Thank you for your interest in serving your community. Town Staff will be in touch if you are selected for an interview or appointment. All appointments are made by the Town of Monument Town Council.

John Parr
Signature

5/1/2025
Date

Please submit your application to the Town of Monument Planning Department.

Attn: Town of Monument Planning Department
645 Beacon Lite Road Monument, CO 80132
Or email to planning@tomgov.org

<i>For Staff Use Only</i>	
Date Application Received	5/1/2025
Date Interviewed	5/28/2025
Date Council Appointed	6/16/2025
Contacted By	Dan Ungerleider, AICP, Planning Director
Other	

**Town of Monument
Resolution 44-2025**

A RESOLUTION APPOINTING A MEMBER OF THE PLANNING COMMISSION

WHEREAS, pursuant to Section 2.40.020 of the Monument Municipal Code, the Planning Commission shall consist of seven (7) regular members and two (2) alternate members; and

WHEREAS, Planning Commission terms are for two (2) years, required to be staggered, and Commissioners shall serve no more than four (4) consecutive terms; and

WHEREAS, one (1) regular member and two (2) alternate member positions are vacant; and

WHEREAS, resident John Parr has applied and submitted a resume in consideration of his appointment as a regular member of the Planning Commission; and

WHEREAS, if the applicant seeking appointment as a regular member is appointed, two (2) alternate member vacancies will remain on the Planning Commission; and

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

John Parr is hereby appointed to the position of regular member of the Town of Monument Planning Commission. The term of this appointment shall commence on July 7, 2025, and shall terminate on December 31, 2025, thereby completing the remaining portion of a two-year term.

PASSED AND RESOLVED by the Town of Monument, El Paso County, Colorado, this 7th day of July 2025, by a vote of ___ for and ___ against.

TOWN OF MONUMENT

Mitch LaKind, Mayor

ATTEST:

Tina Erickson, Town Clerk



MEMORANDUM

To: The Honorable Mayor and Town Council

From: Cassie Olgren, Parks & Trails Planner and Program Manager

Date: July 7th, 2025

RE: Resolution 45-2025 to Approve a Change Order to CXT for the Monument Lake Bathrooms

BACKGROUND: The Town of Monument Parks Department has a current contract with CXT for bathroom facilities for Monument Lake approved by the council on February 5th, 2024, by Resolution 07-2024. The contractor (CXT) has determined that they will need an additional smaller trailer to access the location of the bathrooms, which has increased the initial price estimate.

DISCUSSION: The present plan is to continue moving forward with the current timeline of the bathrooms with CXT on the delivery and installation. As such, the resolution in front of you tonight is a change order to the existing contract already approved by this Town Council.

PROS/CON'S: Pro's – By moving forward with this resolution to approve the change order with CXT, it will allow us to continue moving forward with installation and finish the Monument Lake Bathroom Project. **Con's** – By not approving this change order, we will have to delay the delivery of the bathrooms and the completion of the project during the lake's busiest time of year when the bathrooms are most needed.

FISCAL IMPACT: The additional charges for the bathroom are in the amount of **\$7,197.00**, bringing the total cost for the bathrooms not to exceed \$140,726.00. We have an approved grant through Colorado Parks and Wildlife which has approved a total of \$117,731.00. The Town is responsible for paying the remaining **\$22,995.00** which will be paid out of the Park Fee Fund.

STAFF RECOMMENDATION: Recommend passage of Resolution 45-2025, to approve a change order to CXT to continue moving forward with the installation of the Monument Lake bathrooms.

TOWN OF MONUMENT
RESOLUTION NO. 45-2025

**A RESOLUTION APPROVING TO APPROVE A CHANGE ORDER TO CXT FOR THE
MONUMENT LAKE BATHROOMS**

WHEREAS, the Town's Public Works Department needs a change order to the current CXT contract to deliver and install the bathroom facilities at Monument Lake, and;

WHEREAS, The Public Works Department has available funding for this change order due to overall funds for the project coming in under the initial proposed budget, and;

WHEREAS, our current Contract and Purchasing Policy calls for any change order that exceeds 5% of the current contract be authorized by the authority that approved the original contract, and;

WHEREAS, the funding for this part of the project is through the Park Fee Fund, and;

WHEREAS, the Public Works Department is recommending the approval of the change order to CXT for the Monument Lake Bathrooms.

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

The Town Council hereby approves a change order to CXT in the amount not to exceed \$140,726.00 for the delivery and installation of the Monument Lake Bathrooms.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 7th day of July 2025 by vote of ___ for and ___ against.

TOWN OF MONUMENT

Mitch LaKind, Mayor

ATTEST:

Tina Erickson, Town Clerk



CXT® Precast Concrete Products manufactures restroom, shower and concession buildings in multiple designs, textures and colors. The roof and walls are fabricated with high strength precast concrete to meet all local building codes and textured to match local architectural details. All CXT buildings are designed to meet A.D.A. and to withstand heavy snow, high wind and category E seismic loads. All concrete construction also makes the buildings easy to maintain and withstand the rigors of vandalism. The buildings are prefabricated and delivered complete and ready-to-use, including plumbing and electrical where applicable. With thousands of satisfied customers nationwide, CXT is the leader in prefabricated concrete restrooms.

1. ORDERING ADDRESS(ES): CXT Precast Concrete Products, 606 N. Pines Road, Suite 202, Spokane Valley, WA 99206

2. ORDERING PROCEDURES: Fax 509-928-8270

3. PAYMENT ADDRESS(ES):

Remitting by check:

CXT, Inc., PO Box 676208, Dallas, TX 75267-6208

Remitting by ACH or wire transfer:

Beneficiary: CXT, Inc.

Beneficiary Bank: PNC Bank, Pittsburgh, PA

Account: 1077766885 ABA/Routing: 043000096

Email remittance details to AR@lbfoster.com

4. WARRANTY PROVISIONS: CXT provides a one (1) year warranty. The warranty is valid only when concrete is used within the specified loadings. Furthermore, said warranty includes only the related material necessary for the construction and fabrication of said concrete components. All other non-concrete components will carry a one (1) year warranty. CXT warrants that all goods sold pursuant hereto will, when delivered, conform to specifications set forth above. Goods shall be deemed accepted and meeting specifications unless notice identifying the nature of any non-conformity is provided to CXT in writing within the specified warranty. CXT, at its option, will repair or replace the goods or issue credit for the customer provided CXT is first given the opportunity to inspect such goods. It is specifically understood that CXT's obligation hereunder is for credit, repair or replacement only, F.O.B. CXT's manufacturing plants, and does not include shipping, handling, installation or other incidental or consequential costs unless otherwise agreed to in writing by CXT.

This warranty shall not apply to:

1. Any goods which have been repaired or altered without CXT's express written consent, in such a way as in the reasonable judgment of CXT, to adversely affect the stability or reliability thereof;

2. To any goods which have been subject to misuse, negligence, acts of God or accidents; or

3. To any goods which have not been installed to manufacturer's specifications and guidelines, improperly maintained, or used outside of the specifications for which such goods were designed.

5. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE): All prices subject to the "Conditions of Sale" listed on the CXT quotation form.

Customers are responsible for marking exact location building is to be set; providing clear and level site, free of overhead and/or underground obstructions; and providing site accessible to normal highway trucks and sufficient area for the crane to install and other equipment to perform the contract requirements. Site must allow for the crane to be within three feet of the building location and the truck to be within three feet of the crane. Customer shall provide notice in writing of low bridges, roadway width or grade, unimproved roads or any other possible obstacles to access. CXT reserves the right to charge the customer for additional costs incurred for

special equipment required to perform delivery and installation. Customers will negotiate installation on a project-by-project basis, which shall be priced as separate line items. For more information regarding installation and truck turning radius guidelines please see our website at <http://www.cxtinc.com>.

In the event delivery of the building/s ordered is/are not completed within 30 days of the agreed to schedule through no fault of CXT, an invoice for the full contract value (excluding shipping and installation costs) will be submitted for payment. Delivery and installation charges will be invoiced at the time of delivery and installation.

Should the delivery and installation costs increase due to changes in the delivery period, this increase will be added to the price originally quoted, and will be subject to the contract payment terms.

In the event that the delivery is delayed more than 90 days after the agreed to schedule and through no fault of CXT, then in addition to the remedies above, a storage fee of 1-1/2% of contract price per month or any part of any month will be charged.

****Customer is responsible for all local permits and fees.**

6. DELIVERY CHARGE: All prices F.O.B. origin prepaid and added to invoice. CXT operates three (3) manufacturing plants in the United States and will deliver from the closest location on our carriers.

7. PAYMENT TERMS: ~~All orders are cash in advance.~~ At CXT's discretion, credit may be given after approval of credit application. Payment to CXT by the purchaser of any approved credit amount is net 30 days after submission of invoice to purchaser. Interest at a rate equal to the lower of (i) the highest rate permitted by law; or (ii) 1.5% per month will be charged monthly on all unpaid invoices beginning with the 35th day (includes five (5) day grace period) from the date of the invoice. Under no circumstance can retention be taken. If CXT initiates legal proceeding to collect any unpaid amount, purchaser shall be liable for all of CXT's costs, expenses and attorneys' fees and costs of any appeal.

8. LIMITATION OF REMEDIES: In the event of any breach of any obligations hereunder; breach of any warranty regarding the goods, or any negligent act or omission of any party, the parties agree to submit all claims to binding arbitration. Any settlement reached shall include all reasonable costs including attorney fees. In no event shall CXT be subject to or liable for any incidental or consequential damages. Without limitation on the foregoing, in no event shall CXT be liable for damages in excess of the purchase price of the goods herein offered.

9. DELIVERY INFORMATION: All prices F.O.B. origin prepaid and added to invoice. CXT operates three (3) manufacturing plants in the United States and will deliver from the closest location on our carriers. Use the information below to determine the origin:

- F.O.B. 6701 E. Flamingo Avenue, Building 300, Nampa, ID 83687 applies to: AK, CA, HI, ID, MT, ND, NV, OR, SD, UT, WA, WY.

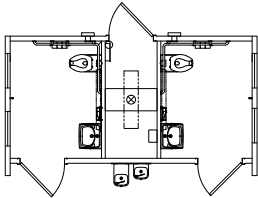
- F.O.B. 901 North Highway 77, Hillsboro, TX 76645 applies to AR, AZ, CO, IA, KS, LA, MN, MO, MS, NE, NM, OK, TX.

- F.O.B. 362 Waverly Road, Williamstown, WV 26183 applies to AL, CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, NC, NH, NJ, NY, OH, PA, PR, RI, SC, TN, VA, VT, WI, WV.

- Prices exclude all federal/state/local taxes. Tax will be charged where applicable if customer is unable to provide proof of exemption.

CORTEZ – 10’ 3” X 17’

Cortez with chase has two single user fully accessible flush restrooms. Standard features include simulated barnwood textured walls, simulated cedar shake textured roof, vitreous china fixtures, interior and exterior lights, off loaded, and set up at site.



CXT
800.696.5766
cxtinc.com

*Base Price \$ 65,718.00

Optional Sections

Restroom* \$65,718 Qty: = \$0	Shower* \$79,479 Qty: = \$0
Family Assist Shower/Restroom Combo* \$76,680 Qty: = \$0	Multipurpose Room \$60,840 Qty: = \$0
Concession* \$76,194 Qty: = \$0	

*Includes 4-gallon water heater. Total for Optional Sections \$ 0.00

Added Cost Options

	Price per unit	Click to select	
Final Connection to Utilities (per section)	\$ 5,000.00	☐	0.00
Optional Wall Texture (per section)- choose one ☐ Split Face Block (\$5,500) ☒ Stone (\$7,000)	Reset Wall Texture		7,000.00
Optional Roof Texture (per section) ☐ Ribbed Metal	\$ 5,500.00		0.00
Insulation and Heaters (per section)	\$ 19,500.00	☒	19,500.00
Stainless Steel Water Closet (each) Qty: 2	\$ 1,750.00	☒	3,500.00
Stainless Steel Lavatory (each) Qty: 2	\$ 1,500.00	☒	3,000.00
Electric Hand Dryer (each) Qty:	\$ 700.00	☐	0.00
Electronic Flush Valve (each) Qty:	\$ 1,500.00	☐	0.00
Electronic Lavatory Faucet (each) Qty:	\$ 1,500.00	☐	0.00
Paper Towel Dispenser (each) Qty: 2	\$ 350.00	☒	700.00
Toilet Seat Cover Dispenser (each) Qty:	\$ 350.00	☐	0.00
Sanitary Napkin Disposal Receptacle (each) Qty:	\$ 100.00	☐	0.00
Baby Changing Table (each) Qty: 2	\$ 750.00	☒	1,500.00
Skylight in Restroom (each) Qty:	\$ 1,600.00	☐	0.00
Marine Grade Skylight in Restroom (each) Qty:	\$ 2,450.00	☐	0.00
Marine Package (excluding fiberglass doors and frames) (per section)	\$ 2,350.00	☐	0.00
Exterior Mounted ADA Drinking Fountain w/Cane Skirt (each) Qty:	\$ 5,600.00	☐	0.00
2K Anti-Graffiti Coating (per section)	\$ 4,000.00	☒	4,000.00
Optional Door Closure (each) Qty:	\$ 700.00	☐	0.00
Fiberglass Entry and Chase Doors and Frames (each) Qty:	\$ 3,300.00	☐	0.00
Timed Electric Lock System (2 doors- does not include chase door) (each) Qty: 2	\$ 1,350.00	☒	2,700.00
Exterior Frostproof Hose Bib with Box (each) Qty:	\$ 1,200.00	☒	0.00

Total for Added Cost Options: \$ 41,900.00

Custom Options: Installation Surcharge (7,870), Price Adjustment(6,301), Short Trailer Cost--Site access (3,850) \$ 17,958.00

Engineering and State Fees: \$ 4,500.00

Estimated One-Way Transportation Costs to Site (quote): \$ 10,650.00

Estimated Tax: \$

Total Cost per Unit Placed at Job Site: \$ 140,726.00

Estimated monthly payment on 5 year lease \$2,828.59

Disclaimer: Please call to confirm selected sections are compatible.

This price quote is good for 60 days from date below, and is accurate and complete.

Robert Veals
Digitally signed by Robert Veals
Date: 2024.11.25 15:17:41 -07'00'
CXT Sales Representative Date

I accept this quote. Please process this order.

Town of Monument Company Name
Cassandra Olgren
Digitally signed by Cassandra Olgren
Date: 2024.12.05 09:56:03 -07'00'
Company Representative Date



OPTIONS

Exterior Color(s) (For single color mark an X. For two-tone combinations use W = Walls and R = Roof.)

☐ Amber Rose	☐ Berry Mauve	☐ Buckskin	☐ Cappuccino Cream
☐ Charcoal Grey	☐ Coca Milk	☐ Evergreen	☐ Georgia Brick
☐ Golden Beige	☐ Granite Rock	☐ R Hunter Green	☐ Java Brown
☐ Liberty Tan	☐ Malibu Taupe	☐ Mocha Caramel	☐ W Natural Honey
☐ Nuss Brown	☐ Oatmeal Buff	☐ Pueblo Gold	☐ Raven Black
☐ Rich Earth	☐ Rosewood	☐ Sage Green	☐ Salsa Red
☐ Sand Beige	☐ Sun Bronze	☐ Toasted Almond	☐ Western Wheat

Special roof color # _____ Special wall color # _____

Special trim color # _____

Stone Color (Mark option with an X.) *If option is not available, verify stone option is selected on previous page.

☐ Basalt* ☐ Mountain Blend* ☐ Natural Grey* ☒ Romana*

Roof Texture *If option is not available, verify roof texture option is selected on previous page.

☐ Ribbed Metal*

Wall Texture(s) (For single texture mark an X. For top and bottom textures use T = Top and B = Bottom.)
*If option is not available, verify wall texture option is selected on previous page.

☐ Split Face Block*	☐ Horizontal Lap*	☐ T Board & Batt*	☐ Stucco**
☐ Brick**	☐ Distressed Wood**		

Stone Wall Texture (bottom texture only) *If option is not available, verify stone option is selected on previous page.

☐ Napa Valley** ☐ River Rock** ☐ Flagstone** ☐ B Stacked Rock**

#Textures not included in CXT's quote are additional cost.

Door Opener

☐ Non-locking ADA Handle ☒ Privacy ADA Latch ☐ Pull Handle/Push Plate

Deadbolt ☒

Accessible Signage

☐ Men ☐ Women ☒ Unisex

Toilet Paper Holder

☐ 2-Roll Stainless Steel ☒ 3-Roll Stainless Steel

Notes:

Quote not to exceed \$140,726.00--Exceptions--additional costs outlined in Terms and Conditions of Installation--Item 5 and Item 7 (Payment Terms) both found on the first page of the this quote (Order Information page).

cxtinc.com
800.696.5766



MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Thomas A. Tharnish, Director of Public Works
DATE: July 7, 2025
RE: Resolution 46-2025 approving Addendum #1 to the Consulting Services Agreement with JDS-Hydro Consultants Inc., a RESPEC Company

BACKGROUND: The Town staff has a need to outline and modify engineering services that were approved back in 2020 for the design and construction of a new water storage tank to be located on Monument Hill. In the time since 2020, the project has encountered several long delays due to multiple land survey issues between several landowners that are now being closed out. The design process was taken as far as it could until the next steps needed could not proceed due to the property line issues.

DISCUSSION: The Town staff has revisited the design process and has had meetings with the engineering firm that was working on the tank design that was started back in 2020. Everything stopped in 2021 until the land issues could be resolved. We need to prepare to move forward with the next steps in the design process and during the time since 2021, our operational outlook has been tasked with potential future demands related to the location of this new tank. We have asked the engineering company to give us some pricing and options related to tank sizing and the design needed to support the different tank options. The engineers will provide an estimate of probable construction costs which is standard for a project like this. Once the design is complete and approved by the state, (CDPHE), the Town can make some decisions regarding potential future demand scenarios and tank size requirements needed to support demand scenarios for storage capacity.

PROS/CON'S: Pro's - By moving forward with this resolution to approve Addendum #1 for Respec Engineering, it will allow us to proceed with the tank design and modifications we have requested the engineering company to provide to hit the ground running with this much needed project. Con's - By not approving this resolution, we would need to re-bid the engineering services with a different firm and could have a significant delay in the design process.

FISCAL IMPACT: The cost of this addendum to the engineering services agreement with JDS-Hydro, a RESPEC Company, is for a "Not-to-Exceed" amount of **\$269,700.00**. The funds required are within the 2A Fund budget for the 2025 Budget Year.

STAFF RECOMMENDATION: **Recommend passage of Resolution 46-2025, approving Addendum #1 to the engineering services agreement with JDS-Hydro, a RESPEC Company, to continue with the new tank design on Monument Hill.**

TOWN OF MONUMENT

RESOLUTION NO. 46 - 2025

A RESOLUTION APPROVING ADDENDUM #1 TO THE CONSULTING SERVICES AGREEMENT WITH JDS-HYDRO CONSULTANTS INC., A RESPEC COMPANY DATED 12/7/2020.

WHEREAS, the Town staff has a need to outline modifications to the engineering services previously provided to complete the design of a new water storage tank located off Beacon Lite Rd. on Monument Hill, and;

WHEREAS, the Town's staff has evaluated the proposal provided by the Respec Engineering Company, as being the original designer of the Monument Hill Tank Project, and has determined the proposed modifications are needed to ensure the tank design follows CDPHE standards for water storage tanks, and;

WHEREAS, the Town staff is preparing to move forward with this tank project once the land survey issues and county planning process requirements are met and by having the engineering process take steps towards restarting the project, will help with the projected timelines to complete the design basis design report for the state to approve, and;

WHEREAS, by continuing the engineering design with the original company, it will allow for a smooth restart of that process since a lot of the preliminary work has been done by the JDS-Hydro Company up until mid 2021 at which point the process stopped, and;

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

The Town Council hereby approves Addendum #1 to the current engineering agreement with Respec Engineering Company to move forward with the complete design of the Monument Hill Tank Project. The total cost of this addendum to the engineering agreement is a **NTE amount of \$269,700.00**. This project is funded through the Towns 2A fund in the 2025 Budget.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 7th day of July 2025 by a vote of ____ for and ____ against.

TOWN OF MONUMENT

Mitch LaKind, Mayor

ATTEST:

Tina Erickson, Town Clerk

SCOPE OF SERVICES

ADDENDUM #1

Task Order Under the Agreement for Consulting Services Agreement with JDS-Hydro Consultants, Inc, a RESPEC Company, dated 12/7/2020

For

New Water Storage Tank on Monument Hill Project

GENERAL SCOPE ADDENDUM DESCRIPTION

The purpose of this Addendum is to outline modifications to the engineering services previously provided to complete the design of a new water storage tank located off Beacon Line Road on Monument Hill. A specific scope of services is as follows:

SPECIFIC SCOPE OF SERVICES

SUMMARY OF ORIGINAL SCOPE

The tank project has been on hold since 2021 as the Town has worked toward acquisition of lands adjacent to the existing tank site to allow for construction of a new replacement tank and future pump station. The original scope and fee will be replaced with the following scope to close out the remaining design and permitting requirements, account for changes in the design, impacts from the proposed Beacon Lite Road improvements, requested additions, and other items necessary.

2025 REVISED SCOPE AND TASKS

TASK 1: AWWA D115 CONCRETE STORAGE TANK DESIGN

- / RESPEC will provide a full structural design for a 1.5 or 2.0 MG AWWA D115 post-tension tank. This tendon tank will allow for post-tensioning in the floor, walls, and roof. Design will be in accordance with American Water Works Association D-115 design standards. Includes contractor pre-qualification assistance and bidding assistance.

TASK 2: 100% DESIGN DRAWINGS

- / Finalize the design drawings to 100% where left from 2021. This includes coordination with El Paso County road design improvements, updating the site, drainage, and utility plans. Incorporating any offsite access changes. Completion of Grading and Erosion Control and Landscaping plans. Updating the design drawings for larger tank storage volume.

TASK 3: TANK GEOTECHNICAL EVALUATION AND REPORT

- / Provide a full geotechnical evaluation for the suitability and design requirements for construction of a new tank at the location adjacent to the existing Monument Hill Tank.

TASK 4: PROJECT MANUAL AND SPECIFICATIONS

- / Update the project manual and specifications and prepare documents for bidding.

TASK 5: CDPHE BASIS OF DESIGN REPORT

- / Prepare and submit a basis of design report to the Colorado Department of Public Health and Environment for approval of the proposed concrete storage tank. Provide design updates and responses to questions or comments from CDPHE reviewers.

TASK 6: EL PASO COUNTY PLANNING APPROVALS

- / Prepare and submit necessary documents to the El Paso County Planning Department for approval of the proposed concrete storage tank. Provide design updates and responses to questions or comments from EPC reviewers. Documents assumed to be required include:
 - » Application Form, Elevation Plans, Financial Assurance Estimate, Grading and Erosion Control checklist and plans, Landscaping Plan, Legal Description, Letter or Intent, Post Construction Storm Water Mgmt. Applicability Evaluation Form, Site Development Plan, Site Exhibit, Storm Water Management Plan, ESQCP, Drainage Letter.

TASK 7: BIDDING

- / Prepare legal advertisement
- / Address contractor questions and issue through addendum
- / Attend and lead a pre-bid meeting
- / Coordinate and lead public bid
- / Provide bid tabulation, bid review, and recommendation of award.

SCHEDULE

It is estimated that completion of the design and preparation of documents for bidding will be finalized by 180 days after receipt of the geotechnical soils evaluation for the proposed tank site.

PROPOSED FEE

TASK	DESCRIPTION	FEE ESTIMATE
TASK 1	AWWA D115 Concrete Storage Tank Design	\$185,000.00
TASK 2	100% Design Drawings (Site Plan, Drainage, GEC, etc.)	\$32,000.00
TASK 3	Tank Geotechnical Evaluation and Report	\$12,900.00
TASK 4	Project Manual and Specifications	\$3,900.00
TASK 5	CDPHE Basis of Design Report	\$7,200.00
TASK 6	El Paso County Planning Department Approval	\$19,800.00
TASK 7	Bidding Services	\$8,900.00
TOTAL		\$269,700.00

Engineer may reallocate fees among tasks as long as the total amount is not to exceed \$269,700.

Notes:

- Contract to be billed on a Time and Expense basis. If the effort exceeds the scope outlined above, the Town will be notified. If at that time the Town requests an expansion of the scope, additional work would need to be approved and would be billed in accordance with the attached hourly rate schedule.

EXCLUSIONS

- / Construction Administration and Observation Services (*RESPEC can provide these services, but a separate scope will be prepared once bidding and award of contract has occurred.*)
- / Third party testing, including but not limited to potholing to locate existing utilities onsite.
- / Subsurface utility engineering.
- / Permitting fees will be paid for by the Town once determined by permitting agencies.
- / Surveying, property, easements, or legal services.
- / Any work required or requested not specifically addressed herein.

ATTACHMENTS

- / 2025 Hourly Rates sheet.
- / Subconsultant geotechnical scope and fee.

Addendum Approval:

Client

RESPEC Company, LLC

By _____
Signature

By  _____
Signature

Printed Name: _____

Printed Name Mario DiPasquale

Title _____

Title Vice President

Date _____

Date 6/25/25



2025 BILLING RATE SCHEDULE

COLORADO SPRINGS STAFF

Position	Hourly Rate
Practice Leader	\$250
Principal	\$230
Sr. Project Manager	\$215
Project Manager	\$190-\$210
Sr. Project Engineer	\$180-\$190
Project Engineer	\$160-\$175
Designer	\$140-\$165
Staff Engineer III	\$155
Staff Engineer II	\$145
Staff Engineer I	\$135
Engineering Technician III	\$130
Engineering Technician II	\$120
Engineering Technician I	\$110
Staff Biologist	\$150
Administrative Support	\$85
Engineering Intern	\$75

Construction Support	Hourly Rate
Sr. Construction Inspector	\$165
Construction Inspector	\$130-\$155

Expenses	
Mileage	Regulatory Rate
Postage/Courier	At Cost
Vendor Printing and Binding	At Cost
Other Expenses	At Cost

MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Thomas A. Tharnish, Director of Public Works
DATE: July 7, 2025
RE: Resolution 47-2025 approving an engineering agreement with RESPEC Engineering Company to provide pipeline design for Beacon Lite Rd. tank system

BACKGROUND: The Town staff was contacted by the El Paso County Engineering about a major road upgrade to Beacon Lite Rd which has been in design for the last several years. During that design process it was determined that sections of the road were going to be lowered, due to sight visibility issues, and that our existing water lines would need to be lowered to stay under the new road elevations. During our review of the road design, we discovered that the water lines under the existing road were never put into an easement. The lines were installed about 40-50 years ago and no thought was given to creating a utility easement to protect those locations. They were basically put into the ground on this dirt road and then connected to the existing water tank, which is over 50 years old.

DISCUSSION: The Town staff has evaluated the risk of trying to lower these 50-year-old lines by about 15 feet below their current elevation and has concluded that it is a much better investment to replace these two critical tank supply and return lines now. The risk of trying to lower water lines that are at the end of their normal life is far greater than to replace with new water mains. The two water mains are the current supply and return water mains from the existing water tank on Monument Hill. Due to the designed road relocation, they would not only need to move vertically, but also about 200' to the East in certain locations. The current tank engineers are aware of the need to redesign the pipelines associated with the new tank proposed to replace the current tank at the top of Monument Hill. We have had extensive discussions with El Paso County Engineering about potentially bidding out the pipeline portion of the project along with the road redesign of Beacon Lite Rd. By having the ability to have the county bid out the complete project and add the water pipeline portion as an addendum or alternate bid could save the Town additional funds due to combining the mobilization and other costs that we would have to pay for as a stand-alone project. One of the issues we may have is the timeline for the county to bid the project out. We are trying to coordinate the design timeline and the road project together in order to save some costs with this project. We will need to design this pipeline project regardless of if the counties timeline will work with ours or not as they are prepared to start the road project this Fall. The engineering agreement before you tonight is to design and coordinate with the county to lower and install two new water pipelines and potentially add additional water connections to meet any new potential requests for a water supply in the locations near the roadway project.

PROS/CON'S: Pro's - By moving forward with this resolution to approve RESPEC Engineering to design the new water pipelines in coordination with the El Paso Counties Beacon Lite Rd. Project will allow for a combined coordinated project which results in some costs savings and provide for some reliability with installing new water mains. Con's - By not approving this resolution, we would need to re-bid the engineering services with a different firm and we would most likely have to RFP the project out separately from the El Paso County Road Project thereby losing some cost savings with coordinating our efforts.

FISCAL IMPACT: The cost of this engineering services agreement with JDS-Hydro, a RESPEC Company, is for a “Not-to-Exceed” amount of **\$68,000.00**. The funds required are within the 2A Fund budget for the 2025 Budget Year.

STAFF RECOMMENDATION: Recommend passage of Resolution 47-2025, approving an engineering services agreement with JDS-Hydro, a RESPEC Company, to design and coordinate with El Paso County to install two new pipelines underneath the newly designed Beacon Lite Rd. Project.

TOWN OF MONUMENT

RESOLUTION NO. 47- 2025

**A RESOLUTION APPROVING AN ENGINEERING SERVICES AGREEMENT
WITH JDS-HYDRO CONSULTANTS INC., A RESPEC COMPANY TO DESIGN
TWO NEW PIPELINES TO THE MONUMENT HILL TANK**

WHEREAS, the Town staff has a need to design two new pipelines to supply the proposed new tank on Monument Hill due to the El Paso County Road Project on Beacon Lite Rd, and;

WHEREAS, the Town's staff has met with El Paso County to try and coordinate the design of the new pipelines at the same time as their new road project gets underway, and;

WHEREAS, the Town staff has evaluated a proposal from the Respec Company, our current tank project engineer, to prepare and align the new pipelines with the new tank project, and;

WHEREAS, by moving forward with this engineering service agreement, it will save tax payor funds to coordinate with El Paso County with their Beacon Lite Road Project and our water line installation design project.

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

The Town Council hereby approves an engineering services agreement with the Respec Company to move forward with the design of the two new water pipelines to connect to the Monument Hill Tank Project. The total cost of this engineering services agreement is a **NTE amount of \$68,000.00**. This project is funded through the Towns 2A fund in the 2025 Budget.

PASSED AND RESOLVED by the Town Council of the Town of Monument, El Paso County, Colorado, this 7th day of July 2025 by a vote of ___ for and ___ against.

TOWN OF MONUMENT

Mitch LaKind, Mayor

ATTEST:

Tina Erickson, Town Clerk

SCOPE OF SERVICES

for
Beacon Lite Pipeline Replacement
Town of Monument

GENERAL SCOPE DESCRIPTION

The purpose of this Scope is to outline engineering services required for the design of an approximate 1-mile water main along Beacon Lite Road, within El Paso County, to replace the existing tank pipeline. This project is being implemented due to improvements to Beacon Lite Road which is being designed and funded by El Paso County. Significant changes are occurring to the alignment and elevations of Beacon Lite which will require replacement of the tank pipeline. The pipeline is assumed to be fully installed within the revised right-of-way for Beacon Lite Road and within existing easements or land owned by the Town. A specific scope of services is as follows:

SPECIFIC SCOPE OF SERVICES

TASK 1 – PIPELINE DESIGN

A summary of tasks proposed to complete the pipeline design is proposed below:

- / Initial kick-off meeting with Town staff.
- / Review existing, planning documents for future roadway improvements provided by the Town and El Paso County.
- / Review hydraulic modeling documents previously prepared by RESPEC.
- / Provide 1041 Determination Letter (if necessary).
- / Coordinate with Town and County departments on the location of pipeline alignment within ROW.
- / Prepare plan and profile sheets for the pipeline alignment.
- / Prepare construction specifications following Town standards.
- / Prepare opinion of cost.

DRAFT SCHEDULE

Proposed schedules are outlined below. This schedule does not take into account review periods for the Town of County on the plans and specifications. The timeline is dependent on receiving all appropriate owner provided information noted in this scope.

TASK	DURATION	START	FINISH
TASK 1 – Pipeline Design	30 DAYS	TUE 7/15/25	MON 8/15/25

PROPOSED FEE

Fees are outlined below for Task 1 are proposed to be billed on a time and expense basis with an estimated fee not to exceed **\$68,000**. If the effort exceeds the scope outlined above, the Town will be notified. If at that time, the town requests and expansion of the scope, additional work would need to be approved and would be billed in accordance with the attached hourly rate schedule.

TASK	DESCRIPTION	FEE ESTIMATE
TASK 1	TOTAL	\$68,000

OWNER PROVIDED INFORMATION

- / Current base files, survey control, right-of-way and property limits, geotechnical reports, existing and proposed utility, and topographical base files for existing and proposed Beacon Lite Road improvements.
- / Owner will be responsible for draining tank and lines and providing service to existing customers that are served off tank line while the tank is out of service and the pipeline is being installed.

EXCLUSIONS

- / Geotechnical, it is assumed that previous bore logs from the county road design will be available for reference for the pipeline.
- / Erosion Control permitting and drawings
- / Subsurface Utility Engineering, it is assumed that the provided county road design documents will include a SUE study for existing and proposed utility coordination.
- / Nationwide 404 permit, Environmental Review, or other USFWS permitting.
- / El Paso County 1041 or ROW permitting, fees, or approvals.
- / Bidding and Construction Services
- / El Paso County or Town of Monument ROW permits, fees, or approvals.
- / Horizontal Directional Drilling (HDD) design. Design fee assumes the pipeline will all be open cut.
- / Permitting Fees, Easements or Title Work
- / Coordination with private landowners
- / Construction administration and observation services
- / Any work required or requested not specifically addressed herein.

ATTACHMENTS

- / 2025 Hourly Rates sheet.

Client

RESPEC Company, LLC

Approved By _____
Signature

Prepared By _____
Signature

Printed Name: _____

Printed Name: Mario DiPasquale

Title _____

Title Vice President

Date _____

Date 6/25/25



2025 BILLING RATE SCHEDULE

COLORADO SPRINGS STAFF

Position	Hourly Rate
Practice Leader	\$250
Principal	\$230
Sr. Project Manager	\$215
Project Manager	\$190-\$210
Sr. Project Engineer	\$180-\$190
Project Engineer	\$160-\$175
Designer	\$140-\$165
Staff Engineer III	\$155
Staff Engineer II	\$145
Staff Engineer I	\$135
Engineering Technician III	\$130
Engineering Technician II	\$120
Engineering Technician I	\$110
Staff Biologist	\$150
Administrative Support	\$85
Engineering Intern	\$75

Construction Support	Hourly Rate
Sr. Construction Inspector	\$165
Construction Inspector	\$130-\$155

Expenses	
Mileage	Regulatory Rate
Postage/Courier	At Cost
Vendor Printing and Binding	At Cost
Other Expenses	At Cost



MEMORANDUM

TO: The Honorable Mayor and Town Council
FROM: Thomas A. Tharnish, Director of Public Works
DATE: July 7, 2025
RE: Discussion of Native Sun Contract for the Iron Removal Project at Wells #11, 12, 13

The Honorable Mayor and Town Council, the purpose of this memo is to discuss the contract between the Town of Monument and Native Sun Construction for the Iron Removal Project to be built in support of Wells #11, 12 and 13. I would like to explain some differences between construction contracts, engineering agreements and capital equipment purchase agreements. Each of these are structured differently depending on what the goal is. The term, "Not-to-Exceed" has some bearing on each of these different contracts and agreements.

When an agreement to purchase some type of capital equipment is coming before the Council, the price is set and makes sense to have the term, "Not-to-Exceed" in the agreement since there is no room for any additional costs that could arise related to the purchase price. The terms of the purchase are in the agreement, and I have not seen any additional costs in the past for these types of purchases.

An engineering agreement is different in that most of these types of documents are built on a time and materials concept. Normally we would see this type of agreement based upon a proposal to provide engineering services to design a project and the estimated cost or fees needed to meet the "Scope" of the project that the Town is asking the engineering firm to produce. Some of these types of agreements will have an additional sentence describing that if the scope is expanded or if the Town requests a change in the scope, then the change in scope would need to be approved by the Town and billed in accordance with the current billing rate schedule provided by the engineering firm.

A construction contract is usually presented based upon a bid price that would be accepted by the Town. Staff has learned from experience that it is in our best interest to request a contingency amount, usually near the 10% amount of the bid price, mainly due to unforeseen circumstances that will typically arise during a construction project. The additional contingency amount would not be part of the bid amount and would only be used in rare cases of encountering unforeseen or changing conditions that would need to be approved by the Town before proceeding. One of the concerns with adding a "Not-to-Exceed" term in the contract especially during the initial RFP that goes out for bid, is that contractors will be looking at our project and building their own contingency amount in their bid. The problem with this is that we would expect much higher bids that will cost the Town more money that would not be in our control if the bid is accepted. The other issue may be that a lot of contractors wouldn't even bid on the project knowing that there was not a policy or procedure to address any unforeseen circumstances that might be encountered. The contract presented tonight by Native Sun Construction has language in it reflecting their bid price that was recommended by the engineer for this project. Any additional costs associated with this project would need to be approved by the Town in accordance with our current Contract and Purchasing Policy. By moving forward with this contract from

Native Sun Construction, it will allow us to move forward with this much-needed project to get these 3 new wells into production as soon as possible.

Thomas A. Tharnish
Director of Public Works
(719) 499-1126

SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between TOWN OF MONUMENT, COLORADO (“OWNER”) and
NATIVE SUN CONSTRUCTION (“CONTRACTOR”).

OWNER and CONTRACTOR hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Wells No. 11, 12 & 13 Iron Removal.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

See Article 1 - Work

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Forsgren Associates, Inc. (ENGINEER), which is to act as OWNER’s representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within 60 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 90 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. CONTRACTOR and OWNER recognize that time is of the essence as stated in Paragraph 4.01 above and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 15 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$1,000.00 (One Thousand Dollars) for each day that expires after the time

specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$1,000.00 (One Thousand Dollars) for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract.

- A. Total of Unit Price Work (subject to final Unit Price adjustment): \$529,310.00
- B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 15.01.A of the General Conditions or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, including but not limited to liquidated damages, in accordance with Article 15 of the General Conditions.
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 percent of the Work completed, less such amounts as ENGINEER shall determine in accordance with Paragraph 15.01.E of the General Conditions.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate 8 percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. CONTRACTOR has carefully studied reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in the Contract Documents.
 - E. CONTRACTOR has considered the information known to CONTRACTOR; information commonly known to CONTRACTORS doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) CONTRACTOR’s safety precautions and programs.
 - F. Based on the information and observations referred to in Paragraph 8.01.E above, CONTRACTOR does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 6, inclusive).
 2. Performance bond (pages 1 to 3, inclusive).
 3. Payment bond (pages 1 to 3, inclusive).
 4. Other bonds (pages N/A to N/A, inclusive).
 5. Certificate of Liability Insurance (pages 1 to 4, inclusive).
 6. General Conditions (pages 1 to 67, inclusive).
 7. Supplementary Conditions (pages 1 to 11, inclusive).
 8. Specifications as listed in the table of contents of the Project Manual.
 9. Drawings consisting of 9 sheets with each sheet bearing the following general title: WELLS NO. 11, 12 & 13 IRON REMOVAL.
 10. Addenda (numbers 1 to 1, inclusive).
 11. Exhibits to this Agreement (enumerated as follows):
 - a. CONTRACTOR's Bid (pages 1 to 7, inclusive).
 - b. Documentation submitted by CONTRACTOR prior to Notice of Award (Post Bid Qualifications pages 1 to 26, inclusive).
 - c. Other: N/A
 12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Article 11 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *CONTRACTOR's Certifications*

- A. CONTRACTOR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of OWNER, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive OWNER of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of OWNER, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement. Counterparts have been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or have been identified by OWNER and CONTRACTOR or on their behalf.

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

OWNER:

TOWN OF MONUMENT

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

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

CONTRACTOR

NATIVE SUN CONSTRUCTION

By: Ernest Jessop

Title: Ernest Jessop, President

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

Attest: Samuel Jeffs

Title: Samuel Jeffs, Chief Estimator

Address for giving notices:

15020 Woodcarver Rd.
Monument, CO 80132

License No.: _____

(Where applicable)

Agent for service of process:

Ernest Jessop

**ADDENDUM TO AGREEMENT BETWEEN OWNER
AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS ADDENDUM TO AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE) (“Addendum”) modifies Agreement between Owner and Contractor for Construction Contract (stipulated price) (“Agreement”) between Native Sun Construction (“Contractor”) and the Town of Monument, Colorado, a home rule municipality of the State of Colorado (“Owner” and together with the Contractor, the “Parties,” or either of the Parties individually, the “Party”), and is effective as of the same date as the Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and Contractor hereby modify the Agreement as follows:

1. Terms of Addendum Controlling. The Parties expressly intend and agree that this Addendum is hereby incorporated into the Agreement and the terms herein shall modify and control the terms in the Agreement. Any inconsistency between the terms of this Addendum and the terms of the Agreement shall be resolved in favor of the terms contained in this Addendum.

2. Independent Contractor. The services to be performed by Contractor are those of an independent contractor and not of an employee or partner of the Owner. **Contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the Agreement. Neither Contractor nor its employees, if any, are entitled to workers’ compensation benefits from the Owner for the performance of the services specified in the Agreement.**

3. Ownership of Work. The Owner shall own all work product for which it has paid.

4. Insurance.

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

i. Workers’ compensation insurance for its employees, if any, as required by Colorado law.

ii. Employer’s liability insurance with limits of at least \$500,000 per employee/accident and \$1,000,000 aggregate.

iii. 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; and \$2,000,000 general aggregate; and

iv. Automobile liability insurance covering all owned, hired and non-owned vehicles used in the performance of the Contractor's services under this Agreement with a limit of at least \$2,000,000 combined per accident for bodily injury and property damage; and

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, the Owner Representative, and the Owner's Town Council members, officers, and employees shall be endorsed as "Additional Insureds" under the (i) commercial general liability insurance policy for both ongoing and completed services for a period of two (2) years; 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 required herein shall provide that the coverage is 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 performance, the 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"). The Contractor agrees that, until the Owner is supplied with Certificates of Insurance, no payment under this Agreement will be made by the Owner. The 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 of its responsibility to provide the specific insurance coverages set forth herein.

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 this Section 13 and provide Certificates of Insurance evidencing the same to the Owner. Notwithstanding the provisions contained in Section 18 (Remedies), if the Contractor fails to procure the required insurance or provide the Owner with

Certificates of Insurance within the timeframe provided, the Owner may terminate or suspend this Agreement upon written notice to the Contractor.

5. Limitation on Damages. Under no circumstances shall the Owner be liable to Contractor for special, punitive, indirect or consequential damages suffered by Vendor arising out of or in connection with the Agreement including, without limitation, lost profits, loss of use, or loss of opportunity.

6. Governing Law and Venue. The laws of the State of Colorado, without regard to Colorado laws regarding conflicts of law, shall govern the construction, interpretation, execution and enforcement of the Agreement. Venue for any dispute arising out of or relating to the Agreement shall be in the State of Colorado District Court for the county in which the Owner's mailing address is located.

7. Annual Appropriation. Pursuant to Article X, Section 20 of the Colorado Constitution and Section 29-1-110, C.R.S., the Owner's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations will be made in the sole discretion of the Owner's Town Council.

8. Liquidated Damages. The Liquidated Damages provided in Paragraph 4.03 reasonably set forth the amount of damages the Owner will suffer if the Work is not completed timely as provided in the Agreement, such Damages are not punitive, and such Damages are difficult to ascertain at the time the Parties entered into the Agreement.

9. Contract Documents. This Agreement is expressly included as part of the Contract Documents listed in Paragraph 9.01(A).

10. Delete Section 10.03. Section 10.03 of the Agreement is deleted.

11. Taxes. The Owner is a governmental entity and is therefore exempt from state and local sales and use tax. The Owner will not pay for or reimburse any sales or use tax that may not directly be imposed against the Owner. The Contractor shall use the Owner sales tax exemption for the purchase of any and all products and equipment on behalf of the Owner.

12. 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.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Addendum to be effective as of the date first set forth above.

CONTRACTOR:

Native Sun Construction, Inc, a Colorado Corporation

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

OWNER:

The Town of Monument, Colorado

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

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance

with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and

submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the

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result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other

submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract

Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or

requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 4. acts of war or terrorism.

- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
 - D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or

make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Possible Price and Times Adjustments:*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;

- b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
- 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 - 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the

costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other

party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
 - 1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 - 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 - 3. Broad form property damage coverage.
 - 4. Severability of interest.
 - 5. Underground, explosion, and collapse coverage.

6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
 - E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
 - F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
 - G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
 - H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
 - I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 1. include at least the specific coverages provided in this Article.

2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown,

boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any

such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

- C. *Deductibles*: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests

for review of proposed substitute items of material or equipment from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the

replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for

the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals

and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 Shop Drawings, Samples, and Other Submittals

A. Shop Drawing and Sample Submittal Requirements:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. Submittal Procedures for Shop Drawings and Samples: Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. Shop Drawings:

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. Samples:

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and

hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design

professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 Coordination

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim

arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise

to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a

subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

- B. An adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
 - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 - 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 - 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in

good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
 5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of

the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective

Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed

Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the

Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended

purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Application and Acceptance:*
1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special

guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change

Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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These Supplementary Conditions amend and supplement Standard General Conditions (SC) and other provisions of the Contract Documents. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1.01.A.20 **Replace** paragraph 1.01.A.20 *Engineer* for the Standard General Conditions in its entirety with the following:

20. Engineer– Forsgren Associates prepared the design and is the ENGINEER for this project.

SC-1.01.A.48 **Delete** the following definitions from paragraph SC-1.01.A.48

48. *“Work Change Directive”*

SC-1.01.A.49-53 **Add** the following paragraphs 1.01.A.49 thru 53:

49. *Specialist:* The term Specialist refers to a person, partnership, firm, or corporation of established reputation (or if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workers skilled in either (as applicable) manufacturing or fabricating items required by the Contract Documents, or otherwise performing Work required by the Contract Documents. Where Specifications require installation by a Specialist, that term shall also be deemed to mean either the manufacturer of the item, a person, a partnership, firm, or corporation licensed by the manufacturer, or a person, partnership, firm, or corporation who will perform the Work under the manufacturer's direct supervision.
50. *Drawing Clarification:* An answer from the Owner, in response to an inquiry from the Contractor, intended to make some requirement(s) of the drawings clearly understood. Drawing clarifications may be sketches, drawings, or in narrative form and will not change any requirements of the drawings. Responses to Contractor inquiries shall be as outlined in the paragraph "Request for Information" of these General Conditions.
51. *Non-Conformance Notice:* A notice issued by the Owner documenting that the work or some portion thereof has not been performed in accordance with the requirements of the Contract Documents. Payment shall not be made on any portion of the work for which a Non-Conformance Notice has been issued and the work not corrected to the satisfaction of the Owner. Upon receipt of a Non-Conformance Notice the Contractor shall provide a written Response to Non-Conformance Notice within five working days after receipt of the Notice. The Contractor's response shall detail either (a) why they believe that the work was performed in accordance with the Contract Documents or (b) what corrective action they intend to take, at their sole expense, to correct the non-conforming work. If the Contractor dispute issuance of the Notice the Owner has five working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Contractor to correct the work. Such determination by the Owner shall be final and conclusive of the matter. If directed to correct the work, the Contractor shall do so within five working days after receipt of such direction from the Owner, or such other time as may be agreed to with the Owner.
52. *Project Communications* – Routine written communications between the owner and the contractor shall be in letter, field memo, or fax format. Such communications shall

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not be identified as Request for Information nor shall they substitute for any other written requirement pursuant to the provisions of these contract documents.

53. *Requests for Information:* A request from the Contractor or one of its subcontractors, to the Owner, seeking an interpretation or a clarification of some requirement of the Contract Documents. The Contractor shall clearly and concisely set forth the issue for which it seeks clarification or interpretation and why a response is needed from the Owner. The Contractor shall, in written request, set forth its interpretation or understanding of the Contractor's requirements along with reasons why it has reached such an understanding. Responses from the Owner will not change any requirements of the Contract Documents. Responses to Contractor inquiries shall be as outlined in the paragraph "Requests for Information" of these General Conditions".

SC-1.01.A.40 Add the following to paragraph 1.01.A.40 *Substantial Completion* of the Standard General Conditions:

Substantial Completion is further defined as that degree of completion of the Project's operating facilities and systems sufficient to satisfy all of the following:

- a. provides the OWNER the full time, uninterrupted, continuous beneficial operation of the Work;
- b. all required functional, performance and acceptance or startup testing has been successfully demonstrated for all components, devices, equipment, and instrumentation and controls to the satisfaction of the ENGINEER in accordance with the requirements of the Specifications;
- c. all inspections required have been completed and identified conditions corrected.

Specific items of Work which shall be completed prior to declaration of Substantial Completion date included, but are not limited to, the following:

- a. conformance with all training services requirements.
- b. correction of all state, local, and other regulatory agency's *defective* Work lists.
- c. submittals have been received and approved by the ENGINEER including, but not necessarily limited to, the following:
 - (1) Record documents.
 - (2) Operation and maintenance manuals, including service and maintenance agreements.
 - (3) Equipment data forms.
 - (4) Manufacturers' certificates of proper installation.
 - (5) Factory test reports.
- d. all special accessories have been provided that are required to place each item of equipment in full operation. These special accessory items include, but are not limited to, specified spare parts, test equipment, adequate oil and grease or other lubrication, air filters, light bulbs, fuses, special tools, valve operators, and other expendable items required for startup and operation of the operating facilities or systems as a whole.
- e. all additional warranty or insurance coverage requirements have been provided.

SC-1.01.A.49 Add the following definition to section 1.01.A – *Defined Terms*:

49. *Incidental* – Work, Materials or Services required by the Contract which are not specifically identified as payment item(s). No specific measurement and/or payment will be made for incidental items. The cost thereof should be included in other items of work listed in the Bid Schedule.

SC-2.02.C Add the following to paragraph 2.02 *Copies of Documents* of the Standard General Conditions:

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- C. The CONTRACTOR shall utilize one set of full sized drawings for record document purposes. See Section 01 70 00 – EXECUTION AND CLOSEOUT PROCEDURES for project record document requirements.
- SC-3.03.C** **Add** the following paragraph to paragraph 3.03 – *Reporting and Resolving Discrepancies* of the Standard General Conditions:
- C. Precedence of Documents:
1. In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:
 - a. AGREEMENT
 - b. ADDENDA TO CONTRACT DOCUMENTS
 - c. SUPPLEMENTARY CONDITIONS
 - d. INSTRUCTIONS TO BIDDERS
 - e. STANDARD GENERAL CONDITIONS
 - f. SPECIFICATIONS
 - g. DRAWINGS
 - h. INVITATION TO BID
 2. Figure dimensions on DRAWINGS shall take precedence over scaled dimensions.
 3. Detailed DRAWINGS shall take precedence over more general DRAWINGS.
- SC-5.02.A.3** **Add** the following at the end of paragraph 5.02.A of the Standard General Conditions:
4. CONTRACTOR shall not enter upon nor use property not under OWNER control until appropriate easements have been executed and a copy is on file with the ENGINEER.
- SC-5.04.A** **Insert** the following to paragraph 5.04.A *Notice by Contractor* of the Standard General Conditions immediately after the word “promptly”:
- “and within 24 hours”
- SC-6.03.A.5** **Add** the following to paragraph 5.04.A *Workers’ Compensation* of the Standard General Conditions:
5. Claims for damages insured by customary personal injury liability coverage which are sustained:
 - a. by any person as a result of a claim directly or indirectly related to the employment of such person by CONTRACTOR, or
 - b. by any other person for any other reason;
- SC-6.03.G** **Replace** the phrase “OWNER and ENGINEER,” in paragraph 5.04.G of the Standard General Conditions with the following: “OWNER, ENGINEER, and Engineer’s Consultants,”

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SC-6.03.D **Add** the following to subsection 6.03 *Contractors Insurance* of the Standard General Conditions:

The limits of liability for the insurance required by paragraph 6.03 *Contractor's Insurance* of the Standard General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations.

Worker's compensation, disability benefits and other similar employee benefit acts, and damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees as provided in paragraphs 5.04.A and 5.04.B of the Standard General Conditions:

- State: Statutory.
- Federal (if any applicable): Statutory
- Employer's Liability or "Stop-Gap": \$1,000,000

Contractor's Liability Insurance under paragraphs 5.04.A and 5.04.B of the Standard General Conditions shall provide the following minimum limits and conditions:

- | | |
|--|--------------|
| • General Aggregate | \$2,000,000. |
| • Products-Completed Operations Aggregate | \$1,000,000. |
| • Personal Accident Injury (per person/organization with employment exclusion deleted) | \$1,000,000. |
| • Each Occurrence (bodily injury and property damage) | \$1,000,000. |
| • Fire Damage (any one fire) | \$1,000,000. |
| • Medical Expenses (any one person) | \$5,000. |

Property Damage liability insurance shall not include the explosion, collapse, and underground exclusions and shall provide broad form property damage coverage.

Automobile Liability under paragraph 5.04.A.6 of the Standard General Conditions shall provide for the following for owned,

Non-owned, rented, or hired vehicles:

- Combined Single Limit (bodily injury and property damage) \$1,000,000

SC-6.05.A. & B. **Replace** paragraphs 6.05.A and 6.05.B of the Standard General Conditions in their entirety with the following:

- A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. Include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, and Engineer's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 2. Be written on a Builder's Risk, special peril, or risk of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and other such perils as may be specifically required by the Supplementary Conditions.

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3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of ENGINEER's, Engineer's Consultants, Consultants, and specialists);
 4. Cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application Payment recommended by ENGINEER; and
 5. Be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 6.05 shall comply with the requirements of 6.07 *Receipt and Application of Insurance Proceeds* and 6.05.D *Partial Occupancy or Use by Owner*.

SC-6.05.D **Add** the following to paragraph 6.05.D *Partial Occupancy or Use by Owner* of the Standard General Conditions:

The property insurance shall contain no partial occupancy restriction for utilization of the Project by the OWNER for the purpose intended.

SC-6.07 **Replace** paragraph 6.07 *Receipt and Application of Insurance Proceeds* of the Standard General Conditions in its entirety with the following:

6.07 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by Paragraphs 6.03 and 6.05 will be adjusted with CONTRACTOR and made payable to CONTRACTOR as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and or paragraph 6.07.B. CONTRACTOR shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
- B. CONTRACTOR as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to CONTRACTOR's exercise of this power. If such objection be made, CONTRACTOR as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CONTRACTOR as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, CONTRACTOR as fiduciary shall give bond for the proper performance of such duties.

SC-7.01.B **Add** the following sentence to the end of paragraph 7.01.B of the Standard General Conditions:

If during the performance of the Work, the Owner determines that the CONTRACTOR has provided an incompetent resident superintendent, the OWNER shall notify the CONTRACTOR in writing, and the CONTRACTOR shall replace said resident superintendent within ten days with a competent resident superintendent.

SC-7.02.B **Replace** paragraph 7.02.B of the Standard General Conditions in its entirety with the following:

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Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Regular working hours consist of up to 10 working hours within an 11-hour period between 7:00 a.m. and 6:00 p.m. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld, given after prior written notice to Engineer.

SC-7.16.E.2 **Replace** paragraph 7.16.E.2 of the Standard General Conditions in its entirety with the following:

2. ENGINEER will record time required by ENGINEER or Engineer's Consultants for submittal review occasioned by CONTRACTOR's resubmissions, in excess of one resubmission, of a required submittal, caused by unverified, unchecked or unreviewed, incomplete, inaccurate or erroneous, or nonconforming submittals. Upon receipt of Engineer's accounting of time and costs, CONTRACTOR will reimburse OWNER for charges of ENGINEER or Engineer's Consultants review for excessive resubmissions through setoffs from the recommended OWNER payments to CONTRACTOR as established in paragraph 15.01.E *Reductions in Payment by Owner* of the Standard General Conditions.

SC-7.18.A **Replace** paragraph 7.18.A of the Standard General Conditions, in its entirety, with the following:

- A. To the fullest extent permitted by Law or Regulation, the CONTRACTOR shall indemnify, hold harmless, and defend the OWNER and its agents, architects, ENGINEER, Consultants, officers, agents, servants, employees, and each of them (hereinafter individually and collectively, the "Indemnitees") from and against any and all liability, claims, damages, injury of any kind or nature whatsoever (including death) and cost of defense to any person or property (including, without limitation, claims for injury to or death to any employee of CONTRACTOR, Subcontractor or Supplier) which result from, arise out of, or occur in connection with the execution of the Work, whether or not such claims are based upon actual or alleged active or passive negligence or wrongdoing of any Indemnities, except that the CONTRACTOR shall not be required to indemnify an Indemnitees against a claim or loss that is the result of the Indemnitee's sole negligence or willful misconduct. CONTRACTOR shall indemnify all Indemnitees from and against all loss, cost, expense, liability, damage or injury, including legal fees, that Indemnitees may directly or indirectly sustain suffer or incur as a result thereof, and the CONTRACTOR agrees to and does hereby assume on behalf of Indemnitees the defense of any action at law or in equity which may be brought against Indemnitees by reason of such claim, and will pay on behalf of Indemnitees, upon their demand, the amount of any judgment that may be entered against Indemnitees or any of them in any such action. In the event that any such claims, loss, costs, expense, liability, damage or injury arise or are made, asserted or threatened against an Indemnitees for which the insurer of CONTRACTOR does not admit coverage, or if the OWNER deems such coverage to be inadequate, the OWNER shall have the right to withhold from any payments due or to become due to the CONTRACTOR an amount sufficient to protect Indemnitees from such claims, loss costs, expense, liability, damage or injury, including legal fees. The CONTRACTOR will require any and all subcontractors and supplier to conform with the provisions of this clause prior to commencing any work and agrees to insure this clause in conformity with Article 5. Bonds and Insurance, herein.

SC-7.18.D., E. & F. Add the following after paragraph 7.18.C of the Standard General Conditions:

- D. For suits, actions, legal or administrative proceedings, claims, demands, damages, losses, penalties, fines, costs, and expenses caused by or resulting from the concurrent negligence of the OWNER and the ENGINEER, or the OWNER's or ENGINEER's agents or employees, and the CONTRACTOR or the CONTRACTOR's agents or employees, in situations where liability for damages arises from claims of bodily injury to persons or damage to property, the preceding indemnity provision shall be valid and enforceable only to extent of the CONTRACTOR's negligence.
- E. CONTRACTOR acknowledges that by entering into a contract with OWNER, CONTRACTOR has mutually negotiated the above indemnity provision with the OWNER.
- F. CONTRACTOR's indemnity and defense obligations shall survive the termination or completion of the Work and remain in full force and effect until satisfied in full.

SC-8.01.D Replace paragraph 8.01.D of the Standard General Conditions in its entirety with the following:

- D. Other work anticipated to be performed at the site by others, prior to, during, and in sequence with the scheduled performance of the Work under these Contract Documents is described in Section 01 31 00 – COORDINATION AND SEQUENCING.

SC-9.02.B Add the following to paragraph 9.02 *Replacement of Engineer* of the Standard General Conditions:

- B. In such an event, work on the project shall temporarily cease until a new ENGINEER is appointed and on-site.

SC-10.03.B., C., D. & E. Add the following to paragraph 10.03 *Project Representative* of the Standard General Conditions:

- B. The Resident Project Representative (RPR) for the Project will be furnished by ENGINEER.
- C. The responsibilities and authority of the Resident Project Representative, assistants and other field staff are limited to those of ENGINEER in paragraph 10.08 *Limitations on Engineer's Authority and Responsibilities* of the Standard General Conditions and to those delegated to the RPR by the ENGINEER's project manager.
- D. The RPR will be prohibited from:
 - 1. Undertaking any of the responsibilities of CONTRACTOR, Subcontractors or CONTRACTOR's superintendent; or
 - 2. Accept Submittals from anyone other than CONTRACTOR.
 - 3. Exceeding the authority delegated by the ENGINEER's project manager.
- E. The following are examples of responsibilities and authority typically delegated to the RPR:
 - 1. Schedules: Review and monitor the Progress Schedule, Schedule of Submittals and Schedule of Values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
 - 2. Conferences and Meetings: Conduct or attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, Work conferences and other Project related meetings.
 - 3. Liaison:
 - a. serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents;

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- b. assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect Owner's onsite operations;
 - c. obtain from OWNER and CONTRACTOR additional details or information when required for proper execution of the Work.
- 4. Submittals:
 - a. receive Submittals at the site, from CONTRACTOR.
 - b. advise ENGINEER and CONTRACTOR of the commencement of any Submittal has not been approved by ENGINEER.
- 5. Review of Work, Rejection of *defective* Work, Inspection and Tests:
 - a. conduct onsite observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents;
 - b. inform ENGINEER and CONTRACTOR when whenever RPR believes that any Work is unsatisfactory, faulty or *defective*, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made
 - c. advise ENGINEER and CONTRACTOR whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or whenever RPR believes Work should be uncovered for observation, or requires special testing, inspection, or approval
 - d. monitor that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof
 - e. observe, record and report to ENGINEER appropriate details relative to the test procedures and startups
 - f. accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
- 6. Records:
 - a. maintain at the site files for correspondence, conference records, Submittals including Shop Drawings and Samples, reproductions of original Contract Documents including all Addenda, the signed Agreement, Work Change Directives, Change Orders, Field Orders, additional Drawings issued after the Effective Date of the Agreement, Engineer's written clarifications and interpretations, progress reports, and other Project related documents;
 - b. keep a diary or log book recording pertinent site conditions, activities, decision and events.
- 7. Payment Requests: Review applications for payment with CONTRACTOR.
- 8. Certificates, Maintenance, and Operation Manuals, Record Documents, and Site Records: During the course of the Work, monitor that these documents and other data required to be assembled, maintained, and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
- 9. Substantial Completion:
 - a. conduct an inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a list of items to be completed or corrected;
 - b. submit to ENGINEER a list of observed items requiring completion or correction.
- 10. Completion:
 - a. conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR;
 - b. notify CONTRACTOR and ENGINEER in writing of all particulars in which this inspection reveals that Work is incomplete or *defective*;

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- c. observe that all items on final list have been completed, corrected, or accepted by OWNER and make recommendations to ENGINEER concerning acceptance.

SC-10.10 Add the following paragraph at the end of Article 10 – ENGINEER’S STATUS DURING CONSTRUCTION of the Standard General Conditions:

10.10 *Requests for Information*

- A. In the event that the Contractor or subcontractor, at any tier, determines that some portion of the drawings, specifications, or other Contract Documents requires clarification or interpretation by the Owner, the Contractor shall submit a Request for Information in writing to the Owner. Requests for Information may only be submitted by the Contractor and shall only be submitted on the Contractor’s standard Request for Information Forms. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed from the Owner. In the Request for Information, the Contractor shall set forth an interpretation or understanding of the requirement along with reasons why such an understanding was reached.
- B. The Owner acknowledges that this is a complex project. Based upon the Owner’s past experience with projects of similar complexity, the Owner anticipates that there will probably be some Requests for Information on this project.
- C. The Owner will review all Requests for Information to determine whether they are Requests for Information within the meaning of this term. If the Owner determines that the document is not a Request for Information, it may be returned to the Contractor, unreviewed as to content, for resubmittal on the proper form and in the proper manner.
- D. Responses to Requests for Information shall be issued within five working days of receipt of the request from the Contractor unless the Owner determines that a longer time is necessary to provide an adequate response. If a longer time is determined necessary by the Owner, the Owner will, within five working days of receipt of the request, notify the Contractor of the anticipated response time. If the Contractor submits a Request for Information on an activity with five working days or less of float on the current project schedule, the Contractor shall not be entitled to any time extension due to the time it takes the Owner to respond to the request provided that the Owner responds within the five working days set forth above.
- E. Responses from the Owner will not change any requirement of the Contract Documents. In the event the Contractor believes that a response to a Request for Information will cause a change to the requirements of the Contract Document, the Contractor shall immediately give written notice to the Owner stating that the Contractor considers the response to be a Change Order. Failure to give such written notice immediately shall waive the Contractor’s right to seek additional time or cost under the Changes article of these General Conditions.

SC-13.01.E Add a sentence to the end of paragraph 13.01.E *Documentation*: of the Standard General Conditions as follows:

Supporting data shall include but not be limited to daily submissions of timesheets indicating hours and trades worked, equipment and time equipment was employed, and materials expended.

SC-13.03.E Replace paragraph 13.03.E of the Standard General Conditions in its entirety the following:

- E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

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1. If the total cost of a particular item of Unit Price Work amounts to 15% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by CONTRACTOR differs by more than 25% from the estimated quantity of such item indicated in the Agreement; and
2. If there is no corresponding adjustment with respect to any other item of Work
3. If CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles OWNER to an adjustment in the unit price, either OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC-14.02.D Add the following at the end of paragraph 14.02.D of the Standard General Conditions:

See paragraphs 14.02.G and 14.02.H.

SC-14.02.G., & H. Add the following new paragraphs immediately after paragraph 14.02.F of the Standard General Conditions:

- G. Tests required by Contract Documents to be performed by an independent laboratory for CONTRACTOR shall be made by a laboratory licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, meet following applicable requirements.
 1. "Recommended Requirements for Independent Laboratory Qualification," published by the American Council of Independent Laboratories.
 2. Basic requirements of ASTM E329, "Standard General of Recommended Practice for Inspection and Testing agencies for Concrete and Steel as Used in Construction" as applicable.
 3. Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.
- H. The CONTRACTOR shall establish an inspection program and a testing plan acceptable to the ENGINEER and shall maintain complete inspection and testing records available to ENGINEER.

SC-15.01.B.1 In the first sentence of paragraph 15.01.B.1 of the Standard General Conditions, after the phrase "At least 20 days before" **delete** the phrase "the date established in the Agreement for".

SC-15.01.C.1 In paragraph 15.01.C.1 of the Standard General Conditions, **delete** the word "Ten" and **insert** the word "Twenty-five" in its place.

SC-15.01.E.1.e **Replace** paragraph 15.01.E.1.e of the Standard General Conditions, in its entirety, with the following:

- e. OWNER compensation to ENGINEER at an estimated average rate of \$100 per each extra personnel hour for labor plus expenses because of the following CONTRACTOR-caused events:
 - Retesting *defective* Work;
 - Return visits to manufacturing facilities for shop testing or retesting;
 - Shop Drawing review in excess of two reviews by ENGINEER for substantially the same submittal;
 - Evaluation and implementation of CONTRACTOR-proposed substitutes or "or equal" items of equipment and in making changes to Contract Documents occasioned thereby;

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SC-15.06.A.2.f Add the following new paragraphs immediately after paragraph 15.06.A.2.e:

SC-15.07.A In paragraph 15.07.A of the Standard General Conditions, **delete** the word “appearing” and **insert** the word “discovered” in its place.

SC-15.08.A. **Revise** the first sentence of paragraph “A” to read as follows:

“A. If within two years after the date of Substantial Completion.....”

SC-16.04.A In the first sentence of paragraph 16.04.A of the Standard General Conditions, and after the words “OWNER fails for”, **delete** the phrase “30” and **insert** the phrase “60”.

SC-16.04.B In the first sentence of paragraph 16.04.B of the Standard General Conditions, and after the words “OWNER fails for”, **delete** the phrase “30” and **insert** the phrase “60”.

SC-18.09 **Add** the following paragraph at the end of ARTICLE 18 – MISCELLANEOUS of the Standard General Conditions:

18.09 If any provision of portion of the Contract Documents is held unconstitutional, invalid or otherwise unenforceable the rest of the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

In such an event, the Owner reserves the right at its sole option to declare the Contract void and to enter into negotiations with Contractor for a new Contract.

END OF SUPPLEMENTARY CONDITIONS

PAYMENT BOND

CONTRACTOR (name and address):

Native Sun Construction
15020 Woodcarver Rd
Monument, CO 80132

SURETY (name and address of principal place of business):

United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07960

OWNER (name and address):

TOWN OF MONUMENT
645 BEACON LITE RD.
MONUMENT, CO 80132

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount: **Five Hundred Twenty Nine Thousand Three Hundred Ten & 00/100 Dollars (\$529,310.00)**

Description (name and location):

WELLS NO. 11, 12 & 13 IRON REMOVAL, MONUMENT, CO

BOND

Bond Number: **602-210931-3**

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount: **Five Hundred Twenty Nine Thousand Three Hundred Ten & 00/100 Dollars (\$529,310.00)**

Modifications to this Bond Form: ☒ None ☐ See Paragraph 18

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Native Sun Construction (seal)

CONTRACTOR's Name and Corporate Seal

By: Ernest Jessop
Signature

Ernest Jessop

Print Name

President

Title

Attest: Samuel Jeffs

Signature

Samuel Jeffs

Chief Estimator

Title

SURETY

United States Fire Insurance Company (seal)

Surety's Name and Corporate Seal

By: Taylor J. Wilstead
Signature (attach power of attorney)

Taylor J. Wilstead

Print Name

Attorney-In-Fact

Title

Attest: Jonathan Bjork

Signature

Jonathan Bjork

Bond Manager

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to CONTRACTOR, Surety, OWNER, or other party shall be considered plural where applicable.

1. The CONTRACTOR and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the OWNER to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the CONTRACTOR promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the OWNER from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the CONTRACTOR shall have no obligation under this Bond.
3. If there is no OWNER Default under the Construction Contract, the Surety's obligation to the OWNER under this Bond shall arise after the OWNER has promptly notified the CONTRACTOR and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the OWNER or the OWNER's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the CONTRACTOR and the Surety.
4. When the OWNER has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the OWNER against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the CONTRACTOR,
 - 5.1.1 have furnished a written notice of non-payment to the CONTRACTOR, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the CONTRACTOR have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the OWNER to the CONTRACTOR, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the OWNER, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or CONTRACTOR may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the OWNER to the CONTRACTOR under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Construction Contract are dedicated to satisfy obligations of the CONTRACTOR and Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the OWNER, Claimants, or others for obligations of the CONTRACTOR that are unrelated to the Construction Contract. The OWNER shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the OWNER, or the CONTRACTOR shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR and OWNER shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
 - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 - 16.2 **Claimant:** An individual or entity having a direct contract with the CONTRACTOR or with a subcontractor of the CONTRACTOR to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the CONTRACTOR and the CONTRACTOR's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 16.3 **Construction Contract:** The agreement between the OWNER and CONTRACTOR identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4 **OWNER Default:** Failure of the OWNER, which has not been remedied or waived, to pay the CONTRACTOR as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5 **Contract Documents:** All the documents that comprise the agreement between the OWNER and CONTRACTOR.
17. If this Bond is issued for an agreement between a CONTRACTOR and subcontractor, the term CONTRACTOR in this Bond shall be deemed to be Subcontractor and the term OWNER shall be deemed to be CONTRACTOR.
18. Modifications to this Bond are as follows: N/A

PERFORMANCE BOND

CONTRACTOR (name and address):

Native Sun Construction
15020 Woodcarver Rd
Monument, CO 80132

SURETY (name and address of principal place of business):

United States Fire Insurance Company
305 Madison Avenue
Morristown, NJ 07960

OWNER (name and address):

TOWN OF MONUMENT
645 BEACON LITE RD
MONUMENT, CO 80132

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount: **Five Hundred Twenty Nine Thousand Three Hundred Ten & 00/100 Dollars (\$529,310.00)**

Description (name and location):

WELLS NO. 11, 12 & 13 IRON REMOVAL, MONUMENT, CO

BOND

Bond Number: **602-210931-3**

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount: **Five Hundred Twenty Nine Thousand Three Hundred Ten & 00/100 Dollars (\$529,310.00)**

Modifications to this Bond Form: ☒ None ☐ See Paragraph 16

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Native Sun Construction (seal)

CONTRACTOR's Name and Corporate Seal

By: Ernest Jessop
Signature

Ernest Jessop
Print Name

President
Title

Attest: Samuel Jeffs
Signature Samuel Jeffs

Chief Estimator
Title

SURETY

United States Fire Insurance Company (seal)

Surety's Name and Corporate Seal

By: [Signature]
Signature (attach power of attorney)

Taylor J. Wilstead
Print Name

Attorney-In-Fact
Title

Attest: [Signature]
Signature Jonathan Bjork

Bond Manager
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to CONTRACTOR, Surety, OWNER, or other party shall be considered plural where applicable.

1. The CONTRACTOR and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the OWNER for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Construction Contract, the Surety and the CONTRACTOR shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no OWNER Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The OWNER first provides notice to the CONTRACTOR and the Surety that the OWNER is considering declaring a CONTRACTOR Default. Such notice shall indicate whether the OWNER is requesting a conference among the OWNER, CONTRACTOR, and Surety to discuss the CONTRACTOR's performance. If the OWNER does not request a conference, the Surety may, within five (5) business days after receipt of the OWNER's notice, request such a conference. If the Surety timely requests a conference, the OWNER shall attend. Unless the OWNER agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the OWNER's notice. If the OWNER, the CONTRACTOR, and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default;

3.2 The OWNER declares a CONTRACTOR Default, terminates the Construction Contract and notifies the Surety; and

3.3 The OWNER has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a CONTRACTOR selected to perform the Construction Contract.

4. Failure on the part of the OWNER to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the OWNER has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the CONTRACTOR, with the consent of the OWNER, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent CONTRACTORS;

5.3 Obtain bids or negotiated proposals from qualified CONTRACTORS acceptable to the OWNER for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the OWNER and a CONTRACTOR selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the OWNER the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the OWNER as a result of the CONTRACTOR Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new CONTRACTOR, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, make payment to the OWNER; or

5.4.2 Deny liability in whole or in part and notify the OWNER, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in Paragraph 5.4, and the OWNER refuses the payment or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Construction Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Construction Contract. Subject to the commitment by the OWNER to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the CONTRACTOR for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER, or the CONTRACTOR shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Construction Contract after all proper adjustments have been made including allowance for the CONTRACTOR for any amounts received or to be received by the OWNER in settlement of insurance or other claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Construction Contract.

14.2 Construction Contract: The agreement between the OWNER and CONTRACTOR identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 CONTRACTOR Default: Failure of the CONTRACTOR, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 OWNER Default: Failure of the OWNER, which has not been remedied or waived, to pay the CONTRACTOR as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the OWNER and CONTRACTOR.

15. If this Bond is issued for an agreement between a CONTRACTOR and subcontractor, the term CONTRACTOR in this Bond shall be deemed to be Subcontractor and the term OWNER shall be deemed to be CONTRACTOR.

16. Modifications to this Bond are as follows: N/A

**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

03783

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Taylor J Wilstead, Alec Kleiner, Chris Morrow, Kaitlyn Sherwood

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties: **Unlimited**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

- (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;
- (b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 8th day of April, 2025.

UNITED STATES FIRE INSURANCE COMPANY



Matthew E. Rubin, President

State of New Jersey }
County of Morris }

On this 8th day of April, 2025, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.



Ethan Schwartz (Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the _____ day of _____, 20____

UNITED STATES FIRE INSURANCE COMPANY

Michael C. Fay, Senior Vice President





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/25/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alliant Insurance Services, Inc. 6400 S. Fiddlers Green Circle, Ste 2000 Greenwood Village CO 80111	CONTACT NAME: Natalie Rodriguez PHONE (A/C, No, Ext): 303-204 2814 FAX (A/C, No): E-MAIL ADDRESS: Natalie.Rodriguez@alliant.com
INSURED Native Sun Materials Inc DBA Native Sun Construction 15020 Woodcarver Road Monument CO 80132	INSURER(S) AFFORDING COVERAGE INSURER A: Zurich American Insurance Comp INSURER B: Pinnacol Assurance INSURER C: Pacific Insurance Company, Lim INSURER D: Upland Specialty Insurance Com INSURER E: FAIR AMERICAN SELECT INSURANCE INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 483242125**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	Y		GLO 6200292-02	5/1/2025	5/1/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y		BAP 6200291-02	5/1/2025	5/1/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A E D	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y		SXS 6200294-02 CSX-8000496-01 USXSL0151725	5/1/2025 5/1/2025 5/1/2025	5/1/2026 5/1/2026 5/1/2026	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	4236688	5/1/2025	5/1/2026	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C A	Pollution Liability Contractor's Equipment	Y		59 CPI BE5249 CPP 5642062-02	11/9/2024 5/1/2025	11/9/2025 5/1/2026	Each Occur/Aggre Per Occurrence Leased/Rented Limit \$1M/\$2M \$8,186,407 \$300,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Engineer's Project No.: 04-23-0047, Wells No. 11, 12 & 13 Iron Removal.

Town of Monument and Forsgren Associates, Inc., and any individuals or entities identified in the Supplementary Conditions, include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors, are named as Additional Insureds with respect to General Liability, Auto Liability, Umbrella/Excess Liability and Pollution Liability if required by written contract. General Liability, Auto Liability, Umbrella/Excess Liability and Pollution Liability are primary, and any other insurance maintained by the Additional Insured is excess and non-contributory. 30 days' notice of cancellation or non-renewal will be provided to Certificate Holder, except 10 days' notice for cancellation for non-payment of premium.

CERTIFICATE HOLDER**CANCELLATION**

Town of Monument
645 Beacon Lite Road
Monument CO 80132

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE

Additional Insured – Automatic – Owners, Lessees Or Contractors



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. GLO 6200292 - 02

Effective Date: 05/01/2025

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a.** The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or
- b.** The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

- (1)** Your ongoing operations, with respect to Paragraph **1.a.** above; or
- (2)** "Your work", with respect to Paragraph **1.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **1.**, insurance afforded to such additional insured:

- (a)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (b)** Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a.** The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or
- b.** The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

- (1)** Your acts or omissions; or
- (2)** The acts or omissions of those acting on your behalf,

in the performance of:

- (a)** Your ongoing operations, with respect to Paragraph **2.a.** above; or
- (b)** "Your work" and included in the "products-completed operations hazard", with respect to Paragraph **2.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **2.**, insurance afforded to such additional insured:

- (i)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (ii)** Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- 3.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a.** Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b.** With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1)** Your acts or omissions; or
- (2)** The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **3.**, insurance afforded to such additional insured:

- (a)** Only applies to the extent permitted by law;
- (b)** Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
- (c)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

- 4.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a.** Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b.** With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **4.**, insurance afforded to such additional insured:

- (1)** Only applies to the extent permitted by law;
- (2)** Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3)** Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

B. Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F. Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1.** Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or
 - 2.** Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.



Waiver Of Subrogation (Blanket) Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l Prem.	Return Prem.
GLO 6200292 - 02	05/01/2025	05/01/2026		13384000		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition**:

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

Coverage Extension Endorsement



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. BAP 6200291 - 02

Effective Date: 05/01/2025

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph **2.** in **B. Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph **2.b.** in **B. Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
 - (1) Overdue lease or loan payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (3) Security deposits not returned by the lessor;
 - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
 - (5) Carry-over balances from previous leases or loans.

F. Towing and Labor

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" that is a "private passenger type", light truck or medium truck is disabled. However, the labor must be performed at the place of disablement.

As used in this provision, "private passenger type" means a private passenger or station wagon type "auto" and includes an "auto" of the pickup or van type if not used for business purposes.

G. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".
- However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

I. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
- (1) Personal property owned by an "insured"; and
 - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
- (1) The reasonable cost to replace; or
 - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
- (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
 - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
 - (3) Paintings, statuary and other works of art.
 - (4) Contraband or property in the course of illegal transportation or trade.
 - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:
- We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:
- (a) Are the property of an "insured"; and
 - (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

K. Airbag Coverage

The Exclusion in Paragraph B.3.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

L. Two or More Deductibles

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

M. Temporary Substitute Autos – Physical Damage

1. The following is added to **Section I – Covered Autos**:

Temporary Substitute Autos – Physical Damage

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
 2. Repair;
 3. Servicing;
 4. "Loss"; or
 5. Destruction.
2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

Temporary Substitute Autos – Physical Damage

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

N. Amended Duties In The Event Of Accident, Claim, Suit Or Loss

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a.** In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

O. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

P. Employee Hired Autos – Physical Damage

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

Q. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

R. Hired Auto – World Wide Coverage

Paragraph **7.b.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere else in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

S. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

T. Expected Or Intended Injury

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

U. Physical Damage – Additional Temporary Transportation Expense Coverage

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

V. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

W. Return of Stolen Automobile

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COLORADO CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:

2. If this policy has been in effect for less than 60 days, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- a.** 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b.** 30 days before the effective date of cancellation if we cancel for any other reason.

B. The following is added to the Cancellation Common Policy Condition:

7. Cancellation Of Policies In Effect For 60 Days Or More

a. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy by mailing through first-class mail to the first Named Insured written notice of cancellation:

- (1)** Including the actual reason, at least 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
- (2)** At least 45 days before the effective date of cancellation if we cancel for any other reason.

We may only cancel this policy based on one or more of the following reasons:

(1) Nonpayment of premium;

(2) A false statement knowingly made by the insured on the application for insurance; or

(3) A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the first Named Insured has notified us of the change and we accept such change.

C. The following is added and supersedes any other provision to the contrary:

NONRENEWAL

If we decide not to renew this policy, we will mail through first-class mail to the first Named Insured shown in the Declarations written notice of the nonrenewal at least 45 days before the expiration date, or its anniversary date if it is a policy written for a term of more than one year or with no fixed expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

D. The following condition is added:

INCREASE IN PREMIUM OR DECREASE IN COVERAGE

We will not increase the premium unilaterally or decrease the coverage benefits on renewal of this policy unless we mail through first-class mail written notice of our intention, including the actual reason, to the first Named Insured's last mailing address known to us, at least 45 days before the effective date.

Any decrease in coverage during the policy term must be based on one or more of the following reasons:

1. Nonpayment of premium;
2. A false statement knowingly made by the insured on the application for insurance; or

3. A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the first Named Insured has notified us of the change and we accept such change.

If notice is mailed, proof of mailing will be sufficient proof of notice.

NCCI #: WC000313B
Policy #: 4236688

Native Sun Materials, Inc.
dba Native Sun Construction
PO Box 2428
Monument, CO 80132

Alliant Insurance Services, Inc.
6400 S. Fiddlers Green Circle, Ste. 2000
Greenwood Village, CO 80111
(303) 824-1440

ENDORSEMENT: Blanket Waiver of Subrogation

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

To any person or organization when agreed to under a written contract or agreement, as defined above and with the insured, which is in effect and executed prior to any loss.

Effective Date: May 1, 2025 Expires on: May 1, 2026
Pinnacol Assurance has issued this endorsement May 2, 2025

1. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
2. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.
- d. An "insured" must submit all "claims", "professional incidents", "protective incidents", "pollution incidents" and "pollution injuries" for defense and indemnity to any other applicable or potentially applicable insurance. When any other insurance has a duty to defend a "claim", we will have no duty to pay "claim expense". If no such other insurance defends the "claim" and we have an obligation to pay "claim expense" under this insurance, we will have the right to control the defense of an "insured" with counsel of our mutual agreement as set forth in **SECTION V – CONDITIONS, Paragraph 3. Defense of Claim.**

19. Additional Insureds (Applicable to Coverage Parts D, F and G Only)

This Policy extends coverage to "additional insureds" under **COVERAGE D - CONSTRUCTION JOB SITE POLLUTION, COVERAGE F – CONSTRUCTION RELATED TRANSPORTATION POLLUTION, and COVERAGE G – NON-OWNED DISPOSAL SITE POLLUTION.** Coverage for "additional insureds" is extended:

- a. Only when a Limit of Insurance for such Coverage Part is shown in the Declarations; and
- b. With respect to the "additional insured's" liability resulting solely from "covered operations" or "completed operations" at a "construction jobsite", "transportation" to or from a "construction jobsite", or disposal of waste or materials generated at a "construction jobsite" performed by an "insured" or by those acting on behalf of an "insured" other than the "additional insured"; and
- c. Only for the period of time required by the written contract or written agreement, or written permit or written license, between the "insured" and "additional insured".

Coverage for "additional insureds" shall not exceed the lesser of the applicable Limit of Insurance available under this Policy or the Limit of Insurance required by written contract or written agreement, or written permit or written license, between the "insured" and the "additional insured."

If coverage under this Policy is extended to an "additional insured" under this **SECTION V - CONDITIONS, Paragraph 19.**, subject to all limitations set forth herein, the "additional insured" will be deemed an "insured" under this Policy.

SECTION VI – EXTENDED REPORTING PERIODS (CLAIMS MADE AND REPORTED COVERAGES)

This Section applies to any Coverage Part or endorsement to this Policy issued on a Claims Made and Reported basis.

1. Basic Extended Reporting Period

We will provide a basic "extended reporting period", as described below, if:

- a. This Policy is canceled or not renewed by us for any reason other than nonpayment of premium, fraud or misrepresentation; or
- b. We renew or replace this Policy with insurance that does not apply to "claims", "protective indemnity claims", "professional incidents", "pollution incidents" or "pollution injury" that would be covered under this Policy.
- c. Subject to **SECTION VI – EXTENDED REPORTING PERIODS, Paragraphs 1a. and 1b.** above, a basic "extended reporting period" is automatically provided without additional charge. This period starts with the end of the "policy period" and lasts for 90 days.

The basic "extended reporting period" does not apply to "claims", "protective indemnity claims", "professional incidents", or "pollution incidents" that are covered under any subsequent insurance providing coverage to an "insured", or that would be covered by the subsequent insurance, except for exhaustion of limits.

2. Supplemental Extended Reporting Period

We will provide a supplemental "extended reporting period" at the written request of the first Named Insured made no later than 60 days after the end of the "policy period." The supplemental "extended reporting period" will be provided by endorsement to this Policy for an additional premium charge. The endorsement shall set forth all terms and conditions applicable to the supplemental "extended reporting period".



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

CONTRACTORS PROFESSIONAL AND PROTECTIVE INDEMNITY PLUS (CPPI+)

SECTION V. - CONDITION Other Insurance Item 18 c. is deleted and replaced with the following:

- c. The coverage afforded under this Policy for an "additional insured" is primary and non-contributory to any other insurance available to such "additional insured" when required by written contract or written agreement between the "insured" and the "additional insured" executed prior to a "claim" or "pollution incident" involving such "additional insured". However, to the extent that the "additional insured" is named as an additional insured on another insurance policy that also provides primary and non-contributory coverage, we shall share with that other insurance as follows:

1. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
2. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.



Straight Excess Liability Policy

There are provisions in this policy that restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as such in **underlying insurance**. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured(s)" means any person or organization qualifying as such in **underlying insurance** but only to the extent and within the scope for which such "insured(s)" qualify for coverage in **underlying insurance**.

Words and phrases that are printed in bold-face type are defined in this policy. These definitions are found in **SECTION VI. DEFINITIONS** of this policy or in the specific policy provision where they appear.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations and in accordance with the provisions of this policy, we agree with you to provide coverage as follows:

Insuring Agreements

SECTION I. COVERAGE

- A. We will pay on behalf of the insured those damages covered by this insurance in excess of the total Applicable Limits of **underlying insurance**. This policy includes:
 - 1. The terms and conditions of **underlying insurance** to the extent such terms and conditions are not inconsistent or do not conflict with the terms and conditions referred to in Paragraph 2. below; and
 - 2. The terms and conditions that apply to this policy.
- B. Notwithstanding anything to the contrary contained in Paragraph A. above, if **underlying insurance** does not apply to damages for reasons other than exhaustion of total applicable limits of insurance by payment of **loss**, then this policy does not apply to such damages.
- C. The amount we will pay under this policy is limited as described in **SECTION II. LIMITS OF INSURANCE**.
- D. We have no obligation under this policy with respect to any settlement made without our consent.
- E. The insurance afforded under this policy applies to bodily injury or property damage only if prior to the Policy Period, neither you nor any **authorized person** knew that the bodily injury or property damage had occurred, in whole or in part. If you or any **authorized person** knew, prior to the Policy Period, that the bodily injury or property damage occurred, then any continuation, change or resumption of such bodily injury or property damage during or after the Policy Period will be deemed to have been known prior to the Policy Period.

Bodily injury or property damage which occurs during the Policy Period and was not, prior to the Policy Period, known to have occurred by you or any **authorized person** includes any continuation, change or resumption of that bodily injury or property damage after the Policy Period; and

Bodily injury or property damage will be deemed to have been known to have occurred at the earliest time when you or any **authorized person**:

- 1. Reports all or any part of, the bodily injury or property damage to us or any other insurer;
- 2. Receives a written or verbal demand or claim for damages because of the bodily injury or property damage; or
- 3. Becomes aware by any other means that bodily injury or property damage has occurred or has begun to occur.

SECTION II. LIMITS OF INSURANCE

- A.** The Limits of Insurance shown in the Declarations and the rules below describe the most we will pay regardless of the number of:
1. Insureds;
 2. Claims made or suits brought; or
 3. Persons or organizations making claims or bringing suits.
- B.** The Limits of Insurance of this policy will apply as follows:
1. The limit shown in Item **4.B.** of the Declarations for the Other Aggregate is the most we will pay for all **loss** to which this policy applies, except for:
 - a. **Loss** covered under the products/completed operations hazard; and
 - b. **Loss** covered in **underlying insurance** to which no underlying aggregate limit applies.

In addition, if a policy listed in the Schedule of Underlying Insurance contains aggregate limits, other than an aggregate limit applying to the products/completed operations hazard, the Other Aggregate limit shown in Item **4.B.** of the Declarations will apply in the same manner as such other aggregate limits of each policy listed in the Schedule of Underlying Insurance.
 2. The limit shown in Item **4.C.** of the Declarations for the Products/Completed Operations Aggregate is the most we will pay for all **loss** to which this policy applies under the products/completed operations hazard.
 3. Subject to Paragraph **B.1.** or **B.2.** above, whichever applies, the limit shown in Item **4.A.** of the Declarations for Occurrence is the most we will pay for all **loss** arising out of any one **occurrence** to which this policy applies.
- C.** Coverage applies only in excess of the greater of the actual limits of insurance of **underlying insurance** or the Applicable Limits of insurance shown in the Schedule of Underlying Insurance forming a part of this policy.
- D.** The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the Policy Period shown in the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the preceding period for purposes of determining the Limits of Insurance.
- E.** Subject to Paragraphs **B.1.**, **B.2.**, **B.3.** and **C.** above:
1. If the limits of **underlying insurance** have been reduced solely by payment of **loss** for which coverage is afforded under this policy, this policy will drop down to become immediately excess of the reduced underlying limit; or
 2. If the limits of **underlying insurance** have been exhausted solely by payment of **loss** for which coverage is afforded under this policy, this policy will continue in force as **underlying insurance**.

SECTION III. DEFENSE AND SUPPLEMENTARY PAYMENTS

- A.** We have the right and duty to assume control of the investigation and settlement of any claim, or defense of any suit against the insured for damages covered by this policy when the applicable limit of **underlying insurance** and **other insurance** has been exhausted by payment of **loss** for which coverage is afforded under this policy.
- B.** In those circumstances where Paragraph **A.** above applies we will pay our expenses and the following to the extent that they are not included in **underlying insurance**:
1. Up to \$2,000 for the cost of bail bonds. We do not have to furnish these bonds.
 2. The cost of bonds to release attachments, but only for bond amounts within the amount of insurance available. We do not have to furnish these bonds.
 3. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit, including actual loss of earnings because of time off from work.
 4. All court costs taxed against the insured in the suit. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

5. Pre-judgment interest awarded against the insured on that part of the judgment we pay. However, if we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court that part of the judgment that is within the applicable limits of insurance.

When our expenses and the payments described in this paragraph above are not included in the definition of **loss**, they will not reduce the Limits of Insurance.

- C. In those circumstances where Paragraph A. above does not apply, we do not have the duty to assume control of the investigation and settlement of any claim, or defense of any suit against the insured. We do, however, have the right to participate in the investigation and settlement of any claim, or defense of any suit that we feel may create liability on our part under the terms of this policy. If we exercise this right, we will do so at our expense.

We will not investigate and settle any claim, or defend any suit after we have exhausted the applicable Limit of Insurance as shown in Item 4. of the Declarations.

If we are prevented by law from carrying out the provisions of Paragraph A. above, we will pay any expense incurred with our consent.

SECTION IV. EXCLUSIONS

This policy does not apply to any liability, damage, **loss**, cost or expense:

ASBESTOS

A. Arising out of or relating in any way to:

1. Asbestos or which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, release, leakage, leaching, friability, flaking escape or presence of asbestos, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to the injury or damage; or
2. Any:
 - a. Request, demand, order, statutory or regulatory requirement, direction or determination, that any insured or others test for, investigate, monitor, clean up, remove, study, contain, treat, encapsulate, control or take any other action regarding asbestos; or
 - b. Claim or suit for damages arising out of or relating in any way to any request, demand, order, statutory or regulatory requirement, direction or determination than any insured or others test for, investigate, monitor, clean up, remove, study, contain, treat, encapsulate, control or take any other action regarding asbestos.

POLLUTION

B. 1. Arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:

- a. At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (1) Bodily injury if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (2) Bodily injury or property damage for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to **underlying insurance** as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (3) Bodily injury or property damage arising out of heat, smoke or fumes from a **hostile fire**;
- b. At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- c. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you maybe legally responsible; or
- d. At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the **pollutants** are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (1) Bodily injury or property damage arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the bodily injury or property damage arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (2) Bodily injury or property damage sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (3) Bodily injury or property damage arising out of heat, smoke or fumes from a **hostile fire**.
- e. At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**.
- f. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled, or handled for movement into, onto or from, any auto for which coverage is provided by **underlying insurance**;
 - (2) Otherwise in the course of transit by or on behalf of any insured; or
 - (3) Being stored, disposed of, treated or processed in or upon any auto.
 However, this subparagraph **f.** does not apply to bodily injury or property damage arising out of:
 - (1) The escape of fuels, lubricants, other operating fluids, exhaust gases or other similar **pollutants** that are needed for or result from the normal electrical, hydraulic or mechanical functioning of a covered auto; or
 - (2) The escape of **pollutants** from a covered auto that directly results from the collision, upset or overturn of such auto while in the course of transit away from any premises owned by or rented to any insured.

2. Arising out of any:

- a. Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**; or
- b. Claim or suit brought by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, **pollutants**.

However, this Paragraph, **B.2.**, does not apply to liability, damage, **loss**, cost or expense because of property damage that the insured would have in the absence of such request, demand, order or statutory or regulatory requirements, or such claim or suit by or on behalf of a governmental agency.

NUCLEAR

- C. 1. With respect to which any insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic, Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its Limits of Insurance; or

2. Resulting from the **hazardous properties of nuclear material** and with respect to which:
 - a. A person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - b. Any insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
3. Any injury or **nuclear property damage** resulting from the **hazardous properties of nuclear material**, if:
 - a. The **nuclear material**:
 - (1) Is at any **nuclear facility** owned by, or operated by or on behalf of, any insured; or
 - (2) Has been discharged or dispersed therefrom;
 - b. The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any insured; or
 - c. The injury or **nuclear property damage** arises out of the furnishing by any insured of services, materials, parts or equipment in connection with the planning, construction, maintenance operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this subparagraph **c.** applies only to **nuclear property damage** to such **nuclear facility** and any property thereat.

As used in this exclusion:

1. **Hazardous properties** include radioactive, toxic or explosive properties;
2. **Nuclear Facility** means:
 - a. Any **nuclear reactor**;
 - b. Any equipment or device designed or used for:
 - (1) Separating the isotopes of uranium or plutonium,
 - (2) Processing or utilizing **spent fuel**, or
 - (3) Handling, processing or packaging **waste**;
 - c. Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
 - d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
3. **Nuclear material** means **source material**, **special nuclear material** or **by-product material**;
4. **Nuclear property damage** includes all forms of radioactive contamination of property;
5. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
6. **Source material**, **special nuclear material** and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
7. **Spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;
8. **Waste** means any waste material;
 - a. Containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and

2. Any workers' compensation, unemployment compensation, or disability benefits law or any similar law; or
3. The Employees' Retirement Income Security Act (E.R.I.S.A.) of 1974 as now or hereafter amended.

LOSS OF, OR LOSS OF USE OF INTANGIBLE PROPERTY

- I. Arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate or process intangible property. For purposes of this policy, electronic data is intangible property and means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

SECTION V. CONDITIONS

A. Appeals

In the event you or any underlying insurer elects not to appeal a judgment in excess of the amount of the **underlying insurance**, we may elect to appeal at our expense. If we do so elect, we will be liable for the costs and additional interest accruing during this appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in **SECTION II. LIMITS OF INSURANCE** of this policy.

B. Bankruptcy or Insolvency

The insolvency, bankruptcy or inability to pay of any insured will not relieve us from our obligation to pay damages covered by this policy.

In the event of insolvency, bankruptcy, refusal, or inability to pay, of any underlying insurer, the insurance afforded by this policy will not replace such **underlying insurance**, but will apply as if all the limits of any **underlying insurance** are fully available and collectible.

C. Cancellation

1. The first Named Insured shown in Item **1.** of the Declarations may cancel this policy by mailing or delivering to us advance written notice stating when the cancellation is to take effect.
2. We may cancel this policy. If we cancel because of non-payment of premium, we will mail or deliver to the first Named Insured not less than ten (10) days advance written notice when the cancellation is to take effect. If we cancel for any other reason, we will mail or deliver to the first Named Insured not less than ninety (90) days advance written notice stating the reason(s) for cancellation, as well as the date when the cancellation is to take effect. Mailing notice to the first Named Insured's mailing address shown in Item **2.** of the Declarations will be sufficient to prove notice.
3. The Policy Period will end on the day and hour shown in the cancellation notice.
4. If this policy is cancelled, the final premium will be calculated pro rata based on the time this policy was in force.
5. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter but the cancellation will be effective even if we have not made or offered any refund due the first Named Insured. Our check or our representative's check, mailed or delivered, will be sufficient tender of any refund due the first Named Insured.
6. The first Named Insured shown in Item **1.** of the Declarations will act on behalf of all other insureds with respect to the giving and receiving of notice of cancellation and the receipt of any premium refund that may become payable under this policy.

D. Maintenance of Underlying Insurance

During the Policy Period, you agree:

1. To keep the policies listed in the Schedule of Underlying Insurance in full force and effect;
2. That the Applicable Limits of insurance of the policies shown in the Schedule of Underlying Insurance will be maintained except for any reduction or exhaustion of limits by payment of claims or suits for **loss** covered by **underlying insurance**;
3. The policies listed in the Schedule of Underlying Insurance may not be canceled or nonrenewed by you without notifying us, and you agree to notify us as soon as practicable before the cancellation or nonrenewal effective date in the event an insurance company cancels or declines to renew any policy listed in the Schedule of Underlying Insurance; and

4. Renewals or replacements of the policies listed in the Schedule of Underlying Insurance will not be materially changed without our agreement.

If you fail to comply with these requirements, we will only be liable to the same extent that we would have been had you fully complied with these requirements.

E. Nonrenewal

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in Item 1. of the Declarations written notice of the nonrenewal not less than thirty (30) days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

F. Notice of Occurrence

1. You must see to it that we are notified as soon as practicable of an **occurrence** which may result in damages covered by this policy. To the extent possible, notice will include:
 - a. How, when and where the **occurrence** took place;
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any injury or damage arising out of the **occurrence**.
2. Knowledge of an **occurrence** by the agent, servant or employee of yours, shall not in itself constitute knowledge by the insured unless you or any **authorized person** receives such notice from the agent, servants or employee.
3. If a claim or suit against any insured is reasonably likely to involve this policy, you must notify us in writing as soon as practicable.
4. You and any other involved insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
 - b. Authorize us to obtain records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of the claim or suit; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this policy may also apply.
5. The insureds will not, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
6. Your failure to give notice of an **occurrence** to us shall not invalidate coverage under this policy if the **occurrence** was inadvertently reported to another insurer. However, you shall report any such **occurrence** to us as soon as practicable once you become aware of such error.

G. Other Insurance

If **other insurance** applies to damages that are also covered by this policy, this policy will apply excess of the **other insurance**. Nothing herein will be construed to make this policy subject to the terms, conditions and limitations of such **other insurance**. However, this provision will not apply if the **other insurance** is written to be excess of this policy.

Other insurance includes any type of self-insurance or other mechanism by which an insured arranges for funding of legal liabilities.

H. Terms Conformed to Statute

The terms of this policy which are in conflict with the statutes, laws, ordinances or regulations in any country, jurisdiction, state or province where this policy is issued are amended to conform to such statutes, laws, ordinances or regulations. If we are prevented by law or statute from paying on behalf of the insured, then we will, where permitted by law or statute, indemnify the insured.

I. Transfer of Rights of Recovery Against Others to Us

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The insured must do nothing after the **loss** to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

However, if any insured is required to waive their rights of recovery from others by a written contract or agreement executed before a **loss**, we agree to waive our rights of recovery to the extent required by the written contract or agreement. This waiver of rights will not be construed to be a waiver with respect to any other operations for which the insured has not waived their rights of recovery by contract.

2. Any amount recovered will be apportioned in the inverse order of payment of **loss** to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.

J. Unintentional Errors and Omissions

Any unintentional error or omission in the description of, or failure to describe completely, any premises or operations intended to be covered by this policy, shall not invalidate or affect the coverage for those operations or premises. However, the insured must report such error or omission to the company as soon as practicable after its discovery.

K. When Loss is Payable

Coverage under this policy will not apply unless and until the insured or the insured's underlying insurer has paid or is legally obligated to pay the full amount of the total Applicable Limits of **underlying insurance**.

When the amount of **loss** is determined by an agreed settlement or a final judgment against an insured obtained after an actual trial, we will promptly pay on behalf of the insured the amount of **loss** covered under the terms of this policy.

L. Audit of Books and Records

We may audit and examine your books and records as they relate to this policy at any time during the period of this policy and for up to three (3) years after the expiration or termination of this policy.

M. Changes

Notice to any agent or knowledge possessed by any agent or any other person will not effect a waiver or a change in any part of this policy. This policy can only be changed by a written endorsement that becomes a part of this policy.

N. First Named Insured

The person or organization first named in Item **1.** of the Declarations is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other insureds for the giving and receiving of notice of cancellation or any other notice required under this policy or by statute or regulation, for the receipt and acceptance of this policy and any endorsements forming a part of this policy, and for the receiving of any return premiums that become payable under this policy.

O. Inspection

We have the right, but are not obligated to inspect the insured's premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of the premises and operations and the premium to be charged. We may provide reports on the conditions we find. We may also recommend changes. While these reports may help reduce losses, we do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that the premises or operations are safe or healthful, or that they comply with laws, regulations, codes or standards.

P. Legal Action Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined by settlement with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a party in an action against you to determine your liability.

Q. Premium

The premium for this policy as stated in Item **5.** of the Declarations is a flat premium. It is not subject to adjustment unless an endorsement is attached to this policy.

R. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

1. As if each named insured were the only named insured; and
2. Separately to each insured against whom claim is made or suit is brought.

S. Transfer of Your Rights and Duties

Your rights and duties under this insurance may not be transferred without our written consent. If you die, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having temporary custody of your property will have your rights and duties but only with respect to that property.

T. Violation of Economic or Trade Sanctions

If coverage for a claim or suit under this policy is in violation of any economic or trade sanctions of the United States of America then coverage for that claim or suit will be null and void.

SECTION VI. DEFINITIONS

In this policy, words and phrases appearing in bold-face type have the definitions shown below:

- A. Authorized person** means any person who may receive notice of an **occurrence** or claim in **underlying insurance**.
- B. Hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.
- C. Loss** means those sums actually paid that the insured is legally obligated to pay as damages for the settlement or satisfaction of a claim because of injury or offense after making proper deductions for all recoveries and salvage. However,
1. **Loss** also includes defense expenses and supplementary payments if **underlying insurance** includes defense expenses and supplementary payments in the Limits of Insurance; and
 2. **Loss** does not include defense expenses and supplementary payments if **underlying insurance** does not include defense expenses and supplementary payments in the Limits of Insurance.
- D. Occurrence** means covered event as defined in **underlying insurance**.
- E. Other insurance** means a policy of insurance providing coverage that this policy also provides. **Other insurance** includes any type of self-insurance or other mechanisms by which an insured arranges for funding of legal liabilities.
- Other insurance** does not include **underlying insurance** or a policy of insurance specifically purchased to be excess of this policy providing coverage that this policy also provides.
- F. Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- G. Underlying insurance** means the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy. We will only be liable for amounts in excess of the Applicable Limits of insurance shown in the Schedule of Underlying Insurance for any **underlying insurance**.



MEMORANDUM

TO: The Honorable Mayor and Town Council
Madeline VanDenHoek, Town Manager

FROM: Rey Medina, Planner I

DATE: July 7, 2025

SUBJECT: **Introduction of Neighborhood Commercial District in Consideration of Gold Canyon Property and Other Similar Properties**

BACKGROUND.

The Town of Monument recently acquired the properties at 980 and 992 Gold Canyon Road. The Planning Department is evaluating the best use for the site, prioritizing the interests of the surrounding neighborhood. Prior to the Town's purchase, previous development proposals faced opposition from residents. While families in the area have expressed a preference for single-family homes, developers have shown limited interest in that type of project. In response, the Planning Department is proposing the introduction of a Neighborhood Commercial (NC) zoning district to the Town's land development code. This new zoning designation would allow neighborhood-friendly commercial uses compatible and serving residential areas.

Neighborhood Commercial (NC) zoning districts are typically intended to provide convenient goods, services, and amenities that directly support adjacent residential areas. These districts are designed to protect neighborhood character by limiting large-scale retail developments, such as "big box" stores, and encouraging smaller-scale, community-focused uses. Typically permitted commercial uses may include professional offices, bakeries/restaurants, financial institutions (banks), personal service establishments, and small-scale retail. Institutional use could include assisted living facilities, small childcare centers, and urgent care facilities.

The purpose of the proposed Neighborhood Commercial (NC) zoning is to ensure that development standards within the district remain compatible with those applied to single-family residential areas. This includes maintaining a minimum front yard setback of 25 feet, side yard setback of 7.5 feet, and rear yard setback of 25 feet. The maximum building height would remain at 30 feet. In addition, the Planning Department recommends requiring a 5-foot landscaped buffer between the public sidewalk and private property to provide appropriate separation and enhance neighborhood character.

This zoning approach offers a balanced framework for integrating neighborhood-friendly development while meeting community needs.

RECOMMENDATION.

Direct staff to refer this matter back to the Planning Commission for further review and a formal recommendation to the Town Council.

Enterprise Zones

Monument and Palmer Lake
El Paso County, Colorado

Legend

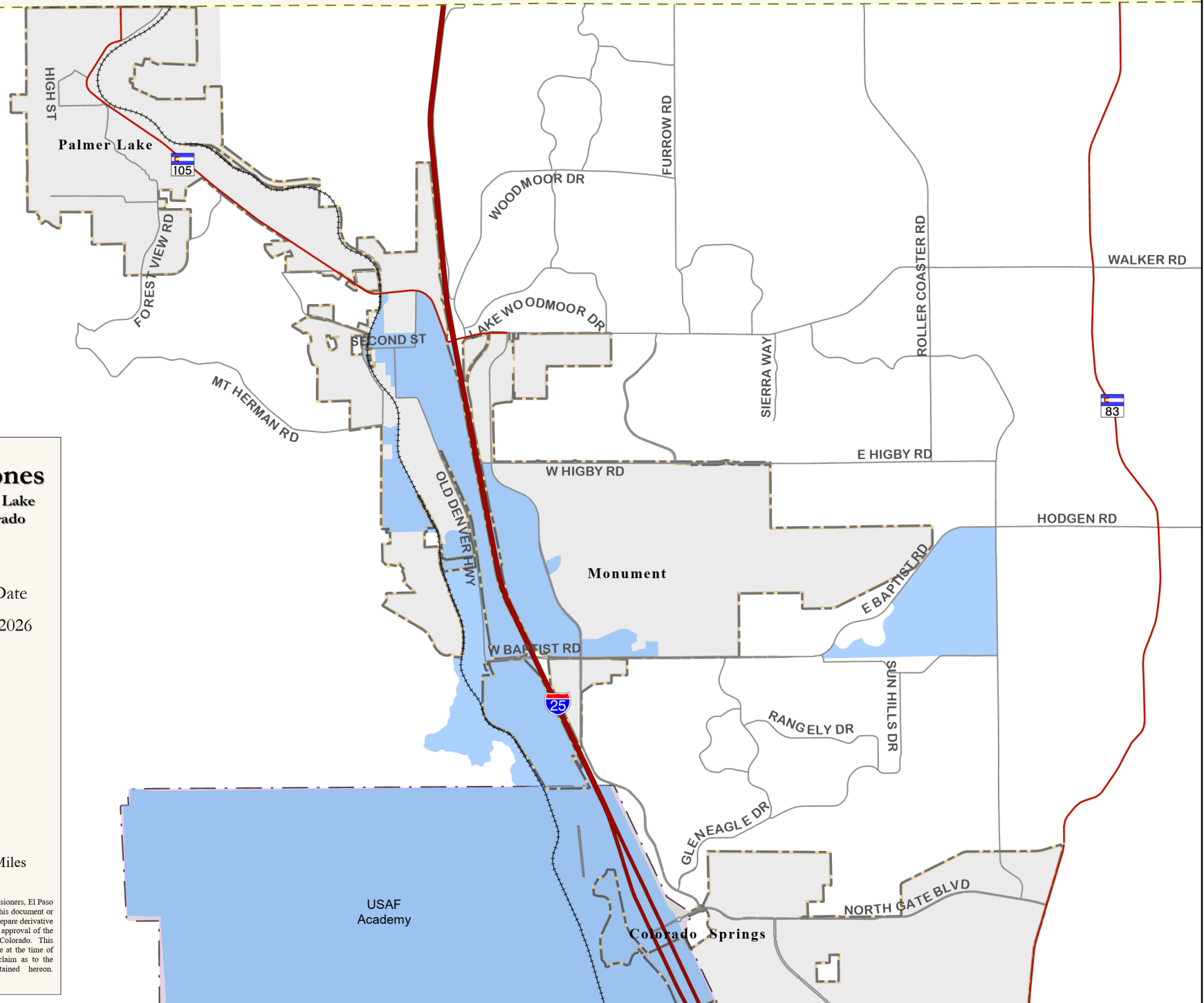
Proposed Effective Date

 1/1/2026



0 0.3 0.6
Miles
Scale 1:65,000

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Enterprise Zones

Monument and Palmer Lake
El Paso County, Colorado

Legend

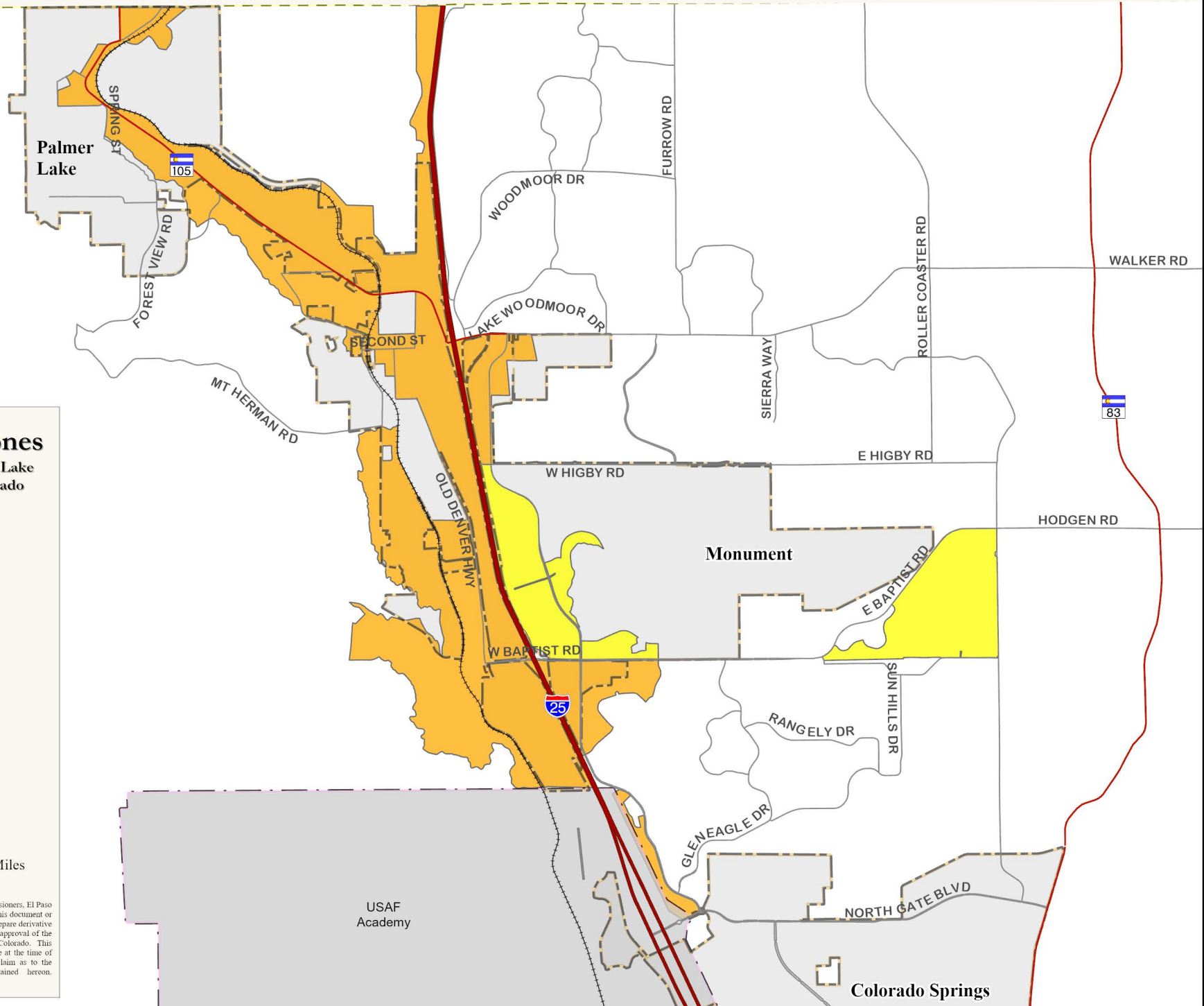
Effective Data

- 1/1/2016
- 6/21/2018
- 9/20/2018
- 8/20/2020
- 5/20/2021
- 8/25/2022
- 6/15/2023
- 7/1/2024



0 0.3 0.6 0.9 1.2
Miles
Scale 1:65,000

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July 7, 2025

Colorado Economic Development Commission
c/o Colorado Office of Economic Development and International Trade
1600 Broadway, Suite 2500
Denver, CO 80203

Dear Economic Development Commission Members,

It is my pleasure to write a letter in support of the Pikes Peak Enterprise Zone Boundary Amendment, as submitted by El Paso County to the Colorado Economic Development Commission.

The Town of Monument has put forth recommendations for census blocks to be included within the Pikes Peak Enterprise Zone boundaries, which would provide a mechanism in support of spurring economic development vitality in El Paso County's Census Tracts, which depict eligible criteria ratios of an undeserved economic distressed population within the Town of Monument. If such areas of recommendation are adopted by the Colorado Economic Development Commission, it would further incentivize new job creation and the attraction of new private investment on behalf of our community residents.

We anticipate the inclusion of this area will attract investment in this distressed area. There is potential for at least one of our community's non-profits to relocate to these areas, which would allow for a potential Enterprise Zone Contribution Project Capital Campaign. This opportunity will enable the non-profit organization to expand its capabilities and service with programming and facilities to some of our community's most vulnerable residents. Additionally, the inclusion of these underutilized properties will support existing and potential new commercial and retail growth and job creation.

We appreciate the partnership with El Paso County and thank you for your consideration to include these economically distressed areas in the Pikes Peak Enterprise Zone boundaries. Please contact me should you need additional information.

Thank you,

Mitch LaKind
Mayor
Town of Monument