

**2024 Fence and Gate Installation Project  
Minturn Water Plant**

This Agreement is made as of the \_\_\_\_\_ day of June 2024 between the "Owner":

Town of Minturn  
302 Pine Street  
PO Box 309  
Minturn, CO 81645

And the "Contractor":

Strategic Fence & Wall Company  
PO Box 9376  
1905 Airport Rd Unit A  
Breckenridge, CO 80424  
P: 970-547-9292

A Colorado (Corporation); (Partnership); (Sole Proprietorship); (other) \_\_\_\_\_

The Project is:

2024 Fence and Gate Installation Project  
Minturn Water Plant  
1931 Highway 24  
Minturn CO 81645

The Owner and Contractor agree as follows:

**ARTICLE 1 – CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, the other documents listed herein, and Change Orders issued after execution of this Agreement; these form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract forms the entire agreement between the Owner and the Contractor and supersedes any prior discussions, negotiations, or agreements, oral or written. The Contract Documents, except for Change Orders, include the following:

- 1.1 This Agreement.
- 1.2 Supplementary Conditions dated May 17, 2024 attached as Exhibit "A".
- 1.3 Contractor's Completed Bid Proposal and Schedule of Values – attached as Exhibit "B."
- 1.4 Contractor's Construction Schedule dated XXX – attached as Exhibit "C".
- 1.5 Contractors Certificate of Insurance attached as Exhibit "E."
- 1.6 Lien Waiver forms attached as Exhibit "F."
- 1.7 Prospective Contractors Certificate Regarding Employing or Contracting with Illegal Aliens attached as Exhibit "G."
- 1.8 Resolution 09-2021 Town of Minturn Procurement Policy attached as Exhibit "H".

**ARTICLE 2 – SCOPE OF WORK**

- 2.1 The Contractor shall, in accordance with the Contract documents, using the Contractor's best skill and attention, furnish all necessary supervision, labor, materials, permits, supplies, equipment, tools, testing, general conditions, and any other act or thing required to diligently and fully perform and complete the Scope of Work referenced in Proposal dated 5.17.24:

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

- a. Prepare and install according to industry standards: 280 linear feet of 6' tall Commercial Chain Link Fence and 1 Double-Swing Gate in locations indicated in the proposal attached as Exhibit "B."
- b. Fence construction consists of:
  - 2-7/8" Schedule 40 galvanized steel corner and end posts, set 30" in concrete
  - 2-3/8" Schedule 40 galvanized steel line posts, set 24" in concrete
  - 1-5/8" Schedule 20 galvanized steel top and bottom rail
  - 6' tall, 11 Gauge galvanized steel fabric
- c. Gate construction consists of:
  - 4" Schedule 40 galvanized steel posts, set in 30" concrete
  - 16' wide Double Swing galvanized steel chain link gate
  - Liftmaster LA500 operator (master & slave arms) with 7AH Batteries
  - Liftmaster KPW 250 wireless keypad
  - Fire Box and Knox key switch (permit by owner)
  - 72" gooseneck stand for keypad and fire box
  - Free exit puck with 100' lead.
  - Install gate 2' above grade and add a chain link skirt that can be raised and lowered.
  - Install two (2) bollards at keypad (bollards to be provided by Town of Minturn, Strategic fence to set them in concrete.
- d. Permanent power consists of:
  - Tower Electric to provide and install one (1) 20-amp circuit to power auto-gate
  - Tower Electric to provide and install conduit from existing panel to new J-box and attached to existing 2" conduit.
  - Tower Electric to provide splice at ground box into existing conduit close to auto-gate tie-in
  - Tower Electric to provide and install Liftmaster Proximity Card Read and six (6) cards

- 2.2 **DAILY CLEAN-UP** will be performed for debris created by the Contractor and its Sub-Contractors to dumpsters provided by Contractor. Trash removal and site clean-up is included in Contract Amount. The Work of this Contract will be completed in segments as noted below. A separate Notice to Proceed will be issued for each building included in that segment of Work. Should the Contractor proceed with Work without the Owners prior, written authorization, it shall be at the sole expense, and risk of the Contractor.
- 2.3 The Owner shall provide and pay for all electric power reasonably required for the Work.
- 2.4 The Contractor shall provide and maintain on-site sanitary toilets and drinking water for the duration of the Work and is included in the Contract Amount. Sanitary toilets shall be removed upon completion of Work.
- 2.5 The Work of this contract includes all Work shown, called for, or that can be reasonably inferred from the Contract Documents.
- 2.6 There will be NO Change Orders unless the scope of the Work changes. PRIOR, WRITTEN authorization by the Owner is required prior to the Contractor proceeding with any additional Work. Should the Contractor proceed with additional Work without the Owners prior, written authorization, it shall be at the sole expense, and risk of the Contractor.
- 2.7 All Work shall be constructed and installed in accordance with Contractor's standard and/or in compliance with state and local codes. All Work shall meet Owner and Municipal approval and is subject to inspections by their representatives at all times.
- 2.8 Alternates to the Contract:

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

- a. Additional Liftmaster Proximity Card Reader Cards are \$10 each
- 2.5 Exclusions:
  - a. Permits

**ARTICLE 3 – CONTRACT LUMP SUM**

3.1 The Owner shall pay the Contractor, subject to the terms and conditions of these Contract Documents, the following Lump Sum Prices:

**The Total Lump Sum Amount for all Work under this agreement shall be:**

<b>Fifty Five Thousand Eight Hundred Ninety Dollars</b>	<b>(\$55,890.00)</b>
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- 3.2 The Contractor warrants that this Contract Lump Sum is based upon the materials and equipment specified in the Contract Documents, and that the Contractor contemplated no substitution of any materials or equipment in establishing the Contract Sum, except as may be specifically recited in this Contract.
- 3.3 The Contractor is not required to provide a separate Contract Performance Bond and a Contract Payment Bond for the Work.
- 3.4 Sales tax is to be excluded from the Contract Lump Sum. Owner is a tax-exempt entity.
- 3.5 The cost of all temporary housing required by the Contractor is included in the Contract Lump Sum.

**ARTICLE 4 – ADDITIONAL PROVISIONS**

- 4.1 The Contractor shall provide a competent Foreman to manage and supervise Contractor’s employees, subcontractors, and material suppliers, and to coordinate all activities of the Contractor with that of others. The Foreman is to provide appropriate supervision at all times Work is proceeding.
- 4.2 The Contractor shall staff the project with adequate quantities of skilled labor as required to maintain the project Schedule. Should the Contractor fall behind Schedule, the Contractor shall, at no additional cost to the Owner, provide additional Workers and/or work additional hours to get Work back on Schedule. Should the Contractor fail to re-establish the Schedule by providing additional Workers and or hours, Owner may supplement Contractors Work force. All costs incurred for supplemental Workers will be at the Contractor’s expense. In addition, a penalty of \$500.00 per day shall be assessed for liquidated damages if the Contractor does not have final completion of the Work by \_\_\_\_\_.
- 4.3 The Work hours for this project are 8:00 AM to 6:00 PM, Monday through Saturday, unless otherwise approved by the Owner.
- 4.4 The Owner’s Representative shall be Inter-Mountain Engineering represented by Jeffery Spanel. The Owner’s Representative shall have authority to approve and execute by signature applications for payment, change orders, and any other matters requiring decisions and subsequent approval and execution by signature.
- 4.5 This Contract is between Owner and “Contractor.” Contractor shall coordinate and schedule of all the Work with the Owner’s Representative. No direction shall be taken from other site personnel, Contractor’s, or Sub-Contractor’s. All communications are to be directed through the Owner’s Representative. This includes but is not limited to clarifications or interpretations of the Contract Documents, suggested modifications, submittals, Change Orders, and requests for payment.
- 4.6 All property shall be protected from damage. Property damaged by the Contractor during the construction of the Work shall be repaired or replaced and left in as good a condition as found at the expense of the Contractor.
- 4.7 All Work and activities in or around the existing utilities shall be coordinated by the Contractor with the appropriate utility company. Contractor responsible to install all utilities per local, state, and utility company specifications. Contractor is responsible for all associated costs for correcting any non-code compliant or improper installations performed by Contractor.
- 4.8 Safety is the responsibility of the Contractor. The Contractor is responsible for compliance with any and all regulations pertaining thereto. Hard hats and other required safety equipment must be worn at all times – no exceptions. Full compliance with all OSHA rules and regulations is mandatory. The Contractor shall have an OSHA-competent representative on the job site at all times the Contractor is proceeding

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

- with the Work. Contractor shall indemnify the Owner against any and all fines, penalties, legal fees, or other costs resulting from the Contractor’s failure to comply with such rules and regulations.
- 4.9 In the event the Contractor’s insurance or safety consultant inspects or visits the job site:
    - a. The Owner shall be provided with written notice 24 hours in advance.
    - b. The Owner shall accompany the safety consultant on their job site inspection.
    - c. The Owner shall be immediately advised in writing of any unsafe conditions that need to be abated.
  - 4.10 The Contractor shall only install their Work over proper substrates. Contractor shall notify the Owner immediately, and in writing, of any improper substrates to allow for remedial Work. Any costs resulting from the placement of Contractors Work over improper substrates shall be borne solely by the Contractor.
  - 4.11 Prior to moving any hazardous materials on the job site, the Contractor shall forward Material Safety Data Sheets (MSDS) to the Owner. Contractor is responsible for handling, use and disposal of hazardous materials in accordance with all applicable regulations.
  - 4.12 Contractor shall provide daily cleanup of Contractors trash and debris to an on-site container provided by Contractor.
  - 4.13 Contractor shall comply with all laws and regulations of the “Immigration and Naturalization Service” (INS). Contractor shall indemnify the Owner against any and all fines, legal fees, or other costs resulting from failure to comply with regulations.
  - 4.14 Nothing contained in this Agreement shall be construed to have a meaning that would infer that the owner would accept any Work of inferior quality, Work that does not meet the requirements of the Contract Documents, or industry standards. All Work will need to be accepted by the Owner and Architect prior to final payment.
  - 4.15 Owner reserves the right to withhold payment until the Contractor provides receives valid certificates of insurance as required in the Supplementary Conditions.
  - 4.16 Should either party employ an attorney to institute suit or demand arbitration to enforce any provision of the Contract, to protect its interests in any manner arising under this Contract, or to recover on a surety bond furnished by a party to this Contract, the prevailing party shall be entitled to recover its reasonable attorney’s fees, costs, charges and expenses expended or incurred therein.

**SIGNATURES**

IN WITNESS WHEREOF, the parties have executed this Contract Agreement by their proper officers or duly authorized agents.

CONTRACTOR:

OWNER:

\_\_\_\_\_

Town of Minturn

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

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

Print Name/Title: \_\_\_\_\_

Michelle Meteer, Town Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor Federal ID# \_\_\_\_\_

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

# supplementary conditions

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## Exhibit A

### **2024 Fence and Gate Installation Project**

### **Minturn Water Plant**

**March 28, 2024**

The following Supplementary Conditions are attached to and made a part of the Contract between \_\_\_\_\_ (Contractor) and The Town of Minturn, Colorado, (Owner) for the **2024 Fence and Gate Installation Project; Minturn Water Plant**, 1931 Highway 24, Minturn Colorado 81645. In the event any provision of these Supplementary Conditions conflicts with any provision of any other Contract Document, the provisions of these Supplementary Conditions shall govern.

#### **ARTICLE 1 - GENERAL PROVISIONS**

##### **1.1 Scope of Work**

- a. The Contractor is required to examine carefully the site of the proposed Work, Proposal, and Plans and Specifications. They shall satisfy themselves as to the character, quality, and quantities of the Work to be performed, materials to be furnished, and as to the requirements of the specifications. The Contractor's signature on this agreement shall be evidence that the Contractor has made such an examination and constitutes an indisputable representation by the Contractor that the Contract Documents are sufficient in scope and detail to indicate and convey all of the terms and conditions for the performance of the Work.
- b. Owner may appoint a Resident Project Representative to assist in observing the performance of the work. The Resident Project Representative will provide the Owner with a greater degree of assurance that the Contractor is complying with the requirements of this Agreement. Actions or Inactions of the Resident Project Representative in no way limit the Contractors responsibility to provide his work in accordance with the Contract Documents.
- c. The Contract Documents are intended to fully describe the Work of this Contract. The Contractor shall include in the Contract Amount all items that can be reasonably inferred as required to provide the completed product.
- d. Nothing contained in the Contract Documents shall be construed to have a meaning that would infer that the Owner would accept any Work of inferior quality, Work that does not meet the requirements of the Contract Documents, or industry standards.

#### **ARTICLE 2 - OWNER**

##### **2.1 Owner's Project Representative**

- a. The Owner's Representative shall be Inter-Mountain Engineering represented by Jeffery Spanel. The Owner's Representative shall have authority to approve and execute by signature, applications for payment, change orders, and any other matters requiring decisions and subsequent approval and execution by signature.
- b. Owner may appoint a Resident Project Representative to assist in observing the performance of the work. The Resident Project Representative will provide the Owner with a greater degree of assurance that the Contractor is complying with the requirements of this Agreement. Actions or Inactions of the Resident Project Representative in no way limit the Contractors responsibility to provide his work in accordance with the Contract Documents.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

- c. Representative will assist Owner in observing the performance of the Work. Observations by the Representative will provide the Owner a greater degree of assurance that the Contractor is complying with the requirements of this Agreement. Actions or inactions of the Representative in no way limit the Contractor's responsibility to provide Work in accordance with the Contract Documents.
- d. The Owner's Representative has no responsibility, duty, or authority for guaranteeing, warranting, directing, or superintending the Contractor's Work methods, safety of the jobsite, processes, failure to carry out the Work in accordance with contract requirements, timeliness in performance of the Work or any other aspect of construction for which the Contractor has responsibility.

**2.2 Communications**

- a. All communications are to be directed through the Owner's Representative. This includes, but is not limited to: clarifications or interpretations of the Contract Documents, suggested modifications, submittals, Change Orders, and requests for payment.
- b. No deviations from the Contract Documents shall be made without prior, written authorization of the Owner.

**ARTICLE 3 -CONTRACTOR**

**3.1 Labor & Materials**

- a. Contractor shall base its price upon the use of items specifically named in the Contract Documents. No changes or substitutions will be considered after the execution of the Contract except those that, in the sole opinion of the Owner, will result in an improvement to the original scope of the Project, a savings to the Owner, or both. The Owner may consider substitutions required due to availability. The Owner must approve all proposed changes or substitutions, in advance, and in writing.

**3.2 Materials Furnished by Owner**

- a. The Owner shall furnish no labor, no equipment, and no materials to the Contractor. It is the intention of this Contract to require the Contractor to furnish all labor, materials, and equipment necessary for the complete construction of the Scope of Work defined in the Contract Documents.

**3.3 Project Management**

- a. The Contractor shall provide appropriate and adequate supervision on the site at all times that Work is in progress.

**3.4 Character of Workers**

- a. Only competent Workers shall be employed in the performance of the Work. Should the Owner, in his sole opinion, feel that a Worker is incompetent, unfaithful, disorderly, or otherwise unsatisfactory; such Worker shall be removed from the project and shall not return to the site without the specific written consent of the Owner.

**3.5 Construction Limits, Storage, and Deliveries**

- a. Prior to commencing Work, the Contractor shall meet with the Owner and determine the limits of construction for that particular segment of Work. The Contractor shall confine operations within the limits of construction agreed to at that meeting.
- b. Site offices, Workshops, storage facilities, etc. shall be located only in locations approved by the Owner
- c. The Contractor shall be responsible for the security of all stored materials.
- d. The Contractor is responsible for any off-site storage required for their operations, if required.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

**3.6 Protection of Public and Private Property**

- a. All property shall be protected from damage. Property damaged by the Contractor during the construction of the Work shall be repaired or replaced, and left in as good condition as found the start of construction at the sole expense of the Contractor.

**3.7 Safety**

- a. Safety is the sole responsibility of the Contractor. The Contractor is responsible for safety in, on, and around the Project site and for compliance with any regulations relating thereto.
- b. The Contractor shall provide an emergency telephone number and contact that can be reached during non-Working hours.

**3.8 Cleaning Up**

- a. The Contractor shall at all times keep the Project and any related buildings and premises clean of debris arising out of the Work. All waste materials generated as a result of the Contractors operations including, but not limited to, boilers, mechanical equipment, wiring, piping, etc. shall be picked up and placed in the Contractor provided waste receptacles.
- b. The Contractor shall provide construction waste and recycling dumpsters and/or receptacles for the Work. No dumping shall be permitted in the Owners on-site trash facilities.
- c. If the Contractor fails to clean up after itself, or any person or entity furnishing goods or services to it; the Owner, after providing 48 hours written notice to the Contractor, may elect to perform the clean-up. The Contractor agrees to reimburse the Owner for any and all costs incurred to perform said clean-up, plus a ten (10) percent charge for overhead expenses.
- d. Final clean up must be approved and accepted by the Owner before the Contract may be considered complete.

**3.9 Electrical Power and Water**

- a. The Owner shall provide and pay for all electric power reasonably required for the Work. Contractor shall coordinate with Owner to use power available to operate tools.
- b. The Contractor shall provide and maintain on-site sanitary toilets and drinking water for use by Workers for the duration of the Work. Location for sanitary toilets shall be approved by Owner. Sanitary toilets shall be removed upon completion of Work.
- c. Under no circumstances is the Contractor authorized to arrange for utility services to be billed to the Owner.

**3.10 Federal, State and Local Laws**

- a. The Contractor shall conform to all applicable Federal, State, and local laws and ordinances in carrying out their obligations under this contract.
- b. Contractor shall comply with all requirements for noise control.
- c. Contractor shall comply with all requirements regarding hours of Work.

**3.11 Parking**

- a. The Contractor shall be responsible for employee, supplier, and subcontractor parking and shall provide off-site parking if required.
- b. Parking shall occur only in areas approved by the Owner.

**3.12 Submittals**

- a. The Contractor may provide either electronic or written copies of required submittals. In the event Contractor provides written submittals, three (3) copies shall be provided. Two (2) will be retained by the Owner and one (1) returned to the contractor.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

- b. The Contractor shall ensure that the material and/or equipment indicated on the submittal is that which is proposed to be incorporated into the project; that it is in compliance with the contract drawings and specifications; and that it can be installed in the allocated spaces. Approved submittals must be returned to the Contractor prior to installation.

**3.13 Environmental Issues**

- a. The Contractor shall be responsible for the safe handling and disposal of all hazardous materials (including containers) required for the Work.

**3.14 Schedule & Notice:**

- a. The Contractor's Construction Schedule has been provided as an Exhibit to the Contract Documents.
  - i. Due to high-mountain seasonal weather condition unknowns, the Construction Schedule may be adjusted by mutual agreement between Contractor and Owner. Any such adjustment must be evidenced in writing.
  - ii. Work is to be performed between the hours of 8:00 AM and 6:00 PM local time Monday through Saturday.

**ARTICLE 4 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**4.1 Operations with Others**

- a. The Owner reserves the right to have other Work performed by other Contractors and to permit public utility companies and others to do Work on and adjacent to the site. The Contractor shall conduct his operations and cooperate with the other parties so as to minimize interference with this other Work. Should a difference arise as to the rights of the Contractor and other parties, the Engineer shall serve as the mediator and their decision shall be final and binding on the Contractor.

**ARTICLE 5 - CHANGES IN THE WORK**

**5.1 Unauthorized Work**

- a. The Contractor shall not perform any Work outside of the scope of this Agreement without the prior, written consent of the Owner. Should the Contractor proceed with any unauthorized Work, he does so at his own risk and expense.

**5.2 Construction Change Directive**

- a. The Contractor shall forward proposals for Construction Change Directives within three (3) calendar days of receipt of a request from the Owner.
- b. The cost or credit to the Owner resulting from a construction change directive shall be determined in one of the following ways:
  - i. By Alternate prices named in the Contractor's bid. Alternate prices shall include all costs of the Contractor, including but not limited to, materials, labor, supervision, taxes, insurance, bond, overhead and profit. Alternate prices shall be applied directly to the quantities or the differences in quantities for which unit prices are requested.
  - ii. By cost agreed to by Owner and Contractor: The Contractor shall submit a detailed proposal for the Change Directive for approval by the Owner. The proposal shall include an itemized breakdown of quantities, unit cost, hours, rates of labor, etc. The proposal shall be prepared in sufficient detail as required for the Owner to establish the reasonableness of the proposal. Similar cost information covering subcontractor's Work shall be included as part of the Contractor's proposal. Charges for "handling" are not acceptable. The Contractor's Fee (including overhead and profit) for changes that increase the Contract Amount shall be increased by an amount equal to six percent (6.0%) of the value of the change. The Contractor's Fee (including overhead and profit) for changes that decrease the Contract Amount shall be increased by an amount equal to six percent (6.0%) of the value of the change.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_



**ARTICLE 6 - TIME**

**6.1 Contract Time**

- a. The Contractor shall proceed immediately with the Work once a Notice to Proceed has been issued. Work shall be prosecuted continuously and without interruption based upon the Contractor's provided Schedule. The Contractor shall be responsible for any liquidated damage costs incurred as a result of delays caused by any cause within the Contractor's control.

**ARTICLE 7 - PAYMENTS AND COMPLETION**

**7.1 Measurement and Payment**

- a. The quantities for which payment will be made are those shown in the Contract Schedule of Values. After the Contract is awarded, no adjustments to these quantities will be made, except for changes to the Work authorized by the Owner.
- b. Payment will be made for only the line items listed on the Contract Schedule of Values. The Contractor shall include the entire cost for all of the Work of the Contract within these line items.

**7.2 Progress Payments**

- a. Owner shall make progress payments on account of the Contract Lump Sum Amount to Contractor as follows:
  - (i) On or about the 1<sup>st</sup> of each month, but in no event later than the 5th day of that month, Contractor shall obtain all subcontractors' and material suppliers estimates of Work completed to date and shall submit to the Owner for approval an application for payment on account of the portion of Work completed; materials delivered to the Project Site (or stored at some other location agreed upon in writing by the Owner); and the earned pro rata share of the Contractor's fee and general conditions.
  - (ii) Each Application for Payment shall be based upon the approved Schedule of Values incorporated in the Contract Documents. The Schedule of Values shall (a) allocate the entire Total Contract Lump Sum Amount among the various portions of the Work; (b) shall be prepared in such form as the Owner may reasonably require; (c) shall be used as a basis for reviewing the Contractor's Applications for Payment; and (d) shall include a construction status report detailing the percent complete for each item of Work.
  - (iii) Each Application for Payment shall be for an amount equal to an estimate of the cost of the Work completed; materials delivered to the Project Site; the earned pro-rata-share of the Contractor's fee and general conditions; less Retainage held as described below; and less all previous payments. Estimates of the completed Work are subject to approval of the Owner.
  - (iv) Retainage of ten percent (10%) shall be held with respect to all Work until it is completed. Retainage shall be paid to the Contractor at the time of Substantial Completion of the Work, except that portion retained pending the completion of incomplete Work and unsettled claims. Owner may hold an amount equal to one hundred fifty percent (150%) of the value of incomplete Work or unsettled claims.
  - (v) Owner shall provide written Notice to Contractor of any disputed amount included in the Application for Payment within 15 days of receipt of said Application. An Application shall be deemed approved in the event no Notice is provided.
  - (vi) Within twenty (20) days after the submission of each Application for Payment to the Owner the amount as approved shall be due and payable by the Owner to the Contractor in current funds via a check deposited in the mail. There shall be a ten (10) day grace period from due date before interest is calculated.
  - (vii) Contractor may cease Work with no consequences if an approved Application is not paid in full 35 days after submitting said Application. All deadlines imposed on Contractor shall

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

automatically be extended by the number of Days Contractor has ceased Work plus a reasonable period for mobilization,

- (viii) With each Application for Payment, the Contractor shall furnish the Owner with Lien Waivers from the Contractor, all subcontractors and material suppliers employed with respect to the Work that were paid in the immediately preceding Application for Payment. The Lien Waivers shall be in a form acceptable to the Owner and accompanied by a summary report listing each subcontractor and material supplier, their current subcontract amount, value of completed Work, current lien release amount, and total lien release amount.
- (ix) With the application for Final Payment the Contractor shall furnish the Owner with Final Lien Waivers from the Contractor, all subcontractors and material suppliers employed with respect to the Work. Final Lien Waivers may be conditioned upon payment.
- (x) Payments due and unpaid under the Contract shall bear interest from the date payment is due. Interest shall be paid at an annual rate of eighteen (18) percent, compounded monthly. The prevailing party in any litigation involving this Contract shall be entitled to recovery of its legal fees and other costs from the non-prevailing party, in addition to other relief awarded to it.
- (xi) If a subcontractor or material supplier hired by Contractor or Contractor’s subcontractor files a lien against the project, and provided the Owner is not in default of their obligations under this agreement, the Contractor shall furnish a bond satisfactory to the Owner against such lien. Should the Contractor fail to provide said bond, the Owner may withhold from amounts due to the Contractor an amount equal to two hundred (200) percent of the amount of the lien. Alternatively, Contractor may obtain a court order at Contractor’s expense, including the cost of any bond provided to the court, to remove the lien. The Contractor shall refund to the Owner, all amounts that the Owner may be compelled to pay in discharging such liens, including all costs and attorney’s fees, except to the extent that the lien arises due to Owner’s failure to pay or is otherwise determined to have been filed due to Owner’s breach of the Contract Documents.

**7.3 Final Completion**

- a. The Project shall not be considered finally complete until the Contractor supplies the following to the Owner:
  - (i) All guarantees, warranties, and certificates evidencing warranties by manufacturers of products incorporated into the Work.
  - (ii) All testing and inspection reports.
  - (iii) All inspection Certificates, including Final Certificates of Occupancy, if applicable.

**ARTICLE 8 - INSURANCE & BONDS**

**8.1 Indemnification**

- a. The Work performed by the Contractor shall indemnify, defend (at Contractor’s sole expense) and hold harmless Owner, affiliated companies of Owner, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns (“Indemnified Parties”), from and against any and all claims of bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys’ fees and costs, and consultants’ fees and costs)(“Claims”) to the extent such Claims are caused or alleged to be caused by Contractor’s performance of the Work, Services provided by Contractor, or materials furnished by Contractor, or for those whom Contractor is legally responsible, whether or not said claims arise in part out of the concurrent act, omission, or negligence of the indemnified parties, whether active or passive. Contractor shall not be obligated to indemnify and defend Owner for claims found to be due to the sole negligence or willful misconduct of Indemnified Parties.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

- b. Contractor’s indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully barred by applicable Laws.

**8.2 Insurance**

- a. Upon execution of this Agreement, and prior to the Contractor’s commencing any Work or services with regard to the Project, the Contractor shall carry insurance in the minimum amounts noted on the attached sample Certificate of Insurance. The Contractor shall provide the Owner with a Certificate of Insurance and Additional Insured Endorsement naming the Owner and Inter-Mountain Engineering as Additional Insured. All coverages shall be placed with an insurance company duly admitted in the State of Colorado and shall be reasonably acceptable to Owner. All Contractor insurance carriers must be “A” rated.
- b. Each Certificate of Insurance shall provide that the insurer must give the Owner at least 30 days’ prior written notice of cancellation and termination of the Owner’s coverage there under. Not less than two weeks prior to the expiration, cancellation, or termination of any such policy, the Contractor shall supply the Owner with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of Owner as set forth above.
- c. It is hereby understood and agreed that such insurance as is afforded by the Contractor’s policies shall be primary and not contributing with any other insurance and shall provide a waiver of subrogation rights endorsement in favor of the Contractor and Owner. ALL ENDORSEMENTS MUST STATE ON THE ENDORSEMENT THAT INSURANCE PROVIDED IS PRIMARY AND NON-CONTRIBUTORY.
- d. Additionally, and prior to commencement of the Work, the Contractor shall provide the Owner with a Certificate of Insurance showing liability insurance coverage for the Contractor and any employees, agents, or Sub-Contractors of the Contractor for any Workers’ Compensation, Employer’s Liability and Automobile Liability. In the event any of these policies are terminated, Certificates of Insurance showing replacement coverage shall be provided to the Owner. Coverages shall be no less than the following:
  - (i) Workers’ Compensation and Employers’ Liability Insurance: As required by law and affording thirty (30) days written notice to Owner prior to cancellation or non-renewal.
  - (ii) Business Auto Liability Insurance: Written in the amount of not less than \$1,000,000 per occurrence for bodily injury and/or property damage, uninsured and underinsured motorist liability, medical payments and damages to vehicles combined including: owned autos, hired or borrowed autos, non-owned autos, and an endorsement affording a thirty (30) day notice to Owner prior to cancellation, non-renewal or amendment (excepting amendments naming Additional Insured’s).
  - (iii) Waiver of Subrogation: Contractor shall obtain from each of its insurers a waiver of subrogation in favor of Contractor and Owner with respect to Losses arising out of or in connection with the Work.

**ARTICLE 9 - MISCELLANEOUS PROVISIONS**

**9.1 Inspection, observation, and testing of the Work**

- a. At all times, representatives of the Owner, Architect, Engineer, and any agencies affected by the Work shall have the right to enter and inspect any and all parts of the Work for compliance with the Contract Documents. Record Documents are to be available to the Owner or his representatives at all times the Work is in progress.
- b. Observations or testing shall in no way excuse the Contractor for defects discovered in the Work.

**9.2 Traffic Regulations**

- a. Streets and passageways are to remain open to vehicular and pedestrian traffic at all times.
- b. The Contractor shall maintain continuous access for emergency vehicles.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

**ARTICLE 10 – TERMINATION OR SUSPENSION OF THE CONTRACT**

**10.1 Termination by the Owner for Convenience:**

- a. In the event the Owner terminates a part of the Work for convenience, Owner shall give Contractor seven days' prior written notice specifying the part of the Work to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. Contractor shall be entitled to payment for Work executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work, including reasonable demobilization charges. For any remainder of the Work not terminated for convenience, the Contract Documents shall remain in full force and effect. In addition, Contractor shall be entitled to a termination fee equal to 1 ½ % on the value of any Work terminated based on the schedule of values.

**10.2 Termination by the Owner for Cause:**

- a. In the event the Contractor breaches any of the terms of this Agreement, the Owner shall have the right to terminate this contract and cancel any further obligations hereunder. Contractor shall be responsible for any costs incurred by Owner for said breach, including reasonable attorney's fees.

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_