

**SECTION 00 52 43**

**AGREEMENT – GUARANTEED MAXIMUM PRICE**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year 20\_\_\_\_ by and between the

TOWN OF JOHNSTOWN, COLORADO, a Colorado home rule municipal corporation,  
(hereinafter called TOWN) and

CONNELL RESOURCES, INC., a Colorado Corporation  
(hereinafter called CONTRACTOR)

TOWN and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**CENTRAL SEWER EXPANSION - PHASE 2**

**ARTICLE 2. ENGINEER**

The project has been designed by IMEG Corporation, a Delaware corporation ("IMEG), who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and have the rights and authority assigned to "ENGINEER" in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. Notwithstanding the foregoing, the Town, by and through the Town's Public Works Director, in its discretion, may assume certain of the duties and responsibilities of "ENGINEER" and have the rights and authority assigned to "ENGINEER" in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME**

3.1 The Work shall meet Substantial Completion no later than November 30, 2022 and shall be finally completed and ready for final payment by December 31, 2022

3.2 Liquidated Damages: TOWN and CONTRACTOR recognize that time is of the essence of this Agreement and that TOWN will suffer financial loss if the Work is not substantially complete within the time specified in Paragraph 3.1 above plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by TOWN if the Work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that, as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay TOWN Five Hundred Dollars (\$500.00) for each day that expires after the time specified in Paragraph 3.1 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 time specified in Paragraph 3.1 plus any proper extension thereof granted by TOWN, CONTRACTOR shall pay TOWN Five Hundred dollars (\$500) for each day that expires after the time specified in Paragraph 3.1 above for final completion and readiness for final payment.

## ARTICLE 4. CONTRACT PRICE

TOWN shall pay CONTRACTOR for completion of the Work in current funds in accordance with the Contract Documents.

For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit, for a Guaranteed Maximum Price of:

Ten Million Five Hundred Seventy-Seven Thousand Nine Hundred Ninety-Seven Dollars and One Cent (\$10,577,997.01)

## ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for payment will be processed by TOWN as provided in the General Conditions and Supplementary Conditions.

- 5.1 Progress Payments. TOWN shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.05 of the General Conditions (and in case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Conditions.
- 5.1.1 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 shall determine, or TOWN may withhold, in accordance with Paragraphs 15.01.C.5 and 15.01.C.6 of the General Conditions:
- a) 95% of Cost of Work completed (with the balance being retainage).
  - b) 95% of the cost of materials and equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to TOWN as provided in Paragraph 15.01.B.1 of the General Conditions (with the balance being retainage).
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, TOWN shall pay the retainage described above and the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 15.06, as amended by the Supplementary Conditions, and in accordance with the Colorado Public Works Act, § 38-26-101, *et seq.*, C.R.S.

## ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 15 of the General Conditions shall bear interest at the maximum rate of two percent (2%) per year.

## ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

- 7.2 CONTRACTOR has studied carefully all reports of explorations and test of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 5.03 of the General Conditions, if any, and accepts the determination set forth in Paragraph SC-5.03 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of 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 Paragraph 5.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 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 accurately locating said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of 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 Paragraph 5.04 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

#### ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between TOWN and CONTRACTOR concerning the Work, consist of the following:

- 8.1 This Agreement (Pages 00 52 43 – 1 to 00 52 43 - 9, inclusive).
- 8.2 [omitted]
- 8.3 Performance Bond, Payment Bond (aka Labor and Material Bond) consisting of 5 pages).
- 8.4 Notice of Award.
- 8.5 Notice to Proceed.
- 8.6 General Conditions (Pages 1 to 65, inclusive) being the Standard EJCDC General Conditions of the Construction Contract (2013 Edition).

8.7 Supplementary Conditions (Pages 1-1-22\_\_\_\_, inclusive).

8.8 Drawings and Specifications bearing the following title:

**PROJECT MANUAL FOR CENTRAL SEWER EXPANSION - PHASE 2 (Oct 21)  
CENTRAL SEWER EXPANSION - PHASE 2 PLANS (Issued for Pricing, 10/21/21)**

8.9 [Intentionally omitted]

8.10 CONTRACTOR's Bid, dated \_\_ Budget for Cost dated November 11 2021 (attached)

8.11 [omitted]

8.12 The following which may be delivered or issued after the Effective Date of the Agreement: All written amendments and other documents amending, modifying, or supplementing of the Contract Documents pursuant to Paragraph 11.01 of the General Conditions.

The documents listed in this Article 8 are attached to this Agreement (except as expressly noted otherwise above and except for those listed in Paragraph 8.12).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraph 11.01 of the General Conditions.

In case of discrepancy, the order of precedence of the following Contract Documents is as follows (i.e., the document with the lower numerical value shall govern over the documents with a higher value):

1. Change Orders
2. Agreement
3. Project Manual
4. Drawings – Central Sewer Expansion Phase 2 - Issued for Pricing 10,20,21
5. Supplementary Conditions
6. General Conditions
7. Geotechnical Report titled, Proposed Wastewater System Interceptor Central Alignment Overall by IMEG Corp dated August 20 2021.

**ARTICLE 9. COMPLIANCE WITH LAWS AND IMMIGRATION STATUS OBLIGATIONS.**

9.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work, including, without limitation, any preference for Colorado Labor as may be required pursuant to Article 17, of Title 8 of the Colorado Revised Statutes (the "Keep Jobs in Colorado Act"). Except where otherwise expressly required by applicable Laws and Regulations, neither TOWN nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

9.2 CONTRACTOR certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with a worker without authorization who will perform work under the public contract for services and that the CONTRACTOR will participate in the United States Government's E-Verify Program or the State of Colorado Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all

employees who are newly hired for employment to perform work under the public contract for services.

9.3 CONTRACTOR shall not:

1) Knowingly employ or contract with a worker without authorization to perform work under this Agreement; or

2) Enter into a contract with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under the public contract for services.

9.4 CONTRACTOR shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

9.5 CONTRACTOR is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

9.6 If CONTRACTOR obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with a worker without authorization, CONTRACTOR shall be required to:

1) Notify the subcontractor and the TOWN within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and

2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph 9.2 2) required the subcontractor does not stop employing or contracting with the worker without authorization; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

9.7 CONTRACTOR shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et seq., as amended from time to time.

9.8 If CONTRACTOR violates any of the provisions set forth in this section, the TOWN may terminate the Agreement and CONTRACTOR shall be liable for all actual and consequential damages incurred by the TOWN.

#### ARTICLE 10. MISCELLANEOUS

10.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

10.2 Reference to the General Conditions shall include modifications thereof by the Supplementary Conditions.

- 10.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies 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 that assignor from any duty or responsibility under the Contract Documents.
- 10.4 Except for the intended beneficiaries of the Labor and Material Payment Bond executed in conjunction with the Contract, nothing in the Contract shall be construed to give any rights or benefits by virtue of the Contract to anyone other than TOWN and CONTRACTOR, and all duties and responsibilities undertaken pursuant to the Contract will be for sole and exclusive benefit of TOWN and CONTRACTOR and not for the benefit of any other party.
- 10.5 TOWN and CONTRACTOR each binds itself, its successors, assigns and legal representatives to the other party hereto, its successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.6 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 TOWN 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.
- 10.7 The TOWN and CONTRACTOR acknowledge and agree that the payments hereunder shall constitute current expenditures of the TOWN payable in the fiscal years for which funds are appropriated for the payment thereof. The TOWN's obligations under the Contract shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the TOWN, or an obligation of the TOWN payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof, or payable from any funds of the TOWN other than funds appropriated for the payment of current expenditures. No provision of the Contract shall be construed to pledge or to create a lien on any class or source of TOWN monies, assets or properties.
- 10.8 To the extent this Contract may be construed to be a "sole source contract" within the meaning of sections 15 through 17 of Article XXVIII of the Colorado Constitution, and to the extent these constitutional provisions have not been enjoined or invalidated by a court of competent jurisdiction, the requirements and limitations of these constitutional provisions are hereby incorporated in this Contract, including the following:
- Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.



Address For Giving Notices:

TOWN:  
TOWN of JOHNSTOWN  
450 S. Parish Avenue  
JOHNSTOWN, CO 80534  
Att'n: Ellen Hilbig

CONTRACTOR:  
Connell Resources, Inc.  
7785 Highland Meadows Pkwy. Suite 100  
Fort Collins, CO 80528  
Attn: Bill Anderson



**SECTION 00 73 00**  
**SUPPLEMENTARY CONDITIONS**

CONDITIONS OF THE CONTRACT

These Supplementary Conditions amend or supplement *The Standard General Conditions of the Construction Contract* (2013 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented shall remain in full force and effect. If the provisions in the General Conditions are amended or supplemented as provided herein, the provisions in these Supplementary Conditions shall control.

**ARTICLE 1 - DEFINITIONS AND TERMINOLOGY**

**SC-1.01 Defined Terms**

- A. The terms used in these Supplementary Conditions which are defined in *The Standard General Conditions of the Construction Contract* (2013 Edition) have the meanings assigned to them in the General Conditions.
- B. Add the following definitions to ARTICLE-1, 1.01.A of the General Conditions

TOWN - The term TOWN as used in these Contract Documents shall have the same meaning as OWNER, and shall mean the TOWN of JOHNSTOWN, a home rule municipality of the State of Colorado.

PLANS – The term plans as used in these Contract Documents shall have the same meaning as Drawings.

PROVIDE – Furnish and install specified materials and equipment

PRODUCT – Includes materials, equipment and systems

**ARTICLE 2 – PRELIMINARY MATTERS**

**SC-2.01 Delivery of Bonds and Evidence of Insurance**

SC-2.01 Delete Paragraphs 2.01 B. and C. in their entirety and insert the following in their place:

- B. Evidence of Contractor's Insurance: When CONTRACTOR delivers the executed counterparts of the 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.
- C. Evidence of Owner's Insurance: After receipt from CONTRACTOR of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to CONTRACTOR copies of the policies of insurance to be provided by Owner under Article 6 (if any). Owner may redact any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

## **SC-2.02 Copies of Documents**

SC-2.02.A Replace the following language of Paragraph 2.02.A of the General Conditions:

- A. TOWN 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 will be furnished upon request at the cost of reproduction.

## **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### **SC-5.02 Use of Site and Other Areas**

Add Paragraph 5.02.E to the General Conditions to read as follows:

- 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 TOWN 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 property until property owner has agreed to the location contemplated by the CONTRACTOR to be used for storage.

### **SC-5.03 Subsurface and Physical Conditions**

Delete Paragraph 5.03.A of the General Conditions and insert the following:

- A. Geotechnical Report provided titled, Proposed Wastewater System Interceptor Central Alignment Overall by IMEG Corp dated August 20 2021.

### **SC-5.06 Hazardous Environmental Condition at Site**

SC-5.06.I Delete Paragraph 5.06.I of the General Conditions in its entirety.

## **ARTICLE 6 - BONDS AND INSURANCE**

### **SC-6.01 Performance, Payment and Other Bonds**

SC-6.01.A Delete 6.01.A in its entirety and insert the following in its place:

- 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 two years 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 or other specific provisions of the Contract.

## SC-6.02 Insurance—General Provisions

SC-6.02.B Delete 6.02.B in its entirety and insert the following in its place:

- 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. 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-6.03 Contractor's Liability Insurance

SC-6.03.E Delete 6.03.E in its entirety and insert the following in its place:

- 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. Excepting only industry-standard exclusions that are acceptable to Owner, the coverage afforded shall follow form as to each and every one of the underlying policies.

SC-6.03.H Delete 6.03.H in its entirety and insert the following in its place:

- 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 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. This insurance 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.

SC-6.03.K Add Paragraph 6.03.K to read as follows:

- K.** The limits of liability for the insurance required by Paragraph 6.03 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 6.03.A.1 and A.2 of the General Conditions:

State: Statutory

Federal, if applicable (e.g., Longshoreman's): Statutory

Jones Act coverage, if applicable:

Bodily injury by accident, each accident	\$ <u>Not Applicable</u>
Bodily injury by disease, aggregate	\$ <u>Not Applicable</u>

Employer's Liability:

Bodily injury, each accident	\$ <u>1,000,000</u>
Bodily injury by disease, each employee	\$ <u>1,000,000</u>
Bodily injury/disease aggregate	\$ <u>1,000,000</u>

For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:

	\$ <u>Not Applicable</u>
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Foreign voluntary worker compensation	<u>Statutory</u>
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2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate	\$ <u>2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>2,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>2,000,000</u>

3. Automobile Liability under Paragraph 6.03.D of the General Conditions:

Bodily Injury:

Each person	\$ <u>1,000,000</u>
Each accident	\$ <u>1,000,000</u>

Property Damage:

Each accident	\$ <u>2,000,000</u>
<i>[or]</i>	
Combined Single Limit of	\$ <u>2,000,000</u>

4. Excess or Umbrella Liability under Paragraphs 6.03.E of the General Conditions:

Per Occurrence	\$ <u>5,000,000</u>
General Aggregate	\$ <u>5,000,000</u>

5. Contractor's Pollution Liability under Paragraph 6.03.F of the General Conditions:

Each Occurrence	\$ <u>Not Applicable</u>
General Aggregate	\$ <u>Not Applicable</u>

If box is checked, Contractor is not required to provide Contractor's Pollution Liability insurance under this Contract

6. Additional Insureds: In addition to the other requirements in the General Conditions related to additional insureds, CONTRACTOR shall include all Subcontractors, the Owner, and the Engineering as additional insureds on the policy

7. Contractor's Professional Liability:

Each Claim	\$ <u>500,000</u>
Annual Aggregate	\$ <u>500,000</u>

### SC-6.05 Property Insurance

- SC-6.05.A Amend Paragraph 6.05.A as follows:

Remove the language from the paragraph: "Unless otherwise provided in the Supplementary Conditions."

- SC-6.05.A.2 Delete Paragraph 6.05.A.2 in its entirety and insert the following in its place:

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; hail; 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.

- SC-6.05.B Amend Paragraph 6.05.B as follows:

Replace "10 days" with "30 days."

## **SC-6.06 Waiver of Rights**

SC-6.06 Delete Paragraph 6.06 in its entirety and insert the following in its place:

- 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. CONTRACTOR waives all rights against Owner and its officers, employees and agents for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against 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. 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.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **SC-7.02 Labor; Working Hours**

SC-7.02.C Add Paragraph 7.02.C to read as follows:

- 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 15.

### **SC-7.07 Patent Fees and Royalties**

SC-7.07.B Delete Paragraph 7.07.B in its entirety.

### **SC-7.08 Permits**

Add the following language to the end of Paragraph 7.08.A of the General Conditions:

CONTRACTOR shall obtain and bear the cost of all permits by regulatory agencies to discharge groundwater to surface watercourses.

### **SC-7.09 Taxes**

Add the following language to Paragraph 7.09.A:

1. TOWN is exempt from Colorado State and TOWN of JOHNSTOWN sales and use taxes on materials to be permanently incorporated in the work. Said taxes shall not be included in the contract price.
2. CONTRACTOR and Subcontractors shall apply to the Colorado Department of Revenue for an exemption certificate and purchase the materials tax free (Section 39-26-114, CRS as amended). CONTRACTOR shall be liable for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates.”

### **SC-7.11 Record Documents**

Add the following language to the end of Paragraph 7.11.A:

At the direction of the TOWN, ENGINEER shall prepare a set of reproducible material and electronic copy of drawings of record clearly depicting those changes made during construction process, which will be delivered to the TOWN.

### **SC-7.12 Safety and Protection**

Add Paragraph 7.12.H to read as follows:

- 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-7.16 Shop Drawings and Samples**

Delete Paragraph 7.16.E.1 and substitute the following Paragraph:

- E.1.** ENGINEER will review and approve Shop Drawings and Samples in accordance with the Shop Drawings and Samples submittals accepted by ENGINEER as required by Paragraph 10.05 of the General Conditions. ENGINEER'S review and approval will be to determine if the items covered by the submittals will, after installation or incorporation into 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. The review and approval of separate items as such will not indicate approval of assembly in which the item functions. CONTRACTOR shall make corrections as required by ENGINEER, and shall return the required number of corrected copies of shop drawings and submit as required for 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.

## **ARTICLE 8 - OTHER WORK AT THE SITE**

SC-8.04 Add Section 8.04 to read as follows:

### **8.04 Damage to Work or Property**

- A. Should CONTRACTOR cause damage to the work or property of any separate contractor 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 CONTRACTOR, TOWN, ENGINEER or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law. CONTRACTOR shall, to fullest extent permitted by laws and regulations, indemnify and hold TOWN 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 and arbitration cost) arising directly, indirectly or consequently out of any action, legal or equitable, brought by any separate contractor against TOWN to the extent based on a claim arising out of CONTRACTOR'S performance of the work.
- B. Should a separate contractor cause damage to the work or property of CONTRACTOR or should the performance of work by any separate contractor at the site rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against TOWN or permit any action to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from TOWN on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of any other separate contractor, and TOWN and CONTRACTOR are unable to agree as the extent of any adjustment in Contract Time attributable thereto, CONTRACTOR may make a claim for an extension of time in accordance with Paragraph 11.05 of the General Conditions. An extension of the Contract Time shall be CONTRACTOR'S exclusive remedy with respect to TOWN and ENGINEER for any delay, disruption, interference or hindrance caused by any separate contractor. This Paragraph does not prevent recovery from TOWN or ENGINEER for activities that are their respective responsibilities.

## ARTICLE 10 - ENGINEER'S STATUS DURING CONSTRUCTION

### SC-10.03 Project Representation

Add the following to Paragraph 10.03 to read as follows:

- 10.03.A.1** TOWN may furnish a Resident Project Representative, assistants, and other field staff to assist TOWN and/or ENGINEER in observing the performance of the work of the CONTRACTOR.
- a. Resident Project Representative is TOWN's agent and will act as directed by and under the supervision of TOWN, and he/she will confer with ENGINEER regarding his/her actions. His/her dealings in matters pertaining to the on-site Work will, in general, be with TOWN and CONTRACTOR. His/her dealings with SUBCONTRACTORS will only be through or with the full knowledge and approval of CONTRACTOR. He/she shall generally communicate with the ENGINEER with the knowledge of and under the direction of TOWN.
- b. Duties and Responsibilities. Resident Project Representative may assist TOWN and ENGINEER as follows:
1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals, schedule of values and other schedules prepared by CONTRACTOR, and consult with ENGINEER concerning acceptability.



2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, other job conferences and other project related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
  - a. Serve as TOWN's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent, and assist him/her in understanding the intent of the Contract Documents. Assist ENGINEER in serving as TOWN's liaison with CONTRACTOR when CONTRACTOR's operations affect TOWN's on-site operations.
  - b. Assist in obtaining from TOWN additional details or information, when required for proper execution of the work.
4. Shop Drawings and Samples:
  - a. Record date of receipt of Shop Drawings and samples.
  - b. Receive samples which are furnished at the site by CONTRACTOR for ENGINEER's review, and notify ENGINEER of their availability for examination.
  - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been approved by ENGINEER.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
  - a. Conduct on-site observations of the Work in progress to assist TOWN in determining that the Work is proceeding in accordance with the Contract Documents.
  - b. Report to TOWN whenever he/she 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 inspections, tests or approvals required to be made; and advise TOWN when she/she believes Work should be corrected or rejected, or should be uncovered for observation, or requires special testing, inspection, or approval.
  - c. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in presence of the appropriate personnel, and that CONTRACTOR maintains adequate records thereof; observe, record, and report to ENGINEER and/or TOWN appropriate details relative to the test procedures and start-ups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to TOWN and/or ENGINEER.

6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarification and interpretation of the Contract Documents as issued by ENGINEER and/or TOWN.
7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modification in Drawings or Specifications and report with his recommendations to ENGINEER. Transmit to CONTRACTOR decisions issued by ENGINEER.
8. Records:
  - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings, and samples, reproductions or original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Agreement, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports and other Project related documents.
  - b. Keep a diary, daily report form, or log book, recording hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders, or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures; send copies to ENGINEER.
  - c. Record names, addresses, and telephone numbers of all CONTRACTORS, SUBCONTRACTORS and major suppliers of equipment and materials.
9. Reports:
  - a. Furnish ENGINEER and/or TOWN 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. Consult with the ENGINEER in advance of scheduled major tests, inspections, or start of important phases of the Work.
  - c. Draft proposed change Orders and work Directive Changes, obtaining backup material from CONTRACTOR and recommend to TOWN Change Orders, Work Directive Changes, and Field Orders.
  - d. Report immediately to ENGINEER and TOWN upon the occurrence of any accident.
10. Payment Requests:

Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER and/or TOWN, 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.

11. Completion:

- a. Before ENGINEER and/or TOWN issues a certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring correction or completion.
  - b. Conduct final inspection in the company of ENGINEER, TOWN, and CONTRACTOR and prepare a final list of items to be corrected or completed.
  - c. Observe that all items on final list have been corrected or completed, and make recommendations to ENGINEER and/or TOWN concerning acceptance.
- c. Limitation of Authority: Resident Project Representative shall not:
1. Authorize any deviations from the Contract Documents or accept any substitute materials or equipment, unless authorized by ENGINEER and/or TOWN.
  2. Exceed limitations of ENGINEER's authority as set forth in the contract documents.
  3. Undertake any of the responsibilities of CONTRACTOR, SUBCONTRACTORS, or CONTRACTOR's superintendent.
  4. Advise on, or issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures for construction, unless such is specifically called for in the Contract Documents.
  5. Advise on, or issue directions regarding, or assume control over safety precautions and programs in connection with the Work.
  6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
  7. Authorize TOWN to occupy the Work in whole or in part.
  8. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by ENGINEER and/or TOWN.

**SC-10.08.F Limitations on ENGINEER'S Authority and Responsibilities**

SC-10.08.F Add Section 10.08.F to read as follows:

- F. The authority and/or responsibilities of the ENGINEER pursuant to the provisions of the Contract Documents shall not create, impose or give rise to any duty owed by the

TOWN to the ENGINEER, nor shall the Agreement or Contract Documents impact, or otherwise limit the obligations and duties which the ENGINEER may owe to the TOWN.

## **ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **SC-15.01 Progress Payments**

SC-15.01.B Amend Paragraph 15.01.B.3 as follows:

Add the following language to the end of the Paragraph: "No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the CONTRACTOR."

SC-15.01.D Amend Paragraph 15.01.D.1 as follows:

Replace "Ten days" with "Thirty days" in the first sentence in the paragraph.

### **SC-15.03 Substantial Completion**

SC 15.03.B Add the following new subparagraph to Paragraph 15.03.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 15.

### **SC-15.06 Final Payment**

SC-15.06A Modify the first sentence of 15.06.A.1 as follows:

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

SC-15.06.D Delete Paragraph 15.06.D of the General Conditions in its entirety and replace with the following paragraph in its place:

Upon receipt of the ENGINEER'S recommendation for payment and the final Application for Payment, TOWN shall order the publication of notice of final settlement and make final payment in accordance with Section 38-26-107, C.R.S.

### **SC-15.08 Correction Period**

SC-15.08A Delete Paragraph 15.08A in its entirety and insert the following in its place:

- A. If within two years 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.

SC-15.08F Add Paragraph 15.08.F to read as follows:

- F. 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.

#### **SC-15.09 Evidence of Amounts Paid**

SC-15.09 Add the following paragraph to Article 15:

Upon written request, TOWN may furnish to any such SUBCONTRACTOR, Supplier or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR in accordance with CONTRACTOR'S Applications for Payment.

### **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

#### **SC-16.03 Owner May Terminate for Convenience**

Delete Section 16.03 in its entirety and substitute the following Sections 16.03.A, 16.03.B, 16.03.C, 16.03.D in its place:

- A.** The TOWN may terminate the performance of Work under the Contract Documents in accordance with this section, in whole, or from time to time in part, whenever the TOWN shall determine that such termination is in the best interest of the TOWN. Any such termination shall be affected by delivery of a written notice of termination to the CONTRACTOR specifying the extent to which performance of Work under Contract is terminated and the date upon which termination becomes effective.
- B.** After receipt of a notice of termination, and except as otherwise directed by TOWN, the CONTRACTOR shall:
- 1) Stop work under the Contract on the date and to the extent specified in the notice of termination.
  - 2) Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of work under contract which is not terminated.
  - 3) Terminate all Work orders and Subcontractors to the extent that they relate to the performance of Work terminated by notice of termination.
  - 4) Assign to the TOWN, in the manner, at the times, and to the extent directed by the TOWN, all of the right, title, and interest of the CONTRACTOR under the orders and subcontractors so terminated. The TOWN shall have the rights, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontractors.
  - 5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontractors, with the approval or ratification of the TOWN to

the extent the TOWN may require. The TOWN's approval or ratification shall be final for all purposes of this clause.

- 6) Transfer to the TOWN, and deliver in the manner, at the times, and to the extent, if any directed by the TOWN, (I) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with performance of, the work terminated by the Notice of Termination, and (II) the completed or partially completed plans, drawings, information, and other property which, if the Project had been completed would have been required to be furnished to the TOWN.
- 7) Use CONTRACTOR'S best efforts to sell, in the manner, at all times, to the extent, and at the price or prices that the TOWN directs or authorizes, any property of the types referred to above in this clause, but the CONTRACTOR (i) shall not be required to extend credit to any purchaser; and (ii) may acquire any such property under the conditions prescribed and at price or prices approved by the TOWN. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made TOWN to the CONTRACTOR under the Contract Documents or shall otherwise be credited to the price or cost of the Work covered by the Contract Documents or paid in such other manner as the TOWN may direct.
- 8) Complete performance of such part of the Work as shall not have been terminated by the notice of termination.
- 9) Take such action as may be necessary, or as TOWN may direct, for the protection and preservation of the property related to the Project which is in the possession of the CONTRACTOR and in which the TOWN has or may acquire an interest.

C. After receipt of notice of termination, 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.

D. 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.

## **ARTICLE 18 – MISCELLANEOUS**

### **SC-18.01 Giving Notice**

Add Paragraph 18.01.B to read as follows:

- B. 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-18.05 No Waiver**

Add Paragraph 18.05.B to read as follows:

- B. CONTRACTOR understands and agrees that any waiver granted by Engineer or Owner 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-18.09 Venue**

Add Paragraph 18.09 to read as follows:

- A. Venue for any legal proceeding shall be in the County of Weld, State of Colorado.

#### **SC-18.10 Appropriation**

Add Paragraph 18.10 to read as follows:

- A. Pursuant to Section 24-91-103.6, C.R.S., as amended, Owner has appropriated the money necessary to fund the Project. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original contract amount, unless Owner provides written assurance to the 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-18.11 Independent Contractor**

Add Paragraph 18.11 to read as follows:

- A. CONTRACTOR understands and agrees that CONTRACTOR is an independent CONTRACTOR and not an employee of Owner. Owner shall not provide benefits of any kind to CONTRACTOR. Owner 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 OWNER. 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 Owner, CONTRACTOR may engage in any other lawful business activities during the term of this Contract.

#### **SC-18.12 Governmental Immunity**

Add Paragraph 18.12 to read as follows:

- A. The Parties hereto understand and agree that TOWN is relying on, and does not waive or intend to waive by any provision of the Contract, the maximum monetary limitations on recovery of judgments or damages, or any other rights, immunities, limitations, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to TOWN, its officers or its

employees. No term or condition of the Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability or other provisions of the Colorado Governmental Immunity Act or any other applicable law.

**SC-18.13 Arbitration**

Add Paragraph 18.13 to read as follows:

- A. Notwithstanding any provision in the Contract Documents to the contrary, the Owner shall have the sole right to determine whether to submit a dispute or other matters to arbitration. It shall be otherwise presumed that all disputes and matters shall be resolved by a court of competent jurisdiction.

**SC-18.14 Colorado Public Works Act**

Add Paragraph 18.14 to read as follows:

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

**SC- 18.15 Colorado Labor**

Add Paragraph 18.15 to read as follows:

- A. Pursuant to Title 8, Article 17, C.R.S., CONTRACTOR agrees, except as otherwise waived by Owner, to employ Colorado labor to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed under the Contract. "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, age, or religion except when sex, gender, or age is a bona fide occupational qualification.

**SC-18.16 Costs and Attorney Fees**

Add Paragraph 18.16 to read as follows:

- A. In the event Owner commences litigation to enforce the provisions of the Contract against CONTRACTOR and is the prevailing party, Owner shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses.

**SC-18.17 No Presumption**

Add Paragraph 18.17 to read as follows:

- A. Each party acknowledges that it has carefully read and reviewed the terms of the Contract. Each party acknowledges that the entry into and execution of the Contract 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 the Contract and with respect to all matters set forth herein. The parties agree that the Contract 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.

**END OF SUPPLEMENTARY CONDITIONS**