

SECTION 00 52 43

AGREEMENT

THIS AGREEMENT, entered into as of the ____ day of _____, 2023, by and between the Town of Johnstown, a Colorado home rule municipal corporation (hereinafter called “Town” or “Owner”), and J-2 Contracting Company, a Colorado corporation (hereinafter called “Contractor”). This Agreement is referred to herein as either the “Agreement” or the “Contract”.

In consideration of the mutual covenants and obligations hereinafter set forth, it is agreed by and between the parties hereto as follows:

Article 1. Contract Documents. The Contract Documents consist of this Agreement, exhibits to this Agreement, the conditions of the Contract (General, Supplementary, and other conditions), the Drawings, Specifications, Notice of Award, Notice to Proceed, Contractor’s Bid, and Addenda issued prior to, and all modifications issued after execution of, this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement.

Article 2. Contractor’s Representations.

In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- a. Contractor has familiarized itself with the nature and extent of the Contract Documents, the Work, Site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- b. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.03 of the General Conditions.
- c. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- d. Contractor has given Owner written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.

Article 3. Assignment. It is understood that the Owner enters into this Agreement based on the special abilities and representations of the Contractor and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities, nor delegate any duties arising under this Agreement without the prior written consent of the Owner.

Article 4. Scope of Work. Contractor shall provide all necessary labor, supervision, equipment, tools, and materials. Contractor acknowledges it has reviewed and agrees to comply with the terms of this Agreement. The Work is generally described as follows:

Installing a new owner supplied generator, automatic transfer switch, electrical conduits and wiring, performing startup procedures, concrete generator slab foundation, concrete masonry unit (CMU) wall, CMU wall foundation; excavation, dewatering, and backfilling; grading; connections to existing facilities and facilities constructed by others; miscellaneous work and cleanup for the Johnstown Reservoir Pump Station Generator project.

Article 5. Time of Completion.

- a. Contractor shall commence the Work within seven (7) days after issuance of the Notice to Proceed (December 4th 2023) and shall achieve Substantial Completion of the Work within 180 calendar days following the Notice to Proceed (June 1st 2024). Final completion of the Work, evidenced by the Town's issuance of Notice of Construction Acceptance, shall be attained 180 days after Substantial Completion (December 4th 2024). Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto. Weather days that result in no work being performed by the Contractor, which are agreed to in writing by Owner or Engineer and set forth in a Change Order, shall be added to the 180 calendar days.

Liquidated Damages. The Town and the Contractor recognize that time is of the essence in this Contract and that the Town will suffer financial loss if the Work is not substantially complete within the time specified in paragraph above in addition to extensions, if any, allowed by the Town by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the Town if the Work is not substantially complete and then finally complete on time. Accordingly, rather than requiring any such proof, the Town and the Contractor agree that, as liquidated damages for delay (but not as a penalty), the Contractor shall pay the Town One Thousand Dollars (\$1,000.00) for each day that expires after the time specified in the paragraph above for Substantial Completion and then for final completion until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the Town for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. The Town may withhold all, or any part of, such liquidated damages from any payment due the Contractor.

Article 6. Contract Sum. The Owner shall pay Contractor for completion of the Work, in accordance with the Contract Documents, the unit price basis at the rates for the respective items on the Bid Schedule, attached as "Exhibit A". The total amount of the individual work items shall be: \$236,770.00.

Article 7. Payment Procedures. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Owner as provided in Article 14 of the General Conditions.

- a. Progress Payments. All progress payments will be on the basis of the progress of the Work as established in the Section 2.07 of the General Conditions and in the case of Unit Price Work, based on the number of units completed.
- b. Retainage. Owner shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:
 - (1) Retention of five percent (5%) of payments authorized until the Work is complete.
 - (2) Upon final completion and acceptance of the Work, all retained amounts will be released to Contractor under the terms and conditions governing final payment. Consent of the Surety shall be obtained before retainage is paid by Owner. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.
 - (3) Retainage shall apply to materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing upon which Contractor requests progress payment.
 - (4) Retainage withheld by the Owner shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship therefore.

Article 8. Hazardous Materials. The parties shall deal with hazardous materials and environmental conditions at the Site in accordance with Section 4.06 of the General Conditions.

Article 9. Performance Guarantee.

- a. The Contractor shall fully and faithfully comply with all terms of this Contract for the Work described herein and hereby guarantees the workmanship and materials for a period of two years, commencing on the date of the Owner and Town's final acceptance of the Work in the form of the Notice of Construction Acceptance. Contractor agrees to repair or replace, any workmanship or materials that become defective, within said two-year period, even though notice thereof may be given by the Owner after the issuance of the Notice of Construction Acceptance. Repairs or replacement shall be at the Contractor's sole cost and expense. The necessity of repairs or replacement is at the sole determination of the Owner.
- b. The Contractor shall fully and faithfully discharge the Contractor's obligation with respect to the Work during the installation and construction period and with respect to those that may arise as a result of the Contractor's two-year guaranty.
- c. The performance and completion of the warranty work are to be further guaranteed by Performance, Payment and Guarantee Bonds in an amount at least equal to the Contract Price, in the form and substance attached herewith.

Article 10. Owner's Representative. The Resident Project Representative (RPR) shall be

inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 18. Attorney Fees. If Contractor fails to comply with the terms and conditions of the Contract Documents and any judicial proceedings are brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

Article 19. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the Owner as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

Article 20. Complete Agreement; Amendment. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereunder and all prior negotiations, representations, understandings or agreements concerning the subject matter hereunder are hereby canceled. No modification, change or alteration of the Agreement shall be of any legal force or effect unless in writing, signed by all the parties hereto.

Article 21. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal, state and local laws that have been or may hereafter be established.

Article 22. Venue, Governing Law. The venue in any and all legal actions regarding or arising out of the Agreement covered herein shall be solely in the district court in and for the County of Weld, State of Colorado. This Agreement shall be governed by the laws of the State of Colorado.

Article 23. Partial Invalidity. If any provision of this Agreement is in violation of any statute or rule of law of the State of Colorado, then such provision shall be deemed null and void to the extent that they may be violative of law, but without invalidating the remaining provisions hereof.

Article 24. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument. This Contract is to be executed in quadruplicate.

Article 25. OSHA Requirements. Contractor agrees that it alone bears the responsibility for providing a safe and healthy work environment and shall provide its employees with adequate orientation and training to safely perform the scope of work set forth in this Contract. Contractor shall at all times comply with the safety and health regulations of the Occupational Safety and Health Act of 1970 (29CFR 1926) including all amendments and modifications thereto. In the event there is a conflict between the safety and health provisions of federal, state and local regulations, the more stringent provision shall prevail. Contractor acknowledges and agrees that with respect to the scope of Work under this Contract, it shall comply with all obligations and assume all responsibilities imposed upon the "controlling contractor" as such term is defined and construed under all OSHA rules and regulations. The Contractor shall adhere to all federal, state and local safety and health regulations, laws and ordinances.

Article 26. No Waiver of Governmental Immunity. The Owner, the Town of Johnstown, its elected officials, officers and employees are relying upon, and do not waive or intend to waive by any provision in this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. Sec. 24-10-101 et seq. as amended or otherwise available to the Town. Nothing herein shall operate as a waiver of any right the Town of Johnstown has of governmental immunity under Colorado law which is specifically herein reserved.

Article 27. Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

Article 28. Indemnification by Contractor. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities under by this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement. Expenses shall include all out-of-pocket expenses, attorney fees, expert costs and related litigation fees.

Article 29. Approval required. This Agreement is subject to the final approval of the Johnstown Town Council and signature by the Mayor of Johnstown.

Article 30. No Presumption. Each party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

Article 31. Miscellaneous.

- a. Capitalized terms used in this Contract defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

00 52 43 - 7

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

TOWN OF JOHNSTOWN

J-2 CONTRACTING COMPANY

Troy D. Mellon, Mayor

Title:_____

ATTEST:_____

ATTEST:_____

Hannah Hill, Town Clerk

Corporate Secretary

CONTRACTOR NOTARY BLOCK

STATE OF COLORADO)

)ss.

COUNTY OF

)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023
by _____ as _____ of J-2 Contracting Company.

My commission expires:

Witness my hand and official seal.

Notary Public

SECTION 00 73 00

SUPPLEMENTARY CONDITIONS

TABLE OF CONTENTS

Article 1 – Definitions 2
 SC-1.01 Defined Terms 2

Article 2 – Preliminary Matters 2
 SC-2.02 Copies of Documents 2

Article 4 – Availability of Lands; Subsurface and Physical Conditions; Reference Points 2
 SC-4.02 Subsurface and Physical Conditions 2
 SC-4.06 Hazardous Environmental Condition at Site 3

Article 5 – Bonds and Insurance 3
 SC-5.01 Performance, Payment and Other Bonds 3
 SC-5.02 Licensed Sureties and Insurers 3
 SC-5.04 Contractor’s Insurance 3
 SC-5.06 Property Insurance 4
 SC-5.07 Waiver of Rights 4
 SC-5.09 Acceptance of Bonds and Insurance; Option to Replace 4

Article 6 – Contractor’s Responsibilities 5
 SC-6.06 Concerning Subcontractors, Suppliers, and Others 5
 SC-6.08 Permits 5
 SC-6.17 Shop Drawings and Samples 5
 SC-6.20 Indemnification 5

Article 9 – Engineer’s Status During Construction 5
 SC-9.03 Project Representative 5

Article 10 – Changes In the Work; Claims 9
 SC-10.03 Execution of Change Orders 9
 SC-10.05 Claims 9

Article 12 – Change of Contract Price; Change of Contract Times 9
 SC-12.01 Change of Contract Price 9
 SC-12.03 Delays 10

Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work 11
 SC-13.07 Correction Period 11

Article 14 – Payments to Contractor and Completion 12
 SC-14.02 Payment for Materials 12
 SC-14.07 Final Payment 12

Article 16 – Dispute Resolution 12
 SC-16.01 Methods and Procedures 12

Article 17 – Miscellaneous 13

SECTION 00 73 00

SUPPLEMENTARY CONDITIONS

TABLE OF CONTENTS

SC-17.07 Addresses of Owner, Engineer, Contractor 13
SC-17.08 Cross-Referencing 13
SC-17.09 Claims for Consequential Damages..... 13

SECTION 00 73 00

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition). All provisions which are not so amended or supplemented remain in full force and effect. These Supplemental Conditions supersede the General Conditions.

The terms used in these Supplementary conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 1 – DEFINITIONS

SC-1.01A.19 Add the following sentence at the end of Paragraph 1.01.A.19:

The title of Architect as used in the Contract Documents refers to the Engineer.

SC-1.01A.27 Add a new Paragraph 1.01A.27.A:

27.A - Notice of Construction Acceptance – The written notice by the Owner to the Contractor that the Work is complete.

SC-1.01A.34 Add the following sentence at the end of Paragraph 1.01.A.34:

The Project Manual also includes the bidding requirements, Contract Forms, General Conditions of the Contract, Supplemental Conditions and Specifications.

SC-1.01A.50 Add the following sentence at the end of Paragraph 1.01.A.50:

Work shall also include the materials and equipment provided by Contractor or equipment as provided by Owner for installation by Contractor.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.01 Delete Paragraph 2.01 B. in its entirety and insert the following:

B. Evidence of Contractor's Insurance: When Contractor delivers the executed Agreement to Owner, Contractor shall also deliver to Owner copies of the policies of insurance (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Contractor in Article 6. Contractor may redact any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

SC-2.02A. Delete Paragraph 2.02A in its entirety and insert the following in its place:

Owner shall furnish to Contractor only electronic copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement). Additional printed copies of the conformed Contract Documents shall be furnished upon request at the cost of reproduction..

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

SC-4.06 Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

ARTICLE 5 – BONDS AND INSURANCE

SC-5.01 Amend Paragraph 5.01.A. as follows:

Replace “one year” with “two years.”

SC-5.01 Add the following new paragraph immediately after Paragraph 5.01.C:

- D. In addition to the performance bond specified in the General Conditions, Contractor shall furnish Labor and Material Payment Bonds and Insurance Certificates. Owner and Engineer reserve the right to reject surety providing performance and payment bonds or other bonds as specified in the Contract Documents. The Agreement shall not be executed until surety is acceptable to Owner and Engineer.

SC-5.02.A Delete Paragraph 5.02. A in its entirety and insert the following:

- A. All bonds and insurance required by the Contact Documents to be purchased and maintained by the Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Colorado and must be countersigned by an agent who is a resident of the State of Colorado and must be accompanied by a certified copy of the authority to act for the surety and authority to transact business in the State of Colorado. Excepting any Colorado public entity self-insurance pool, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better. Notwithstanding the foregoing, Contractor may obtain worker’s compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker’s compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide

worker's compensation insurance for similar projects by the state within the last 12 months.

SC-5.04 Add the following new paragraphs immediately after Paragraph 5.04.B:

C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

- a. State of Colorado Statutory
- b. Applicable Federal: Statutory
- c. Employer's Liability \$100,000 each accident
\$500,000 disease, policy limit
\$100,000 disease, each
employee

2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- a. General Aggregate \$2,000,000
- b. Products Completed
Operations Aggregate \$1,000,000
- c. Personal and Advertising
Injury \$500,000
- d. Each Occurrence
(Bodily Injury and
Property Damage) \$1,000,000
- e. Property Damage liability insurance will provide Explosion,
Collapse, and Under-ground coverages where applicable.
- f. Excess or Umbrella Liability
Bodily Injury and
Property Damage \$2,000,000
Retention \$10,000

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

a. Combined Single Limit of \$2,000,000

D. The Owner (Town of Johnstown), Engineer (J&T Consulting, Inc.), Owner's Material Testing Company (Cesare, Inc.), and property owners (as listed in the Drawings) shall be named as additional insureds.

SC-5.06.A Delete Paragraph 5.06.A in its entirety.

SC-5.06.B Delete Paragraph 5.06.B

SC-5.07.B.1 Delete subparagraph 5.07.B.1 in its entirety. SC-5.09.A Delete Paragraph 5.09.A in its entirety and insert the following in its place:

A. If the Owner has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the Owner shall so notify the Contractor in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.01.B. Contractor shall provide to the Owner such additional information in respect of insurance. If Contractor does not purchase or maintain all of the Bonds and insurance required of Contractor by the Contract Documents, Contractor shall notify the Owner 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. Without prejudice to any other right or remedy, the Owner may elect to obtain equivalent Bonds or insurance to protect the Owner's interests at the expense of the Contractor and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

SC-6.02 Add the following new paragraph immediately after Paragraph 6.02.B:

C. If Owner consents to Work outside regular working hours or on Saturdays, Sundays or legal holidays, Contractor shall be responsible for the cost of any overtime pay or other expense incurred by Owner, including but not limited to those for Engineer's services (including those of the Resident Project Representative, if any), occasioned by the performance of Work at such times. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 14.

SC-6.06 Add the following new paragraph immediately after Paragraph 6.06.G:

H. 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 a particular Subcontractor of Supplier.

SC-6.08 Add the following new paragraph immediately after Paragraph 6.08. A:

00 73 00 - 6

- B. Contractor shall coordinate with all agencies as required in the Special Conditions for any and all permits required to complete the Work.

SC-6.10 Delete Paragraph 6.10 in its entirety and insert the following in its place:

- A. All sales to Owner in its governmental capacity only shall be exempt from sales and use tax pursuant to Section 39-26-704, C.R.S. Contractor shall apply with the Department of Revenue, Sales Tax for an exemption certificate pursuant to and purchase the materials for incorporation in this Project tax-free pursuant to Section 39-26-708, C.R.S. 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.
- B. Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of cities and counties thereof on all materials to be incorporated into the Work.
 - 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 - 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-6.11.E Add the following new paragraph immediately after Paragraph 6.11.D:

- E. The responsibility for protection and safekeeping of equipment and materials on or near the Site is entirely that of Contractor, and no claim shall be made against Owner by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access to the sites occupied by stored materials and equipment, Contractor shall immediately move the same. No materials or equipment may be placed upon Owner's property until Owner has agreed to the location contemplated by the Contractor to be used for storage.

SC-6.13 Add the following new paragraph immediately after Paragraph 6.13.F:

- H. Contractor shall comply with all state and federal laws, rules and regulations regarding Coronavirus 2019 (COVID-19). To the extent of an ambiguity or inconsistency therein, Contractor shall notify Owner and, unless Owner provides specific direction, act in a manner reasonably consistent with the state and federal laws, rules and regulations.

SC-6.17 Delete paragraphs 6.17.A, B, C, D, and E in their entirety and replace with the following:

- A. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer shall record Engineer's time for reviewing subsequent submittals of Shop Drawings, Samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.
- B. In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

SC-6.20 Add the following new paragraph immediately after Paragraph 6.20.C:

- D. Governmental Immunities Act. The Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the Town, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

SC-9.03 Add the following new paragraphs immediately after Paragraph 9.03.A:

- B. The Resident Project Representative (RPR) shall be Owner’s representative at the Site and shall act as directed by and under the supervision of Owner, and Engineer regarding construction, inspection and observation. Where the Contract Documents require the Engineer to perform any act or function, this act or function shall be carried out by the RPR except when an interpretation of the Contract Documents, or a decision resolving claims is involved. RPR’s dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The RPR shall:
 - 1. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 - 2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 3. Liaison:
 - a. Serve as Engineer’s liaison with Contractor, working principally through Contractor’s authorized representative, assist in providing information regarding the intent of the Contract Documents.

- b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 4. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 5. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
- 6. Modifications: Consider and evaluate Contractor's suggestions and modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 7. Review of Work and Rejection of Defective Work:
 - a. Conduct on-site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 8. Inspections, Tests, and System Startups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
9. Records:
- a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - b. Maintain records for use in preparing Project documentation.
10. Reports:
- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
 - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
11. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer and Owner, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
12. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
13. Completion:
- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

- b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to the Engineer concerning acceptance and issuance of the Notice of Construction Acceptance.

C. The RPR shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
- 2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor’s superintendent.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work unless such advice or directions are specifically required by the Contract Documents.
- 5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 8. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

SC-10.03.A.4. Add the following new paragraph immediately after Paragraph 10.03.A.3:

- 4. At the time of execution of a Change Order or written amendment to the Agreement, Owner and Contractor expressly acknowledge that said Change Order or written amendment provides for a fair and equitable adjustment in Contract Price and/or Contract Time for the additions, deletions, or revisions in the Work as authorized by said Change Order or written amendment. Owner and Contractor further expressly

acknowledge that later claims for adjustments to the Contract Price and/or Contract Time associated with said Change Order or written amendment are not valid.

SC-10.05.G Add the following new paragraphs immediately after Paragraph 10.05.F:

- G. Should Contractor cause damage to the Work or property of any separate contractor or subcontractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against the Contractor, Owner, or Engineer, the Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by pursuing legal recourse.

Contractor shall to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner and/or Engineer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court or arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner and/or Engineer.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

SC-12.01.A Add the following language at the end of the last sentence of Paragraph 12.01A:

Changes in the Contract Price or Contract Time, which are agreed to by the parties by an appropriate, duly executed Change Order or written amendment to the Agreement shall constitute a full and final change or amendment to the Contract for any and all changes of which the Contractor is, or should have been, aware as of the date of the executed Change Order.

Accordingly, execution of a Change Order or written amendment to the Agreement by the Contractor shall constitute a waiver on the part of the Contractor of any further claims for changes in the Contract Price or Contract Time, which occurred or may have occurred up through the date of any executed Change Order or written amendment to the Agreement, whether such changes were expressly set forth in the executed change Order or not.

SC-12.03 Add the following new paragraph immediately after Paragraph 12.03.E.

- F. Time is an essential condition of the Contract. Should Contractor fail to achieve Substantial Completion and then final completion as set forth in the Agreement, Contractor shall pay to Owner, as liquidated damages and not as a penalty, the amounts set forth in the Agreement unless extensions of time granted by Owner expressly, waive liquidated damages in writing.

Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to sue for and

recover compensation for damages for nonperformance of this Contract within the time stipulated.

SC-12.03 Add the following new paragraph immediately after Paragraph 12.03.F:

- G. The Owner and Contractor are both aware that a substantial portion of the construction may be conducted during winter weather conditions, and that extremely variable and severe weather conditions are typical for the Site of the Work. The Contractor expressly agrees that the Contract Price is based on completion of the Work within the times specified in the Agreement and under weather conditions typically encountered during the contemplated construction period at the Site of the Work. For purposes of evaluating requests for extensions of time due to unusually severe weather conditions, the following conditions, and no others, will be considered unusually severe:
1. Precipitation exceeding the historical mean for the months of the construction period by more than one standard deviation;
 2. For winter construction, average temperature less than the historical mean for the months of the construction period by more than one standard deviation;
 3. For winter construction, number of days below freezing exceeding the historical mean for the months of the construction period by more than one standard deviation;
 4. Isolated abnormal weather occurrences of a severely destructive nature, which in fact, cause such destruction at the site of the Work.
 5. For the purpose of determining mean conditions, all available data contained in the records of the National Weather Service for reporting from, as well as data available from the State Climatologist for the same areas. The Contractor further agrees that should a request for time extension due to unusually severe weather conditions be made, the Contractor shall submit all necessary historical and detailed daily data during the construction period to support the claim.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.07.A In the first sentence, replace “one years” with “two years.”

SC-13.07 Add the following new paragraphs immediately after Paragraph 13.07.E:

- F. Nothing in the General Conditions concerning the correction period or otherwise shall establish a period of limitation with respect to any other obligation that Contractor has under the Contract Documents. The establishment of a time period relates only to the specific obligations of the Contractor to correct the

Work and has no relationship to the time within which the Contractor's obligations under the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than to specifically correct the Work.

- G. In Owner's discretion, a warranty inspection shall be held during the sixty (60) day period prior to the expiration of the two-year warranty period. Contractor shall provide an authorized representative at such inspection to represent Contractor's interests.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02.A.1 Add the following as the last sentence of subparagraph 14.02.A.1:

Payment for materials and equipment not incorporated in the Work, but delivered and suitably stored, shall be based only upon the actual cost of such materials to Contractor, and shall not include any overhead or profit to Contractor.

SC-14.02.A.3 Add the following as the last sentence of subparagraph 14.02.A.3:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the Contractor.

SC-14.02.C.1 Delete Paragraph 14.02.C.1 in its entirety and replaced with the following:

1. Thirty days after presentation of an Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

SC-14.02.D.3 Delete subparagraph 14.02.D.3 in its entirety and replace with the following:

3. Upon a subsequent determination that the Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1, as amended, and subject to interest as provided in the Agreement from the date of said determination, to the date of payment.

SC-14.04.B Add the following new subparagraph to Paragraph 14.04.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount

owed, then Owner may impose a reasonable set-off against payments due under Article 14.

SC-14.07.A.1 Modify the first sentence of 14.07.A.1 as follows:

After Contractor has, in the opinion of Engineer and Owner, satisfactorily....

SC-14.07.C.1 Delete subparagraph 14.07.C.1 in its entirety and replace with the following:

1. The Owner shall make final payment to the Contractor in accordance with Section 14.07 of the General Conditions, except final payment shall not be due until forty-five (45) days after Owner approval of the final Application for Payment, or unless final payment is subject to statutory retention for unresolved claims as provided by C.R.S. § 38-26-107.

ARTICLE 16 – DISPUTE RESOLUTION

SC-16.01 Delete Paragraph 16.01 A, B and C in their entirety and insert the following:

- A. In the event of any dispute or claim arising under or related to the Agreement, the parties agree to use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim, then the parties shall proceed to mediation as a condition precedent to litigation. If mediation is unsuccessful, the parties shall proceed to Weld County District Court. The Surety and any other party may be joined in the lawsuit following either party's written request therefore.

ARTICLE 17 – MISCELLANEOUS

SC-17.01.A Add the following new paragraph immediately after Paragraph 17.01.A.2:

3. Notwithstanding the foregoing, notice of routine matters may be delivered by electronic mail on the condition that the intended recipient of the electronic mail acknowledges receipt thereof.

SC-17.07 Add the following new paragraphs immediately after Paragraph 17.06:

- A. Owner is the Town of Johnstown. All notices, letters and communication directed to Owner shall be addressed and delivered to Matt LeCerf, who is designated representative (below), with a copy to J&T Consulting, Inc., Engineer.

Town of Johnstown
130 South Parish Avenue
Johnstown, CO 80534
Attention: Matt LeCerf, Town Manager

J&T Consulting, Inc.
J.C. York, P.E.
305 Denver Avenue, Suite D
Fort Lupton, CO 80621

- B. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by J&T Consulting, Inc. and their duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to address noted above.
- C. Owner may furnish a Resident Project Representative and assistants to aid Engineer in carrying out responsibilities at the Site. The duties, responsibilities, and limitations of authority of the Resident Project Representative are set forth in paragraph SC-9.03 of these Supplementary Conditions.
- D. The business addresses of Contractor given in the Agreement for the Work is hereby designated as the place to which all notices, letters, and other communication to Contractor will be delivered
- E. Either Owner, Contractor, or Engineer may change its address at any time by an instrument in writing delivered to the other parties.

SC-17.08 Add the following new paragraphs immediately after Paragraph 17.07:

The cross-referencing or specification sections referred to herein “”are intended as an aid to the Contractor and shall not relieve the Contractor from the Contractor’s responsibility to coordinate the Work under the Contract Documents. Listings of cross-references are not intended to be comprehensive. The omission of a cross-reference to an additional or related requirement shall not relieve the Contractor of his obligation to provide a complete Project.

SC-17.09 Claims for Consequential Damages. The Contractor waives Claims against the Owner for consequential damages arising out of or relating to the Contract. This waiver includes, but is not limited to damages incurred by the Contractor for principal and home office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work specifically performed.

SC-17.10 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.
- B. Contractor understands and agrees that any waiver granted by Owner or Engineer of any term or provision of the Contract shall not constitute a precedent. Neither the acceptance of the Work by Engineer or Owner nor the payment of all or part

of the sum due Contractor hereunder shall constitute a waiver by Owner of any claim Owner may have against Contractor.

SC-17.11 Appropriation.

- A. Pursuant to Section 24-91-103.6, C.R.S., as amended, Owner has appropriated the money necessary to fund the Project. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original contract amount, unless Owner provides written assurance to the Contractor that lawful appropriations have been made to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of the Contract.
- B. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of Owner payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Contract shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

SC-17.12 Colorado Public Works Act.

- A. Notwithstanding any other provision of the Contract, Owner may withhold funds if required to do so pursuant to the Colorado Public Works Act, Section 38-26-101, et seq., C.R.S.

END OF SECTION