



## BOARD OF TRUSTEES

### REGULAR MEETING AGENDA

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October 14, 2020

7:00 PM

Virtual Meeting

2 Park Avenue

Firestone, CO 80504

PRE-MEETING WORK SESSION 6:30 PM IN THE TRAINING ROOM

AGENDA FOR THE WORK SESSION IS A DISCUSSION OF THE REGULAR MEETING AGENDA BELOW

REGULAR MEETING 7:00 PM IN THE COURT ROOM

#### 1. Access Information

1.a. Town of Firestone is inviting you to a scheduled Zoom meeting.

Topic: 10-14-2020 Board of Trustees Meeting

Time: Oct 14, 2020 07:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/81719851117?pwd=SnkzWjUyREJ3R0lzdIFTQm1kejFsZz09>

Meeting ID: 817 1985 1117

Passcode: 199973

One tap mobile

+16699009128,,81719851117#,,,,,0#,,199973# US (San Jose)

+12532158782,,81719851117#,,,,,0#,,199973# US (Tacoma)

Dial by your location

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

Meeting ID: 817 1985 1117

Passcode: 199973

Find your local number: <https://us02web.zoom.us/j/81719851117?pwd=SnkzWjUyREJ3R0lzdIFTQm1kejFsZz09>

\* Individuals that desire to address the Board of Trustees are requested to sign up at the table at the entrance to the meeting room. Each individual will be provided an opportunity to speak (limited to three minutes) during Public Comment. Maximum time permitted for all Public Comment is 30 minutes.

If you need special assistance in order to participate in a Board of Trustees meeting, please contact the Town Clerk's Office at 303-531-6264 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

**2. Call to Order & Roll Call**

**3. Pledge of Allegiance**

**4. Approval of Agenda**

**5. Public Comment** \*(maximum time permitted for all Public Comment is 30 minutes)

**6. Consent Agenda**

**6.a.** Approval of September 23, 2020 Meeting Minutes

**6.b.** **Resolution 20-93**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND THE ST VRAIN VALLEY SCHOOL DISTRICT RE-1J FOR A JOINT SCHOOL RESOURCE OFFICER PROGRAM

**6.c.** **Resolution 20-97**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, CONCERNING THE MEMBERSHIP, ROLES AND RESPONSIBILITIES OF THE TOWN OF FIRESTONE FINANCE COMMITTEE

**7. Presentation**

**7.a.** STAR Award

**8. Land Development**

**8.a.** **Ordinance 981**: AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, REPEALING AND REENACTING IN THEIR ENTIRETY CHAPTERS 15.04 (BUILDING CODE), 15.06 (INTERNATIONAL RESIDENTIAL CODE), 15.08 (NATIONAL ELECTRIC CODE), 15.10 (INTERNATIONAL EXISTING BUILDING CODE), 15.12 (INTERNATIONAL FUEL GAS CODE), 15.32 (INTERNATIONAL FIRE CODE), AND 15.36 (INTERNATIONAL ENERGY CONSERVATION CODE) OF THE FIRESTONE MUNICIPAL CODE; AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.14 REGARDING ADOPTION OF THE 2018 INTERNATIONAL MECHANICAL CODE; AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.16 REGARDING ADOPTION OF THE 2018 INTERNATIONAL PLUMBING CODE; AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.18

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REGARDING ADOPTION OF THE 2018 INTERNATIONAL PROPERTY MAINTENANCE CODE; AND AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.20 REGARDING ADOPTION OF THE 2018 INTERNATIONAL SWIMMING POOL AND SPA CODE

## 9. Discussion/Action

- 9.a. **Resolution 20-95:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND CENTENNIAL ARCHAEOLOGY LLC FOR A CLASS III PEDESTRIAN AND CULTURAL INVENTORY OF THE TOWN OF FIRESTONE'S INJECTION WELL PAD AND ASSOCIATED FACILITIES SITE
- 9.b. Finance Committee Appointments
- 9.c. **Resolution 20-91:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A SUMMARY OF GRANT AWARD TERMS AND CONDITIONS BETWEEN THE TOWN OF FIRESTONE AND THE STATE OF COLORADO
- 9.d. **Resolution 20-92:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND FRANSEN PITTMAN CONSTRUCTION COMPANY REGARDING CONSTRUCTION SERVICES FOR THE FIRESTONE TOWN HALL CONSTRUCTION PROJECT
- 9.e. **Ordinance 980:** AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO AUTHORIZING THE FINANCING OF THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS AND THE REFINANCING OF CERTAIN OUTSTANDING LEASE OBLIGATIONS; AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO 2018 AND 2019 SITE LEASES AND 2018 AND 2019 LEASE PURCHASE AGREEMENTS AND APPROVAL OF CERTAIN OTHER DOCUMENTS AND MATTERS RELATED THERETO; AND AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY THERETO
- 9.f. **Resolution 20-94:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND BOHANNAN HUSTON INC FOR A TRANSPORTATION MASTER PLAN

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**9.g. Resolution 20-96:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND WESTWATER RESEARCH LLC FOR WATER RIGHTS ACQUISITION ASSISTANCE REGARDING NATIVE DITCH WATER RIGHTS

**9.h.** Broadband Initiative Update

**10. Public Comment** \*(maximum time permitted for all Public Comment is 30 minutes)

**11. Reports**

**11.a.** Staff

**11.b.** Mayor

**11.c.** Trustees

**12. Adjournment**

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**AGENDA INFORMATION  
MEMORANDUM**

**FIRESTONE  
TOWN BOARD OF TRUSTEES**



**AIM#:** 6.a

**Consent Agenda**

**Meeting Date:** October 14, 2020

**Initiated By:** Jessica Koenig

**Dept:** Town Clerk

**AGENDA TITLE**

Approval of September 23, 2020 Meeting Minutes

**SUMMARY**

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**

Approval of the September 23, 2020 draft meeting minutes.

**ALTERNATIVES**

**ATTACHMENTS**

1. September 23, 2020 Draft Meeting Minutes

**FINANCIAL CONSIDERATIONS**

TOWN OF FIRESTONE, COLORADO  
Board of Trustees Regular Meeting  
MINUTES  
September 23, 2020

**1. Access Information**

**1.a.** Town of Firestone is inviting you to a scheduled Zoom meeting.

Topic: 09-23-2020 Board of Trustees Meeting

Time: Sep 23, 2020 07:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/84083043357?pwd=cEZaMDhUZW5MT2tPVms0Y1NSRXFWQT09>

Meeting ID: 840 8304 3357

Passcode: 152560

One tap mobile

+12532158782,,84083043357#,,,,,0#,,152560# US (Tacoma)

+13462487799,,84083043357#,,,,,0#,,152560# US (Houston)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

Meeting ID: 840 8304 3357

Passcode: 152560

Find your local number: <https://us02web.zoom.us/j/kwOqD2QAv>

**2. Call to Order & Roll Call**

The Board of Trustees of the Town of Firestone met for a Regular Meeting on September 23, 2020, at the Police Department, 2 Park Avenue, Firestone, Colorado. Mayor Sindelar called the meeting to order at 7:03 pm.

The following were present upon the call of the roll:

**Mayor:** Bobbi Sindelar

**Trustees:** Don Conyac  
David Whelan  
Samantha Meiring

Sean Doherty  
Doug Sharp

**Staff:** **Present:** Jan Sloat, Director of Human Resources; Dave Lindsay, Engineer; Paula Mehle, Director of FURA & Economic Development; Raelynn Ferrera, Assistant to the Town Manager; Katie Hansen, Director of Communications; Jessica Clanton, Director of Finance; Julie Pasillas, Director of Public Works; Todd Bjerkaas, Director of Planning; David Montgomery, Chief of Police; Jessica Koenig, Town Clerk; AJ Krieger, Town Manager; & William Hayashi, Town Attorney

### 3. Pledge of Allegiance

Mayor Sindelar led the pledge of allegiance.

### 4. Approval of Agenda

**Motion** by Trustee Conyac, **second** by Trustee Meiring, to Amend the Agenda to move Agenda Item No. 7d and 7e after Agenda Item No. 7g.

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**Motion** by Trustee Conyac, **second** by Trustee Meiring, to Approve the Agenda.

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

### 5. Public Comment \*(maximum time permitted for all Public Comment is 30 minutes)

Becky Duckworth gave public comment regarding Resolution 20-90, an electronic communication inquiry policy.

### 6. Consent Agenda

**Motion** by Trustee Whelan, **second** by Trustee Doherty, to Approve the Consent Agenda.

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**6.a.** Approval of September 3, 2020 Special Meeting Minutes

- 6.b. Approval of September 9, 2020 Regular Meeting Minutes
- 6.c. Cancellation of November 11, 2020 Board of Trustees Regular Meeting
- 6.d. Cancellation of November 25, 2020 Board of Trustees Regular Meeting
- 6.e. Cancellation of December 23, 2020 Board of Trustees Regular Meeting
- 6.f. **Resolution 20-83:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, GRANTING AND APPROVING A NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND ST. VRAIN SANITATION DISTRICT FOR THE CONSTRUCTION, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT AND REMOVAL OF SANITARY SEWER LINES INCLUDING THE LINES UNDERGROUND AND SURFACE FACILITIES AND APPURTENANCES

## 7. Discussion/Action

- 7.a. **Resolution 20-85:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ISSUING A NOTICE OF AWARD TO HUDICK EXCAVATING, INC., REGARDING CONSTRUCTION SERVICES FOR THE FIRESTONE RESERVOIR NO. 1 SUPPLY AND DELIVERY INFRASTRUCTURE PROJECT

**Motion** by Trustee Meiring, **second** by Trustee Conyac, to Approve **Resolution 20-85:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ISSUING A NOTICE OF AWARD TO HUDICK EXCAVATING, INC., REGARDING CONSTRUCTION SERVICES FOR THE FIRESTONE RESERVOIR NO. 1 SUPPLY AND DELIVERY INFRASTRUCTURE PROJECT

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

- 7.b. **Resolution 20-86:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND WENCK ASSOCIATES, INC., FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE FIRESTONE RESERVOIR NO. 1 SUPPLY AND DELIVERY INFRASTRUCTURE PROJECT

**Motion** by Trustee Meiring, **second** by Trustee Conyac, to Approve **Resolution 20-86**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND WENCK ASSOCIATES, INC., FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE FIRESTONE RESERVOIR NO. 1 SUPPLY AND DELIVERY INFRASTRUCTURE PROJECT

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**7.c. Resolution 20-87:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN CESARE INC., AND THE TOWN OF FIRESTONE REGARDING GEOTECHNICAL ENGINEERING SERVICES FOR THE FIRESTONE RESERVOIR NO. 1 SUPPLY AND DELIVERY INFRASTRUCTURE PROJECT

**Motion** by Trustee Meiring, **second** by Trustee Doherty, to Approve **Resolution 20-87**: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN CESARE INC., AND THE TOWN OF FIRESTONE REGARDING GEOTECHNICAL ENGINEERING SERVICES FOR THE FIRESTONE RESERVOIR NO. 1 SUPPLY AND DELIVERY INFRASTRUCTURE PROJECT

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**7.d. Planning & Zoning Commission Appointments**

**Motion** by Trustee Sharp, **second** by Trustee Doherty, to Appoint Casey O'Donnell to the Planning & Zoning Commission to a term expiring in January 2023.

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**Motion** by Trustee Doherty, **second** by Trustee Whelan, to Appoint James Sutton to the Planning & Zoning Commission to a term expiring in January 2025.

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**7.e. Resolution 20-84:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND VIA MOBILITY SERVICES FOR TRANSPORTATION SERVICES FOR ELIGIBLE TOWN RESIDENTS

**Motion** by Trustee Meiring, **second** by Trustee Doherty, to Approve **Resolution 20-84:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND VIA MOBILITY SERVICES FOR TRANSPORTATION SERVICES FOR ELIGIBLE TOWN RESIDENTS

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**7.f. Resolution 20-88:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ISSUING A NOTICE OF AWARD TO WALSH CONSTRUCTION, INC., FOR CONSTRUCTION SERVICES FOR THE GOULD HORIZONTAL WELL

**Motion** by Trustee Conyac, **second** by Trustee Whelan, to Approve **Resolution 20-88:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ISSUING A NOTICE OF AWARD TO WALSH CONSTRUCTION, INC., FOR CONSTRUCTION SERVICES FOR THE GOULD HORIZONTAL WELL

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp

**No:** None

**Abstain:** None

**Motion carried.**

**7.g. Resolution 20-89:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING PART 2B CONSTRUCTION PHASE OF THE TOWN OF FIRESTONE AND INTEGRATED WATER SERVICES, INC.'S ST VRAIN WATER TREATMENT PLANT PROJECT AGREEMENT

**Motion** by Trustee Whelan, **second** by Trustee Sharp, to Approve **Resolution 20-89:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING PART 2B CONSTRUCTION PHASE OF THE TOWN OF FIRESTONE AND INTEGRATED WATER SERVICES, INC.'S ST VRAIN WATER TREATMENT PLANT PROJECT AGREEMENT

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp  
**No:** None  
**Abstain:** None  
**Motion carried.**

**7.h. Resolution 20-90:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING THE BOARD OF TRUSTEES ELECTRONIC COMMUNICATION INQUIRY POLICY

**Motion** by Trustee Meiring, **second** by Trustee Conyac, to Approve **Resolution 20-90:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING THE BOARD OF TRUSTEES ELECTRONIC COMMUNICATION INQUIRY POLICY

**Roll Call Vote:**

**Yes:** Trustee Conyac, Trustee Whelan, Trustee Meiring, Trustee Doherty, Trustee Sharp  
**No:** None  
**Abstain:** None  
**Motion carried.**

**7.i. Budget Discussion - Water & Stormwater**

**8. Public Comment** \*(maximum time permitted for all Public Comment is 30 minutes)

There was no one present that wished to give public comment.

**9. Reports**

**9.a. Staff**

Katie Hansen, Director of Marketing & Communications, reported on the Halloween Safe Night event scheduled for October 30, 2020, from 5 pm - 8 pm.

Chief Montgomery, Chief of Police, summarized the August 2020 Police Report.

AJ Krieger, Town Manager, reported on a meeting with Neighbors Point regarding the park. Mr. Krieger reported on the Central Park scope of work and public engagement concepts. Mr. Krieger reported that the consulting agreement for the Central Park master plan was tentatively scheduled for October 14, 2020.

Raelynn Ferrera, Assistant to the Town Manager, reported that the grant from DOLA was on hold until an agreement was approved. Ms. Ferrera reported that the approval of the DOLA agreement was scheduled for October 14, 2020. Ms. Ferrera reported that construction on the new Town Hall is scheduled to start on October 15, 2020, with 11 months of anticipated construction.

**9.a.i. August Monthly Financial Report**

**9.b. Mayor**

**9.c. Trustees**

Trustee Whelan inquired if zoom access information could be added to future Work Sessions.

William Hayashi, Town Attorney, clarified that it would require an amendment to the telephonic meeting policy in order to allow zoom access information for Work Sessions. Mr. Hayashi also explained that zoom access information added to past Work Sessions was an accommodation to a Trustee.

Trustee Whelan requested that the zoom access information and Work Sessions be scheduled for discussion at a future meeting.

The Board reached a consensus that it was part of a broader discussion of recording and streaming Board of Trustees meetings.

Trustee Sharp reported that he and Trustee Conyac would be attending the Frederick-Firestone Fire Protection District Strategic Meeting next week.

Trustee Doherty celebrated that the Firestone Police Department & Municipal Court Building, designed by Roth Sheppard Architects, LLP, was recognized for the Award of Distinction by the American Institute of Architects (AIA) Colorado.

**10. Adjournment**

**Motion** by Trustee Conyac, **second** by Trustee Meiring, to Adjourn at 9:00 pm, All in Favor, **Motion carried.**

Introduced and Approved the 14th of October, 2020.

TOWN OF FIRESTONE, COLORADO

ATTEST

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Bobbi Sindelar, Mayor

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Jessica Koenig, Town Clerk

**AGENDA INFORMATION  
MEMORANDUM**

**FIRESTONE  
TOWN BOARD OF TRUSTEES**



**AIM#:** 6.b

**Consent Agenda**

**Meeting Date:** October 14, 2020

**Initiated By:** Leah Vanarsdall

**Dept:** Police

**AGENDA TITLE**

**Resolution 20-93:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND THE ST VRAIN VALLEY SCHOOL DISTRICT RE-1J FOR A JOINT SCHOOL RESOURCE OFFICER PROGRAM

**SUMMARY**

Attached is a draft agreement between the Town and the St Vrain Valley School District (SVVSD) for the 2020/2021 school year to provide a School Resource Officer Program. This agreement has been reviewed by the Town and SVVSD staff and is a cooperative effort to provide a public safety presence and outreach in the SVVSD schools within the Town limits of Firestone.

**HISTORY AND PREVIOUS BOARD ACTION**

An IGA for a Joint School Resource Officer has been executed annually since 2009.

**RECOMMENDATION**

Staff recommends the Board approve the attached Intergovernmental Agreement between the Town of Firestone and St Vrain Valley School District RE-1J for a Joint School Resource Officer Program.

**ALTERNATIVES**

Provide staff with additional direction.

**ATTACHMENTS**

1. SVVSD Reso 20-93
2. Draft SRO IGA 20-21

**FINANCIAL CONSIDERATIONS**

The School District will pay one-half of the School Resource Officer's salary prorated for a nine (9) month school period. The Town will fund the remaining one-half.

**RESOLUTION 20-93**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF  
FIRESTONE, COLORADO, APPROVING AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND THE ST VRAIN  
VALLEY SCHOOL DISTRICT RE-IJ FOR A JOINT SCHOOL RESOURCE  
OFFICER PROGRAM**

WHEREAS, the Town of Firestone ("Town") and the community are significantly impacted by the demands placed upon them to address incidents and situations directly or indirectly related to juveniles and schools; and

WHEREAS, the problems of delinquency, alcohol and substance abuse, gang involvement and other youth related problems, which negatively affect the community and the schools, can best be addressed in a proactive and preventive manner; and

WHEREAS, the Town and the St. Vrain Valley School District have jointly developed a School Resource Officer Program to provide a district wide school based approach to establish a positive relationship between students and law enforcement, and prevent delinquency, alcohol and substance abuse, and gang involvement by the community's youth; and

WHEREAS, such programs are recognized as being effective in developing positive relationships between law enforcement and students and decreasing delinquency.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Intergovernmental Agreement between the Town of Firestone and the St. Vrain Valley School District RE-IJ, for a Joint School Resource Officer Program, is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Intergovernmental Agreement on behalf of the Town.

INTRODUCED, READ AND ADOPTED this \_\_ day of \_\_\_\_\_, 2020.

TOWN OF FIRESTONE, COLORADO

\_\_\_\_\_  
Bobbi Sindelar, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, Town Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
TOWN OF FIRESTONE AND ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J  
FOR A JOINT SCHOOL RESOURCE OFFICER PROGRAM**

THIS AGREEMENT (this “Agreement”) is made by and between **TOWN OF FIRESTONE** (the “Governmental Unit”) through the police or sheriff’s office, as applicable, and the **ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J** (the “School District”).

**WHEREAS**, the Governmental Unit, the School District, and the community are significantly impacted by the demands placed upon them to address incidents and situations directly or indirectly related to juveniles and the schools; and

**WHEREAS**, the problems of delinquency, alcohol and substance abuse, gang involvement, and other youth related problems which negatively affect the community and the schools can best be addressed in a proactive and preventative manner; and

**WHEREAS**, the Governmental Unit and the School District have jointly developed a program to provide a school-based approach to the development of a positive relationship between students and the police and the prevention of delinquency, alcohol and substance abuse, and gang involvement by our community’s young people (the “School Resource Officer Program”); and

**WHEREAS**, such programs are recognized as being effective in the development of a positive relationship between the police, faculty, and young people and in the prevention of delinquency.

**NOW THEREFORE, FOR AND IN CONSIDERATION OF THE** covenants and agreements below appearing, the parties agree as follows:

**I.**

**SCOPE OF SERVICES**

To facilitate School Resource Officer Program, the Governmental Unit shall hire police officers to work in the School District’s schools (the “School Resource Officers”). The School Resource Officers shall be assigned to work with the administration, faculty, and students on school sites located within the School District and identified on **Exhibit A**. An emphasis will be made to select secondary level sites (high school and middle school campuses) with the intention to continue services at the elementary level as resources allow.

The School Resource Officers may perform functions including, but not limited to the following:

1. Assist school administration in the prevention and control of crime, delinquency, truancy,

and disorder on the campus.

2. Conduct or assist in the investigation of offenses on campus.
3. Provide presentations and available educational resources in the following areas: alcohol and substance abuse, law related education, criminal justice system orientation, delinquency prevention, gang involvement and awareness, and community responsibility, for students, parents, and other groups associated with the school.
4. As requested by school staff, provide instructional resources for classroom presentations as time permits.
5. Enforce federal and state statutes and municipal ordinances as appropriate.
6. Appear in court and assist in prosecution and other judicial processes as appropriate.
7. Assist in the coordination of efforts of other enforcement agencies on the campus.
8. Provide visible presence on the campus.
9. Assist campus supervisors with appropriate monitoring and enforcement in the parking lots and other grounds of the school.
10. Attend school-related functions during normal classroom hours, as well as nighttime hours to include attending social events, such as school dances and sporting events, etc., as regular duty hours. This will not replace security and off duty work already in place. If School District approves of overtime duty for School Resource Officers, the Governmental Unit will bill the School District separately for those services.
11. Contribute to the positive police-school-community relations efforts, especially as these efforts relate to students and parents.

## **II.**

### **PROGRAM ADMINISTRATION**

A. **EMPLOYMENT.** The School Resource Officers shall be regular employees and certified police officers of the appropriate Governmental Unit police or sheriff's office. The officers will be subject to the ordinances, policies, procedures, rules, regulations, directives, and orders of the Governmental Unit and the appropriate Governmental Unit police or sheriff's office. The officers also will comply with the policies and regulations of the School District, to the extent that such policies and regulations are not in conflict with those of the Governmental Unit; are not in conflict with terms contained here or direction of the appropriate Governmental Unit police or sheriff's office; and are not in conflict with federal, state, or city laws.

B. **SALARY AND BENEFITS.** The Governmental Unit and the School District jointly fund the School Resource Officer Program. The School Resource Officers will receive salary and employee benefits and normally-issued equipment and supplies from the Governmental Unit. The School District agrees to pay its share for each officer as identified in **Exhibit A** on or before November 1st of each year this Agreement is in effect. If, during the course of this Agreement, the number of School Resource Officers provided for in **Exhibit A** is reduced, the School District's obligation for funding School Resource Officers at 100% will be reduced prior to the School District's obligation to jointly fund the School Resource Officer's position with the Governmental Unit.

C. **SCHEDULE.** The School Resource Officers will work a schedule consistent with Governmental Unit ordinances, policies, and procedures and subject to the Fair Labor Standards Act. Except as otherwise provided in this Agreement, during times when the schools are in session, the School Resource Officers will devote such officers' full shifts to the school calendar day, except for required duties such as court appearances. During the schools' summer vacation, spring break, holiday breaks, and on other days when the schools are not in session, and the officers are not involved in assigned school related activities, the School Resource Officers will participate in police department or school training, take accumulated vacation, compensatory, or holiday time off, or engage in prevention, enforcement, and other activities as assigned by the appropriate Governmental Unit police or sheriff's office. School Resource Officers will be able to take leave with the authorization of the appropriate Governmental Unit police or sheriff's office and with School District approval ensuring coverage at the school is present. In the event of an emergency, as determined by the appropriate Governmental Unit police or sheriff's office, the School Resource Officers may be required to perform general police duties. The School Resource Officers shall attend in-service and specialized assignment training conducted by the appropriate Governmental Unit police or sheriff's office scheduled throughout the year.

D. **SUPERVISION.** The School Resource Officers are subject to the appropriate Governmental Unit police or sheriff's office chain of command and are subject to the supervision and control of the Governmental Unit police chief, sheriff, or designee ("Police Supervisor"). Day-to-day supervision will be by assigned Police Supervisors. The assigned Police Supervisor will be responsible for maintaining contact with the principals, school administration, and their management staffs. The School Resource Officers will work closely with school administrators, and faculty to determine the most effective use of the officers' time and expertise, but shall not be subject to supervision or direction by the School District, its officers, agents, or employees.

E. **EXTRA DUTY.** It is common that the School District requests assistance from the Governmental Unit to provide services at after-hours School District events. In such cases, the Governmental Unit may provide School Resource Officers or other officers to perform such duties. The following guidelines shall direct the conduct of all officers, School Resource Officers and non-School Resources Officers, while conducting extra duty assignments. The School District shall pay for extra duty support as set forth on **Exhibit A**.

1. **Assignment of Officers.** The Governmental Unit shall allow the assignment of

otherwise off-duty Governmental Unit police officers for the purpose of performing services for the School District.

2. Provision of Services. The following shall apply to all services performed pursuant to this Agreement and to each officer assigned by the Governmental Unit in connection with such services:

a. The officer shall be responsible for the enforcement of Governmental Unit ordinances and applicable laws, and activities related thereto.

b. The officer's performance of services pursuant to this Agreement shall be deemed to be normal law enforcement functions undertaken in the regular course of the officer's assigned duties and shall be deemed to be within the performance of the officer's duties and the scope of the officer's employment with the Governmental Unit.

c. The officer shall be under the supervisions and control of the Governmental Unit Police Supervisor.

d. Unless the Governmental Unit Police Supervisor has approved an officer for plainclothes work, officers shall wear the official uniform and badge of the appropriate Governmental Unit police or sheriff's office and the badge shall be plainly visible.

e. The officer shall be responsible for completing the appropriate reports and forms necessary to conclude an incident unless otherwise directed by the Governmental Unit Police Supervisor.

f. The officer shall at all times follow the ordinances, rules, regulations, and policies of the Governmental Unit and the appropriate Governmental Unit police or sheriff's office, and other applicable laws.

g. The Governmental Unit Police Supervisor may authorize the use of Governmental Unit equipment by the officer when such use is determined by the Governmental Unit Police Supervisor to be in the best interests of the public safety and necessary to the assignment.

h. For school-related functions (i.e., sporting events, prom, graduation, etc.) extra duty must be approved by the principal of the school requesting extra duty assignments; for extra duty assignments that extend the officer's normal duties, there must be prior approval from the School District Superintendent's office.

F. PERFORMANCE APPRAISAL. The School Resource Officers' performance will be evaluated consistent with Governmental Unit policy and procedures by the assigned police supervisor, who will seek and accept input from the respective school principal or their designees.

G. **SELECTION.** The School Resource Officer will be selected in a manner as agreed upon by the Governmental Unit's police chief or sheriff, as applicable, with input by members of the School District.

H. **VEHICLE.** As necessary to the duties of the position, and subject to availability, the School Resource Officers will be provided on-duty use of a appropriate Governmental Unit police or sheriff's office vehicle.

I. **LIABILITY COVERAGE.** The Governmental Unit and School District shall exchange evidence of insurance showing general liability coverage for the School District and general liability and police professional coverage of the Governmental Unit in the minimum amount established by the Colorado Governmental Immunity Act for protection from claims for bodily injury, death, property damage, or personal injury which may arise through the execution of this Agreement, through the Governmental Unit's Risk Manager and the School District's Superintendent. Such evidence shall be approved by each recipient prior the commencement of this Agreement. Nothing set forth herein shall be interpreted to supersede the provisions of § 29-5-101, C.R.S. and following, to the extent applicable, and such statute shall control in the event of a conflict between the statute and this Agreement.

J. **TERMINATION.** Either the Governmental Unit or School District may terminate this Agreement without cause upon 30 days written notice. Upon termination, any funds provided by the School District for the services of a School Resource Officer under this Agreement that have not been provided as of the termination date, shall be returned to the School District. Upon termination, all services of a School Resource Officer provided by the Governmental Unit under this Agreement prior to the termination date that have not been paid for by the School District as of the termination date, shall be paid by the School District within thirty days of the effective date of termination of this Agreement. Notice shall be given to the Governmental Unit police chief or sheriff, as applicable, or the School District Superintendent as appropriate.

K. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. Amendment of this Agreement may be made only in writing and signed by the parties hereto.

L. **RELATIONSHIP OF THE PARTIES.** It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed as in any way establishing the relationship of co-partners or a joint venture between the Governmental Unit and the School District or as construing the School District, including its officers, agents, volunteers and employees, as an agent of the Governmental Unit or of construing the Governmental Unit, including its officers, agents, volunteers and employees as an agent of the School District. The School District shall not represent that the School Resource Officers are employees or agents of the School District in any capacity. The School Resource Officers shall not represent that they are employees or agents of the School District in any capacity. The School Resource Officers shall remain solely employees of the Governmental Unit.

M. **NO THIRD PARTY BENEFICIARIES.** None of the terms or conditions in this Agreement gives or allows any claim, benefit, or right of action by any third person not a party

hereto. Any person other than the Governmental Unit or the School District receiving services or benefits under this Agreement is only an incidental beneficiary. Nothing in this Agreement shall be deemed as a waiver of immunity or liability granted to the Governmental Unit and the School District under the Colorado Governmental Immunity Act.

**N. COVID-19 PANDEMIC.**

- a. As of the date of this Agreement, the COVID-19 pandemic has caused several non-traditional scenarios for the operation of the School District's schools. Those scenarios range from fulltime online, to hybrid (half in-person/half online), to fulltime in-person instruction. How long each of these scenarios may last is unknown. The School District is working closely with state, county, and municipal health agencies to ensure compliance with all applicable rules and regulations related to the COVID-19 pandemic. Regardless of the scenario, educational services will continue at School District buildings. Those services may include, but are not limited to:
  - i. teacher instruction (both in-person and online),
  - ii. administrative operations, including in-person communications with parents and community members, as well as, supervision of teachers and staff, and direct student interaction under different scenarios,
  - iii. student testing for classes such as Advanced Placement, SAT/ACT, and state-required standardized tests,
  - iv. breakfast and lunch distribution for eligible students, and
  - v. iPad and technology distribution for students, faculty and staff.

In light of these ongoing operations at the School District schools, it is necessary that the School Resource Officer Program continue during the COVID-19 pandemic even though students may not be at the schools during a traditional, 5-day per week schedule.

- b. The parties further recognize that, during the pandemic, the applicable Governmental Unit's police or sheriff's office may need additional flexibility in its scheduling and operational schedules to meet its internal agency needs. The Parties are willing to collaborate to ensure each Party's particular needs are met, with the following, minimum standards for supervision of School District schools:
  - i. School Resource Officers will stay connected with their assigned schools. This may include daily check-ins with school administration, site-visits, increased patrols around specific schools, or otherwise, but the intent is to continue incorporating School Resource Officers in the culture and

operations of their assigned schools to the greatest degree possible.

- ii. Maintain an immediate line of communication with each assigned school. To the extent a School Resource Officer is engaged in different duties as assigned by the Governmental Unit Police Supervisor, the School Resource Officer shall also be reachable by cellular phone or handheld radio during School District working hours, and must be authorized by the applicable Governmental Unit Police Supervisor to respond immediately to potential incidents at School District schools.
- iii. Finally, the Parties recognize that these are unique times and they pledge to work together, maintaining clear, transparent, and free communications at the highest levels between and among agencies and the School District, to ensure the safety and security of all School District students, teachers, administrators, and staff.

### III.

#### TERM OF AGREEMENT

The term of this Agreement shall be July 1, 2020, through June 30, 2021. This Agreement may be renewed each year for one additional year upon written certification by each party that funds sufficient to pay the respective expenses of the Governmental Unit and the School District for any additional year have been authorized by the Governmental Unit and the School District respectively.

The respective costs for the Governmental Unit and the School District for each school year will be detailed in a new **Exhibit A** for each additional school year.

### IV.

#### MISCELLANEOUS

**A. PRESERVATION OF IMMUNITY.** Nothing in this Agreement shall be construed: (i) as a waiver by either party of immunity provided by common law or by statute, specifically including the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as it may be amended from time to time; (ii) as creating an assumption of any duty or obligation with respect to any third party where no such duty previously existed; or (iii) as creating any rights enforceable by such third parties.

**B. INFORMATION SHARING.** The appropriate Governmental Unit police or sheriff's office, the School District, Boulder County District Attorney's Office, Boulder County Juvenile Probation, Boulder County Department of Social Services, Boulder County District

Attorney's Office, and other governmental agencies have entered into a juvenile information exchange agreement and agree to abide by and share information that is in accordance with Colorado State law, C.R.S. § 19-3-303, that mandates the sharing of information between these separate agencies when dealing with delinquency, dependency, and neglect cases.

**C. GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

**D. NO WAIVER.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Governmental Unit or the School District shall not constitute a waiver of any of the other terms or obligation of this Agreement.

**E. NOTICE.** Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the party at the address set forth below:

To School District:  
Superintendent  
395 South Pratt Parkway  
Longmont, CO 80501

To Governmental Unit:  
Town of Firestone  

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2 Park Avenue  

---

Firestone, CO 80504  

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**F. SEVERABILITY.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

**G. ASSIGNMENT.** Neither this Agreement nor any of the rights or obligations of the parties shall be assigned by either party without the written consent of the other.

**H. NON-APPROPRIATION/TABOR.** The parties understand and acknowledge that the Governmental Unit and the School District are subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, any payment obligation of the School District is expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period ending upon the next succeeding June 30. Financial obligations payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the School District, as applicable, and other applicable law. Notwithstanding any other provision of this Agreement concerning termination, upon the School District's failure to appropriate such funds, this Agreement shall automatically terminate.

**I. BINDING ARBITRATION PROHIBITED.** Neither party agrees to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

**J. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** School District or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Governmental Unit hereby certifies and warrants that, during the term of this Agreement and any extensions, Governmental Unit has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the School District determines that Governmental Unit is in violation of this provision, the School District may exercise any and all remedies available at law, in equity, or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**K. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. School District Board Policy GBEA.** The signatories aver that to their knowledge and without prior approval of the School District's Board of Education, no employee of the School District has any personal or beneficial interest in the service or property described in this Agreement. Governmental Unit has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Governmental Unit's services and Governmental Unit shall not employ any person having such known interests.

**L. STUDENT DATA PRIVACY. §§22-16-101 et seq., C.R.S.** Governmental Unit agrees that any data given to it by the School District in order to perform its obligations under this Agreement (i.e., student personally identifiable information, demographic data, financial data, etc., collectively referred to herein as "Confidential Data"), whether provided through electronic transfer or on physical drives, remains the sole property of the School District. Governmental Unit shall maintain the Confidential Data in the strictest confidence consistent with, and shall comply with, the Colorado Student Transparency and Security Act (in particular § 22-16-108 through 110, C.R.S.), Children's Online Privacy Protection Rule, and the Federal Education Rights and Privacy Act. Any discovery of Confidential Data by Governmental Unit in the ordinary course of business shall remain confidential and shall similarly be maintained in a manner consistent with all Colorado and federal laws. Confidential Data shall not be passed, transported, or otherwise moved outside the School District networks, Governmental Unit's secure data transmission site, or off School District property without written approval from the School District's Chief Technology Officer. Confidential Data stored on School District equipment shall not be duplicated or transferred to a different media without the School District's express written consent. Changes to Governmental Unit's practices, privacy policy, or end user license agreement that conflict with existing Colorado or federal laws and material breaches that involve the misuse or unauthorized release of Confidential Data may result in immediate termination of this Agreement.

1. **Data Transparency:** Governmental Unit shall provide clear information that is

understandable by a layperson explaining the data elements of the Confidential Data that Governmental Unit collects, the learning purpose for which Governmental Unit collects it, and how Governmental Unit uses and shares it. The information must include all Confidential Data that Governmental Unit collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. Governmental Unit shall provide the information to the School District in a format that is easily accessible through a website. Governmental Unit shall update the information as necessary to maintain accuracy.

Governmental Unit shall provide clear notice to the School District before making material changes to its privacy policy for school services.

Governmental Unit shall facilitate access to and correction of any factually inaccurate Confidential Data by the School District in response to a request for correction that the School District receives and responds to in accordance with section 22-16-112(1)(c), C.R.S.

Upon discovering the misuse or unauthorized release of the Confidential Data held by Governmental Unit, a subcontractor of Governmental Unit, or a subsequent subcontractor, Governmental Unit shall notify the School District as soon as possible, regardless of whether the misuse or unauthorized release is a result of a material breach of the terms of this Agreement.

**2. Use of Confidential Data.** Governmental Unit shall not:

- a. Sell the Confidential Data; except that this prohibition does not apply to the purchase, merger, or other type of acquisition of Governmental Unit, or any assets of Governmental Unit, by another entity, so long as the successor entity continues to be subject to the provisions of C.R.S. § 22-16-101 et seq. with respect to the Confidential Data that Governmental Unit acquired while subject to the provisions of C.R.S. § 22-16-101 et seq.;
- b. Use or share Confidential Data for purposes of targeted advertising to students; or
- c. Use Confidential Data to create a personal profile of a student other than for supporting purposes authorized by the School District or with the consent of the student or the student's parent.

Notwithstanding any provision of C.R.S. § 22-16-101 et seq. to the contrary, Governmental Unit may use or disclose Confidential Data to:

- a. Ensure legal or regulatory compliance or to take precautions against

liability;

- b. Respond to or participate in the judicial process;
- c. Protect the safety of users or others on Governmental Unit's website, online service, online application, or mobile application; or
- d. Investigate a matter related to public safety.

If Governmental Unit uses or discloses Confidential Data as allowed above, Governmental Unit shall notify the School District as soon as possible after the use or disclosure of the information.

Governmental Unit may use or disclose Confidential Data to a subcontractor only if Governmental Unit contractually requires the subcontractor to comply with C.R.S. § 22-16-101 and following. The provisions of this paragraph apply to the ability of an initial or subsequent subcontractor to further subcontract. If the School District determines that an initial or subsequent subcontractor has committed a material breach of this Agreement that involves the misuse or unauthorized release of Confidential Data, the School District shall comply with the requirements of section 22-16-105(5) (a) or 22-16-107 (2) (a), as applicable; except that the School District is not required to consider terminating this Agreement if Governmental Unit terminates this Agreement with the subcontractor as soon as possible after Governmental Unit knows or has reason to know of the initial or subsequent subcontractor's material breach.

A student may consent to the use, sharing, or retention of the student's Confidential Data only if the student is at least eighteen years of age or legally emancipated.

3. **Confidential Data Security and Destruction.** Governmental Unit shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of the Confidential Data. The information security program must make use of appropriate administrative, technological, and physical safeguards.

During the term of this Agreement between Governmental Unit and the School District, if the School District requests destruction of a student's Confidential Data collected, generated, or inferred as a result of this Agreement, Governmental Unit shall destroy the information as soon as practicable after the date of the request unless:

- a. Governmental Unit obtains the consent of the student or the student's parent to retain the student's Confidential Data; or
- b. The student has transferred to another public education entity and the

receiving public education entity has requested that Governmental Unit retain the student's Confidential Data.

Following the termination or conclusion of this Agreement between Governmental Unit and the School District, Governmental Unit shall, within the time period specified in this Agreement, destroy all Confidential Data collected, generated, or inferred as a result of this Agreement. If this Agreement does not specify a period for destruction of the Confidential Data, Governmental Unit shall destroy the information when the information is no longer needed for the purpose of this Agreement between Governmental Unit and the School District. Governmental Unit shall notify the School District of the date upon which all of the Confidential Data is destroyed.

**M. ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or claim arising under or related to this Agreement, the parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within thirty (30) days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim through mediation conducted by the Judicial Arbitrator Group (“JAG”) of Denver, Colorado or, if JAG is no longer in existence, or if the parties mutually agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within sixty (60) days following either party’s written request therefor. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the District Court for Boulder County.

**N. ATTORNEYS’ FEES.** For any dispute arising from or related to this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs whether or not legal proceedings are instituted.

**O. AUTHORITY OF PARTIES/SIGNATORIES.** Each person signing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of the MOU and the performance of such party’s obligations hereunder have been duly authorized and that the MOU is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**[Remainder of page intentionally left blank; signatures appear on following page.]**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

GOVERNMENTAL UNIT

SCHOOL DISTRICT

\_\_\_\_\_  
Bobbi Sindelar, Mayor  
Town of Firestone

\_\_\_\_\_  
Dr. Don Haddad, Superintendent of Schools,  
St. Vrain Valley School District

ATTEST:

ATTEST:

\_\_\_\_\_  
GOVERNMENTAL UNIT CLERK  
APPROVED AS TO CONTENT:

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
PROOFREAD

**EXHIBIT A**  
School Resource Officer Compensation

**A. School Year**

This document is an exhibit to the **INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND THE ST. VRAIN VALLEY SCHOOL DISTRICT RE-1J FOR A JOINT SCHOOL RESOURCE OFFICER PROGRAM** and applies to the school year August 2020 through May 2021.

**B. School Sites**

School District school sites involved in the School Resource Officer Program shall be determined prior to the start of each school calendar (August-May) and should include School Resource Officer (“SRO”) staffing expectations. School sites chosen for the 2020-21 school year are:

|                          |       |
|--------------------------|-------|
| Prairie Ridge Elementary | 1 SRO |
| Centennial Elementary    |       |
| Coal Ridge Middle School |       |

SRO support upon request at Middle/Elementary schools

**C. Compensation by School Year**

1. 2020-21 School Year. For the 2020-21 school year, School District shall pay to the Governmental Unit the below listed costs as its portion of the 2020 salaries of the SROs for the schools identified in paragraph B above:

|                                        |             |
|----------------------------------------|-------------|
| 1 SRO at 50% of 9 months 2020 salary = | \$31,825.60 |
| Annual Salary =                        | \$82,201.60 |
| Total Payment for 2020 school year =   | \$31,825.60 |

2. Extra Duty Pay. Salary costs for the first officer assigned to perform extra duty services for a function will be covered by the appropriate Governmental Unit police or sheriff’s office. For school-related functions (i.e., sporting events, prom, graduation, etc.) extra duty must be approved by the principal of the school requesting extra duty assignments. For extra duty assignments that extend the officer’s normal duties, there must be prior approval from the School District Superintendent’s office. For each additional officer assigned to the School District for

extra duty coverage, the School District will remit to the Governmental Unit a sum equal to **\$ [REDACTED] per hour** of the assignment. Said payment will cover the applicable rate of compensation to the officer plus the Governmental Unit's additional costs, including but not limited to overtime compensation, payroll taxes, and other benefits and costs.

**CERTIFICATION OF AVAILABLE FUNDS**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

I hereby certify that the School District has budgeted sufficient funds to pay its respective costs for the School Resource Officer Program for the school year identified in paragraph C above.

SCHOOL DISTRICT

\_\_\_\_\_  
Dr. Don Haddad, Superintendent of Schools  
St. Vrain Valley School District

\*\*\*\*\*

I hereby certify that the Governmental Unit of the Town of Firestone did budget sufficient funds to pay its respective costs for the School Resource Officer Program for the school year identified in paragraph C above. I further represent that the appropriate Governmental Unit police or sheriff's office, as applicable, obtained sufficient funding in its 2020-2021 budget to pay its respective costs for the School Resource Officer Program.

\_\_\_\_\_ OF \_\_\_\_\_

\_\_\_\_\_  
Bobbi Sindelar, Mayor  
Town of Firestone

## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



AIM#: 6.c

Consent Agenda

Meeting Date: October 14, 2020

Initiated By: Jessica Koenig

Dept: Town Clerk

#### **AGENDA TITLE**

**Resolution 20-97:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, CONCERNING THE MEMBERSHIP, ROLES AND RESPONSIBILITIES OF THE TOWN OF FIRESTONE FINANCE COMMITTEE

#### **SUMMARY**

Resolution 20-97 staggers the terms for Finance Committee members to ensure continuity and ease the transition of the change-over in membership. Resolution 20-97 also clarifies and aligns the Finance Committee with other Town of Firestone voluntary boards and commissions.

#### **HISTORY AND PREVIOUS BOARD ACTION**

Resolution No. 11-26, the Board of Trustees formally established the Town of Firestone Finance Committee ("Committee") as an advisory committee of the Board of Trustees in accordance with Section 2.04.130 of the Firestone Municipal Code.

Resolution No. 13-12, the Board of Trustees increased the membership of the Committee, restated the membership, goals, and responsibilities of the Committee, and repealed and replaced Resolution No. 11-26.

Resolution No. 17-39, the Board of Trustees further increased the membership of the Committee and revised and restated the goals and responsibilities of the Committee.

#### **RECOMMENDATION**

Staff recommends approval of Resolution 20-97.

#### **ALTERNATIVES**

Provide staff with further direction.

#### **ATTACHMENTS**

1. Finance Committee Membership Res

#### **FINANCIAL CONSIDERATIONS**

## **RESOLUTION NO. 20-97**

### **A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, CONCERNING THE MEMBERSHIP, ROLES AND RESPONSIBILITIES OF THE TOWN OF FIRESTONE FINANCE COMMITTEE**

WHEREAS, by Resolution No. 11-26, the Board of Trustees formally established the Town of Firestone Finance Committee ("Committee") as an advisory committee of the Board of Trustees in accordance with Section 2.04.130 of the Firestone Municipal Code; and

WHEREAS, by Resolution No. 13-12, the Board of Trustees increased the membership of the Committee, restated the membership, goals and responsibilities of the Committee, and repealed and replaced Resolution No. 11-26; and

WHEREAS, by Resolution 17-39 the Board of Trustees further increased the membership of the Committee and revised and restated the goals and responsibilities of the Committee; and

WHEREAS, to ensure continuity of the Committee and ease the transition of the change-over in membership, the Board of Trustees desires to establish staggered terms.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

Section 1. The Town of Firestone Finance Committee (the "Committee") was formally established by Board of Trustees Resolution No. 11-26, adopted September 28, 2011. The Committee shall be an advisory committee of the Board of Trustees. The Committee shall consist of five members, as follows: two members of the Board of Trustees and three residents of the Town. Committee members shall be appointed at a public meeting of the Board of Trustees in accordance with the Firestone Municipal Code.

Section 2. The following rules shall apply to the Committee:

A. Quorum: Three members of the Committee, one of whom must be a member of the Board of Trustees, shall constitute a quorum. A majority of the quorum is required to act on any matter before the Committee, but in the absence of a quorum, a lesser number may adjourn any meeting to a later time and date.

B. Term: Each Committee member shall be appointed to a four-year term. A member's term shall commence on the fourth Wednesday of April of each even numbered year and shall expire on the fourth Wednesday of April four years later, subject to the requirement that a Trustee's service shall be concurrent with his or her service as a Trustee. The first Trustee appointed in 2020 shall be appointed for a four year term. The second Trustee appointed in 2020 shall be appointed for a two year term, which term shall upon its expiration become a four year term. The first two resident members appointed in 2020 shall be appointed for four year terms. The third resident member appointed in 2020 shall be appointed for a two-year term, which term

shall upon its expiration become a four-year term.

C. Vacancies/Removal: Committee vacancies shall be filled by an affirmative vote of a majority of the entire Board of Trustees. The term of any person appointed to the Committee to fill a vacancy left by a vacating Committee member shall expire on the expiration date of the term of the vacating Committee member. A Committee member may be removed from the Committee for any reason by an affirmative vote of a majority of the entire Board of Trustees.

D. Meetings: The Committee shall meet monthly unless there is no business for the Committee to consider. Regular meeting dates, times and locations shall be determined at the first Committee meeting of each calendar year. Meetings of the Committee shall be subject to the Colorado Open Meetings Law. Staff to the Committee shall keep an accurate summary or minutes of all Committee meetings, which shall be open for inspection in accordance with the Colorado Open Records Act. The Committee may call special meetings or reschedule any meeting by action taken at any meeting.

Section 3. The Committee shall serve in an advisory capacity to Board of Trustees on matters concerning Town's finances. The Committee's goals and responsibilities shall include the following:

A. Review the Town's annual draft budget to obtain an understanding of the Town's financial position as well as budgeting priorities and initiatives determined by the Town Board and provide feedback on inconsistencies or irregularities to the Town Board.

B. Review financial policies developed and drafted by Town Finance staff and provide comments and recommendations regarding such draft financial policies to the Town Board.

C. Periodically review, but no less frequently than as recommended by the State Auditor's Office, the need for rotation of the Town's independent auditor.

D. Interview selected qualified firms being considered to serve as the Town's auditor. Make recommendation of auditor for Town Board consideration and approval.

E. Review the Town's draft annual audit, monitor the Town's established internal controls related to accounting procedures and functions, and provide recommendations regarding responses to Town auditor's management letter. Provide recommendation to Town Board to accept the Town's audited year-end financial statements.

F. Other duties as specifically identified and requested by the Town Board.

Section 4. The Committee shall have the power to adopt bylaws, rules, policies and procedures for the conduct of its activities, which shall be consistent with the provisions of the Firestone Municipal Code, resolutions and other applicable law. The Committee shall have the power to determine and appoint its own officers.

Section 5. Resolution No. 17-39 is hereby repealed and replaced in its entirety by this

Resolution.

INTRODUCED, READ AND ADOPTED this \_\_ day of \_\_\_\_\_, 2020.

TOWN OF FIRESTONE, COLORADO

\_\_\_\_\_  
Bobbi Sindelar, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, CMC Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, Town Attorney

**AGENDA INFORMATION  
MEMORANDUM**

**FIRESTONE  
TOWN BOARD OF TRUSTEES**



**AIM#:** 7.a

**Presentation**

**Meeting Date:** October 14, 2020

**Initiated By:** Jan Sloat

**Dept:** Human Resources

**AGENDA TITLE**

STAR Award

**SUMMARY**

Presentation of the STAR Award for Outstanding Achievement in recognition of the performance of the Town's Events Team; Ashley Clark and Christina Cardinale.

**HISTORY AND PREVIOUS BOARD ACTION**

In May 2019, the Board approved a new employee recognition program that was created to award employees for demonstrating exceptional service or exceeding expectations in the performance of their work and are deserving of Special Thanks and Recognition (STAR).

**RECOMMENDATION**

**ALTERNATIVES**

**ATTACHMENTS**

1. Special Thanks And Recognition

**FINANCIAL CONSIDERATIONS**



## **Special Thanks And Recognition - STAR Award**

The STAR Award is being created to recognize and express appreciation for services rendered by Town employees who demonstrate exceptional service and/or performance in one or more of the following categories:

- **Customer Service:** Exceeds customer service standards when serving the residents of the Town of Firestone.
- **Safety:** Recognizes employees for providing exceptional care and service while administering first aid and/or support until professional services arrive.
- **Creativity:** One-time innovation or creation that results in time/dollar savings, revenue enhancement, and productivity improvement; and/or ongoing innovative activities that will benefit the Town of Firestone.
- **Teamwork:** Acting as an exceptionally effective and cooperative team member or team leader for a group that has significantly exceeded goals and objectives of the department or unit.
- **Outstanding Achievement:** Awarded to the team member(s) for exceeding expectations and serving the Town in an exemplary manner.

To nominate an employee for consideration of the STAR Award you must submit your request in writing identifying the circumstance for the recommendation. Recipients of this award should demonstrate exceptional service and/or performance in one of the aforementioned categories.

Selected recipients of this award will be recognized at a regularly scheduled Town Board meeting by the Mayor and Board of Trustees and be presented with the STAR Award and a limited edition Town inspired t-shirt. Employees awarded the STAR Award will also have their name added to the STAR Award recipient plaque that will be located in the Board Room at Town Hall.

Recipients will be informed of their selection by means of a congratulatory email and letter inviting them to the next practicable Board meeting for this honor. We encourage recipients to invite family and friends as we recognize their achievement.

## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



AIM#: 8.a

Land Development

Meeting Date: October 14, 2020

Initiated By: Todd Bjerkaas

Dept: Planning & Development

#### **AGENDA TITLE**

**Ordinance 981:** AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, REPEALING AND REENACTING IN THEIR ENTIRETY CHAPTERS 15.04 (BUILDING CODE), 15.06 (INTERNATIONAL RESIDENTIAL CODE), 15.08 (NATIONAL ELECTRIC CODE), 15.10 (INTERNATIONAL EXISTING BUILDING CODE), 15.12 (INTERNATIONAL FUEL GAS CODE), 15.32 (INTERNATIONAL FIRE CODE), AND 15.36 (INTERNATIONAL ENERGY CONSERVATION CODE) OF THE FIRESTONE MUNICIPAL CODE; AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.14 REGARDING ADOPTION OF THE 2018 INTERNATIONAL MECHANICAL CODE; AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.16 REGARDING ADOPTION OF THE 2018 INTERNATIONAL PLUMBING CODE; AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.18 REGARDING ADOPTION OF THE 2018 INTERNATIONAL PROPERTY MAINTENANCE CODE; AND AMENDING TITLE 15 OF THE FIRESTONE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.20 REGARDING ADOPTION OF THE 2018 INTERNATIONAL SWIMMING POOL AND SPA CODE

#### **SUMMARY**

For the Board of Trustees' consideration at a future public hearing is Ordinance 981, which repeals and reenacts existing portions of Title 15 of the Firestone Municipal Code as well as adding new sections to Title 15 as they pertain to the Town's adopted building codes. Pursuant to Part 2 of Article 16, Title 31 of the Colorado Revised Statutes for ordinance codes adopted by reference, the Board of Trustees will first introduce the ordinance and then schedule the public hearing for a future date with notice in compliance with C.R.S. 31-16-203.

Staff requests the Board of Trustees introduce the adopting ordinance and schedule the public hearing for the November 18, 2020 Board of Trustees meeting.

#### **HISTORY AND PREVIOUS BOARD ACTION**

#### **RECOMMENDATION**

Staff recommends that the Board of Trustees introduce the adopting ordinance and schedule the public hearing for the November 18, 2020 Board of Trustees meeting.

#### **ALTERNATIVES**

#### **ATTACHMENTS**

None

#### **FINANCIAL CONSIDERATIONS**

## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



AIM#: 9.a

Discussion/Action

Meeting Date: October 14, 2020

Initiated By: Julie Pasillas

Dept: Public Works

#### **AGENDA TITLE**

**Resolution 20-95:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND CENTENNIAL ARCHAEOLOGY LLC FOR A CLASS III PEDESTRIAN AND CULTURAL INVENTORY OF THE TOWN OF FIRESTONE'S INJECTION WELL PAD AND ASSOCIATED FACILITIES SITE

#### **SUMMARY**

As part of the EPA permit process for the deep injection well sites, a public review period is required. The only comments received were from the Colorado State Historic Preservation Office (CSHPO) regarding the need for the Class III Pedestrian and Cultural Inventory.

#### **HISTORY AND PREVIOUS BOARD ACTION**

In August 2019, Centennial Archaeology completed a Class I (literature review) cultural resource investigation that included the project area under the services provided by Leonard Rice Engineering and New IPT for the preparations of the permit application submitted to the EPA.

#### **RECOMMENDATION**

Staff recommends approval of Resolution 20-95, approving a Professional Services Contract with Centennial Archaeology LLC for Class III Pedestrian and Cultural Inventory services.

#### **ALTERNATIVES**

The Board may choose not to approve Resolution 20-95 and provide Staff with additional direction.

#### **ATTACHMENTS**

1. Res 20-95 Centennial Archaeology Contract
2. Professional Services Contract Centennial Archaeology-Signed
3. Exhibit A Firestone\_Injection\_Well\_Class\_III\_Scope\_Costs

#### **FINANCIAL CONSIDERATIONS**

The contract includes an amount not to exceed \$26,325.00. Sufficient funds have been budgeted and appropriated in the Water Fund.

**RESOLUTION NO. 20-95**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE,  
COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF  
FIRESTONE AND CENTENNIAL ARCHAEOLOGY LLC FOR A CLASS III  
PEDESTRIAN AND CULTURAL INVENTORY OF THE TOWN OF FIRESTONE'S  
INJECTION WELL PAD AND ASSOCIATED FACILITIES SITE**

WHEREAS, in accordance with the Environmental Protection Agency ("EPA"), the property encompassing the Town of Firestone Underground Injection Well site is within a 658.6 acre Area of Review ("Area"), which in accordance with the Colorado State Historic Preservation Officer ("CSHPO") requires a cultural resources inventory; and

WHEREAS, Centennial Archaeology, on behalf of the Town of Firestone ("Town") completed a Class I analysis of the majority of the Area in 2019; and

WHEREAS, as approximately 270 acres of the Area is undisturbed, the Town in accordance with CSHPO's requirements, must conduct a Class III pedestrian and cultural resource inventory of such locations; and

WHEREAS, Centennial Archaeology, having performed the Class I analysis, is uniquely qualified and well positioned to perform the Class III pedestrian and cultural inventory as a sole source provider.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Agreement between the Town of Firestone and Centennial Archaeology LLC for a Class III Pedestrian and Cultural Inventory of the Town of Firestone's Injection Well Pad and associated Facilities site is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

INTRODUCED, READ AND ADOPTED this 14th day of October, 2020.

TOWN OF FIRESTONE, COLORADO

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Bobbi Sindelar, Mayor

ATTEST:

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Jessica Koenig, CMC Town Clerk

APPROVED AS TO FORM:

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William P. Hayashi, Town Attorney

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## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between the **TOWN OF FIRESTONE**, a Colorado municipal corporation with an address of 151 Grant Avenue, P.O. Box 100, Firestone, Colorado 80520 (the "Town"), and **CENTENNIAL ARCHAEOLOGY, LLC**, an independent contractor with a principal place of business at 300 E. Boardwalk, 4-C, Fort Collins, Colorado 80525 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: **St Vrain WTP Injection Well (W2020-9526)**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

### **II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

### **III. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$26,325.00. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

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#### **IV. PROFESSIONAL RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

#### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor. To the extent such work identifies prehistoric native American sites the Town shall in accordance with the State Historic Preservation Officer's regulations deem such information confidential and not subject to disclosure under the Colorado Open Records Act (C.R.S, 24-72-200.1 et seq.)

If the Town reuses or makes any modification to Consultant's designs, documents or work product without the prior written authorization of Consultant, the Town agrees, to the fullest extent permitted by law, to release the Consultant, its officers, directors, employees and sub-consultants from all claims and causes of action arising from such uses, and shall indemnify and hold them harmless from all costs and expenses, including the cost of defense, related to claims and causes of action to the extent such costs and expenses arise from the Town's modification or reuse of the documents.

The Town expressly acknowledges and agrees that the documents and data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

#### **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain

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at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

## **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VIII. INDEMNIFICATION**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability

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under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

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E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

**X. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

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L. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF FIRESTONE, COLORADO**

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Bobbi Sindelar, Mayor

ATTEST:

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Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

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William P. Hayashi, Town Attorney

**CENTENNIAL ARCHAEOLOGY, LLC**

By:



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Christopher C. Kinneer, Vice President

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## NO EMPLOYEE AFFIDAVIT

To be completed only if Contractor has **no** employees

**1. Check and complete one:**

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Firestone (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- A valid Colorado driver's license or a Colorado identification card;
- A United States military card or a military dependent's identification card;
- A United States Coast Guard Merchant Mariner card;
- A Native American tribal document;
- In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or
- Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.*

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Signature

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Date

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## DEPARTMENT PROGRAM AFFIDAVIT

*To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program*

I, \_\_\_\_\_, as a public contractor under contract with the Town of Firestone (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to (or affirmed) before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

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**EXHIBIT A  
SCOPE OF SERVICES**

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- See attached Scope of Work and Assumptions provided by Centennial Archaeology, LLC



## **CLASS III INVENTORY OF AN INJECTION WELL PAD AND ASSOCIATED FACILITIES FOR THE TOWN OF FIRESTONE IN WELD COUNTY, COLORADO**

**Submitted to the Town of Firestone – Public Works Director  
September 18, 2020**

### **Scope of Work and Assumptions**

- The Town of Firestone is developing infrastructure to fill and discharge from a gravel pit lake that has already been constructed. Among the various facilities is an injection well. To meet the permitting requirements of the Environmental Protection Agency (EPA), an area surrounding the project components was previously identified as the Area of Review.
- The EPA Area of Review is a single parcel encompasses 658.6 acres. However much of this area has been completely disturbed by gravel pits, the construction of reservoirs and roads, and housing developments. All of the remaining areas exhibit lesser disturbance related agriculture.
- Following correspondence with the Colorado State Historic Preservation Office (SHPO) the EPA Area of Review was accepted as the formal Area of Potential Effect (APE) by the SHPO. Therefore the term APE will be used going forward to indicate the area where cultural resource inventories are required.
- Centennial Archaeology LLC (Centennial) completed a full Class I analysis the vast majority of the APE in 2019; however, a small portion of the current APE along the southeast boundary was not included in the 2019 Class I analysis. That investigation identified one previously documented site (5WL1408), a historic ranch/farmstead and numerous undocumented ditches, trails.
- Centennial Archaeology LLC (Centennial) proposes to conduct a Class III pedestrian inventory and cultural resource documentation within the 658.6-acre APE.
- As previously mentioned, much of the APE is completely disturbed and pedestrian inventory will not be completed within these areas. Using aerial imagery to determine areas of 100% disturbance, allows for an approximate calculation of 270 acres where pedestrian survey will be accomplished.
- And updated Class I (literature review) analysis of the APE will be completed to determine if there are changes in the records since the previous Class, and to investigate the areas that lie outside the 2019 Class I boundary.
- Class III pedestrian inventory in Colorado requires transect spacing of no more than 15 meters. Therefore, the study area will be inventoried with sweeping transects throughout entire lot at 15 m intervals.

- All resources (archaeological and historical) that are over 50 years in age will be documented on appropriate Site Forms and that a cultural resources technical report appropriate to the type of resources found will be prepared.
- A total of six (6) known cultural resources will require documentation. These include site 5WL1407, segments of the Rural and Last Chance ditches, other unnamed ditches, and Weld County Roads 13 and 26.
- Upon completion of the Class I and III inventories, a Cultural Resources Technical Report and full suite of Colorado Cultural Resource Inventory Forms (Site Forms) will be produced.
- It is assumed that the Class III inventory will take no more than five (5) days for two archaeologists to complete. The estimated duration of field inventory includes all travel time to and from the APE as well as cultural resource documentation.
- It is assumed that a cultural resources technical report and any associated cultural resource forms will take no more than ten (10) days for the project director and support staff to complete.
- The estimates for field work and reporting days required to complete this study are based on documentation of the six known resources and up to 5 isolated finds. If additional cultural resources are encountered more field and reporting time may be necessary. In that event a change order may be required to increase the budget to cover the additional work effort.
- It is assumed that GIS shapefiles of the APE as well as the relevant proposed facilities will be provided to Centennial prior to initiating work.
- If shovel test excavation is required to make NRHP eligibility assessments, that work will be negotiated separately.
- No artifacts will be collected. All artifacts will be fully documented in the field and left in place.
- It is assumed that the ground will be clear and free of snow at the time of the survey. Snow cover is considered to be *force majeure* and may result in delays to the proposed schedule.
- It is assumed that there will be no barriers to access, physical or legal, and that all access will be arranged prior to conducting field work.
- The total estimated cost for this project is \$26,325.00. A cost breakdown by task is provided below .

### **Estimated Costs**

Centennial works on a time and materials basis. If costs to complete the project are lower than estimated, only the actual hours required to complete the work will be invoiced.

| <b>Task 1 - Class I Literature and Database Search</b> |                     |   |                      |                 |
|--------------------------------------------------------|---------------------|---|----------------------|-----------------|
| <b>Position</b>                                        | <b>No. of Hours</b> |   | <b>Rate per Hour</b> | <b>Subtotal</b> |
| Principal Investigator                                 | 1                   | @ | \$95.00              | \$95.00         |
| Project Director                                       | 4                   | @ | \$85.00              | \$340.00        |
| GIS Specialist                                         | 2                   | @ | \$75.00              | \$150.00        |
| Historian                                              | 4                   | @ | \$70.00              | \$280.00        |
| <b>Labor Subtotal</b>                                  |                     |   |                      | <b>\$865.00</b> |

(Continued below)

| Other Direct Costs (ODC)             |              |   |                       |                    |
|--------------------------------------|--------------|---|-----------------------|--------------------|
| File Search Costs                    | Days         |   | Rate Per Day          | Subtotal           |
| File Search / Site Form Request      | At Cost      | @ | Estimate              | \$20.00            |
|                                      |              |   | <b>ODC Subtotal</b>   | <b>\$20.00</b>     |
| Task 2 - Class III Field Inventory   |              |   |                       |                    |
| Position                             | No. of Hours |   | Rate per Hour         | Subtotal           |
| Principal Investigator               | 4            | @ | \$95.00               | \$380.00           |
| Project Director                     | 50           | @ | \$85.00               | \$4,250.00         |
| GIS Specialist                       | 16           | @ | \$75.00               | \$1,200.00         |
| Historian                            | 8            | @ | \$70.00               | \$560.00           |
| Field Technician II                  | 50           | @ | \$48.00               | \$2,400.00         |
|                                      |              |   | <b>Labor Subtotal</b> | <b>\$8,790.00</b>  |
| Other Direct Costs (ODC)             |              |   |                       |                    |
| Vehicle Cost                         | Days         |   | Rate Per Day          | Subtotal           |
| Vehicle Cost                         | 6            | @ | \$150.00              | \$900.00           |
| Miscellaneous                        | Days         |   | Rate Per Day          | Subtotal           |
| GPS/Survey Equipment (per unit)      | 5            | @ | \$50.00               | \$250.00           |
|                                      |              |   | <b>ODC Subtotal</b>   | <b>\$1,150.00</b>  |
| Task 3 - Report and Form Preparation |              |   |                       |                    |
| Position                             | No. of Hours |   | Rate per Hour         | Subtotal           |
| Principal Investigator               | 4            | @ | \$95.00               | \$380.00           |
| Project Director                     | 80           | @ | \$85.00               | \$6,800.00         |
| Technical Editor                     | 4            | @ | \$75.00               | \$300.00           |
| GIS Specialist                       | 32           | @ | \$75.00               | \$2,400.00         |
| Historian                            | 24           | @ | \$70.00               | \$1,680.00         |
| Laboratory/Report Technician II      | 80           | @ | \$48.00               | \$3,840.00         |
|                                      |              |   | <b>Labor Subtotal</b> | <b>\$15,400.00</b> |
| Other Direct Costs (ODC)             |              |   |                       |                    |
| Miscellaneous                        |              |   |                       |                    |
| Curation Fees                        |              |   |                       | \$0.00             |
| Report and Site Form Printing        |              |   |                       | \$100.00           |
|                                      |              |   | <b>ODC Subtotal</b>   | <b>\$100.00</b>    |
|                                      |              |   |                       |                    |
| <b>TOTAL COST</b>                    |              |   |                       | <b>\$26,325.00</b> |

**AGENDA INFORMATION  
MEMORANDUM**

**FIRESTONE  
TOWN BOARD OF TRUSTEES**



**AIM#:** 9.b

**Discussion/Action**

**Meeting Date:** October 14, 2020

**Initiated By:**

**Dept:** Board of Trustees

**AGENDA TITLE**

Finance Committee Appointments

**SUMMARY**

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**

**ALTERNATIVES**

**ATTACHMENTS**

None

**FINANCIAL CONSIDERATIONS**

**AGENDA INFORMATION  
MEMORANDUM**

**FIRESTONE  
TOWN BOARD OF TRUSTEES**



**AIM#:** 9.c

**Discussion/Action**

**Meeting Date:** October 14, 2020

**Initiated By:** Raelynn Ferrera

**Dept:** Administration

**AGENDA TITLE**

**Resolution 20-91:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A SUMMARY OF GRANT AWARD TERMS AND CONDITIONS BETWEEN THE TOWN OF FIRESTONE AND THE STATE OF COLORADO

**SUMMARY**

The Department of Local Affairs' (DOLA) Energy and Mineral Impact Assistance Fund (EIAF) program was created to assist political subdivisions that are socially and/or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels. Funds come from the State severance tax on energy and mineral production and from a portion of the State's share of royalties paid to the federal government for mining and drilling of minerals and mineral fuels on federally owned land.

The Town of Firestone pursued funding from (DOLA) Energy and Mineral Impact Assistance Program for the 2020 grant cycle for \$1,000,000.00. After participating in the grant process, Town staff was notified on August 7, 2020, that the Town had been awarded the full \$1,000,000.00 for the Town Hall Project. Town staff received the executed agreement from DOLA on September 25, 2020.

**HISTORY AND PREVIOUS BOARD ACTION**

The Town submitted an application on February 3, 2020, which was accepted on April 2, 2020. In July, The Town was selected to move to the next step and participate in the applicant hearings. On August 7, 2020, Town staff was notified that the Town had been awarded the full \$1,000,000.00 for the Town Hall Project.

**RECOMMENDATION**

Staff recommends the approval of this resolution.

**ALTERNATIVES**

**ATTACHMENTS**

1. Grant Award Reso
2. 9-22-2020 SUMMARY OF GRANT AWARD TERMS AND CONDITIONS - EIAF 9258
3. 9-22-2020 Exhibit B - EIAF 9258

**FINANCIAL CONSIDERATIONS**

**RESOLUTION NO. 20-91**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF  
FIRESTONE, COLORADO, APPROVING A SUMMARY OF GRANT AWARD  
TERMS AND CONDITIONS BETWEEN THE TOWN OF FIRESTONE AND  
THE STATE OF COLORADO**

WHEREAS, the Town of Firestone ("Town") was awarded an Energy and Mineral Impact Assistance Program (EIAF) grant in the amount of \$1,000,000.00 for the Firestone Town Hall Project; and

WHEREAS, award of the grant is subject to the Town agreeing to the Summary of Grant Award Terms and Conditions as set forth by the State of Colorado.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Summary of Grant Award Terms and Conditions between the Town of Firestone and the State of Colorado is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to sign the Summary of Grant Award Terms and Conditions on behalf of the Town.

INTRODUCED, READ AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2020.

TOWN OF FIRESTONE, COLORADO

\_\_\_\_\_  
Bobbi Sindelar, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, CMC Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, Town Attorney

|                      |
|----------------------|
| EIAF                 |
| CTGG1 NLAA 2021*2401 |

## SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

|                                                                                                                   |                                                                                           |                                                   |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|---------------------------------------------------|
| <b>State Agency</b><br>Department of Local Affairs                                                                | <b>DLG Number</b><br>F21S9258                                                             | <b>CMS Number</b><br>164161                       |
| <b>Grantee</b><br>Town of Firestone                                                                               | <b>Grant Award Amount</b><br>\$1,000,000.00                                               | <b>Retainage Amount</b><br>\$50,000.00            |
| <b>Project Number and Name</b><br>EIAF 9258 - Firestone Town Hall Project                                         | <b>Performance Start Date</b><br>The later of the Effective Date<br>or September 21, 2020 | <b>Grant Expiration Date</b><br>November 30, 2022 |
| <b>Project Description</b><br>The Project consists of constructing a new Town Hall for the<br>Town of Firestone.  | <b>Program Name</b><br>Energy & Mineral Impact Assistance Program (EIAF)                  |                                                   |
|                                                                                                                   | <b>Funding Source</b><br>STATE FUNDS                                                      |                                                   |
|                                                                                                                   | <b>Catalog of Federal Domestic Assistance (CFDA) Number</b><br>N/A                        |                                                   |
| <b>DOLA Regional Manager</b><br><u>Chris La May, (970) 679-4501,</u><br><u>(chris.la.may@state.co.us)</u>         | <b>Funding Account Codes</b>                                                              |                                                   |
| <b>DOLA Regional Assistant</b><br><u>Robert Thompson, (970) 679-4503,</u><br><u>(robert.thompson@state.co.us)</u> | <b>VCUST#</b><br><br>13331                                                                | <b>Address Code</b><br>CN003 EFT                  |

## THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

|                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DEPARTMENT OF LOCAL AFFAIRS</b><br><b>PROGRAM REVIEWER</b><br><br><br><hr/> By: Tim Katers, EIAF Program Manager<br><br>Date: 9/22/2020   4:58 PM MDT | <b>STATE OF COLORADO</b><br>Jared S. Polis, Governor<br><b>DEPARTMENT OF LOCAL AFFAIRS</b><br>Rick M. Garcia, Executive Director<br><br><br><hr/> By: Rick M. Garcia, Executive Director<br><br>Date: 9/23/2020   8:41 AM MDT |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate (the “Effective Date”).

|                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>STATE CONTROLLER</u></b><br><b><u>Robert Jaros, CPA, MBA, JD</u></b><br><br><br><hr/> By: Yingtse Cha, Controller Delegate<br>Department of Local Affairs<br><br>Effective Date: 9/25/2020   10:07 AM MDT |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

EIAF 9258 - Firestone Town Hall Project

## TERMS AND CONDITIONS

### 1. GRANT

As of the Performance Start Date, the State Agency shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter (the "State") hereby obligates and awards to Grantee shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter (the "Grantee") an award of Grant Funds in the amount shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

### 2. TERM

#### A. Initial Grant Term and Extension

The Parties' respective performances under this Grant Award Letter shall commence on the Performance Start Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter or an executed Option Letter showing the new Grant Expiration Date.

#### B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

#### C. *Reserved.*

### 3. AUTHORITY

Authority to enter into this Grant Award Letter exists in the law as follows:

#### A. State Authority

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 39-29-110 (Local Government Severance Tax Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been

## EIAF 9258 - Firestone Town Hall Project

accomplished from and with appropriate agencies. This Grant Award Letter is funded, in whole or in part, with State funds.

**B.** *Reserved.*

#### 4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

**A.** *Reserved.*

**B.** *Reserved.*

**C.** “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

**D.** “**Exhibits**” means the following exhibits attached to this Grant Award Letter:

**i.** **Exhibit B**, Scope of Project

**ii.** **Exhibit G**, Form of Option Letter

**E.** “**Extension Term**” means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter, an amendment, or an Option Letter.

**F.** *Reserved.*

**G.** *Reserved.*

**H.** “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.

**I.** “**Grant Award Letter**” or “**Grant**” means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.

**J.** “**Grant Expiration Date**” means the Grant Expiration Date shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter. Work performed after the Grant Expiration Date is not eligible for reimbursement from Grant Funds.

**K.** “**Grant Funds**” or “**Grant Award Amount**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.

**L.** “**Incident**” means any accidental or deliberate event that results in, or constitutes an imminent threat of, the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

**M.** “**Initial Term**” means the time period between the Performance Start Date and the initial Grant Expiration Date.

**N.** *Reserved.*

**O.** “**Other Funds**” means all funds necessary to complete the Project, excluding Grant Funds. Grantee is solely responsible for securing all Other Funds.

**P.** “**Party**” means the State or Grantee, and “**Parties**” means both the State and Grantee.

## EIAF 9258 - Firestone Town Hall Project

- Q.** “**Performance Start Date**” means the later of the Performance Start Date or the Execution Date shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter.
- R.** *Reserved.*
- S.** *Reserved.*
- T.** *Reserved.*
- U.** “**Project**” means the overall project described in **Exhibit B**, which includes the Work.
- V.** “**Project Budget**” means the amounts detailed in **§6.2** of **Exhibit B**.
- W.** *Reserved.*
- X.** *Reserved.*
- Y.** “**Services**” means the services performed by Grantee as set forth in this Grant Award Letter, and shall include any services rendered by Grantee in connection with the Goods.
- Z.** “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to State personnel records not subject to disclosure under CORA.
- AA.** “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- BB.** “**State Fiscal Year**” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- CC.** “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- DD.** *Reserved.*
- EE.** “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- FF.** *Reserved.*
- GG.** *Reserved.*
- HH.** *Reserved.*
- II.** “**Work**” means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- JJ.** “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Performance Start Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

EIAF 9258 - Firestone Town Hall Project

## 5. PURPOSE

The purpose of the Energy and Mineral Impact Assistance Program is to assist political subdivisions that are socially and/or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels. The purpose of this Grant is described in **Exhibit B**.

## 6. SCOPE OF PROJECT

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of **Exhibit B**. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

## 7. PAYMENTS TO GRANTEE

### A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Award Amount shown on the Summary of Grant Award Terms and Conditions page of this Grant Award Letter.

- i. The State may increase or decrease the Grant Award Amount by providing Grantee with an updated Grant Award Letter or an executed Option Letter showing the new Grant Award Amount.
- ii. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Performance Start Date or after the Grant Expiration Date.
- iii. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### B. Erroneous Payments

The State may recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee. The State may recover such payments by deduction from subsequent payments under this Grant Award Letter, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

### C. Matching Funds.

Grantee shall provide the Other Funds amount shown on the Project Budget in **Exhibit B** (the "Local Match Amount"). Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

## EIAF 9258 - Firestone Town Hall Project

**D. Reimbursement of Grantee Costs**

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Project Budget in **Exhibit B**.

- i.** Upon request of the Grantee, the State may, without changing the maximum total amount of Grant Funds, adjust or otherwise reallocate Grant Funds among or between each line of the Project Budget by providing Grantee with an executed Option Letter or formal amendment.

**E. Close-Out and De-obligation of Grant Funds**

Grantee shall close out this Grant no later than 90 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. Any Grant Funds remaining after submission and payment of Grantee's final reimbursement request are subject to de-obligation by the State.

**8. REPORTING – NOTIFICATION****A. Performance and Final Status**

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out period described in **§7.E**.

**B. Violations Reporting**

Grantee shall disclose, in a timely manner, in writing to the State, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting this Award.

**9. GRANTEE RECORDS****A. Maintenance and Inspection**

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

**B. Monitoring**

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

**C. Audits**

Grantee shall comply with all State and federal audit requirements.

EIAF 9258 - Firestone Town Hall Project

**10. CONFIDENTIAL INFORMATION-STATE RECORDS****A. Confidentiality**

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security (<http://oit.state.co.us/ois>) and all applicable laws, rules, policies, publications, and guidelines. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

**B. Other Entity Access and Nondisclosure Agreements**

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

**C. Use, Security, and Retention**

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**D. Incident Notice and Remediation**

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

EIAF 9258 - Firestone Town Hall Project

## **11. CONFLICTS OF INTEREST**

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration.

## **12. INSURANCE**

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

## **13. REMEDIES**

In addition to any remedies available under any Exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant Funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

## **14. DISPUTE RESOLUTION**

Except as herein specifically provided otherwise, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

## **15. NOTICES AND REPRESENTATIVES**

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §15.

## **16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

## **17. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions, committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C.

## EIAF 9258 - Firestone Town Hall Project

Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Grant Award Letter shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, or protections of any of these provisions.

**18. GENERAL PROVISIONS****A. Assignment**

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

**B. Captions and References**

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**C. Entire Understanding**

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

**D. Modification**

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in either an option letter or a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

**E. Statutes, Regulations, Fiscal Rules, and Other Authority**

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Performance Start Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. Order of Precedence**

In the event of a conflict or inconsistency between this Grant Award Letter and any Exhibits or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i.** Any executed Option Letter
- ii.** The provisions of this Grant Award Letter.
- iii.** The provisions of any exhibits to this Grant Award Letter.

EIAF 9258 - Firestone Town Hall Project

**G. Severability**

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

**H. Survival of Certain Grant Award Letter Terms**

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

**I. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

**J. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**K. *Reserved.***

**L. Digital Signatures**

If any signatory signs this Grant using a digital signature in accordance with the Colorado State Controller Contract, Grant, and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Grant by reference.

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EIAF 9258 - Firestone Town Hall Project

## EXHIBIT B – SCOPE OF PROJECT (SOP)

### 1. PURPOSE

**1.1. Energy Impact.** The purpose of the Energy and Mineral Impact Assistance Program is to assist political subdivisions that are socially and/or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels.

### 2. DESCRIPTION OF THE PROJECT(S) AND WORK

**2.1. Project Description.** The Project consists of constructing a new Town Hall for the Town of Firestone.

**2.2. Work Description.** The Town of Firestone (Grantee) shall construct a new Town Hall. The approximately 15,956 square foot facility will be located in the Central Park campus, adjacent to the Firestone Police Department and Municipal Court in Firestone. The building will be constructed following the 2018 International Energy Code and have capacity for future growth. Town government offices will be located in the new building. Grantee will own and maintain the new facility and, in accordance with §9 below, a contractor will be hired to complete the Work.

**2.2.1.** The Grantee warrants that the facility will continue to be utilized as a Town-owned facility for at least ten (10) years following completion of the Grant. If the facility is used for any purpose other than intended during that ten-year period, the Grantee shall return a portion of the grant funds based on the following payback schedule: In year one, one hundred percent (100%) of the grant funds must be returned; in year two, ninety percent (90%); in year three, eighty percent (80%); in year four, seventy percent (70%); in year five, sixty percent (60%); in year six, fifty percent (50%); in year seven, forty percent (40%); in year eight, thirty (30%) percent; in year nine, twenty (20%) and in year ten, ten (10%) percent. At the end of the ten (10) year period following the date of completion of the renovations and thereafter, no State restrictions on use of the property shall be in effect.

**2.3. Responsibilities.** Grantee shall be responsible for the completion of the Work and to provide required documentation to DOLA as specified herein.

**2.3.1.** Grantee shall notify DOLA at least 30 days in advance of Project Completion.

**2.4. Recapture of Advanced Funds.** To maximize the use of Grant Funds, the State shall evaluate Grantee's expenditure of the Grant Funds for timeliness and compliance with the terms of this Grant. DOLA reserves the right to recapture advanced Grant Funds when Grantee has not or is not complying with the terms of this Grant.

**2.5. Eligible Expenses.** Eligible expenses shall include: labor and materials, site preparation and required testing and inspections. Engineering, bidding expenses, permitting and legal fees shall be the sole responsibility of the Grantee.

### 3. DEFINITIONS

#### 3.1. Project Budget Lines.

**3.1.1.** “Building or Facility Construction” means labor and materials costs, bond and insurance costs, bid advertisements, purchase and erection of pre-engineered buildings, and attorney’s fees.

**3.2.** “Substantial Completion” means the Work is sufficiently complete in accordance with the Grant so it can be utilized for its intended purpose without undue interference.

### 4. DELIVERABLES

**4.1. Outcome.** The final outcome of this Grant is completed construction of a new Town Hall for Firestone.

**4.2. Service Area.** The performance of the Work described within this Grant shall be located in Firestone, Colorado.

**4.3. Performance Measures.** Grantee shall comply with the following performance measures:

## EIAF 9258 - Firestone Town Hall Project

| <u>Milestone/Performance Measure/Grantee will:</u> | <u>By:</u>                                                          |
|----------------------------------------------------|---------------------------------------------------------------------|
| Put Project out to bid.                            | Within 90 days after the Effective Date of this Grant Award Letter. |
| Award and finalize subcontract(s).                 | Within 30 days after bid opening.                                   |
| Provide DOLA with Project Timeline.                | Within 30 days after the Effective Date of the subcontract(s).      |
| Provide DOLA with Project photos.                  | Prior to Project closeout.                                          |
| Submit Quarterly Pay Requests                      | <b>See §4.5.2 below</b>                                             |
| Submit Quarterly Status Reports                    | <b>See §4.5.2 below</b>                                             |
| Submit Project Final Report                        | February 28, 2023                                                   |

**4.4. Budget Line Adjustments.**

**4.4.1. Grant Funds.** Grantee may request in writing that DOLA move Grant Funds between and among budget lines, so long as the total amount of Grant Funds remains unchanged. To make such budget line changes, DOLA will use an Option Letter (**Exhibit G**).

**4.4.2. Other Funds.** Grantee may increase or decrease the amount of Other Funds in any one or any combination of budget lines as described in **§6.2**, or move Other Funds between and among budget lines, so long as the total amount of such “Other Funds” is not less than the amount set forth in **§6.2** below. Grantee may increase the Total Project Cost with “Other Funds” and such change does not require an amendment or option letter. DOLA will verify the Grantee’s contribution of “Other Funds” and compliance with this section at Project Closeout.

**4.5. Quarterly Pay Request and Status Reports.** Beginning 30 days after the end of the first quarter following execution of this Grant and for each quarter thereafter until termination of this Grant, Grantee shall submit Pay Requests and Status Reports using a form provided by the State. The State shall pay the Grantee for actual expenditures made in the performance of this Grant based on the submission of statements in the format prescribed by the State. The Grantee shall submit Pay Requests setting forth a detailed description and provide documentation of the amounts and types of reimbursable expenses. Pay Requests and Status Reports are due within 30 days of the end of the quarter but may be submitted more frequently at the discretion of the Grantee.

**4.5.1.** For quarters in which there are no expenditures to reimburse, Grantee shall indicate zero (0) requested in the Pay Request and describe the status of the Work in the Status Report. The report will contain an update of expenditure of funds by budget line as per **§6.2** of this **Exhibit B** Scope of Project as well as a projection of all Work expected to be accomplished in the following quarter, including an estimate of Grant Funds to be expended.

**4.5.2.** Specific submittal dates.

| Quarter                   | Year | Due Date         | Pay Request Due | Status Report Due |
|---------------------------|------|------------------|-----------------|-------------------|
| 3 <sup>rd</sup> (Jul-Sep) | 2020 | October 30, 2020 | Yes             | Yes               |
| 4 <sup>th</sup> (Oct-Dec) | 2020 | January 30, 2021 | Yes             | Yes               |
| 1 <sup>st</sup> (Jan-Mar) | 2021 | April 30, 2021   | Yes             | Yes               |
| 2 <sup>nd</sup> (Apr-Jun) | 2021 | July 30, 2021    | Yes             | Yes               |
| 3 <sup>rd</sup> (Jul-Sep) | 2021 | October 30, 2021 | Yes             | Yes               |
| 4 <sup>th</sup> (Oct-Dec) | 2021 | January 30, 2022 | Yes             | Yes               |
| 1 <sup>st</sup> (Jan-Mar) | 2022 | April 30, 2022   | Yes             | Yes               |

## EIAF 9258 - Firestone Town Hall Project

|                           |      |                  |     |     |
|---------------------------|------|------------------|-----|-----|
| 2 <sup>nd</sup> (Apr-Jun) | 2022 | July 30, 2022    | Yes | Yes |
| 3 <sup>rd</sup> (Jul-Sep) | 2022 | October 30, 2022 | Yes | Yes |
| 4 <sup>th</sup> (Oct-Dec) | 2022 | January 30, 2023 | Yes | Yes |

**4.6. DOLA Acknowledgment.** The Grantee agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

## 5. PERSONNEL

**5.1. Responsible Administrator.** Grantee's performance hereunder shall be under the direct supervision of **Raelynn Fererra, Assistant to the Town Manager, ([rfererra@firestoneco.gov](mailto:rfererra@firestoneco.gov))**, who is an employee or agent of Grantee, and is hereby designated as the responsible administrator of this Project and a key person under this §5. Such administrator shall be updated through the process in §5.3. If this person is an agent of the Grantee, such person must have signature authority to bind the Grantee and must provide evidence of such authority.

**5.2. Other Key Personnel.** **A.J. Krieger, Town Manager, ([akrieger@firestoneco.gov](mailto:akrieger@firestoneco.gov))**. Such key personnel shall be updated through the process in §5.3.

**5.3. Replacement.** Grantee shall immediately notify the State if any key personnel specified in §5 of this **Exhibit B** cease to serve. All notices sent under this subsection shall be sent in accordance with §15 of the Grant.

**5.4. DLG Regional Manager:** **Chris La May, (970) 679-4501, ([chris.la.may@state.co.us](mailto:chris.la.may@state.co.us))**

**5.5. DLG Regional Assistant:** **Robert Thompson, (970) 679-4503, ([robert.thompson@state.co.us](mailto:robert.thompson@state.co.us))**

## 6. FUNDING

The State provided funds shall be limited to the amount specified under the "Grant Funds" column of §6.2, Budget, below.

**6.1. Matching/Other Funds.** Grantee shall provide **at least 88%** of the Total Project Cost as documented by Grantee and verified by DOLA at Project Closeout. Initial estimates of Grantee's contribution are noted in the "Other Funds" column of §6.2 below. Increases to Grantee's contribution to Total Project Cost do not require modification of this Grant Award Letter and/or **Exhibit B**.

### 6.2. Budget

| Budget Line(s) |                                   | Total Project Cost | Grant Funds        | Other Funds        | Other Funds Source |
|----------------|-----------------------------------|--------------------|--------------------|--------------------|--------------------|
| Line #         | Cost Category                     |                    |                    |                    |                    |
| 1              | Building or Facility Construction | \$8,414,018        | \$1,000,000        | \$7,414,018        | Grantee            |
| <b>Total</b>   |                                   | <b>\$8,414,018</b> | <b>\$1,000,000</b> | <b>\$7,414,018</b> |                    |

## 7. PAYMENT

Payments shall be made in accordance with this section and the provisions set forth in §7 of the Grant.

**7.1. Payment Schedule.** If Work is subcontracted or subgranted and such Subcontractors and/or Subgrantees are not previously paid, Grantee shall disburse Grant Funds received from the State to such Subcontractor or Subgrantee within fifteen days of receipt. Excess funds shall be returned to DOLA.

## EIAF 9258 - Firestone Town Hall Project

| Payment            | Amount             |                                                                                                                                                                                            |
|--------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Interim Payment(s) | \$950,000          | Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses.                                               |
| Final Payment      | \$50,000           | Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports. |
| <b>Total</b>       | <b>\$1,000,000</b> |                                                                                                                                                                                            |

**7.2. Interest.** Grantee or Subgrantee may keep interest earned from Grant Funds up to \$100 per year for administrative expenses.

## **8. ADMINISTRATIVE REQUIREMENTS**

**8.1. Reporting.** Grantee shall submit the following reports to DOLA using the State-provided forms. DOLA may withhold payment(s) if such reports are not submitted timely.

**8.1.1. Quarterly Pay Request and Status Reports.** Quarterly Pay Requests shall be submitted to DOLA in accordance with §4.5 of this Exhibit B.

**8.1.2. Final Reports.** Within 90 days after the completion of the Project, Grantee shall submit the final Pay Request and Status Report to DOLA.

**8.2. Monitoring.** DOLA shall monitor this Work on an as-needed basis. DOLA may choose to audit the records for activities performed under this Grant. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Grant. Such books and records shall contain documentation of the Grantee's pertinent activity under this Grant in accordance with Generally Accepted Accounting Principles.

**8.2.1. Subgrantee/Subcontractor.** Grantee shall monitor its Subgrantees and/or Subcontractors, if any, during the term of this Grant. Results of such monitoring shall be documented by Grantee and maintained on file.

**8.3. Bonds.** If Project includes construction or facility improvements, Grantee and/or its contractor (or subcontractors) performing such work shall secure the bonds hereunder from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223 and are authorized to do business in Colorado.

**8.3.1. Bid Bond.** A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

**8.3.2. Performance Bond.** A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

**8.3.3. Payment Bond.** A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

**8.3.4. Substitution.** The bonding requirements in this §8.3 may be waived in lieu of an irrevocable letter of credit if the price is less than \$50,000.

**9. CONSTRUCTION/RENOVATION.** The following subsections shall apply to construction and/or renovation related projects/activities:

EIAF 9258 - Firestone Town Hall Project

- 9.1. Plans & Specifications.** Construction plans and specifications shall be drawn up by a qualified engineer or architect licensed in the State of Colorado, or pre-engineered in accordance with Colorado law, and hired by the Grantee through a competitive selection process.
- 9.2. Procurement.** A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Grantee being obligated to award the construction contract to the lowest responsive, responsible bidder meeting the Grantee's specifications.
- 9.3. Subcontracts.** Copies of any and all contracts entered into by the Grantee in order to accomplish this Project shall be submitted to DOLA upon request, and any and all contracts entered into by the Grantee or any of its Subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.
- 9.4. Standards.** Grantee, Subgrantees and Subcontractors shall comply with all applicable statutory design and construction standards and procedures that may be required, including the standards required by Colorado Department of Public Health and Environment, and shall provide the State with documentation of such compliance.

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## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



**AIM#:** 9.d

**Discussion/Action**

**Meeting Date:** October 14, 2020

**Initiated By:** Raelynn Ferrera

**Dept:** Administration

#### **AGENDA TITLE**

**Resolution 20-92:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND FRANSEN PITTMAN CONSTRUCTION COMPANY REGARDING CONSTRUCTION SERVICES FOR THE FIRESTONE TOWN HALL CONSTRUCTION PROJECT

#### **SUMMARY**

Fransen Pittman Construction Company was selected as part of an RFP process in 2019. Fransen Pittman has been in business since 1994 and successfully worked on multiple government and community projects, including the Colorado State Capitol Building, Hudson Town Hall, Erie Police, and Municipal Court Building, Lyons Community Library, and Lochbuie Town Hall.

As part of the pre-construction agreement approved in 2019, Fransen Pittman has been working with the Architect (Kelly Deitman, Halcyon Design) and Town staff on the preliminary stages of the project, producing the Guaranteed Maximum Price (GMP) of this agreement. This agreement is the final step to starting the construction of the Town Hall Construction Project.

The project is scheduled to begin immediately and be completed by Fall 2021.

#### **HISTORY AND PREVIOUS BOARD ACTION**

At the August 14, 2019 Regular Board meeting, the Board of Trustees approved Resolution 19-75, a pre-construction agreement with Fransen Pittman General Contractors.

The agreement allowed the team to get started on the preliminary evaluation of the project budget, schedule, and prepare a conceptual cost estimate to establish a baseline cost for the construction of Town Hall.

#### **RECOMMENDATION**

Approval of this Resolution authorizing execution of an agreement and authorizing Staff to expend funds.

#### **ALTERNATIVES**

#### **ATTACHMENTS**

1. Fransen Pittman Town Hall RESO
2. Firestone Town Hall Contract - GMP Amendment & all Exhibits

#### **FINANCIAL CONSIDERATIONS**

##### **Soft Costs - \$899,000**

i.e., Water Tap Fee, Electrical Upsize, Gas Service Upsize, Water Shares, and FF&E

##### **Hard Costs - \$4,889,731**

i.e., Demolition & Site work, Concrete, Mechanical and Electrical

##### **Indirect General Contractor Costs - \$720,659**

i.e., State and Local Tax, Overhead & Profit, Insurance, and Performance & Payment Bonds



**RESOLUTION 20-92**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF  
FIRESTONE, COLORADO, APPROVING AN AGREEMENT  
BETWEEN THE TOWN OF FIRESTONE AND FRANSEN PITTMAN  
CONSTRUCTION COMPANY REGARDING CONSTRUCTION  
SERVICES FOR THE FIRESTONE TOWN HALL CONSTRUCTION  
PROJECT**

WHEREAS, the Town of Firestone ("Town") is in need of construction services for its Town Hall Construction Project ("Project"); and

WHEREAS, Fransen Pittman Construction Company, having dutifully performed the Project's pre-construction services, is uniquely qualified as a sole source to perform the Project's construction services.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Construction Services Agreement between the Town of Firestone and Fransen Pittman Construction Company is approved in substantially the same form as the copy attached hereto and made a part of this resolution, and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this 14th day of October, 2020.

TOWN OF FIRESTONE, COLORADO

\_\_\_\_\_  
Bobbi Sindelar, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, Town Attorney



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the 14th day of October in the year 2019  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

Firestone Town Hall  
151 Grant Ave.  
Firestone, CO 80520

and the Construction Manager:  
(Name, legal status and address)

Fransen Pittman Construction Co., Inc.  
9563 S. Kingston Ct.  
Englewood, CO 80112

for the following Project:  
(Name and address or location)

Firestone Town Hall Addition & Remodel  
151 Grant Ave.  
Firestone, CO 80520

The Architect:  
(Name, legal status and address)

Halcyon Design LLC  
8310 Colorado Blvd., Suite 650  
Firestone, CO 80504

The Owner's Designated Representative:  
(Name, address and other information)

Raelynn Ferrera  
Firestone Town Hall  
151 Grant Ave.  
Firestone, CO 80520

The Construction Manager's Designated Representative:  
(Name, address and other information)

Josh Davis  
Fransen Pittman Construction Co., Inc.  
9563 S. Kingston Ct.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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**User Notes:**

(1999792977)

Englewood, CO 80112

The Architect's Designated Representative:  
*(Name, address and other information)*

Kelly Deitman  
Halcyon Design LLC  
8310 Colorado Blvd., Suite 650  
Firestone, CO 80504

The Owner and Construction Manager agree as follows.

Init.

/

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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in that certain agreement for preconstruction services dated August 17, 2019. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

*(Paragraphs deleted)*

### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, Contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its Contingency for the Construction Manager's exclusive use to cover those unanticipated costs considered reimbursable as the Cost of the Work but not included in a Change Order for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents, which Contingency shall not exceed fifteen percent (15%) of the Cost of the Work. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; design errors or omissions (f) those events for which the Owner has extended schedule and time but has not increased the Contract Sum (ie. for conditions out of the Contractor's control). The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Construction Manager to increase the Guaranteed Maximum Price under the Contract Documents. Construction Manager shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner a monthly status report setting forth an accounting of the Contingency. Construction Manager agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance of bond may provide reimbursement, Construction Manager will in good faith exercise reasonable steps to obtain performance from the Subcontractor

and/or recovery from any surety or insurance company. Construction Manager agrees that if Construction Manager is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** Following review of the Guaranteed Maximum Price proposal, and after making any appropriate adjustments thereto, Owner shall notify the Construction Manager that the Owner has accepted the Guaranteed Maximum Price in writing on or before the date specified in the Guaranteed Maximum Price proposal. Following Owner's acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

**§ 2.2.10** The Work will be provided under all awarded schedules and shall be substantially completed as of the date set forth in Exhibit H to the Guaranteed Maximum Price Amendment. Final completion for all Work awarded shall be date as specified in Exhibit H to the Guaranteed Maximum Price Amendment .

## **§ 2.3 Construction Phase**

### **§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 2.3.1.2** The Construction Phase shall commence within ten (10) calendar days after completion of all of the following:

- .1 Owner's approval of the total Cost of the Work
- .2 The Parties' mutual execution of the Guaranteed Maximum Price Amendment;
- .2 Owner furnishing evidence of ability to finance the entire Cost of the Work
- ..3 Procurement of a complete and final Building Permit, grading permit, and other permits necessary for the commencement and continuity of construction operations;
- .4 Delivery of such Bonds as Construction Manager may be required to furnish in accordance with Article 8 of this Agreement;
- .6 Delivery of such Certificates of Insurance that Construction Manager is required to purchase and maintain in accordance with Article 8 of this Agreement; and
- .7 Issuance of a Notice to Proceed.

### **§ 2.3.2 Administration**

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements

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with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain competitive bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2017.

§ 2.3.2.7 Included in the working days is an allowance for 6 anticipated adverse weather days total for the project, where weather prevents or interferes with the critical path construction activity and construction manager is delayed in the progress of the Work by unanticipated adverse weather.

*(Paragraph deleted)*

§ 2.3.2.9 There is no bonus incentive for early completion of this Project, nor will liquidated damages be assessed for failure to substantially complete the project by the Substantial completion Date.

§ 2.3.2.10 The Construction Manager shall record the progress of the Project on a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.1 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

## § 2.4 Professional Services

Section 3.12.10 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

**§ 2.4.1 Design/Build Components.** The Work includes the Design/Build Work, as defined below.

**§ 2.4.2** Except with respect to the Design/Build Work, as defined herein, to the extent that the Owner requires any incidental services, construction consulting, material or cost engineering analyses, the Owner acknowledges that such services are advisory in nature and are not to be considered professional design services. Except with respect to the Design/Build Work, the Owner will, with due diligence, refer any such recommendations, suggestions or questions to the appropriate design professionals, and the Construction Manager shall have no liability to the Owner or to the Architect or its consultants for such services requested by the Owner.

**§ 2.4.3** Under this Agreement, the "Design/Build Work" shall be defined as that construction delivery method whereby the Construction Manager has entered or will enter into subcontracts that include delivery of design/build services by a Subcontractor. The Design/Build Work will be performed in accordance with the provisions of this Article 2.4. The Owner acknowledges that the pricing for the Design/Build Work included in the Contract Sum is based upon the scope of the Design/Build Work set forth in the Plans and Specifications as of the date of this Agreement or as set by the GMP Amendment. The Contract Time shall be equitably extended and the Contract Sum, including applicable General Conditions Costs, bonds and insurance, shall be increased if the scope of the Design/Build Work changes.

**§ 2.4.3.1** The Design/Build Work must be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Construction Manager, through the applicable Subcontractor, will submit for the Owner's approval a schedule for the performance of the Design/Build Work which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and approval. The Construction Manager shall cause the Design/Build Work Subcontractor to properly and timely submit their respective designs for approval by the Architect and with any and all applicable authorities having jurisdiction over the Project.

**§ 2.4.3.2** For all Design/Build Work, the Construction Manager shall require the Design/Build Work Subcontractor and relevant Sub-subcontractor to provide and maintain appropriate professional liability coverage insurance. The Design/Build Work Subcontractor and Sub-Subcontractor shall continue to carry professional liability insurance that complies with the requirements of this Agreement through the applicable Statute of Repose or such other time as may be designated herein. Notwithstanding anything to the contrary set forth herein, the Owner hereby acknowledges and agrees that, in the event of any defect in the design of the Design/Build Work as prepared by the Design/Build Work Subcontractor and/or Sub-subcontractor, the Construction Manager's liability shall be limited to the proceeds available under such professional liability insurance policies, and the Construction Manager hereby assigns to the Owner all of the Construction Manager's claims against the Design-Build Work Subcontractor in connection therewith, and the Owner hereby waives any and all rights it may have to any additional recovery or damages against the Construction Manager. The Construction Manager shall identify the Owner as an express, third-party beneficiary of each Design-Build subcontract.

**§ 2.4.3.3** The Design/Build Work Subcontractor and/or Sub-subcontractor shall prepare construction documents for the Design/Build Work for approval by the Owner and the Architect, consisting of drawings and specifications setting forth in detail the requirements for the construction of the Design/Build Work portions of Project. The Architect shall review all designs and construction documents comprising the Design/Build Work for consistency, coordination and integration purposes. Upon completion and acceptance by the Owner and the Architect, the designs and construction documents comprising the Design/Build Work will be considered part of the Contract Documents. Notwithstanding anything to the contrary set forth herein, the Construction Manager shall have no obligation to have its Subcontractor perform the Design/Build Work or to construct the Design/Build Work until the Owner has approved the designs and construction documents comprising the Design/Build Work.

## **§ 2.5 Hazardous Materials**

Section 10.3 of A201-2017 shall apply to the Construction Phases.

## **ARTICLE 3 OWNER'S RESPONSIBILITIES**

### **§ 3.1 Information and Services Required of the Owner**

**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Owner has appropriated funds equal to or in excess of the Contract Sum, and the Guaranteed Maximum Price Amendment shall include a provision to that effect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™–2017, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

*(Paragraphs deleted)*

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## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

(4.1%) of the total Cost of the Work, which shall be included in the Guaranteed Maximum Price.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

5% overhead and profit

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15% overhead and profit limit on subcontractor's markup on change orders

§ 5.1.4 Rental rates for Construction Manager-provided equipment shall be as shown in the Standard Tool and Equipment Rental Pricing List attached hereto as Exhibit C.

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, unless amended by a Change Order or Written Amendment. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. The Guaranteed Maximum Price shall be determined when Construction documents are 100% complete and approved by Owner and made part of this Agreement by written amendment hereto. Construction Manager does not guarantee any specific line item estimate provided within the Guaranteed Maximum Price.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

None.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract and without notice to any surety, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. Such additions, deletions or revisions will be authorized by a Written Amendment, Change Order in accordance with Article 7 of AIA Document A201-2017. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2017, General Conditions of the Contract for Construction.

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**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201–2017 shall have the meanings assigned to them in AIA Document A201–2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

*(Paragraph deleted)*

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7, as modified by Exhibit I Clarifications, and Contractor's General Conditions Costs as itemized and identified in the Guaranteed Maximum Price Amendment. Should there be a conflict between the Articles describing the Cost of the Work, and in case of conflict Exhibit I Clarifications shall prevail.

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

**§ 6.1.4** Contractor's General Conditions Costs are defined as those costs that are itemized and identified in the GMP Amendment.

### **§ 6.2 Labor Costs**

**§ 6.2.1** Labor rates and other compensation for employees in the direct employ of the Construction Manager to perform the Work or services specifically related to the Work, whether at the site or in Construction Manager's principal or a branch office, under schedules of job classifications and at such rates set forth in Exhibit D. Such employees shall include without limitation superintendents, foreman, construction workers, special consultants (including but not limited to architects, testing laboratories, surveyors, attorneys and accountants) and other personnel employed full-time. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.

*(Paragraphs deleted)*

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors for Work performed or furnished by Subcontractors in accordance with the requirements of the subcontracts.

**§ 6.3.1** Construction Manager reserves the right to self-perform work typically performed by Subcontractors, if such work is identified for self-performance in the GMP Amendment and only on a cost plus fee (Not-To-Exceed 5%) basis subject to an agreed upon guaranteed maximum price for the self-performed work. The Construction Manager shall bid its proposed Guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade contractors. Any subcontract for self-performed work will provide for payment in an amount equal to the Cost of the Work (as defined in the Contract Documents) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this Agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for self-performed work shall be applied to reduce the Cost of the Work under this Agreement and

the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Construction Manager, or any separate Construction Manager or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

#### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rates of Construction Manager-provided equipment are set forth in Exhibit C. The rentals of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies. Costs for communications services, electronic equipment, and software, directly related to the Work with the Owner's prior approval. Cost of document reproductions and delivery charges incurred in discharge of duties connected with the Work.

**§ 6.5.5** That portion of the necessary expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, including automobile allowances, cell phones and subsistence expenses.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with adequate insurance coverage evidenced by a certificate of insurance provided to Owner, and subject to the Owner's prior approval.

#### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Costs of premiums for additional Bonds and insurance required because of changes in the Work.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay, subject to Exhibit I Clarifications.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 6.6.6 Costs for communications services, electronic equipment and software, including Textura fees, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the negligence of the Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them and for whose acts any of them may be liable or the failure of the Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them and for whose acts any of them may be liable to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

*(Paragraph deleted)*

§ 6.6.10 General Project close out costs, including but not limited to demobilization, punch list, operation and maintenance manual and as-built drawing costs.

## § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2017.

§ 6.7.3 Costs of repairing or correcting damaged Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

## § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel, whether stationed at the site or at Construction Manager's principal office or offices other than the site office for general administration of the Work and not specifically referred to in Section 6.2, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses not expressly included in Sections 6.1 to 6.7 or 11.5 or otherwise excluded in Exhibit I Clarifications;
- .4 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work and charges against Construction Manager for delinquent payments (unless delinquent payments are due to late payments from Owner);
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract,

- including correction of defective or nonconforming Work, disposal of materials or equipment wrongly supplied, and repairing any damage to property;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7 or 11.5;
  - .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
  - .8 Costs for services incurred during the Preconstruction Phase.

### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### **§ 6.11 Accounting Records**

The Owner shall be afforded access to the Construction Manager's record books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement for a period of three years after final payment. Any audit shall be performed by a qualified construction CPA selected by Owner and acceptable to Construction Manager, acting in the sole interest of the Owner. The cost of the audit shall be the sole responsibility of the Owner. All audit findings will be considered confidential and can only be disclosed between Owner, Owner's Auditor and Construction Manager unless the Auditor's findings result in a dispute which reasonably requires further disclosure. Otherwise, no disclosure of any audit findings will be allowed to any other party. .

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.1.1** Payments by the Owner to the Construction Manager will be in the form of a wire transfer of electronic funds.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the twenty-fifth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be made as follows:

- .1 Prior to substantial completion, progress payments shall be made in amount to be computed as follows
  - (a) Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017;
  - (b) Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
  - (c) Add the Construction Manager's Fee, less retainage of five percent ( 5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
  - (d) Subtract retainage of five percent ( 5 %) withheld from every progress payment,
  - (e) Subtract the aggregate of previous payments made by the Owner;
  - (f) Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
  - (g) Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.
- .2 Upon substantial completion in an amount sufficient to increase total payments to Construction Manager to 95% of the Contract Sum, including the payments to Construction Manager on account of the Construction Manager Fee, less such amounts as Owner may withhold in accordance with Article 9 of AIA Document A201-2017.

§ 7.1.8 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the Construction Manager shall execute subcontracts in accordance with those agreements. Payments to Subcontractors shall be subject to retainage of not less than ten percent (10%).

**§ 7.1.8.1** Upon satisfactory completion and acceptance of the following portions of the Work, full retainage will be released to the Subcontractors performing the following Work:

Demolition  
Earthwork  
Utilities  
Shoring  
Rebar  
Caissons  
Concrete Foundations  
Pre-Cast Concrete  
Masonry  
Structural Steel

**§ 7.1.9** Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by qualified auditors who are mutually acceptable to the Owner and Contractor, but acting in the sole interest of the Owner.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting. Work that is subject to a lump sum price shall not be subject to audit except for the percentage of work actually completed versus the amount billed toward the lump sum price. Agreed upon rates which form the basis of the Cost of the Work shall not be subject to audit.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day

period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

*(Paragraph deleted)*

## **ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in

*(Paragraphs deleted)*

Exhibit B.

*(Table deleted)*

## **ARTICLE 9 DISPUTE RESOLUTION**

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2017.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in Weld County District Court.

☐ Other: *(Specify)*

None.

In the event either party by this Contract commences a legal proceeding against the other to enforce or interpret this Agreement, then the prevailing party shall be awarded its attorneys' fees and costs.

*(Paragraphs deleted)*

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2017.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be compensated for any Preconstruction Phase services performed under the executed preconstruction agreement dated 8/17/19, and in accordance with such agreement.

*(Paragraphs deleted)*

### **§ 10.2 Termination Subsequent to Executing Guaranteed Maximum Price Amendment**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2017.

*(Paragraphs deleted)*

### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

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## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2017.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2017 shall apply to the Construction Phase.

### § 11.3 Governing Law

Section 13.1 of A201–2017 shall apply to the Construction Phase.

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 Contractor's Representations

In order to induce Owner to enter into this Agreement, Construction Manager makes the following representations:

*(Paragraphs deleted)*

§ 11.5.1 Construction Manager is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents. Construction Manager has familiarized itself with the general nature and extent of the Contract Documents, Work, site, locality, all local conditions that in any manner may affect cost, progress, performance, or furnishing of the Work. It is also understood that the Architect of record has implemented and incorporated into the construction documents all applicable codes, laws, existing conditions, factors, etc. that are applicable to the project.

§ 11.5.2 Construction Manager has reviewed all reports of explorations and test of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) that have been utilized by Architect in preparing the Contract Documents, and accepts the general accuracy of the technical data contained in such reports and drawings upon which Construction Manager is entitled to rely. .

§ 11.5.3 Construction Manager has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such additional supplementary examinations, investigations, explorations, tests, reports, and studies and data 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 and which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Construction Manager and safety precautions and programs incident thereto.

§ 11.5.4 Construction Manager 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 as required by Colorado law.

### § 11.6 Compliance with laws and immigration status obligations.

§11.6.1 Construction Manager shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Construction Manager's compliance with any Laws or Regulations.

§ 11.6.2 Construction Manager certifies, through signature of its authorized representative executing this Agreement,

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that it does not knowingly employ or contract with an illegal alien 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.

**§ 11.6.3** Construction Manager shall not:

- .1 Knowingly employ or contract with an illegal alien 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 an illegal alien to perform work under the public contract for services.

**§ 11.6.4** Construction Manager shall affirm as required by C.R.S. § 8-17.5-102 (c) (II), as may be amended, 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.

**§ 11.6.5** Construction Manager 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.

**§ 11.6.6** If Construction Manager obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Construction Manager shall be required to:

- .1 Notify the subcontractor and the Owner within three days that the Construction Manager has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- .2 Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph 13.6(a) required the subcontractor does not stop employing or contracting with the illegal alien; except that the Construction Manager 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 an illegal alien.

**§ 11.6.7** Construction Manager 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 may be amended.

**§ 11.6.8** If Construction Manager violates any of the provisions set forth in this section, the Owner may terminate the Agreement and Construction Manager shall be liable for all actual and consequential damages incurred by the Owner.

**§ 11.7** Other provisions:

**§ 11.7.1** Construction Manager is responsible only for construction of the Project according to the Contract Documents. Construction Manager is not a licensed design professional and has no professional qualifications in architecture, structural, mechanical, electrical, civil or acoustical engineering. Any value engineering recommendations or alternate material suggestions by Construction Manager are subject to prior approval and acceptance by Owner and Architect.

**§ 11.7.2** Owner acknowledges that soil movement beneath the building improvements may cause damage to the structure. There are various ways of construction improvements on soils that move that can help reduce this risk of damage. It is Construction Manager's and Architect's responsibility to review with Owner the Soils Report and to assist Owner in becoming informed of various methods of construction and risk of damage due to soil movement associated with the various methods. It is Owner's responsibility to determine which method of constructing the improvements that Owner desires to employ and how much risk Owner is willing to accept. Owner acknowledges that

it may not be possible to totally eliminate the risk of soil movement and damage to the building improvements. Provided that Construction Manager constructs the Project in accordance with the Contract Documents, Owner may not make a claim against Construction Manager with respect to damages to the project caused by soil movement.

**§ 11.7.3** It is the responsibility of the Owner to address all potential issues with adjoining property owners such as party lines, zero lot lines, site drainage, etc. before the commencement of construction. The Construction Manager specifically excludes costs resulting from issues with adjoining properties.

**§ 11.7.4** In the event the base price of essential construction materials to the Project at the time or date of installation (or purchase by the Contractor) increases by more than 10% of the Producer Price Index for construction materials and components, Series ID Number WPUFD432, published by the U.S. Bureau of Labor Statistics in effect for the month in which the material was installed or purchased, the Contract Sum shall be equitably adjusted to reflect such increase. The Contractor's equitable adjustment shall be made by Change Order in accordance with the provisions of AIA Document A201-2017. An adjustment in the pricing for a price-impacted material shall not include any amount for overhead and profit. The Contract Price shall not be adjusted by more than 25% of the original Contract Sum for the aggregate of the increases in base prices for any potentially price-impacted essential construction materials.

**§ 11.7.5** The Owner and Construction Manager acknowledge and agree that the payments hereunder shall constitute current expenditures of the Owner payable in the fiscal years for which funds are appropriated for the payment thereof. The Owner's obligations under this Agreement 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 Owner, or an obligation of the Owner 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 Owner other than funds appropriated for the payment of current expenditures. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Owner monies, assets or properties

## **ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1** AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2** AIA Document A201–2017, General Conditions of the Contract for Construction  
(Paragraphs deleted)
- .5** Other documents:

*(List other documents, if any, forming part of the Agreement.)*

|           |                                                 |
|-----------|-------------------------------------------------|
| Exhibit A | AIA Document A133-2009 GMP Amendment            |
| Exhibit B | Insurance and Bonds                             |
| Exhibit C | Standard Tool and Equipment Rental Pricing List |
| Exhibit D | Labor Rates                                     |
| Exhibit E | Drawings & Specifications Index                 |
| Exhibit F | GMP Estimate                                    |
| Exhibit G | Alternates                                      |
| Exhibit H | Construction Schedule                           |
| Exhibit I | Clarifications                                  |
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| Exhibit K | Allowances                                      |

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

*(Printed name and title)*

CONSTRUCTION MANAGER *(Signature)*

*(Printed name and title)*



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# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

Firestone Town Hall Addition & Remodel  
151 Grant Ave.  
Firestone, CO 80520

### THE OWNER:

(Name, legal status and address)

Firestone Town Hall  
151 Grant Ave.  
Firestone, CO 80520

### THE ARCHITECT:

(Name, legal status and address)

Halcyon Design LLC  
8310 Colorado Blvd., Suite 650  
Firestone, CO 80504

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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

*(Paragraphs deleted)*

### § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

#### **§ 1.2.4 Order Of Precedence**

**§ 1.2.4.1** In the case of conflicts between the Drawings and Specifications, the Specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner and Architect for clarification. The Architect's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Sum pursuant to Articles 7 and 8 or dispute resolution in accordance with Article 15.

**§ 1.2.4.2** Where figures are given, they shall be preferred to scaled dimensions.

**§ 1.2.4.3** Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with their well-known meanings.

**§ 1.2.4.4** In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and Written Amendments to this Agreement; (b) this Agreement; (c) Drawings (large scale governing over small scale), Specifications and Addenda issued prior to the execution of this Agreement; (d) approved Submittals; (e) information furnished by the Owner; (f) other documents listed in the Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

#### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

#### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

#### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

#### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic mail.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by a method of delivery that includes proof of receipt, such as certified or registered mail, by courier providing proof of delivery, or FedEx, UPS or other similar delivery with tracking verification.

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model, if any, without agreement to protocols governing the use of, and reliance on, the information contained in the model and without agreed upon protocols, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

*(Paragraphs deleted)*

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the

Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.2.5 Underground Facilities**

**.1 Shown or Indicated:** The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities (which shall be defined as all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water) at or contiguous to the site is based on information and data furnished to Owner or Architect by the owners of such Underground Facilities or by others

**.2 Not Shown or Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site that was not shown or indicated in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such Underground Facility and give written notice to that owner and to Owner and Architect. Architect will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If Architect concludes that a change in the Contract Documents is required, a Construction Change Directive or a Change Order will be issued as provided in Article 7 to reflect and document such consequences. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility. Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Sum or Contract Times, Contractor may make a claim therefor as provided in Article 15. However, Owner, Architect and Architect's Consultants shall not be liable to Contractor for any claims, costs, losses or damages incurred or sustained by Contractor on or in connection with any other project or anticipated project

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from

those Owner-required means, methods, techniques, sequences or procedures unless arising from the negligence of Contractor, its Subcontractors or persons or entities for whom they are responsible.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

#### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor believes it has encountered human remains or recognized the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from such suspension may be made as provided in Article 15.

#### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

#### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent. Failure of the Owner or Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's and Architect's information. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require, then the Contractor's design professional shall certify that the Work has been performed in accordance with the design criteria.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully

completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors

shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Sum or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

### **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and

**.3 The extent of the adjustment, if any, in the Contract Time.**

**§ 7.2.2** Notwithstanding the foregoing, no change in the Contract Sum requiring additional compensable Work to be performed, which Work causes the aggregate amount payable under the Contract Documents to exceed the amount appropriated for the original Contract Documents, shall be valid, unless Owner gives Contractor written assurance that lawful appropriations to cover the costs of the additional Work have been made and that the appropriations are available prior to performance of the additional Work, or unless such Work is covered under a remedy-granting provision in the Contract Documents.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1** Labor rates, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3** Rental rates of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4** Premium rates for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5** Costs of labor rates of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### § 7.5 Authority to Approve Changes.

Any other provision of the Contract Documents notwithstanding, for purposes of this Article 7, and only for purposes of this Article 7, the term "Owner" shall have the following meaning with respect to the approval and execution of Written Amendments, Change Orders and Construction Change Directives.

§ 7.5.1 With respect to any Written Amendment, Change Order or Work Change Directive that results in an increase in the Contract Sum of an amount equal to five percent (5%) or less of the Contract Sum, the department director who has responsibility for the Project may act as "Owner" with respect to the approval and execution of such Written Amendment, Change Order or Construction Change Directive up to and until such time as the total dollar amount of all Written Amendments, Change Orders and Construction Change Directives exceeds Ten Thousand Dollars (\$10,000.00), at which time such Written Amendment, Change Order or Construction Change Directive shall be subject to approval and execution pursuant to the provisions of the following subparagraph 7.5.2

§ 7.5.2 With respect to any Written Amendment, Change Order or Construction Change Directive that results in an increase in the Contract Sum of an amount greater than five percent (5%) but less than ten percent (10%) of the Contract Sum, the Town Manager may act as "Owner" with respect to the approval and execution of such Written Amendment, Change Order or Construction Change Directive up to and until such time as the total dollar amount of all Written Amendments, Change Orders or Construction Change Directives exceeds Fifty Thousand Dollars (\$50,000.00), at which time such Written Amendment, Change Order or Construction Change Directive shall be subject to approval and execution pursuant to the provisions of the following subparagraph 7.5.3

§ 7.5.3 With respect to any Written Amendment, Change Order or Construction Change Directive that results in an increase in the Contract Sum of an amount equal to or greater than ten percent (10%) of the Contract Price and further, with respect to any Written Amendment, Change Order or Construction Change Directive that results in **any** increase in the Contract Sum when the total amount of **all** Written Amendments, Change Orders or Construction Change Directives exceeds Fifty Thousand Dollars (\$50,000.00) the Town Board of Trustees shall act as "Owner" with respect to the approval and execution of such Written Amendment, Change Order or Construction Change Directive.

§ 7.5.4 Nothing within this paragraph 7.5. or any subparagraph thereof shall prevent the Town Board of Trustees from acting as the "Owner" with respect to the approval and execution of any Written Amendment, Change Order or

Construction Change Directive of any amount whatsoever; it is the intent of this paragraph 7.5. and the subparagraphs hereof only to authorize the department director who has responsibility for the Project and the Town Manager, in the absence of Town Board of Trustees approval and execution, to approve and execute certain Written Amendments, Change Orders or Construction Change Directives under the circumstances detailed above.

#### **§ 7.6 Claims for Change to Contract Sum,**

The Contract Sum may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Sum shall be based on written notice delivered by the party making the claim to the other party and to Architect within the time specified in Article 15. Notice of the amount of the claim shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Sum shall be determined in accordance with Article 15 if Owner and Contractor cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Sum will be valid if not submitted in accordance with this paragraph and Article 15.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date established in the GMP Amendment.

*(Paragraph deleted)*

**§ 8.1.4** The date of Final Completion is the date established in the GMP Amendment.

**§ 8.1.5** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

*(Paragraphs deleted)*

#### **§ 8.3 Claim for Change to Contract Times**

The Contract Times may only be changed as allowed or permitted in the contract documents. Any Claim for an adjustment of the Contract Times shall be based on written notice delivered by the party making the Claim to the other party and to Architect within the time specified in Article 15. Notice of the extent of the Claim shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All Claims for adjustment in the Contract Times shall be determined in accordance with Article 15, if Owner and Contractor cannot otherwise agree. No Claim for an adjustment in the Contract Times will be valid if not submitted in accordance with the requirements of this paragraph 8.3 and Article 15.

**§ 8.4 Time of the Essence.** All time limits stated in the Contract Documents are of the essence of the Agreement.

#### **§ 8.5 Delays and Extensions of Time**

**§ 8.5.1** If the Contractor is prevented or delayed at any time in the commencement or from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a claim is made therefor in accordance with Article 15. Delays beyond the control of Contractor shall include, but not be limited to: (1) an act or neglect of the Owner or Architect, of

an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unanticipated adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control or acts of God, epidemics, pandemics, government actions; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

**§ 8.5.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** Where Contractor is delayed due to action or inaction of Owner or by anyone for whom the Owner is legally liable, the Contract Times shall be extended in an amount equal to the time lost due to such delay. In no event shall Owner be liable to Contractor, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of Contractor, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work. This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor may revise the initial schedule of values from time to time when the actual costs and progress of the Work varies from the original approved schedule of values.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least twenty days before the date established for each progress payment (but not more often than once a month), the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work as of the date of the Application. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment, free and clear of all liens. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, with Contractor's approval, which shall not be unreasonably delayed or withheld, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and

the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and

on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled at the time of final payment;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 latent defects in the Work;
- .4 terms of special warranties required by the Contract Documents; or
- .5 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor, including any Subcontractor or anyone else for whom contractor is responsible, is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances, as well as any and all applicable federal, state or local laws relating to the protection of health, safety and the environment from releases or threatened releases of hazardous substances or waste materials and/or governing the handling, use, generation, treatment, storage, recycling, transportation or disposal of hazardous or waste materials. If the Contractor encounters a hazardous material or substance uncovered or revealed at the site and not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of Work, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 .[reserved]

§ 10.3.4 Contractor shall indemnify, defend, and hold harmless the Owner and any of its officers or employees from and against any claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of relating to: (1) any environmental contamination or pollution or threatened contamination or pollution arising out of any release or threatened release of hazardous materials or substances brought to the site by Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible into the Environment, even if such materials or substances are required by the Contract Documents; provided that any such claim, loss or expense is due to the fault or negligence of the Contractor, its Subcontractors, or persons or entities for which they are responsible in the use and handling of hazardous materials or substances required by the Contract Documents, or in the performing of any Work that is outside the scope of Work or contrary to applicable federal, state or local laws relating to the protection of health, safety and the environment from releases or threatened releases of hazardous substances or waste materials and/or governing the handling, use, generation, treatment, storage, recycling, transportation or disposal of hazardous or waste materials.

*(Paragraph deleted)*

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

**ARTICLE 11 INSURANCE AND BONDS**

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Named Insured as fiduciary and made payable to the Named Insured as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Named Insured shall pay the other insureds, their just shares of insurance proceeds received by the Named Insured, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** The Owner and Contractor shall agree on the allocation of the insurance proceeds. If the Owner and Contractor reach an agreement as to the allocation of the insurance proceeds, then the Named Insured shall settle the loss accordingly, and the Contractor or Owner, as applicable, shall be bound by the settlement and allocation. Upon receipt, the Named Insured shall deposit the insurance proceeds in a separate account and make the appropriate distributions. If no agreement regarding the allocation of insurance proceeds is reached, then the damaged Work shall be repaired and/or replaced by the Contractor and the insurance proceeds shall be applied to the costs of repair and/or replacement of the Work. If the insurance proceeds are insufficient to compensate Contractor for the repair and/or replacement of the Work, or for other Contractor costs associated with the loss, including but not limited to costs related to stand-by or delay, then Owner and Contractor shall execute a Construction Change Directive therefor. Any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly, as directed by Architect, either correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, or if the Work has been rejected by the Architect, remove it from the site and replace it with Work that is not defective,, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, such as not in conformity with the requirements of the Contract Documents, the Contractor shall promptly, without regard to cause, and without cost to Owner, and in accordance with Owner's written instructions: (i) correct such defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor

and to make a claim for breach of warranty. If the Contractor fails to correct defective Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

§ 12.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.3 Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 12.2, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed, or for such longer period as agreed upon by the parties.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Architect's issuance of final Certificate of Payment) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Architect as to reasonableness). If any such acceptance occurs prior to Architect's issuance of final Certificate of Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Sum, and, if the parties are unable to agree as to the amount thereof, Owner may make a claim therefor as provided in Article 15. If the acceptance occurs after such Certificate of Payment, an appropriate amount will be paid by Contractor to Owner. Such adjustment shall be effectuated whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the State of Colorado, and venue for any litigation arising under the Contract shall be in Weld County District Court.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 If, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, the Work is stopped for a period of more than 90 consecutive days by Owner or issuance of an order of a court or other public

*(Paragraphs deleted)*

authority, or because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, then the Contractor may, upon seven days' written notice to Owner, and provided that Owner or Architect do not remedy such suspension or failure within that

time, elect to suspend the Work until payment of all such amounts due Contractor, including interest thereon, or terminate the Contract and recover from Owner payment on the same terms as provided in Section 14.4.3

*(Paragraphs deleted)*

#### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 persistently fails to perform the Work in accordance with the Contract Documents; or
- .5 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligation to pay the amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

**§ 14.2.5** Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or that may thereafter accrue. Any retention or payment of monies due Contractor by Owner will not release Contractor from liability.

#### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, at any time and without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part, for a period of not more than ninety days by notice in writing to Contractor, which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed.

**§ 14.3.2** Contractor shall be allowed an adjustment in the Contract Sum or an extension of the Contract Times, or both, directly attributable to any such suspension under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract for the Owner's convenience.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be paid as follows:

- .1 for 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 completed and acceptable Work;
- .2 for 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 completed Work, plus fair and reasonable sums for overhead and profit on such expenses;
- .3 for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others;
- .4 for reasonable expenses directly attributable to termination; and
- .5 A termination fee in an amount equal to 2% of the cost of any unperformed Work as of the date of termination.

Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination, any unearned profit or revenue on the unperformed portion of the work other than such amount as specified in § 14.4.3.5, or any other type of consequential damages.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party with a copy sent to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the direction provided by the Owner, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the direction provided by the Owner.

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### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If unanticipated adverse weather conditions in excess of the Weather Day Allowance for the Project as specified in Section 2.3.2.7 of the Contract are the basis for a Claim for additional time, such Claim shall be documented by CPM schedule analysis substantiating that adverse weather conditions impacted a critical path construction activity in excess of the Weather Day Allowance for the Project.

### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Direct Discussions

§ 15.2.1 If the parties cannot resolve a claim relating to or arising out of this Agreement, the parties shall endeavor to reach resolution through good faith direct discussions between the parties' representatives, who shall possess the necessary authority to resolve such claim and who shall record the date of first discussion. If the parties' representatives are not able to resolve such claim within five (5) business days after the date of first discussion, the parties' representatives shall immediately inform senior executives in writing that resolution was not achieved. Upon receipt of such notice, senior executives of the parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) business days from the date of first discussion, the parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

*(Paragraphs deleted)*

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its current Construction Industry Mediation Procedures in effect on the date of the request for mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this agreement, or for the enforcement of any remedy under any statute, emergency or otherwise.

*(Paragraphs deleted)*



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009 Exhibit A

## Guaranteed Maximum Price Amendment

for the following PROJECT:

*(Name and address or location)*

Firestone Town Hall Addition & Remodel  
151 Grant Ave.  
Firestone, CO 80520

### THE OWNER:

*(Name, legal status and address)*

Firestone Town Hall  
151 Grant Ave.  
Firestone, CO 80520

### THE CONSTRUCTION MANAGER:

*(Name, legal status and address)*

Fransen Pittman Construction Co., Inc.  
9563 S. Kingston Ct.  
Englewood, CO 80112

### ARTICLE A.1

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Six Million Five Hundred Nine Thousand Three Hundred Ninety Dollars and Zero Cents (\$6,509,390.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.  
*(Provide below or reference an attachment.)*

Refer to Exhibit F - Estimate

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

Refer to Exhibit G - Alternates

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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**User Notes:**

(1482119471)

**§ A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

| Item                            | Price (\$0.00) |
|---------------------------------|----------------|
| Refer to Exhibit K - Allowances |                |

**§ A.1.1.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

Refer to Exhibit I - Clarifications

**§ A.1.1.6** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
| N/A      |       |      |       |

**§ A.1.1.7** The Guaranteed Maximum Price is based upon the following Specifications:  
*(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)*  
 Refer to Exhibit E – Drawings & Specs

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|---------|-------|------|-------|

**§ A.1.1.8** The Guaranteed Maximum Price is based upon the following Drawings:  
*(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)*  
 Refer to Exhibit E – Drawings & Specs

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

**§ A.1.1.9** The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Agreement.)*

Base Contract Agreement – AIA Document A133-2009 ( as modified)  
 A201-2007 General Conditions  
 Exhibit A - A133 GMP Amendment  
 Exhibit B – Insurance and Bonds  
 Exhibit C – Standard Tool and Equipment Rental Pricing List  
 Exhibit D – Labor Rates  
 Exhibit E – Drawing and Specs Index  
 Exhibit F – GMP Estimate  
 Exhibit G – Alternates  
 Exhibit H – Construction Schedule  
 Exhibit I – Clarifications  
 Exhibit J – Subcontractor Bid Tab Summary  
 Exhibit K - Allowances

## ARTICLE A.2

**§ A.2.1** The anticipated date of Substantial Completion established by this Amendment:

Refer to Exhibit H - Schedule

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

*(Printed name and title)*

*(Printed name and title)*



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/



# AIA<sup>®</sup> Document A102<sup>™</sup> – 2017 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 14th day of October in the year 2020  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Firestone Town Hall Addition & Remodel  
151 Grant Ave.  
Firestone, CO 80520

**THE OWNER:**  
(Name, legal status and address)

Firestone Town Hall  
151 Grant Ave.  
Firestone, CO 80520

**THE CONTRACTOR:**  
(Name, legal status and address)

Fransen Pittman Construction Co., Inc.  
9563 S. Kingston Ct.  
Englewood, CO 80112

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction or Prime Contract as applicable.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction. Article 11 of A201<sup>™</sup>-2017 contains additional insurance provisions.

## § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

## § A.2.3 Required Property Insurance

§ A.2.3.1 The obligation is placed on the Contractor pursuant to Section A.3.3.2.1 to purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Suppliers, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as their interests may appear.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from workmanship, or materials. Sub-limits, if any, are as follows and subject to the terms of the policy:

*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss                      | Sub-Limit |
|-------------------------------------|-----------|
| Flood (subject to zone limitations) | \$500,000 |
| Earthquake                          | \$500,000 |

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows and subject to the terms of the policy:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage       | Sub-Limit |
|----------------|-----------|
| Soft Cost      | \$500,000 |
| Debris Removal | \$250,000 |
| Demolition     | \$250,000 |

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

| Coverage             | Deductible |
|----------------------|------------|
| Flood and Earthquake | \$25,000   |
| Snow and Ice         | \$10,000   |
| All other perils     | \$2,500    |

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of

coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

#### **§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties. The existing structure must be occupied during construction by the Owner. If the structure is vacant, the Contractor shall be responsible to provide existing structure coverage until the Project is completed.

#### **§ A.2.4 Optional Extended Property Insurance.**

The Contractor, as indicated below, shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner or Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

☒ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

Contractor shall purchase this coverage as part of the policy required in Article A.2.3.1.

☒ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

Contractor shall purchase this coverage as part of the policy required in Article A.2.3.1.

☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

☒ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the

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Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

Contractor shall purchase this coverage as part of the policy required in Article A.2.3.1.

#### § A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

☐ § A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

☐ § A.2.5.2 Other Insurance  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage

Limits

### ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

#### § A.3.1 General

§ A.3.1.1 **Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 **Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor in excess of twenty-five thousand and 00/100 dollars (\$25,000).

§ A.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. Architect and its consultants are named as additional insureds for Contractor's on-going operations only..

#### § A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

2 years after Substantial Completion

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million dollars (\$ 1,000,000 ) each occurrence, Two Million dollars (\$ 2,000,000 ) general aggregate, and Two Million dollars (\$ 2,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .10 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million dollars (\$ 1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ A.3.2.5** Workers' Compensation at statutory limits.

**§ A.3.2.6** Employers' Liability with policy limits not less than Five Hundred Thousand dollars (\$ 500,000 ) each accident, Five Hundred Thousand dollars (\$ 500,000 ) each employee, and Five Hundred Thousand dollars (\$ 500,000 ) policy limit.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Five Million dollars (\$ 5,000,000 ) per claim and Five Million dollars (\$ 5,000,000 ) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than Two Million dollars (\$ 2,000,000 ) per claim and Two Million dollars (\$ 2,000,000 ) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than N/A (\$ N/A ) per claim and N/A (\$ N/A ) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than N/A (\$ N/A ) per claim and N/A (\$ N/A ) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than One Million dollars (\$ 1,000,000 ) per claim and One Million dollars (\$ 1,000,000 ) in the aggregate.

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General  
(Paragraphs deleted)  
Conditions.

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.  
(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [ X ] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Contractor shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General

(Paragraphs deleted)  
Conditions.

- [ ] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than N/A (\$ N/A ) per claim and N/A (\$ N/A ) in the aggregate, for Work within fifty (50) feet of railroad property.

- [ ] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than N/A (\$ N/A ) per claim and N/A (\$ N/A ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- [ X ] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

| Coverage                    | Sub-Limit   |
|-----------------------------|-------------|
| Transit                     | \$1,000,000 |
| Temporary Storage Locations | \$1,000,000 |

[ ] § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ X ] § A.3.3.2.6 Other Insurance  
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

| Coverage | Limits                  |
|----------|-------------------------|
| Umbrella | \$20,000,000/occurrence |
|          | \$20,000,000/aggregate  |

#### § A.3.4 Performance Bond and Payment Bond

The Contractor may provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located,  
(Paragraphs deleted)  
for the Contract Sum.

#### ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None.

# EXHIBIT C

## FRANSEN PITTMAN / DOUGLAS COUNTY EQUIPMENT (RELATED PARTY) STANDARD TOOL AND RENTAL EQUIPMENT PRICING LIST

| Equipment Description      | Bill Code | Monthly Billing Rate |
|----------------------------|-----------|----------------------|
| AIR BREAKER-25-90 LB       | 1B        | \$ 785               |
| AIR COMPSR-DSL-175-185CFM  | 1C        | \$ 1,850             |
| AIR COMPSR-DSL-375 CFM     | 1D        | \$ 3,250             |
| AIR MONITOR-GAS DETECTOR   | B2        | \$ 290               |
| AIRLESS SPRAYER            | B3        | \$ 130               |
| APPLIANCE DOLLY            | 1E        | \$ 160               |
| ARC WELDER 180-250 AMP-DS  | 1F        | \$ 1,075             |
| ART BOOM LIFT 30-34' 4WD   | 1G        | \$ 3,675             |
| ART BOOM LIFT 40-49' 4WD   | 1H        | \$ 5,040             |
| ART BOOM LIFT 60-64'-FWD   | 1L        | \$ 5,500             |
| ART-STR-BOOM LIFT-80-89-4  | 1K        | \$ 9,765             |
| 50-55 SPECIALTY BOOM       | 5N        | \$ 3,000             |
| Boom Lift 40'-49';DSL-4WD  | 7F        | \$ 5,040             |
| PUSH AROUND BOOM LIFT      | 5P        | \$ 1,000             |
| STR BM LIFT 120-126' 4WD   | 4M        | \$ 16,800            |
| STR BM LIFT 60-69' 4WDDSL  | 4N        | \$ 5,050             |
| TOW BOOM LIFT 33-50' PLAT  | 4V        | \$ 2,790             |
| BACKHOE-4WD 12-15' W/CAB   | 1N        | \$ 4,200             |
| BACKHOE-4WD 7-8' MINI      | 1Y        | \$ 3,950             |
| BARRIER CLAMP              | 7E        | \$ 700               |
| BLOWER                     | 5J        | \$ 500               |
| BODY HARNESS KIT           | B6        | \$ 275               |
| BREAKER ATTACH HYD 1000LB  | 2X        | \$ 3,780             |
| BREAKER ATTACH HYD LARGE   | R10       | \$ 6,000             |
| BREAKER ATTACHMENT SMALL   | Q1        | \$ 2,074             |
| BRICK/BLOCK SAW-ELEC-14"   | 1P        | \$ 945               |
| BRUSH CUTTER; 24"          | 6N        | \$ 1,000             |
| BUILDERS LEVEL             | B7        | \$ 375               |
| BULL FLOAT                 | 5F        | \$ 250               |
| CHAIN FALL; 2-TON>         | 6B        | \$ 350               |
| CHAINSAW                   | 6T        | \$ 650               |
| CLUB CAR GOLF CART         | GA        | \$ 350               |
| CNCRETE VIBRATOR-ELEC 1-3  | 2F        | \$ 850               |
| CNC RTE FLOOR GRINDER 1-2  | 1X        | \$ 1,100             |
| CNC RTE MIXER-5-9 CU FT    | 2A        | \$ 980               |
| CNC RTE PLANE/SCARFR-GAS   | 2B        | \$ 4,000             |
| CNC RTE PWR BUGGY-R/O-16   | 2C        | \$ 1,680             |
| CNC RTE SAW-SP/WB-GAS10-20 | 2D        | \$ 1,050             |
| COMPACTION WHEEL           | 6F        | \$ 700               |
| COMPACTOR ATTACHMENT       | R11       | \$ 2,500             |
| COMPRESSOR (LARGE TWIN)    | C3        | \$ 525               |
| COMPRESSOR (PANCAKE)       | C4        | \$ 105               |
| COMPRESSOR (SMALL TWIN)    | C5        | \$ 425               |
| CONCRETE BUCKET            | 1W        | \$ 750               |
| CONTAINER-20'-25'          | 1A        | \$ 340               |
| CORE DRILL W/STAND, ETC.   | KA        | \$ 865               |
| DATA VAULT                 | R4        | \$ 330               |
| DEMO SAW                   | D4        | \$ 960               |
| DEMOLITION HAMMER          | D5        | \$ 970               |
| DIGITAL TRANSIT            | D8        | \$ 375               |
| DOOR HANGING CART          | D9        | \$ 150               |
| DOOR JAMB PROTECTORS       | P4        | \$ 50                |
| DOOR SHIELD PROTECTORS     | P3        | \$ 50                |
| DRILL PRESS                | 5K        | \$ 1,000             |
| DRYWALL DOLLY              | E2        | \$ 275               |
| DUMP HOPPER (1/2 CY)       | E3        | \$ 500               |
| ELECTRIC BREAKER 60-75LB   | 2J        | \$ 1,200             |
| FAN =<36"                  | E6        | \$ 400               |
| FAN 36">                   | R8        | \$ 700               |
| 10 LB. FIRE EXTINGUISHER   | A1        | \$ 40                |
| 5 LB. FIRE EXTINGUISHER    | A3        | \$ 20                |
| FLOOR BUFFER               | 5H        | \$ 650               |
| FLOOR SCABBLER-AIR 5 HEAD  | 2K        | \$ 3,500             |
| INDUS FORKLIFT-5K LB       | 3B        | \$ 2,100             |
| FRKLFT ATTCH; JIB          | 5S        | \$ 450               |
| FRKLFT ATTCH; TRSH HOPPER  | 5T        | \$ 850               |
| REACH FORKLIFT-FXD 5K LB   | 3W        | \$ 3,255             |
| REACH FORKLIFT-FXD 8K LB   | 3X        | \$ 4,780             |

**FRANSEN PITTMAN / DOUGLAS COUNTY EQUIPMENT (RELATED PARTY) STANDARD TOOL AND RENTAL  
EQUIPMENT PRICING LIST**

| Equipment Description     | Bill Code | Monthly Billing Rate |
|---------------------------|-----------|----------------------|
| REACH FORKLIFT-FXD 9K >   | 4B        | \$ 6,040             |
| REACH FORKLIFT-TRV 6K LB  | 4A        | \$ 3,860             |
| FUEL CUBE                 | 7G        | \$ 225               |
| GANG BOX TOOLS-LEVEL 1    | O1        | \$ 3,500             |
| GANG BOX TOOLS-LEVEL 2    | O2        | \$ 5,500             |
| GENERATOR-5-10 KW         | 2S        | \$ 950               |
| GENERATOR, 20-39 KW       | 5E        | \$ 2,250             |
| GENERATOR 45-89 KW        | IA        | \$ 2,250             |
| GENERATOR-90-119 KW       | 2R        | \$ 3,780             |
| HAND TRUCK-2 WHEEL        | F7        | \$ 95                |
| HEATER > 500k BTU         | 6J        | \$ 7,500             |
| HEATER: FORCED/CONV 150K> | 2P        | \$ 750               |
| HEATER; INDRCT; 300K-500K | 6H        | \$ 1,750             |
| HYDRO TST PUMP:300-10Kpsi | 6A        | \$ 1,350             |
| EXTENSION LADDER          | E4        | \$ 100               |
| STEP LADDER               | L2        | \$ 75                |
| LASER-ROTATING-HORIZ ONLY | FB        | \$ 680               |
| LIGHT TOWER               | 3C        | \$ 1,300             |
| MACHINERY DOLLY KIT 8T    | 3D        | \$ 550               |
| MANOMETER                 | R9        | \$ 400               |
| MATERIAL LIFT 18-25'      | 3E        | \$ 950               |
| MEDIA BLASTER             | 5L        | \$ 1,500             |
| MINI EXCAVATOR >10' DEPTH | P9        | \$ 4,500             |
| MINI EXCAVATOR 6-9.9' DEP | 3G        | \$ 2,730             |
| MITRE SAW                 | H1        | \$ 390               |
| NEGATIVE AIR MACHINE      | H5        | \$ 775               |
| OFFICE TRAILER 12' X 60'  | BD        | \$ 2,500             |
| OFFICE TRLR(12X40)EQUIPD  | O4        | \$ 1,995             |
| PALLET JACK               | H6        | \$ 500               |
| PERSON LIFT 12-30 AC W/   | 3H        | \$ 975               |
| PLANER W/STAND - 15"      | H9        | \$ 300               |
| PLATE COMPACTOR GAS       | 3L        | \$ 1,040             |
| PLATE COMPACTR REVERSIBLE | 5G        | \$ 2,000             |
| POWER AUGER               | 3M        | \$ 750               |
| POWER THREADER            | 3J        | \$ 1,575             |
| PRESSURE WASH COLD-GAS    | 3P        | \$ 1,500             |
| PRESSURE WASH HOT-GAS     | 3Q        | \$ 2,150             |
| PROJECT MANAGER VEHICLE   | Q2        | \$ 900               |
| PROJECT SUPT VEHICLE      | Q3        | \$ 975               |
| RADIO                     | J8        | \$ 95                |
| RAMMER ELEC               | 3T        | \$ 1,040             |
| RAMMER-GAS 2.2-3.2K       | 3V        | \$ 1,040             |
| RAPTOR SECURITY-BASE      | P7        | \$ 1,200             |
| REBAR BENDER CUTTER       | 4C        | \$ 450               |
| RO ROLL-VB SMOOTH 45-60"  | 3S        | \$ 4,500             |
| RO ROLL-VB SMOOTH 65">    | 5X        | \$ 5,500             |
| RO ROLL-VB SMOOTH-DD 1.5T | 3R        | \$ 2,100             |
| WB ROLLER-PADFOOT 3000LB  | 5B        | \$ 3,200             |
| ROLL-A-LIFT 1500-6000 LB  | 4D        | \$ 1,000             |
| SCAFFOLD SINGLE SEC       | 6D        | \$ 250               |
| SCAFFOLD UTILITY: PERRY   | K6        | \$ 400               |
| SCFFLD: 5x5x7 SEC 2-4;10' | 6E        | \$ 700               |
| SCISSOR LIFT 12'-19'      | 4J        | \$ 975               |
| SCISSOR LIFT 25-34 4WD DF | 4E        | \$ 2,153             |
| SCISSOR LIFT 26'          | 4K        | \$ 1,280             |
| SCISSOR LIFT 30-34' DC 46 | 4F        | \$ 1,496             |
| SCISSOR LIFT 35-44' 4WD   | 4G        | \$ 2,468             |
| SECURITY SYSTEM: CAMERA   | R13       | \$ 300               |
| SHOT BLASTER              | 5M        | \$ 5,500             |
| SILT PLOW                 | 6X        | \$ 650               |
| SKIDSTEER-1351-1750# 1845 | AA        | \$ 2,850             |
| SKIDLOADER 1800-2000LB    | Q4        | \$ 3,150             |
| Skidloader bucket         | Q9        | \$ 650               |
| PALLET FORKS FOR SKIDSTEE | AC        | \$ 650               |
| SKIDSTEER ATTACHMENT      | 7A        | \$ 1,400             |
| AUGER ATTACH -SKIDSTEER   | 1M        | \$ 1,900             |
| SLAB GRABBER RAIL SYSTEM  | R12       | \$ 20                |
| SNOW BLOWER               | 6S        | \$ 500               |

**FRANSEN PITTMAN / DOUGLAS COUNTY EQUIPMENT (RELATED PARTY) STANDARD TOOL AND RENTAL  
EQUIPMENT PRICING LIST**

| Equipment Description     | Bill Code | Monthly Billing Rate |
|---------------------------|-----------|----------------------|
| STORAGE TRAILER-38'       | BA        | \$ 275               |
| SUBMERSIBLE PUMP < 3"     | L5        | \$ 650               |
| SUBMERSIBLE PUMP-ELEC 3"> | 4Q        | \$ 900               |
| SURVEYOR VEHICLE          | Q8        | \$ 975               |
| SWEEPER/BROOM-SKIDSTEER   | JA        | \$ 1,400             |
| TABLE SAW                 | L6        | \$ 200               |
| TATTLE TALE ALARM SYSTEM  | CA        | \$ 350               |
| TECHNOLOGY FEE            | R14       | \$ 150               |
| TEMP FENCE PANELS PER FT  | R5        | \$ 1                 |
| TEMP LIGHT SYSTEM         | 6U        | \$ 150               |
| TEMP PWR DIST(SPIDER BOX) | 6P        | \$ 650               |
| TILE STRIPPER-ELEC        | 4S        | \$ 920               |
| TORCH, CART & GUAGES      | M2        | \$ 320               |
| TOTAL STATION             | EA        | \$ 4,000             |
| TRACTOR DSL               | 5Q        | \$ 2,700             |
| TRACTOR,LOADER,LANDSCAPE  | 5R        | \$ 4,200             |
| TRAILER;DUMP 12,000 lb    | 6K        | \$ 1,200             |
| TRAILER;TILT: 12'-16'     | 6R        | \$ 1,200             |
| TRAILER;VACUUM; 500 gal.  | 6L        | \$ 5,000             |
| TRASH CART                | M3        | \$ 300               |
| TRASH CHUTE ACCESSORY     | 6Q        | \$ 100               |
| TRASH PUMP                | 4W        | \$ 1,200             |
| TRENCHER RO 35-39 HP      | 4X        | \$ 3,550             |
| TRENCHER WB 12-20 HP      | 5A        | \$ 1,995             |
| TRIMMER MOWER;WB          | 6M        | \$ 450               |
| TRUCK;SINGLE-AXLE DUMP    | 6G        | \$ 5,000             |
| UTILITY CART W/TRAY 4-WHE | M6        | \$ 150               |
| UTILITY VEHICLE           | Q5        | \$ 1,200             |
| WATER METER               | 6W        | \$ 250               |
| WATER TRUCK 2000 GAL      | 5D        | \$ 5,000             |
| WEATHER PROTECT BLANKET   | C7        | \$ 90                |
| WELDER (110 VOLT-STICK)   | N1        | \$ 235               |
| WHEEL LOADER: 1 YD        | 5V        | \$ 4,000             |
| WHEEL LOADER: 1>          | 5W        | \$ 7,500             |

# EXHIBIT D

## Fransen Pittman Labor Rates - Firestone Town Hall

| Position                         | Rate     |
|----------------------------------|----------|
| Project Executive                | \$124.00 |
| General Superintendent           | \$119.00 |
| Project Manager                  | \$105.08 |
| Project Superintendent           | \$92.89  |
| MEP Coordinator                  | \$93.76  |
| Quality Control Manager          | \$88.80  |
| Project Engineer                 | \$62.31  |
| Project Administrator            | \$40.54  |
| Field Engineer                   | \$61.65  |
| Assistant Project Manager        | \$82.09  |
| Assistant Project Superintendent | \$82.09  |
| Foreman                          | \$75.89  |
| Lead Man                         | \$74.76  |
| Carpenter                        | \$72.48  |
| Carpenter Apprentice             | \$54.17  |
| Laborer                          | \$45.37  |
| Safety Officer                   | \$72.26  |
| Licensed Surveyor                | \$183.00 |
| Estimator                        | \$82.32  |

These rates subject to adjustment at the beginning of every calendar quarter

Overtime for hourly positions will be billed at 1.5 times the above burdened rates

Makeup of bill rates not subject to audit

## Fransen Pittman Insurance Rates

|                        |    |      |
|------------------------|----|------|
| General Liability CGL  | \$ | 7.95 |
| Umbrella               | \$ | 4.95 |
| Professional Liability | \$ | 1.15 |
| Builder's Risk         | \$ | 1.08 |



# EXHIBIT E

## Drawing and Specs

Summary Log, Grouped by Bulletin

### Firestone Town Hall - Addition and Remodel

151 Grant Ave  
Firestone, CO 80520

### Project # 3042.C1

Tel: 720-403-7756 Fax:

### Fransen Pittman General Contractors

| Number               | Rev | Title                                        | Rev Date  | Bulletin | % Complete | Status   | Category         | General Notes | Ref RFIs |
|----------------------|-----|----------------------------------------------|-----------|----------|------------|----------|------------------|---------------|----------|
| No Bulletin Assigned |     |                                              |           |          |            |          |                  |               |          |
| 007200               | 0   | GENERAL PROVISIONS                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 007300               | 0   | GENERAL PROVISIONS                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 011100               | 0   | SUMMARY OF WORK                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 012300               | 0   | ALTERNATES                                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 012500               | 0   | SUBSTITUTIONS                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 013300               | 0   | SUBMITTALS                                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 014000               | 0   | QUALITY CONTROL                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 015000               | 0   | CONSTRUCTION FACILITIES & TEMPORARY CONTROLS | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 016000               | 0   | PRODUCT REQUIREMENTS                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 017000               | 0   | CONTRACT CLOSEOUT                            | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 019000               | 0   | GEOTECHINCAL INVESTIGATION                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 031000               | 0   | CONCRETE FORMWORK                            | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 032000               | 0   | CONCRETE REINFORCEMENT                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 033000               | 0   | CAST-IN-PLACE CONCRETE                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 033500               | 0   | CONCRETE FINISHING                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 033900               | 0   | CONCRETE CURING                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 034700               | 0   | SITE CAST TILT-UP CONCRETE                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 034800               | 0   | PRECAST CONCRETE SPECIALTIES                 | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 036000               | 0   | GROUT                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 047300               | 0   | SIMULATED                                    | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |

| Number | Rev | Title                                     | Rev Date  | Bulletin | % Complete | Status   | Category         | General Notes | Ref RFIs |
|--------|-----|-------------------------------------------|-----------|----------|------------|----------|------------------|---------------|----------|
|        |     | /MANUFACTURED STONE                       |           |          |            |          |                  |               |          |
| 051200 | 0   | STRUCTURAL STEEL                          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 052100 | 0   | STEEL JOISTS                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 053100 | 0   | METAL DECK                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 054000 | 0   | LIGHT GAUGE METAL FRAMING                 | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 055000 | 0   | METAL FABRICATIONS                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 061000 | 0   | ROUGH CARPENTRY                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 062000 | 0   | FINISH CARPENTRY                          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 064000 | 0   | CUSTOM CARPENTRY                          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 066100 | 0   | CAST POLYMER (QUARTZ) FABRICATIONS        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 066510 | 0   | SOLID SURFACE FABRICATIONS                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 071100 | 0   | DAMPPROOFING                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 072100 | 0   | BUILDING INSULATION                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 072500 | 0   | WEATHER RESISTIVE BARRIERS                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 072600 | 0   | INTERIOR VAPOR CONTROL                    | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 072616 | 0   | UNDERSLAB VAPOR CONTROL                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 074100 | 0   | PREFORMED METAL ROOFING AND SOFFIT PANELS | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 075300 | 0   | SINGLE-PLY MEMBRANE ROOFING               | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 076000 | 0   | FLASHING AND SHEET METAL                  | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 077000 | 0   | ROOF SPECIALTIES AND ACCESSORIES          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 079200 | 0   | JOINT SEALERS                             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 081100 | 0   | HOLLOW METAL DOORS AND FRAMES             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 081400 | 0   | WOOD DOORS                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 081423 | 0   | CLAD WOOD DOORS (BID ALTERNATE)           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |

| Number | Rev | Title                                              | Rev Date  | Bulletin | % Complete | Status   | Category         | General Notes | Ref RFIs |
|--------|-----|----------------------------------------------------|-----------|----------|------------|----------|------------------|---------------|----------|
| 084100 | 0   | ALUMINUM STOREFRONT                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 087000 | 0   | FINISH HARDWARE                                    | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 088000 | 0   | GLASS AND GLAZING                                  | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 088700 | 0   | GLASS AND GLAZING                                  | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 092000 | 0   | GYPSUM WALLBOARD,<br>SOFFIT AND CEILING<br>SYSTEMS | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 092400 | 0   | COMPOSITE STUCCO FINISH<br>SYSTEM                  | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 093000 | 0   | PORCELAIN/CERAMIC TILE                             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 095100 | 0   | ACOUSTICAL CEILINGS                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 096500 | 0   | RESILIENT FLOORING AND<br>BASE                     | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 096800 | 0   | CARPET TILE                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 099000 | 0   | COATINGS                                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 099300 | 0   | CONCRETE STAINING                                  | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 101400 | 0   | SIGNS                                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 102113 | 0   | TOILET COMPARTMENTS                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 102600 | 0   | CORNER GUARDS                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 102810 | 0   | TOILET ACCESSORIES                                 | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 104400 | 0   | FIRE EXTINGUISHERS                                 | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 105500 | 0   | POSTAL SPECIALTIES                                 | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 107500 | 0   | FLAG POLES                                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 122100 | 0   | WINDOW BLINDS                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 129300 | 0   | SITE FURNISHINGS                                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 323313 | 0   | BICYCLE RACKS                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| 323323 | 0   | TRASH RECEPTACLES                                  | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A00    | 0   | COVER SHEET                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A01    | 0   | SITE PLAN                                          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A02    | 0   | CODE COMPLAINCE                                    | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A10    | 0   | FLOOR PLAN                                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A11    | 0   | EXTERIOR OPENING PLAN                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |

| Number | Rev | Title                                                    | Rev Date  | Bulletin | % Complete | Status   | Category         | General Notes | Ref RFIs |
|--------|-----|----------------------------------------------------------|-----------|----------|------------|----------|------------------|---------------|----------|
| A12    | 0   | FINISH PLAN                                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A13    | 0   | REFLECTED CEILING PLAN                                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A14    | 0   | ROOF PLAN                                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A20    | 0   | DOOR SCHEDULE,<br>ELEVATORS & DETAILS                    | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A21    | 0   | WINDOW SCHEDULE,<br>ELEVATIONS & DETAILS                 | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A30    | 0   | BUIDLING ELEVATION                                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A31    | 0   | BUIDLING ELEVATIONS                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A40    | 0   | BUIDLING SECTIONS                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A41    | 0   | WALL SECTIONS                                            | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A42    | 0   | SECTIONS, DETAILS                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A43    | 0   | INTERIORS PARTITION<br>TYPES                             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A50    | 0   | ENLARGED PLANS &<br>ELEVATIONS                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| A51    | 0   | INTERIOR ELEVATIONS                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-1    | 0   | COVER SHEET                                              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-2    | 0   | HORIZONTAL CONTROL<br>PLAN                               | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-3    | 0   | UTILITY PLAN                                             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-4    | 0   | GRADING PLAN                                             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-5    | 0   | DRAINAGE & EROSION<br>CONTROL PLAN                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-6    | 0   | DETAIL SHEET 1                                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| C-7    | 0   | DETAIL SHEET 2                                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| E-0.1  | 0   | LEGEND, NOTES, INDEX,<br>SCHEDULES & ONE-LINE<br>DIAGRAM | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| E-0.2  | 0   | SCHEDULES                                                | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| E-1.0  | 0   | SITE ELECTRICAL PLAN                                     | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| E-1.1  | 0   | SIDEWALK LIGHTING PLAN                                   | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| E-2.0  | 0   | LIGHTING PLAN                                            | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| E-3.0  | 0   | POWER PLAN                                               | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |

| Number | Rev | Title                                                    | Rev Date  | Bulletin | % Complete | Status   | Category         | General Notes | Ref RFIs |
|--------|-----|----------------------------------------------------------|-----------|----------|------------|----------|------------------|---------------|----------|
| E-3.1  | 0   | ROOF POWER PLAN                                          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| IR1    | 0   | GENERAL DESCRIPTION                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| IR2    | 0   | IRRIGATION DRAWING                                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| IR3    | 0   | IRRIGATION DETAILS                                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| LS 1   | 0   | LANDSCAPE PLAN                                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| LS 2   | 0   | NOTES AND DETAILS                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| M-0    | 0   | LEGEND, NOTES, INDEX,<br>SCHEDULES, CONTROL<br>SEQUENCES | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| M-0.1  | 0   | SCHEDULES & DRAWINGS                                     | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| M-1.0  | 0   | MECHANICAL FLOOR PLAN                                    | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| M-1.1  | 0   | MECHANICAL ROOF PLAN                                     | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| P-0    | 0   | LEGEND, NOTES, INDEX,<br>DIAGRAMS AND SCHEDULES          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| P-1.0  | 0   | PLUMBING OVERALL FLOOR<br>PLAN                           | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| P-1.1  | 0   | ENLARGED PLUMBING<br>FLOOR PLANS                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| P-1.2  | 0   | PLUMBING ROOF PLAN                                       | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| PM-1   | 0   | GEN. MECHANICAL NOTES<br>AND OUTLINE SPECS.              | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S0     | 0   | GENERAL NOTES                                            | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S1     | 0   | FOUNDATION PLAN                                          | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S2     | 0   | ROOF FRAMING PLAN                                        | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S3     | 0   | FOUNDATION SECTIONS                                      | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S4     | 0   | WALL SECTIONS AND<br>DETAILS                             | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S5     | 0   | FRAMING SECTIONS                                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S6     | 0   | FRAMING SECTIONS                                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |
| S7     | 0   | FRAMING SECTIONS                                         | 7/24/2020 |          | 100        | Approved | Construction Set |               |          |



# EXHIBIT F

## Firestone Town Hall

### 100% GMP Estimate

ESTIMATE DATE: 09/09/20  
 BUILDING AREA IN SQ FT: 15,682  
 DRAWINGS PREPARED BY: Halcyon Design  
 DRAWINGS ARE DATED: 7/24/2020

| DIVISION<br>NUMBER | DIVISION RECAP                       | DIVISION<br>TOTAL  | \$ PER<br>S.F.  | % OF<br>TTL   |
|--------------------|--------------------------------------|--------------------|-----------------|---------------|
| 1                  | General Conditions                   | 491,125            | \$31.32         | 7.5%          |
| 2                  | Demolition & Sitework                | 937,782            | \$59.80         | 14.4%         |
| 3                  | Concrete                             | 602,922            | \$38.45         | 9.3%          |
| 4                  | Masonry                              | 62,267             | \$3.97          | 1.0%          |
| 5                  | Metals                               | 351,039            | \$22.38         | 5.4%          |
| 6                  | Carpentry                            | 162,800            | \$10.38         | 2.5%          |
| 7                  | Moisture Protection                  | 441,279            | \$28.14         | 6.8%          |
| 8                  | Doors, Windows & Glass               | 272,437            | \$17.37         | 4.2%          |
| 9                  | Finishes                             | 650,314            | \$41.47         | 10.0%         |
| 10                 | Specialties                          | 26,189             | \$1.67          | 0.4%          |
| 11                 | Equipment                            | 0                  | \$0.00          | 0.0%          |
| 12                 | Furnishings                          | 6,837              | \$0.44          | 0.1%          |
| 13                 | Special Construction                 | 0                  | \$0.00          | 0.0%          |
| 14                 | Conveying Systems                    | 0                  | \$0.00          | 0.0%          |
| 15                 | Mechanical                           | 448,990            | \$28.63         | 6.9%          |
| 16                 | Electrical                           | 435,750            | \$27.79         | 6.7%          |
| <b>DIRECT COST</b> |                                      | <b>4,889,731</b>   | <b>\$311.81</b> | <b>75.12%</b> |
|                    | Soft Costs Allowance                 | 899,000            | \$57.33         | 13.81%        |
|                    | State & Local Tax 6.50%              | 44,195             | \$2.82          | 0.68%         |
|                    | Use Tax Exempt                       |                    |                 |               |
|                    | Permit & Plan Review Fee Exempt      |                    |                 |               |
|                    | Overhead & Profit 3.95%              | 257,121            | \$16.40         | 3.95%         |
|                    | Construction Contingency 4.00%       | 260,376            | \$16.60         | 4.00%         |
|                    | Bidding and Buyout Contingency 0.00% | 0                  | \$0.00          | 0.00%         |
|                    | Preconstruction Fees 0.25%           | 16,273             | \$1.04          | 0.25%         |
|                    | Insurance 1.51%                      | 98,487             | \$6.28          | 1.51%         |
|                    | Performance & Payment Bonds LS       | 44,207             | \$2.82          | 0.68%         |
| <b>TOTAL COST</b>  |                                      | <b>\$6,509,390</b> | <b>\$415.09</b> | <b>100.0%</b> |

**Division 1 General Requirements**

| Item Code                                      | ITEM DESCRIPTION                                  | QUAN  | UNIT     | ITEM TOTAL      | \$ PER S.F. | % OF TTL |
|------------------------------------------------|---------------------------------------------------|-------|----------|-----------------|-------------|----------|
| <b>01 10 00 ADMINISTRATIVE REQUIREMENTS</b>    |                                                   |       |          |                 |             |          |
| 01 11 01                                       | Superintendent                                    | 51    | Weeks    | <b>203,515</b>  | \$12.98     | 3.2%     |
| 01 11 06                                       | Project Engineer                                  | 16.00 | Weeks    | <b>39,877</b>   | \$2.54      | 0.6%     |
| 01 11 07                                       | Project Coordinator                               | 12.10 | Weeks    | <b>19,619</b>   | \$1.25      | 0.3%     |
| 01 11 13                                       | Field Engineer                                    | 23.00 | Weeks    | <b>56,718</b>   | \$3.62      | 0.9%     |
| 01 11 00                                       | Project Manager                                   | 24.00 | Weeks    | <b>107,064</b>  | \$6.83      | 1.7%     |
| <b>01 12 00 FIELD OFFICE EXPENSES</b>          |                                                   |       |          |                 |             |          |
| 01 12 01                                       | Courier                                           | 45    | Weeks    | <b>5,625</b>    | \$0.36      | 0.1%     |
| 01 12 02                                       | Reproductions/Reprographics                       | 45    | Weeks    | <b>5,625</b>    | \$0.36      | 0.1%     |
| 01 12 04                                       | Field Office Equip. computer, fax, etc.)          | 45    | Weeks    | <b>3,375</b>    | \$0.22      | 0.1%     |
| 01 12 05                                       | Field Office Supplies                             | 45    | Weeks    | <b>3,375</b>    | \$0.22      | 0.1%     |
| 01 12 06                                       | Textura                                           | 1     | LS       | <b>3,500</b>    | \$0.22      | 0.1%     |
| <b>01 21 00, 01 22 00 TEMPORARY FACILITIES</b> |                                                   |       |          |                 |             |          |
| 01 21 01                                       | Jobsite telephone/Sup. Cell phone/Radios          | 10.25 | Months   | <b>3,075</b>    | \$0.20      | 0.0%     |
| 01 21 02                                       | Electrical, Gas, Water Consumption Costs By Owner |       | Excluded | <b>By Owner</b> |             |          |
| 01 21 03                                       | Temporary Water                                   |       | Excluded | <b>By Owner</b> |             |          |
| 01 21 04                                       | Portable chemical toilets                         | 10    | Months   | <b>4,408</b>    | \$0.28      | 0.1%     |
| 01 21 06                                       | Jobsite IT                                        | 1     | LS       | <b>9,500</b>    | \$0.61      | 0.1%     |
| 01 22 01                                       | Office trailer                                    | 10    | Months   | <b>12,300</b>   | \$0.78      | 0.2%     |
| 01 22 04                                       | Temporary job fence                               | 1,200 | LF       | <b>6,000</b>    | \$0.38      | 0.1%     |
| 01 22 05                                       | Temporary storage                                 | 10    | Months   | <b>4,613</b>    | \$0.29      | 0.1%     |
| 01 22 07                                       | Safety supplies/First Aid                         | 11    | Months   | <b>1,663</b>    | \$0.11      | 0.0%     |
| 01 22 08                                       | Water, ice and cups                               | 11    | Months   | <b>1,275</b>    | \$0.08      | 0.0%     |
| <b>DIVISION 1 TOTALS</b>                       |                                                   |       |          | <b>491,125</b>  | \$31.32     | 7.6%     |

**Division 2 Site Work**

| LINE NUMBER                                           | ITEM DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | QUANTITY | UNIT          | ITEM TOTAL     | \$ PER S.F.    | % OF TTL     |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------|----------------|----------------|--------------|
| <b>31 00 00 Earthwork</b>                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Earthwork Pkg                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 1        | LS            | 122,460        | \$7.81         | 1.9%         |
| 31 00 00                                              | Earthwork                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |          |               | 122,460        | \$7.81         | 1.9%         |
| <b>31 10 00 Layout - Site</b>                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Layout Equipment (for surveyor and superintendent) for project duration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 11       | Months        | 46,200         | \$2.95         | 0.7%         |
| 31 10 00                                              | Layout - Site                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |          |               | 46,200         | \$2.95         | 0.7%         |
| <b>31 25 00 Erosion/Sedimentation Control (SWMP)</b>  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Erosion Control Pkg                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 48       | Weeks         | 48,000         | \$3.06         | 0.7%         |
| 31 25 00                                              | Erosion/Sedimentation Control (SWMP)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |          |               | 48,000         | \$3.06         | 0.7%         |
| <b>31 25 01 Stormwater Inspection &amp; Audit</b>     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | 3rd Party Inspections & Audits                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 11       | Months        | 5,500          | \$0.35         | 0.1%         |
| 31 25 01                                              | Stormwater Inspection & Audit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |          |               | 5,500          | \$0.35         | 0.1%         |
| <b>32 12 00 Asphalt Paving</b>                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Asphalt Patching                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 1        | LS            | 7,500          | \$0.48         | 0.1%         |
| 2                                                     | Striping                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1        | LS            | 650            | \$0.04         | 0.0%         |
| 3                                                     | Asphalt Patching                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 1        | Allowance     | 20,000         | \$1.28         | 0.3%         |
| 32 12 00                                              | Asphalt Paving                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |          |               | 28,150         | \$1.80         | 0.4%         |
| <b>32 13 13 Site Concrete Material</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Sidewalks, Patios, and Curb and Gutter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 1        | LS            | 86,278         | \$5.50         | 1.3%         |
| 2                                                     | Curb and Gutter Patching                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1        | Allowance     | 15,000         | \$0.96         | 0.2%         |
| 32 13 13                                              | Site Concrete Material                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |          |               | 101,278        | \$6.46         | 1.6%         |
| <b>32 31 00 Fences &amp; Gates</b>                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Demolition of Montage Security Fence Panels and Posts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 1        | LS            | 5,000          | \$0.32         | 0.1%         |
| 2                                                     | Reinstallation of Panels and Posts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1        | LS            | 5,000          | \$0.32         | 0.1%         |
| 3                                                     | Re-pour Foundations for Posts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 1        | LS            | 7,500          | \$0.48         | 0.1%         |
| 32 31 00                                              | Fences & Gates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |          |               | 17,500         | \$1.12         | 0.3%         |
| <b>32 90 00 Landscaping</b>                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Landscaping & Design Build Irrigation Pkg                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 1        | LS            | 81,371         | \$5.19         | 1.3%         |
| 2                                                     | 1 Year Maintenance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |          | Clarification | Included       |                |              |
| 32 90 00                                              | Landscaping                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |          |               | 81,371         | \$5.19         | 1.3%         |
| <b>12 93 00 Site Furnishings</b>                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Bike Racks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 1        | LS            | 1,274          | \$0.08         | 0.0%         |
| 2                                                     | Trash Receptacles                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1        | LS            | 3,315          | \$0.21         | 0.1%         |
| 3                                                     | Picnic Tables                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 1        | LS            | 3,945          | \$0.25         | 0.1%         |
| 12 93 00                                              | Site Furnishings                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |          |               | 8,534          | \$0.54         | 0.1%         |
| <b>33 10 00 Utilities</b>                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Utilities outside of Plumbing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 1        | LS            | 146,241        | \$9.33         | 2.3%         |
| 2                                                     | Fire Hydrants                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |          | LS            | Not in Scope   |                |              |
| 3                                                     | Fire Line into Building                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 1        | LS            | 11,472         | \$0.73         | 0.2%         |
| 33 10 00                                              | Utilities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |          |               | 157,713        | \$10.06        | 2.5%         |
| <b>33 90 00 Sewer Line Intersection/Camera</b>        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Inspect New & Existing Sewer Lines                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1        | LS            | 3,000          | \$0.19         | 0.0%         |
| 33 90 00                                              | Sewer Line Intersection/Camera                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |          |               | 3,000          | \$0.19         | 0.0%         |
| <b>02 99 01 Fransen Pittman Means and Methods</b>     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Dumpsters                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 1        | LS            | 14,000         | \$0.89         | 0.2%         |
| 2                                                     | Final Cleaing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 1        | LS            | 15,682         | \$1.00         | 0.2%         |
| 3                                                     | Project Scheduling                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1        | LS            | 6,500          | \$0.41         | 0.1%         |
| 4                                                     | General Jobsite Equipment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 48       | Weeks         | 98,016         | \$6.25         | 1.5%         |
| 5                                                     | Laborer for Project Duration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 48       | Weeks         | 108,878        | \$6.94         | 1.7%         |
| 02 99 01                                              | Fransen Pittman Means and Methods                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |          |               | 243,076        | \$15.50        | 3.8%         |
| <b>02 99 02 Wind and Weather Protection Allowance</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               |                |                |              |
| 1                                                     | Wind and Weather protection allowance is to include all temporary heating needs for interior / exterior trades, all temporary weather protection for interior / exterior trades and all snow removal or protection (this includes all concrete blankets) - (this includes all FP labor, materials, equipment, tools and subcontractor help) Wind bracing and shoring for wind bracing is included in this allowance if required. Temporary Heat is also included in this allowance; temporary heat includes the using of portable heaters as well as possibly using the permanent units to heat the building. In the event that the permanent units are used to heat the building, cleaning of the unit and ductwork is included in the weather projection allowance only. Also included in this allowance is all snow and ice removal/protection. Any extensions in permanent equipment warranties are also included only in this allowance. | 1        | Allowance     | 75,000         | \$4.78         | 1.2%         |
| 02 99 02                                              | Wind and Weather Protection Allowance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |          |               | 75,000         | \$4.78         | 1.2%         |
| <b>DIVISION 2 TOTALS</b>                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |               | <b>937,782</b> | <b>\$59.80</b> | <b>14.6%</b> |

**Division 3 Concrete**

| LINE NUMBER                               | ITEM DESCRIPTION                 | QUANTITY | UNIT | ITEM TOTAL | \$ PER S.F. | % OF TTL |
|-------------------------------------------|----------------------------------|----------|------|------------|-------------|----------|
| <b>03 30 10 Concrete Material</b>         |                                  |          |      |            |             |          |
| 1                                         | Foundations                      | 1        | LS   | 94,473     | \$6.02      | 1.5%     |
| 2                                         | Slab on Grade                    | 1        | LS   | 124,374    | \$7.93      | 1.9%     |
| 03 30 10                                  | Concrete Material                |          |      | 218,847    | \$13.96     | 3.4%     |
| <b>03 47 13 Tilt-Up Sitecast Concrete</b> |                                  |          |      |            |             |          |
| 1                                         | Tilt-Up Sitecast Concrete Panels | 1        | LS   | 384,075    | \$24.49     | 6.0%     |
| 03 47 13                                  | Tilt-Up Sitecast Concrete        |          |      | 384,075    | \$24.49     | 6.0%     |
| <b>DIVISION 3 TOTALS</b>                  |                                  |          |      | 602,922    | \$38.45     | 9.4%     |

**Division 4 Masonry**

| LINE NUMBER                  | ITEM DESCRIPTION              | QUANTITY | UNIT | ITEM TOTAL    | \$ PER S.F. | % OF TTL |
|------------------------------|-------------------------------|----------|------|---------------|-------------|----------|
| <b>04 20 00 Unit Masonry</b> |                               |          |      |               |             |          |
| <b>1</b>                     | Stone Veneer                  | 1        | LS   | <b>37,300</b> | \$2.38      | 0.6%     |
| <b>2</b>                     | Stucco at Metal Framed Wall   | 1        | LS   | <b>23,000</b> | \$1.47      | 0.4%     |
| <b>3</b>                     | Precast Column and Bench Caps | 1        | LS   | <b>1,967</b>  | \$0.13      | 0.0%     |
| 04 20 00                     | Unit Masonry                  |          |      | <b>62,267</b> | \$3.97      | 1.0%     |
| <b>DIVISION 4 TOTALS</b>     |                               |          |      | <b>62,267</b> | \$3.97      | 1.0%     |

**Division 5 Steel**

| LINE NUMBER                      | ITEM DESCRIPTION | QUANTITY | UNIT | ITEM TOTAL     | \$ PER S.F. | % OF TTL |
|----------------------------------|------------------|----------|------|----------------|-------------|----------|
| <b>05 12 00 Structural Steel</b> |                  |          |      |                |             |          |
| <b>1</b>                         | Structural Steel | 1        | LS   | <b>337,200</b> | \$21.50     | 5.2%     |
| <b>2</b>                         | Aluminum Louvers | 1        | LS   | <b>13,839</b>  | \$0.88      | 0.2%     |
| 05 12 00                         | Structural Steel |          |      | <b>351,039</b> | \$22.38     | 5.5%     |
| <b>DIVISION 5 TOTALS</b>         |                  |          |      | <b>351,039</b> | \$22.38     | 5.5%     |

**Division 6 Woods & Plastics**

| LINE NUMBER                               | ITEM DESCRIPTION                        | QUANTITY | UNIT          | ITEM TOTAL | \$ PER S.F. | % OF TTL |
|-------------------------------------------|-----------------------------------------|----------|---------------|------------|-------------|----------|
| <b>06 10 00 Rough Carpentry</b>           |                                         |          |               |            |             |          |
| 1                                         | Backing and Blocking and Carpenter Time | 1        | LS            | 103,200    | \$6.58      | 1.6%     |
| 06 10 00                                  | Rough Carpentry                         |          |               | 103,200    | \$6.58      | 1.6%     |
| <b>06 40 00 Finish Carp/Arch Woodwork</b> |                                         |          |               |            |             |          |
| 1                                         | Cabinetry & Millwork Pkg                | 1        | LS            | 59,600     | \$3.80      | 0.9%     |
| 2                                         | Wood Ceiling                            |          | Clarification | Included   |             |          |
| 06 40 00                                  | Finish Carp/Arch Woodwork               |          |               | 59,600     | \$3.80      | 0.9%     |
| <b>DIVISION 6 TOTALS</b>                  |                                         |          |               | 162,800    | \$10.38     | 2.5%     |

| Division 7 Thermal & Moisture Protection         |                                                      |          |      |                |                |             |
|--------------------------------------------------|------------------------------------------------------|----------|------|----------------|----------------|-------------|
| LINE NUMBER                                      | ITEM DESCRIPTION                                     | QUANTITY | UNIT | ITEM TOTAL     | \$ PER S.F.    | % OF TTL    |
| <b>07 10 00 Dampproofing &amp; Waterproofing</b> |                                                      |          |      |                |                |             |
| 1                                                | Dampproofing Pkg                                     | 1        | LS   | 9,400          | \$0.60         | 0.1%        |
| 07 10 00                                         | Dampproofing & Waterproofing                         |          |      | 9,400          | \$0.60         | 0.1%        |
| <b>07 21 00 Thermal Insulation</b>               |                                                      |          |      |                |                |             |
| 1                                                | Rigid Insulation and Barrier - Standard Framing Only | 1        | LS   | 3,550          | \$0.23         | 0.1%        |
| 07 21 00                                         | Thermal Insulation                                   |          |      | 3,550          | \$0.23         | 0.1%        |
| <b>07 50 00 Flat Roofing</b>                     |                                                      |          |      |                |                |             |
| 1                                                | Flat Roofing Pkg                                     | 1        | LS   | 247,354        | \$15.77        | 3.8%        |
| 2                                                | Standing Seam Roofing                                | 1        | LS   | 99,250         | \$6.33         | 1.5%        |
| 07 50 00                                         | Flat Roofing                                         |          |      | 346,604        | \$22.10        | 5.4%        |
| <b>07 62 00 Sheet Metal Flashing and Trim</b>    |                                                      |          |      |                |                |             |
| 1                                                | Sheet Metal Flashing and Trim                        | 1        | LS   | 24,900         | \$1.59         | 0.4%        |
| 07 62 00                                         | Sheet Metal Flashing and Trim                        |          |      | 24,900         | \$1.59         | 0.4%        |
| <b>07 92 00 Joint Sealers</b>                    |                                                      |          |      |                |                |             |
| 1                                                | Caulking or joints including Panels                  | 1        | LS   | 14,500         | \$0.92         | 0.2%        |
| 07 92 00                                         | Joint Sealers                                        |          |      | 14,500         | \$0.92         | 0.2%        |
| <b>07 99 01 Canopy Finish</b>                    |                                                      |          |      |                |                |             |
| 1                                                | Prefinished Metal Panel at Canopy Soffits            | 1        | LS   | 23,400         | \$1.49         | 0.4%        |
| 07 99 01                                         | Canopy Finish                                        |          |      | 23,400         | \$1.49         | 0.4%        |
| <b>07 99 02 Envelope Review</b>                  |                                                      |          |      |                |                |             |
| 1                                                | Complete Envelope Review                             | 1        | LS   | 18,925         | \$1.21         | 0.3%        |
| 07 99 02                                         | Envelope Review                                      |          |      | 18,925         | \$1.21         | 0.3%        |
| <b>DIVISION 7 TOTALS</b>                         |                                                      |          |      | <b>441,279</b> | <b>\$28.14</b> | <b>6.9%</b> |

| Division 8 Doors & Windows       |                                             |                  |          |      |            |             |          |
|----------------------------------|---------------------------------------------|------------------|----------|------|------------|-------------|----------|
| Line Number                      |                                             | Item Description | Quantity | Unit | Item Total | \$ Per S.F. | % of TTL |
| 08 10 00 Doors & Frames          |                                             |                  |          |      |            |             |          |
| 1                                | Doors & Hardware Pkg                        |                  | 1        | LS   | 113,941    | \$7.27      | 1.8%     |
| 2                                | Installation of Doors, Frames, and Hardware |                  | 1        | LS   | 8,500      | \$0.54      | 0.1%     |
| 08 10 00                         | Doors & Frames                              |                  |          |      | 122,441    | \$7.81      | 1.9%     |
| 08 41 13 Entrances & Storefronts |                                             |                  |          |      |            |             |          |
| 1                                | Aluminum Storefront and Glazing             |                  | 1        | LS   | 149,996    | \$9.56      | 2.3%     |
| 08 41 13                         | Entrances & Storefronts                     |                  |          |      | 149,996    | \$9.56      | 2.3%     |
| DIVISION 8 TOTALS                |                                             |                  |          |      | 272,437    | \$17.37     | 4.2%     |

**Division 9 Finishes**

| LINE NUMBER                                           | ITEM DESCRIPTION                                   | QUANTITY | UNIT          | ITEM TOTAL     | \$ PER S.F.    | % OF TTL     |
|-------------------------------------------------------|----------------------------------------------------|----------|---------------|----------------|----------------|--------------|
| <b>09 06 00 Temp. Prot. For New/Existing Finishes</b> |                                                    |          |               |                |                |              |
| 1                                                     | Temp. Prot. For New/Existing Finishes              | 1        | LS            | 30,000         | \$1.91         | 0.5%         |
| 09 06 00                                              | Temp. Prot. For New/Existing Finishes              |          |               | 30,000         | \$1.91         | 0.5%         |
| <b>09 10 00 Layout - Framing Systems</b>              |                                                    |          |               |                |                |              |
| 1                                                     | Layout - Framing Systems                           | 1        | LS            | 12,500         | \$0.80         | 0.2%         |
| 09 10 00                                              | Layout - Framing Systems                           |          |               | 12,500         | \$0.80         | 0.2%         |
| <b>09 21 16 Gypsum Board Assemblies</b>               |                                                    |          |               |                |                |              |
| 1                                                     | Drywall and Framing; Sheathing and Batt Insulation | 1        | LS            | 275,435        | \$17.56        | 4.3%         |
| 09 21 16                                              | Gypsum Board Assemblies                            |          |               | 275,435        | \$17.56        | 4.3%         |
| <b>09 51 00 Acoustical Ceilings</b>                   |                                                    |          |               |                |                |              |
| 1                                                     | Acoustical Ceiling Pkg                             | 1        | LS            | 59,850         | \$3.82         | 0.9%         |
| 2                                                     | Wood Ceilings                                      |          | Clarification | In Div. 6      |                |              |
| 09 51 00                                              | Acoustical Ceilings                                |          |               | 59,850         | \$3.82         | 0.9%         |
| <b>09 01 60 Flooring Prep</b>                         |                                                    |          |               |                |                |              |
| 1                                                     | Major Floor Preparation and Moisture Control       | 1        | Allowance     | 15,000         | \$0.96         | 0.2%         |
| 09 01 60                                              | Flooring Prep                                      |          |               | 15,000         | \$0.96         | 0.2%         |
| <b>09 60 00 Flooring</b>                              |                                                    |          |               |                |                |              |
| 1                                                     | Flooring Pkg                                       | 1        | LS            | 85,782         | \$5.47         | 1.3%         |
| 2                                                     | Concrete Flooring                                  | 1        | LS            | 4,475          | \$0.29         | 0.1%         |
| 09 60 00                                              | Flooring                                           |          |               | 90,257         | \$5.76         | 1.4%         |
| <b>09 80 00 Acoustic Treatment</b>                    |                                                    |          |               |                |                |              |
| 1                                                     | Acoustical Wall and Ceiling Treatments             | 1        | Allowance     | 22,500         | \$1.43         | 0.3%         |
| 09 80 00                                              | Acoustic Treatment                                 |          |               | 22,500         | \$1.43         | 0.3%         |
| <b>09 91 00 Painting</b>                              |                                                    |          |               |                |                |              |
| 1                                                     | Painting Package                                   | 1        | LS            | 55,985         | \$3.57         | 0.9%         |
| 2                                                     | Sealed Concrete                                    |          | Clarification | Included       |                |              |
| 09 91 00                                              | Painting                                           |          |               | 55,985         | \$3.57         | 0.9%         |
| <b>09 99 01 Means and Methods for Finishes</b>        |                                                    |          |               |                |                |              |
| 1                                                     | Foreman at Finish Trades                           | 22       | Weeks         | 66,787         | \$4.26         | 1.0%         |
| 2                                                     | Equipment for Finish Trades                        | 22       | Weeks         | 22,000         | \$1.40         | 0.3%         |
| 09 99 01                                              | Means and Methods for Finishes                     |          |               | 88,787         | \$5.66         | 1.4%         |
| <b>DIVISION 9 TOTALS</b>                              |                                                    |          |               | <b>650,314</b> | <b>\$41.47</b> | <b>10.1%</b> |

| Division 10 Specialties                     |                                                                                                                 |          |      |            |             |          |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------|------|------------|-------------|----------|
| LINE NUMBER                                 | ITEM DESCRIPTION                                                                                                | QUANTITY | UNIT | ITEM TOTAL | \$ PER S.F. | % OF TTL |
| <b>10 14 00 Building Signage</b>            |                                                                                                                 |          |      |            |             |          |
| 1                                           | Interior Signage Pkg                                                                                            | 1        | LS   | 6,045      | \$0.39      | 0.1%     |
| 2                                           | Will have an add altertnate for Signage at Area of Refuge, Drinking Fountain, Entrances, and Fire Extinguishers |          |      | 0          | \$0.00      | 0.0%     |
| 10 14 00                                    | Building Signage                                                                                                |          |      | 6,045      | \$0.39      | 0.1%     |
| <b>10 28 13 Toilet Accessories</b>          |                                                                                                                 |          |      |            |             |          |
| 1                                           | Restroom Accessories Pkg                                                                                        | 1        | LS   | 4,328      | \$0.28      | 0.1%     |
| 2                                           | Restroom Partitions                                                                                             | 1        | LS   | 5,632      | \$0.36      | 0.1%     |
| 3                                           | Corner Guards                                                                                                   | 1        | LS   | 2,129      | \$0.14      | 0.0%     |
| 10 28 13                                    | Toilet Accessories                                                                                              |          |      | 12,089     | \$0.77      | 0.2%     |
| <b>10 44 00 Fire Protection Specialties</b> |                                                                                                                 |          |      |            |             |          |
| 1                                           | Fire Extinguishers & Cabinets                                                                                   | 1        | LS   | 1,313      | \$0.08      | 0.0%     |
| 10 44 00                                    | Fire Protection Specialties                                                                                     |          |      | 1,313      | \$0.08      | 0.0%     |
| <b>10 55 00 Postal Specialties</b>          |                                                                                                                 |          |      |            |             |          |
| 1                                           | Thru-Wall Chute                                                                                                 | 1        | LS   | 769        | \$0.05      | 0.0%     |
| 10 55 00                                    | Postal Specialties                                                                                              |          |      | 769        | \$0.05      | 0.0%     |
| <b>10 99 01 Flagpoles</b>                   |                                                                                                                 |          |      |            |             |          |
| 1                                           | 35' Tall Aluminum Flagpole with Flag                                                                            | 1        | LS   | 5,973      | \$0.38      | 0.1%     |
| 10 99 01                                    | Flagpoles                                                                                                       |          |      | 5,973      | \$0.38      | 0.1%     |
| <b>DIVISION 10 TOTALS</b>                   |                                                                                                                 |          |      | 26,189     | \$1.67      | 0.4%     |

| Division 12 Furnishings    |                   |                  |          |      |            |             |          |
|----------------------------|-------------------|------------------|----------|------|------------|-------------|----------|
| LINE NUMBER                |                   | ITEM DESCRIPTION | QUANTITY | UNIT | ITEM TOTAL | \$ PER S.F. | % OF TTL |
| 12 20 00 Window Treatments |                   |                  |          |      |            |             |          |
| 1                          | Window Coverings  |                  | 1        | LS   | 6,837      | \$0.44      | 0.1%     |
| 12 20 00                   | Window Treatments |                  |          |      | 6,837      | \$0.44      | 0.1%     |
| DIVISION 12 TOTALS         |                   |                  |          |      | 6,837      | \$0.44      | 0.1%     |

**Division 15 Mechanical**

| LINE NUMBER                      | ITEM DESCRIPTION                                                     | QUANTITY | UNIT          | ITEM TOTAL     | \$ PER S.F.    | % OF TTL    |
|----------------------------------|----------------------------------------------------------------------|----------|---------------|----------------|----------------|-------------|
| <b>21 00 00 Fire Suppression</b> |                                                                      |          |               |                |                |             |
| 1                                | Fire Protection Systems Pkg                                          | 1        | LS            | 43,167         | \$2.75         | 0.7%        |
| 2                                | Dry Fire Sprinkler System at Canopy Overhangs                        |          | Clarification | Excluded       |                |             |
| 21 00 00                         | Fire Suppression                                                     |          |               | 43,167         | \$2.75         | 0.7%        |
| <b>22 00 00 Plumbing</b>         |                                                                      |          |               |                |                |             |
| 1                                | Plumbing Pkg                                                         | 1        | LS            | 132,343        | \$8.44         | 2.1%        |
| 22 00 00                         | Plumbing                                                             |          |               | 132,343        | \$8.44         | 2.1%        |
| <b>23 00 00 HVAC</b>             |                                                                      |          |               |                |                |             |
| 1                                | Mechanical Pkg                                                       | 1        | LS            | 242,904        | \$15.49        | 3.8%        |
| 2                                | Mechanical Coordinator - He was not included in the original pricing |          | Hours         | 0              | \$0.00         | 0.0%        |
| 3                                |                                                                      |          |               | 0              | \$0.00         | 0.0%        |
| 23 00 00                         | HVAC                                                                 |          |               | 242,904        | \$15.49        | 3.8%        |
| <b>21 99 01 BIM Coordination</b> |                                                                      |          |               |                |                |             |
| 1                                | Full BIM Coordination and Modeling                                   | 1        | LS            | 30,576         | \$1.95         | 0.5%        |
| 21 99 01                         | BIM Coordination                                                     |          |               | 30,576         | \$1.95         | 0.5%        |
| <b>DIVISION 15 TOTALS</b>        |                                                                      |          |               | <b>448,990</b> | <b>\$28.63</b> | <b>7.0%</b> |

**Division 16 Electrical**

| LINE NUMBER                | ITEM DESCRIPTION                   | QUANTITY | UNIT          | ITEM TOTAL        | \$ PER S.F. | % OF TTL |
|----------------------------|------------------------------------|----------|---------------|-------------------|-------------|----------|
| <b>26 00 00 Electrical</b> |                                    |          |               |                   |             |          |
| <b>1</b>                   | Electrical Pkg                     | 1        | LS            | <b>435,750</b>    | \$27.79     | 6.8%     |
| <b>2</b>                   | BIM Coordination - See Division 15 |          | Clarification | <b>In Div. 15</b> |             |          |
| 26 00 00                   | Electrical                         |          |               | <b>435,750</b>    | \$27.79     | 6.8%     |
| <b>DIVISION 16 TOTALS</b>  |                                    |          |               | <b>435,750</b>    | \$27.79     | 6.8%     |

## EXHIBIT G

### Firestone Town Hall – 100% CD GMP

#### List of Alternates

1. Alternate #1
  - a. Change the Exterior Soffit Finish to Stucco in lieu of Metal Panels
    - i. Deduct
    - ii. (\$7,827)
2. Alternate #2
  - a. Change the Storefront Systems at the Break Room, Hall 146, and Hall 132 to Clad Wood Systems
    - i. Deduct
    - ii. (\$7,132)
3. Alternate #3
  - a. Add in Use Tax if it is not covered by the Exemption Certificate
    - i. Add
    - ii. \$150,000
4. Voluntary Alternate #4
  - a. Change the Sunshades from Architectural Louvers to Tubelite Sunshades
    - i. Deduct
    - ii. (\$4,171)

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#### Englewood (HQ)

**office** (303) 783-3900 9563 South Kingston Court, Suite 200  
**fax** (303) 783-3939 Englewood, CO 80112

#### Windsor

**office** (970) 460-5250 128 North 6th Street, Unit D  
**fax** (303) 783-3939 Windsor, CO 80550

# Firestone Town Hall

## SCHEDULE FILE: CD Master Bid Schedule

# EXHIBIT H



| ID |  | Task Name                              | Cal       | Dur              | % Comp    | Start               | Finish             | Qtr 2 | Qtr 3 | Qtr 4 | 2021<br>Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 |
|----|--|----------------------------------------|-----------|------------------|-----------|---------------------|--------------------|-------|-------|-------|---------------|-------|-------|-------|
| 1  |  | <b>Firestone Town Hall</b>             | <b>7D</b> | <b>447 days?</b> | <b>0%</b> | <b>Wed 7/1/20</b>   | <b>Mon 9/20/21</b> |       |       |       |               |       |       |       |
| 3  |  | Submit cd's for permit                 | 5D        | 67 days          | 0%        | Wed 7/1/20          | Mon 10/5/20        |       |       |       |               |       |       |       |
| 2  |  | NTP                                    | 7D        | 0 days           | 0%        | Thu 10/15/20        | Thu 10/15/20       |       |       |       |               |       |       |       |
| 4  |  | Receive permit                         | 5D        | 1 day?           | 0%        | Tue 10/6/20         | Tue 10/6/20        |       |       |       |               |       |       |       |
| 5  |  | Mobilize                               | 5D        | 5 days           | 0%        | Thu 10/15/20        | Wed 10/21/20       |       |       |       |               |       |       |       |
| 6  |  | <b>Site Work</b>                       | <b>5D</b> | <b>147 days</b>  | <b>0%</b> | <b>Thu 10/15/20</b> | <b>Wed 5/12/21</b> |       |       |       |               |       |       |       |
| 7  |  | Install erosion control and Site Fence | 5D        | 5 days           | 0%        | Thu 10/15/20        | Wed 10/21/20       |       |       |       |               |       |       |       |
| 52 |  | Site signage                           | 5D        | 1 day            | 0%        | Thu 10/15/20        | Thu 10/15/20       |       |       |       |               |       |       |       |
| 8  |  | BMP inspection                         | 5D        | 1 day            | 0%        | Thu 10/22/20        | Thu 10/22/20       |       |       |       |               |       |       |       |
| 9  |  | <b>Site Excavation</b>                 | <b>5D</b> | <b>133 days</b>  | <b>0%</b> | <b>Thu 10/22/20</b> | <b>Thu 4/29/21</b> |       |       |       |               |       |       |       |
| 10 |  | Grub                                   | 5D        | 1 day            | 0%        | Thu 10/22/20        | Thu 10/22/20       |       |       |       |               |       |       |       |
| 11 |  | Overlot grading                        | 5D        | 4 days           | 0%        | Fri 10/23/20        | Wed 10/28/20       |       |       |       |               |       |       |       |
| 12 |  | Layout C&G                             | 5D        | 3 days           | 0%        | Mon 4/5/21          | Wed 4/7/21         |       |       |       |               |       |       |       |
| 13 |  | Cut/fills @ C&G                        | 5D        | 2 days           | 0%        | Thu 4/8/21          | Fri 4/9/21         |       |       |       |               |       |       |       |
| 14 |  | Layout sidewalks                       | 5D        | 1 day            | 0%        | Mon 4/19/21         | Mon 4/19/21        |       |       |       |               |       |       |       |
| 15 |  | Cut/fills @ sidewalks                  | 5D        | 2 days           | 0%        | Tue 4/20/21         | Wed 4/21/21        |       |       |       |               |       |       |       |
| 16 |  | Grade for walks behind curbs           | 5D        | 2 days           | 0%        | Thu 4/22/21         | Fri 4/23/21        |       |       |       |               |       |       |       |
| 17 |  | Landscape grading                      | 5D        | 3 days           | 0%        | Tue 4/27/21         | Thu 4/29/21        |       |       |       |               |       |       |       |
| 25 |  | <b>Site Utilities</b>                  | <b>5D</b> | <b>26 days</b>   | <b>0%</b> | <b>Thu 10/29/20</b> | <b>Mon 12/7/20</b> |       |       |       |               |       |       |       |
| 26 |  | Layout sanitary sewer                  | 5D        | 1 day            | 0%        | Thu 10/29/20        | Thu 10/29/20       |       |       |       |               |       |       |       |
| 27 |  | Install sanitary sewer                 | 5D        | 4 days           | 0%        | Fri 10/30/20        | Wed 11/4/20        |       |       |       |               |       |       |       |
| 28 |  | Layout fireline                        | 5D        | 1 day            | 0%        | Thu 11/5/20         | Thu 11/5/20        |       |       |       |               |       |       |       |
| 29 |  | Install fireline loop                  | 5D        | 3 days           | 0%        | Fri 11/6/20         | Tue 11/10/20       |       |       |       |               |       |       |       |
| 30 |  | Layout storm sewer                     | 5D        | 1 day            | 0%        | Wed 11/11/20        | Wed 11/11/20       |       |       |       |               |       |       |       |
| 31 |  | Install storm sewer                    | 5D        | 4 days           | 0%        | Thu 11/12/20        | Tue 11/17/20       |       |       |       |               |       |       |       |
| 32 |  | Install storm sewer structures         | 5D        | 4 days           | 0%        | Wed 11/18/20        | Mon 11/23/20       |       |       |       |               |       |       |       |
| 33 |  | Layout domestic waterline to the bldg  | 5D        | 2 days           | 0%        | Wed 12/2/20         | Thu 12/3/20        |       |       |       |               |       |       |       |
| 35 |  | Layout fireline to the bldg            | 5D        | 1 day            | 0%        | Wed 12/2/20         | Wed 12/2/20        |       |       |       |               |       |       |       |
| 36 |  | Install fire line to the bldg          | 5D        | 3 days           | 0%        | Thu 12/3/20         | Mon 12/7/20        |       |       |       |               |       |       |       |
| 34 |  | Install domestic waterline to the bldg | 5D        | 2 days           | 0%        | Fri 12/4/20         | Mon 12/7/20        |       |       |       |               |       |       |       |
| 37 |  | <b>BLD Services</b>                    | <b>5D</b> | <b>80 days</b>   | <b>0%</b> | <b>Wed 12/2/20</b>  | <b>Wed 3/24/21</b> |       |       |       |               |       |       |       |
| 38 |  | Install electrical transformer & feed  | 5D        | 4 days           | 0%        | Wed 12/2/20         | Mon 12/7/20        |       |       |       |               |       |       |       |
| 39 |  | Install gas service & meter            | 5D        | 3 days           | 0%        | Thu 3/18/21         | Mon 3/22/21        |       |       |       |               |       |       |       |
| 40 |  | CenturyLink service to bldg            | 5D        | 3 days           | 0%        | Mon 3/22/21         | Wed 3/24/21        |       |       |       |               |       |       |       |
| 41 |  | Comcast service to bldg                | 5D        | 3 days           | 0%        | Mon 3/22/21         | Wed 3/24/21        |       |       |       |               |       |       |       |
| 42 |  | <b>Electrical</b>                      | <b>5D</b> | <b>18 days</b>   | <b>0%</b> | <b>Mon 4/19/21</b>  | <b>Wed 5/12/21</b> |       |       |       |               |       |       |       |
| 43 |  | Secondaries to transformer             | 5D        | 4 days           | 0%        | Fri 5/7/21          | Wed 5/12/21        |       |       |       |               |       |       |       |
| 44 |  | Layout lightpoles                      | 5D        | 1 day            | 0%        | Mon 4/19/21         | Mon 4/19/21        |       |       |       |               |       |       |       |
| 45 |  | Install site lighting conduit          | 5D        | 3 days           | 0%        | Tue 4/20/21         | Thu 4/22/21        |       |       |       |               |       |       |       |
| 46 |  | Drill, form & pour lightpole bases     | 5D        | 3 days           | 0%        | Fri 4/23/21         | Tue 4/27/21        |       |       |       |               |       |       |       |
| 47 |  | Install site lighting                  | 5D        | 2 days           | 0%        | Wed 4/28/21         | Thu 4/29/21        |       |       |       |               |       |       |       |

# Firestone Town Hall

## SCHEDULE FILE: CD Master Bid Schedule



| ID  |  | Task Name                               | Cal       | Dur             | % Comp    | Start               | Finish              | Qtr 2 | Qtr 3 | Qtr 4 | 2021<br>Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 |
|-----|--|-----------------------------------------|-----------|-----------------|-----------|---------------------|---------------------|-------|-------|-------|---------------|-------|-------|-------|
| 18  |  | <b>Concrete &amp; Paving</b>            | <b>5D</b> | <b>12 days</b>  | <b>0%</b> | <b>Mon 4/12/21</b>  | <b>Tue 4/27/21</b>  |       |       |       |               |       |       |       |
| 19  |  | Install C&G                             | 5D        | 5 days          | 0%        | Mon 4/12/21         | Fri 4/16/21         |       |       |       |               |       |       |       |
| 21  |  | Scarify/recompact @ road                | 5D        | 2 days          | 0%        | Mon 4/19/21         | Tue 4/20/21         |       |       |       |               |       |       |       |
| 22  |  | Asphalt 1st lift                        | 5D        | 2 days          | 0%        | Wed 4/21/21         | Thu 4/22/21         |       |       |       |               |       |       |       |
| 20  |  | Install concrete sidewalks & chases     | 5D        | 3 days          | 0%        | Thu 4/22/21         | Mon 4/26/21         |       |       |       |               |       |       |       |
| 23  |  | Asphalt top lift                        | 5D        | 2 days          | 0%        | Fri 4/23/21         | Mon 4/26/21         |       |       |       |               |       |       |       |
| 24  |  | Parking lot striping                    | 5D        | 1 day           | 0%        | Tue 4/27/21         | Tue 4/27/21         |       |       |       |               |       |       |       |
| 48  |  | <b>Landscaping</b>                      | <b>5D</b> | <b>13 days</b>  | <b>0%</b> | <b>Tue 4/20/21</b>  | <b>Thu 5/6/21</b>   |       |       |       |               |       |       |       |
| 49  |  | Irrigation sleeving                     | 5D        | 2 days          | 0%        | Tue 4/20/21         | Wed 4/21/21         |       |       |       |               |       |       |       |
| 50  |  | Install irrigation system               | 5D        | 5 days          | 0%        | Fri 4/23/21         | Thu 4/29/21         |       |       |       |               |       |       |       |
| 51  |  | Install landscaping                     | 5D        | 5 days          | 0%        | Fri 4/30/21         | Thu 5/6/21          |       |       |       |               |       |       |       |
| 53  |  | Site accessories                        | 5D        | 5 days          | 0%        | Tue 4/27/21         | Mon 5/3/21          |       |       |       |               |       |       |       |
| 54  |  | <b>Core &amp; Shell</b>                 | <b>5D</b> | <b>159 days</b> | <b>0%</b> | <b>Thu 10/29/20</b> | <b>Mon 6/14/21</b>  |       |       |       |               |       |       |       |
| 73  |  | <b>Structural</b>                       | <b>5D</b> | <b>110 days</b> | <b>0%</b> | <b>Mon 1/11/21</b>  | <b>Mon 6/14/21</b>  |       |       |       |               |       |       |       |
| 74  |  | Tilt up panels 1st phase form and pour  | 5D        | 10 days         | 0%        | Mon 1/11/21         | Fri 1/22/21         |       |       |       |               |       |       |       |
| 75  |  | Erect panels                            | 5D        | 5 days          | 0%        | Mon 1/25/21         | Fri 1/29/21         |       |       |       |               |       |       |       |
| 76  |  | Tilt up panels 2nd phase form and pour  | 5D        | 10 days         | 0%        | Mon 2/1/21          | Fri 2/12/21         |       |       |       |               |       |       |       |
| 77  |  | Erect panels                            | 5D        | 5 days          | 0%        | Mon 2/15/21         | Fri 2/19/21         |       |       |       |               |       |       |       |
| 78  |  | Steel erection                          | 5D        | 10 days         | 0%        | Mon 2/22/21         | Fri 3/5/21          |       |       |       |               |       |       |       |
| 79  |  | Roof RTU opening reinforcing            | 5D        | 2 days          | 0%        | Mon 3/8/21          | Tue 3/9/21          |       |       |       |               |       |       |       |
| 80  |  | Roof access ladder                      | 5D        | 1 day           | 0%        | Mon 6/14/21         | Mon 6/14/21         |       |       |       |               |       |       |       |
| 55  |  | <b>Excavation</b>                       | <b>5D</b> | <b>42 days</b>  | <b>0%</b> | <b>Thu 10/29/20</b> | <b>Wed 12/30/20</b> |       |       |       |               |       |       |       |
| 56  |  | Layout footings                         | 5D        | 1 day           | 0%        | Thu 10/29/20        | Thu 10/29/20        |       |       |       |               |       |       |       |
| 57  |  | Excavate for footing                    | 5D        | 4 days          | 0%        | Fri 10/30/20        | Wed 11/4/20         |       |       |       |               |       |       |       |
| 58  |  | Backfill foundations                    | 5D        | 4 days          | 0%        | Tue 11/24/20        | Tue 12/1/20         |       |       |       |               |       |       |       |
| 59  |  | Rough grade SOG                         | 5D        | 2 days          | 0%        | Wed 12/2/20         | Thu 12/3/20         |       |       |       |               |       |       |       |
| 60  |  | Fine grade SOG                          | 5D        | 2 days          | 0%        | Tue 12/29/20        | Wed 12/30/20        |       |       |       |               |       |       |       |
| 67  |  | <b>Footings &amp; Foundations</b>       | <b>5D</b> | <b>13 days</b>  | <b>0%</b> | <b>Thu 11/5/20</b>  | <b>Mon 11/23/20</b> |       |       |       |               |       |       |       |
| 68  |  | Layout footings                         | 5D        | 3 days          | 0%        | Thu 11/5/20         | Mon 11/9/20         |       |       |       |               |       |       |       |
| 69  |  | Form & pour footings                    | 5D        | 10 days         | 0%        | Tue 11/10/20        | Mon 11/23/20        |       |       |       |               |       |       |       |
| 88  |  | <b>Plumbing</b>                         | <b>5D</b> | <b>80 days</b>  | <b>0%</b> | <b>Fri 12/4/20</b>  | <b>Fri 3/26/21</b>  |       |       |       |               |       |       |       |
| 89  |  | Underslab plumbing rough in             | 5D        | 8 days          | 0%        | Fri 12/4/20         | Tue 12/15/20        |       |       |       |               |       |       |       |
| 91  |  | Plumbing roof penetrations              | 5D        | 2 days          | 0%        | Mon 3/8/21          | Tue 3/9/21          |       |       |       |               |       |       |       |
| 90  |  | Gas line rough in                       | 5D        | 5 days          | 0%        | Mon 3/22/21         | Fri 3/26/21         |       |       |       |               |       |       |       |
| 97  |  | <b>Electrical/Fire Alarm</b>            | <b>5D</b> | <b>72 days</b>  | <b>0%</b> | <b>Wed 12/16/20</b> | <b>Fri 3/26/21</b>  |       |       |       |               |       |       |       |
| 98  |  | Underslab electrical rough in           | 5D        | 8 days          | 0%        | Wed 12/16/20        | Mon 12/28/20        |       |       |       |               |       |       |       |
| 99  |  | Electrical/Fire Alarm roof penetrations | 5D        | 2 days          | 0%        | Mon 3/8/21          | Tue 3/9/21          |       |       |       |               |       |       |       |
| 100 |  | Electrical service rough in             | 5D        | 5 days          | 0%        | Mon 3/22/21         | Fri 3/26/21         |       |       |       |               |       |       |       |
| 61  |  | <b>Flat Work</b>                        | <b>5D</b> | <b>50 days</b>  | <b>0%</b> | <b>Thu 12/31/20</b> | <b>Wed 3/10/21</b>  |       |       |       |               |       |       |       |
| 62  |  | SOG prep                                | 5D        | 3 days          | 0%        | Thu 12/31/20        | Mon 1/4/21          |       |       |       |               |       |       |       |
| 63  |  | SOG pour                                | 5D        | 1 day           | 0%        | Tue 1/5/21          | Tue 1/5/21          |       |       |       |               |       |       |       |

# Firestone Town Hall

## SCHEDULE FILE: CD Master Bid Schedule



| ID  |  | Task Name                         | Cal       | Dur             | % Comp    | Start              | Finish             | Qtr 2 | Qtr 3 | Qtr 4 | 2021<br>Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 |
|-----|--|-----------------------------------|-----------|-----------------|-----------|--------------------|--------------------|-------|-------|-------|---------------|-------|-------|-------|
| 64  |  | SOG Cure period                   | 5D        | 3 days          | 0%        | Wed 1/6/21         | Fri 1/8/21         |       |       |       |               |       |       |       |
| 65  |  | RTU roof pad prep                 | 5D        | 2 days          | 0%        | Mon 3/8/21         | Tue 3/9/21         |       |       |       |               |       |       |       |
| 66  |  | RTU roof pad pour                 | 5D        | 1 day           | 0%        | Wed 3/10/21        | Wed 3/10/21        |       |       |       |               |       |       |       |
| 70  |  | <b>Exterior Skin</b>              | <b>5D</b> | <b>13 days</b>  | <b>0%</b> | <b>Mon 3/8/21</b>  | <b>Wed 3/24/21</b> |       |       |       |               |       |       |       |
| 71  |  | Stone Vaneer                      | 5D        | 8 days          | 0%        | Mon 3/8/21         | Wed 3/17/21        |       |       |       |               |       |       |       |
| 72  |  | Exterior Coatings                 | 5D        | 5 days          | 0%        | Thu 3/18/21        | Wed 3/24/21        |       |       |       |               |       |       |       |
| 81  |  | <b>Rough Carpentry</b>            | <b>5D</b> | <b>10 days</b>  | <b>0%</b> | <b>Mon 3/8/21</b>  | <b>Fri 3/19/21</b> |       |       |       |               |       |       |       |
| 82  |  | RTU curb levelors                 | 5D        | 3 days          | 0%        | Mon 3/8/21         | Wed 3/10/21        |       |       |       |               |       |       |       |
| 84  |  | Window wraps                      | 5D        | 8 days          | 0%        | Mon 3/8/21         | Wed 3/17/21        |       |       |       |               |       |       |       |
| 83  |  | Parapet cap                       | 5D        | 7 days          | 0%        | Thu 3/11/21        | Fri 3/19/21        |       |       |       |               |       |       |       |
| 94  |  | <b>Mechanical</b>                 | <b>5D</b> | <b>12 days</b>  | <b>0%</b> | <b>Mon 3/8/21</b>  | <b>Tue 3/23/21</b> |       |       |       |               |       |       |       |
| 95  |  | RTU curbs                         | 5D        | 2 days          | 0%        | Mon 3/8/21         | Tue 3/9/21         |       |       |       |               |       |       |       |
| 96  |  | Set RTU's                         | 5D        | 2 days          | 0%        | Mon 3/22/21        | Tue 3/23/21        |       |       |       |               |       |       |       |
| 85  |  | <b>Roofing</b>                    | <b>5D</b> | <b>12 days</b>  | <b>0%</b> | <b>Thu 3/11/21</b> | <b>Fri 3/26/21</b> |       |       |       |               |       |       |       |
| 86  |  | EPDM Roof                         | 5D        | 7 days          | 0%        | Thu 3/11/21        | Fri 3/19/21        |       |       |       |               |       |       |       |
| 87  |  | Parapet cap & flashings           | 5D        | 5 days          | 0%        | Mon 3/22/21        | Fri 3/26/21        |       |       |       |               |       |       |       |
| 92  |  | <b>Fire Sprinkler</b>             | <b>5D</b> | <b>10 days</b>  | <b>0%</b> | <b>Mon 3/22/21</b> | <b>Fri 4/2/21</b>  |       |       |       |               |       |       |       |
| 93  |  | Sprinkler mains & branch rough in | 5D        | 10 days         | 0%        | Mon 3/22/21        | Fri 4/2/21         |       |       |       |               |       |       |       |
| 101 |  | <b>TI</b>                         | <b>5D</b> | <b>98 days?</b> | <b>0%</b> | <b>Mon 3/8/21</b>  | <b>Fri 7/23/21</b> |       |       |       |               |       |       |       |
| 120 |  | <b>Doors &amp; Hardware</b>       | <b>5D</b> | <b>96 days?</b> | <b>0%</b> | <b>Mon 3/8/21</b>  | <b>Wed 7/21/21</b> |       |       |       |               |       |       |       |
| 121 |  | Set door jams                     | 5D        | 4 days          | 0%        | Mon 3/8/21         | Thu 3/11/21        |       |       |       |               |       |       |       |
| 122 |  | Doors & hardware                  | 5D        | 1 day?          | 0%        | Wed 7/21/21        | Wed 7/21/21        |       |       |       |               |       |       |       |
| 102 |  | <b>Framing &amp; Drywall</b>      | <b>5D</b> | <b>57 days</b>  | <b>0%</b> | <b>Wed 3/17/21</b> | <b>Fri 6/4/21</b>  |       |       |       |               |       |       |       |
| 103 |  | Layout walls, soffits, ceilings   | 5D        | 5 days          | 0%        | Wed 3/17/21        | Tue 3/23/21        |       |       |       |               |       |       |       |
| 104 |  | Frame walls                       | 5D        | 20 days         | 0%        | Fri 3/19/21        | Thu 4/15/21        |       |       |       |               |       |       |       |
| 105 |  | Frame hard lids & soffits         | 5D        | 5 days          | 0%        | Fri 4/9/21         | Thu 4/15/21        |       |       |       |               |       |       |       |
| 106 |  | Drywall walls                     | 5D        | 20 days         | 0%        | Fri 4/9/21         | Thu 5/6/21         |       |       |       |               |       |       |       |
| 107 |  | Drywall hardlids                  | 5D        | 3 days          | 0%        | Fri 5/7/21         | Tue 5/11/21        |       |       |       |               |       |       |       |
| 108 |  | Drywall finish walls & hardlids   | 5D        | 20 days         | 0%        | Fri 5/7/21         | Fri 6/4/21         |       |       |       |               |       |       |       |
| 123 |  | <b>Storefront &amp; Glazing</b>   | <b>5D</b> | <b>12 days</b>  | <b>0%</b> | <b>Thu 3/18/21</b> | <b>Fri 4/2/21</b>  |       |       |       |               |       |       |       |
| 124 |  | Aluminum storefront               | 5D        | 8 days          | 0%        | Thu 3/18/21        | Mon 3/29/21        |       |       |       |               |       |       |       |
| 125 |  | Aluminum windows                  | 5D        | 8 days          | 0%        | Thu 3/18/21        | Mon 3/29/21        |       |       |       |               |       |       |       |
| 126 |  | Aluminum doors & hardware         | 5D        | 4 days          | 0%        | Tue 3/30/21        | Fri 4/2/21         |       |       |       |               |       |       |       |
| 136 |  | <b>Plumbing</b>                   | <b>5D</b> | <b>86 days</b>  | <b>0%</b> | <b>Mon 3/22/21</b> | <b>Wed 7/21/21</b> |       |       |       |               |       |       |       |
| 137 |  | Above ceiling rough in plumbing   | 5D        | 12 days         | 0%        | Mon 3/22/21        | Tue 4/6/21         |       |       |       |               |       |       |       |
| 138 |  | Wall rough in plumbing            | 5D        | 7 days          | 0%        | Thu 3/25/21        | Fri 4/2/21         |       |       |       |               |       |       |       |
| 139 |  | Fixture & trim plumbing           | 5D        | 4 days          | 0%        | Fri 7/16/21        | Wed 7/21/21        |       |       |       |               |       |       |       |
| 140 |  | <b>Fire Sprinkler</b>             | <b>5D</b> | <b>75 days</b>  | <b>0%</b> | <b>Mon 3/22/21</b> | <b>Tue 7/6/21</b>  |       |       |       |               |       |       |       |
| 141 |  | Fire riser & backflow             | 5D        | 3 days          | 0%        | Mon 3/22/21        | Wed 3/24/21        |       |       |       |               |       |       |       |
| 142 |  | Fire sprinkler mains & branch     | 5D        | 8 days          | 0%        | Thu 3/25/21        | Mon 4/5/21         |       |       |       |               |       |       |       |
| 143 |  | Fire sprinkler hard lid drops     | 5D        | 2 days          | 0%        | Fri 4/16/21        | Mon 4/19/21        |       |       |       |               |       |       |       |

# Firestone Town Hall

## SCHEDULE FILE: CD Master Bid Schedule

| ID  |  | Task Name                                    | Cal       | Dur            | % Comp    | Start              | Finish             | Qtr 2 | Qtr 3 | Qtr 4 | 2021<br>Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 |
|-----|--|----------------------------------------------|-----------|----------------|-----------|--------------------|--------------------|-------|-------|-------|---------------|-------|-------|-------|
| 144 |  | Fire sprinkler grid drops                    | 5D        | 5 days         | 0%        | Wed 6/16/21        | Tue 6/22/21        |       |       |       |               |       |       |       |
| 145 |  | Trim fire sprinkler                          | 5D        | 2 days         | 0%        | Fri 7/2/21         | Tue 7/6/21         |       |       |       |               |       |       |       |
| 146 |  | <b>Mechanical</b>                            | <b>5D</b> | <b>67 days</b> | <b>0%</b> | <b>Mon 3/22/21</b> | <b>Wed 6/23/21</b> |       |       |       |               |       |       |       |
| 147 |  | Duct mains & branch                          | 5D        | 20 days        | 0%        | Mon 3/22/21        | Fri 4/16/21        |       |       |       |               |       |       |       |
| 148 |  | Flex & GRD's                                 | 5D        | 6 days         | 0%        | Wed 6/16/21        | Wed 6/23/21        |       |       |       |               |       |       |       |
| 149 |  | <b>Electrical/Fire Alarm</b>                 | <b>5D</b> | <b>85 days</b> | <b>0%</b> | <b>Mon 3/22/21</b> | <b>Tue 7/20/21</b> |       |       |       |               |       |       |       |
| 150 |  | Above ceiling rough in electrical/fire alarm | 5D        | 35 days        | 0%        | Mon 3/22/21        | Fri 5/7/21         |       |       |       |               |       |       |       |
| 151 |  | Wall rough in electrical/fire alarm          | 5D        | 25 days        | 0%        | Mon 3/29/21        | Fri 4/30/21        |       |       |       |               |       |       |       |
| 152 |  | Hard lid lighting                            | 5D        | 4 days         | 0%        | Fri 4/16/21        | Wed 4/21/21        |       |       |       |               |       |       |       |
| 156 |  | Build new electrical service                 | 5D        | 12 days        | 0%        | Wed 6/2/21         | Thu 6/17/21        |       |       |       |               |       |       |       |
| 153 |  | Grid lighting                                | 5D        | 12 days        | 0%        | Wed 6/9/21         | Thu 6/24/21        |       |       |       |               |       |       |       |
| 154 |  | Device electrical                            | 5D        | 5 days         | 0%        | Fri 7/9/21         | Thu 7/15/21        |       |       |       |               |       |       |       |
| 155 |  | Trim electrical                              | 5D        | 3 days         | 0%        | Fri 7/16/21        | Tue 7/20/21        |       |       |       |               |       |       |       |
| 109 |  | <b>Rough Carpentry</b>                       | <b>5D</b> | <b>10 days</b> | <b>0%</b> | <b>Fri 3/26/21</b> | <b>Thu 4/8/21</b>  |       |       |       |               |       |       |       |
| 110 |  | Backing                                      | 5D        | 10 days        | 0%        | Fri 3/26/21        | Thu 4/8/21         |       |       |       |               |       |       |       |
| 164 |  | <b>Security</b>                              | <b>5D</b> | <b>82 days</b> | <b>0%</b> | <b>Tue 3/30/21</b> | <b>Fri 7/23/21</b> |       |       |       |               |       |       |       |
| 166 |  | Security tie into door frames & storefront   | 5D        | 5 days         | 0%        | Tue 3/30/21        | Mon 4/5/21         |       |       |       |               |       |       |       |
| 165 |  | Above ceiling rough in security              | 5D        | 5 days         | 0%        | Mon 5/10/21        | Fri 5/14/21        |       |       |       |               |       |       |       |
| 167 |  | Device & trim security                       | 5D        | 4 days         | 0%        | Tue 7/20/21        | Fri 7/23/21        |       |       |       |               |       |       |       |
| 157 |  | <b>IT</b>                                    | <b>5D</b> | <b>52 days</b> | <b>0%</b> | <b>Mon 5/10/21</b> | <b>Thu 7/22/21</b> |       |       |       |               |       |       |       |
| 158 |  | Above ceiling rough in IT                    | 5D        | 7 days         | 0%        | Mon 5/10/21        | Tue 5/18/21        |       |       |       |               |       |       |       |
| 159 |  | Build out IDF                                | 5D        | 8 days         | 0%        | Mon 6/14/21        | Wed 6/23/21        |       |       |       |               |       |       |       |
| 160 |  | Trim IT                                      | 5D        | 5 days         | 0%        | Fri 7/16/21        | Thu 7/22/21        |       |       |       |               |       |       |       |
| 161 |  | <b>AV</b>                                    | <b>5D</b> | <b>53 days</b> | <b>0%</b> | <b>Mon 5/10/21</b> | <b>Fri 7/23/21</b> |       |       |       |               |       |       |       |
| 162 |  | Above ceiling rough in AV                    | 5D        | 5 days         | 0%        | Mon 5/10/21        | Fri 5/14/21        |       |       |       |               |       |       |       |
| 163 |  | Install AV equipment                         | 5D        | 3 days         | 0%        | Wed 7/21/21        | Fri 7/23/21        |       |       |       |               |       |       |       |
| 111 |  | <b>Painting</b>                              | <b>5D</b> | <b>36 days</b> | <b>0%</b> | <b>Fri 5/28/21</b> | <b>Tue 7/20/21</b> |       |       |       |               |       |       |       |
| 112 |  | Prime & 1 coat                               | 5D        | 10 days        | 0%        | Fri 5/28/21        | Fri 6/11/21        |       |       |       |               |       |       |       |
| 113 |  | Finish coat                                  | 5D        | 8 days         | 0%        | Fri 7/9/21         | Tue 7/20/21        |       |       |       |               |       |       |       |
| 117 |  | <b>Grid &amp; Specialty Ceilings</b>         | <b>5D</b> | <b>20 days</b> | <b>0%</b> | <b>Fri 6/4/21</b>  | <b>Thu 7/1/21</b>  |       |       |       |               |       |       |       |
| 118 |  | Install ceiling grid                         | 5D        | 8 days         | 0%        | Fri 6/4/21         | Tue 6/15/21        |       |       |       |               |       |       |       |
| 119 |  | Install ceiling tile                         | 5D        | 5 days         | 0%        | Fri 6/25/21        | Thu 7/1/21         |       |       |       |               |       |       |       |
| 114 |  | <b>Millwork</b>                              | <b>5D</b> | <b>28 days</b> | <b>0%</b> | <b>Mon 6/14/21</b> | <b>Thu 7/22/21</b> |       |       |       |               |       |       |       |
| 115 |  | Casework                                     | 5D        | 8 days         | 0%        | Mon 6/14/21        | Wed 6/23/21        |       |       |       |               |       |       |       |
| 116 |  | Wall treatments                              | 5D        | 4 days         | 0%        | Mon 7/19/21        | Thu 7/22/21        |       |       |       |               |       |       |       |
| 127 |  | <b>Floor &amp; Wall Coverings</b>            | <b>5D</b> | <b>13 days</b> | <b>0%</b> | <b>Fri 7/2/21</b>  | <b>Wed 7/21/21</b> |       |       |       |               |       |       |       |
| 130 |  | Carpet                                       | 5D        | 10 days        | 0%        | Fri 7/2/21         | Fri 7/16/21        |       |       |       |               |       |       |       |
| 129 |  | Tile                                         | 5D        | 5 days         | 0%        | Fri 7/9/21         | Thu 7/15/21        |       |       |       |               |       |       |       |
| 131 |  | Base                                         | 5D        | 3 days         | 0%        | Mon 7/19/21        | Wed 7/21/21        |       |       |       |               |       |       |       |
| 128 |  | Sealed floors                                | 5D        | 1 day          | 0%        | Wed 7/21/21        | Wed 7/21/21        |       |       |       |               |       |       |       |
| 132 |  | <b>Specialties</b>                           | <b>5D</b> | <b>4 days</b>  | <b>0%</b> | <b>Fri 7/16/21</b> | <b>Wed 7/21/21</b> |       |       |       |               |       |       |       |

# Firestone Town Hall

## SCHEDULE FILE: CD Master Bid Schedule



| ID  |  | Task Name                          | Cal       | Dur            | % Comp    | Start              | Finish             | Qtr 2 | Qtr 3 | Qtr 4 | 2021<br>Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 |
|-----|--|------------------------------------|-----------|----------------|-----------|--------------------|--------------------|-------|-------|-------|---------------|-------|-------|-------|
| 134 |  | Restroom partitions & accessories  | 5D        | 3 days         | 0%        | Fri 7/16/21        | Tue 7/20/21        |       |       |       |               |       |       |       |
| 133 |  | Maker boards, corners guards etc.  | 5D        | 3 days         | 0%        | Mon 7/19/21        | Wed 7/21/21        |       |       |       |               |       |       |       |
| 135 |  | Acoustical treatments              | 5D        | 2 days         | 0%        | Mon 7/19/21        | Tue 7/20/21        |       |       |       |               |       |       |       |
| 168 |  | <b>Inspections &amp; Close Out</b> | <b>5D</b> | <b>65 days</b> | <b>0%</b> | <b>Fri 6/18/21</b> | <b>Mon 9/20/21</b> |       |       |       |               |       |       |       |
| 169 |  | Commisioning                       | 5D        | 4 days         | 0%        | Fri 6/18/21        | Wed 6/23/21        |       |       |       |               |       |       |       |
| 170 |  | Prepunch                           | 5D        | 5 days         | 0%        | Mon 7/26/21        | Fri 7/30/21        |       |       |       |               |       |       |       |
| 171 |  | Architect/owner punch              | 5D        | 2 days         | 0%        | Mon 8/2/21         | Tue 8/3/21         |       |       |       |               |       |       |       |
| 174 |  | Final inspections                  | 5D        | 4 days         | 0%        | Mon 8/2/21         | Thu 8/5/21         |       |       |       |               |       |       |       |
| 172 |  | Punch list corrections             | 5D        | 10 days        | 0%        | Wed 8/4/21         | Tue 8/17/21        |       |       |       |               |       |       |       |
| 173 |  | Final clean                        | 5D        | 2 days         | 0%        | Wed 8/18/21        | Thu 8/19/21        |       |       |       |               |       |       |       |
| 175 |  | Contractor Contengency Time        | 5D        | 30 days        | 0%        | Fri 8/6/21         | Fri 9/17/21        |       |       |       |               |       |       |       |
| 176 |  | Certificate of occupancy           | 5D        | 1 day          | 0%        | Mon 9/20/21        | Mon 9/20/21        |       |       |       |               |       |       |       |

## EXHIBIT I

September 14, 2020

Pricing Clarifications for  
Firestone Town Hall  
100% Construction Documents  
of Drawings Dated 07/24/2020

Division One

1 This GMP is based on the 100% CD drawings and specifications dated 07/24/20 as generated by Halcyon Design.

2 The Contract excludes all utility development fees and all municipal development fees.

3 The Scope of Work excludes all hazardous material sampling, testing and abatement.

4 It is assumed that the structural engineer of record will provide all structural engineering, including providing structural services in accordance with 2016 AISC Steel Manual 15th Edition – Code of Standard Practice For Steel Buildings and Bridges, Section 3.1 and subsection 3.1.1 Option 1, and that no structural engineering services will be required by Fransen Pittman.

5 This guaranteed maximum price is not a line item guaranteed maximum price and cannot be treated as such.

6 Due to the everchanging COVID-19 pandemic there are potential risks and policies which are constantly shifting. We have not included additional money or schedule extensions for delays associated with inspections, supply chains, government shutdowns, outbreaks, etc. Fransen Pittman is taking every precaution necessary to abide by the current government protocols and health orders for both the safety and well-being of staff, subcontractors and Firestone Town Hall.

7 No costs have been carried within the GMP associated with dry utility work or design work which includes gas, phone/data, cable, United Power, gas meters, ec.)

8 Site work city/town/county/state public ROW work, stormwater work, utilities work, road work, site stabilization, etc. performance bonds, guarantees and warranty bonds are not included in this GMP and assumed to be by Owner

9 All Taxes are excluded from this project per discussion with the Owner and Architect. This includes Use Tax. We have an allowance of \$150,000 in the case that the Use Tax is not covered by the Exemption Certificate.

Division Two

- 1 Dewatering is excluded from the Base Bid and assumed as not needed.
- 2 A 1-Year Maintenance Agreement is included in the Base Bid for Landscaping.
- 3 Due to possible damage from the Tilt-Up Concrete Crane to existing Asphalt and Concrete, allowances have been carried for Asphalt and Concrete Patching.
- 4 No perimeter drains or foundation drains have been included.

Division Three

- <sup>1</sup> Fransen Pittman does not warrant slabs-on-grade and slabs cast on metal decking against cracking that will affect the aesthetic characteristics of the floor.
- <sup>2</sup> Specific requirements limiting moisture or ph of concrete materials, including flow-fill are excluded from Scope of Work.
- <sup>3</sup> Special coatings and/or special floor preparations required for concrete due to moisture or ph conditions are excluded from the Scope of Work.

Division Five

- <sup>1</sup> The Steel Subcontractor has carried an Allowance for Steel Embeds in or at the Tilt-Up Panels as the quantities of these items were not clearly defined.

Division Six

- 1 Millwork subcontractor is not AWI or FSC certified.

Division Seven

<sup>1</sup> The Warranty for the Roofing is assumed as a standard 20-Year Warranty. The specified 25 Year Warranty is excluded.

<sup>2</sup> Per the Specifications, the Metal Edging and Membrane Transitions call for a Drexel Metal SecurEdge 400. Our Roofer has priced an in-house product that meets the same requirements as the Drexel Product.

Division Eight

- <sup>1</sup> The storefront subcontractor has carried Tubelite as the manufacturer of the storefront doors and windows.
- <sup>2</sup> We have a voluntary Alternate to furnish and install Sunshades by Tubelite in lieu of the Architectural Louvers specified.

Division Nine

1 Floor covering prices do not include special high moisture and/or excessive alkalinity adhesives or special floor preparations.

2 Fransen Pittman recommends Level 5 finish drywall. Should the Contract Documents specify a lower grade finish, Fransen Pittman cannot guarantee a satisfactory final product as some irregularities may not be concealed, especially with the use of semi gloss or gloss sheens of paint and any wall covering type products.

3 An Allowance for Major Floor Preparation has been carried at \$15,000.

4 The Exterior Canopy Columns are priced as Light Gauge Framing with a 4" Stone Veneer to match the Veneer on Tilt-Up Panels.

5 We changed Wall Type A at Storage 118 into a Type G Wall so that it goes all the way to deck. Per the Section detail, the ladder attaches to a full-height wall. We recommend all the walls in this Storage Room be Full-Height.

6 Any walls specified to extend full height are figured with a single piece of 20 ga deflection track with 2-1/2" legs at the head of the wall. No Fire-Track or slotted track has been included.

7 An Allowance for Acoustical Wall and Ceiling Treatments is being carried at \$22,500 as no design is currently decided on.

Division Ten

- 1 Display Boards have been excluded from this price and carried by Owner.
- 2 The Monument Sign is excluded and carried under the Owner, not Fransen Pittman.
- 3 Code Required Signage solely is included in this Scope of Work. We have a voluntary Alternate for Signage at the Area of Refuge, Accessible Drinking Fountain, Accessible Entrances, and Fire Extinguishers.

Division Eleven

- 1 All Residential Appliances are excluded and assumed as carried by Owner.

Division Twelve

1 Window Coverings are priced as an Approved Substitute by Lu-Tek.

Division Thirteen

- 1 This Scope of work has been excluded in its entirety.

Division Fourteen

- 1 This Scope of work has been excluded in its entirety.

Division Fifteen

- The permanent heating/cooling equipment provided as part of the Scope of Work may be used by Fransen Pittman for construction heating/cooling prior to Substantial Completion of the Project. Proper
- 1 equipment maintenance, as recommended by the manufacturer, shall be implemented by Fransen Pittman. The warranty period on said equipment shall begin when such equipment is put into use during construction.
  - 2 Fire Sprinklers have been included in the Base Price. A Fire Line is also included into the Building. Fire Hydrants have been excluded.
  - 3 A Dry Fire Sprinkler System at the Canpoy overhangs has been excluded from the Alternate Price as we assume it is not required by code.
  - 4 A 1-Year Maintenance Agreement has been included in the Base Price for the Mechanical Systems.

Division Sixteen

Fransen Pittman excludes replacement of all light bulbs used in permanent fixtures during construction  
1 regardless of the duration of use. However, all bulbs that are not working or are burnt out at the time of Substantial Completion will be replaced by Fransen Pittman.

2 The Generator is priced as relocated from the existing Town Hall. No measures are currently in place for replacing this Generator at the existing Town Hall Building.

We only have the conduit and routing of the LV as it is shown/called out on the electrical drawings. Card  
3 Readers, LV Cabling, Security Camera and any head end systems for access control and security is by other and not included in the GMP.

# EXHIBIT J



## FIRESTONE TOWN HALL - 100% CD GMP

### TAB SUMMARY

| DIVISION / LINE NUMBER   | ITEM DESCRIPTION / SUBCONTRACTOR |                | BID TOTAL | RECOMMENDED SUBCONTRACTOR            | COMMENTS |
|--------------------------|----------------------------------|----------------|-----------|--------------------------------------|----------|
| DIVISION 02 SITE WORK    |                                  |                |           |                                      |          |
| Earthwork                |                                  |                |           |                                      |          |
| 1                        | Bear Excavating                  | \$ 195,872.00  | X         |                                      |          |
| 2                        | Dyer Construction                | \$ 122,460.00  |           |                                      |          |
| 3                        | Dunrite Excavating               | \$ 140,425.69  |           |                                      |          |
| 4                        | Denver Dirt Works                | NO BID         |           |                                      |          |
| Asphalt Paving           |                                  |                |           |                                      |          |
| 1                        | Red Line Striping                | \$ 650.00      | X         |                                      |          |
| 2                        | Aggregate Industries             | NO BID         |           |                                      |          |
| 3                        | Asphalt Specialties              | NO BID         |           |                                      |          |
| 4                        | Colorado Asphalt                 | NO BID         |           |                                      |          |
| 5                        | Brannan Sand & Gravel            | NO BID         |           |                                      |          |
| Site Concrete Paving     |                                  |                |           |                                      |          |
| 1                        | Total Concrete Services          | \$ 86,278.29   | X         |                                      |          |
| 2                        | Blue Ribbon                      | \$ 89,940.00   |           |                                      |          |
| 3                        | Coloscapes Concrete              | \$ 89,872.51   |           |                                      |          |
| 4                        | JAR Concrete                     | NO BID         |           |                                      |          |
| 5                        | Clem N Sons                      | NO BID         |           |                                      |          |
| 6                        | K&S Enterprises                  | NO BID         |           |                                      |          |
| Landscaping & Irrigation |                                  |                |           |                                      |          |
| 1                        | Environmental Landworks          | \$ 111,658.00  | X         |                                      |          |
| 2                        | Landtech Contractors             | \$ 97,888.00   |           |                                      |          |
| 3                        | Terrascapes                      | \$ 81,370.55   |           |                                      |          |
| 4                        | Singing Hills                    | NO BID         |           |                                      |          |
| 5                        | Consolidated Divisions           | NO BID         |           |                                      |          |
| Utilities                |                                  |                |           |                                      |          |
| 1                        | Bear Excavating                  | \$ 158,004.00  | X         |                                      |          |
| 2                        | Diamond Contracting              | \$ 157,713.00  |           |                                      |          |
| 3                        | Dunrite Excavating               | \$ 216,445.73  |           |                                      |          |
| 4                        | R&D Pipeline                     | NO BID         |           |                                      |          |
| DIVISION 03 Concrete     |                                  |                |           |                                      |          |
| Building Concrete        |                                  |                |           |                                      |          |
| 1                        | JB Concrete                      | Incomplete Bid | X         | More follow-up on scope.             |          |
| 2                        | Total Concrete Services          | \$ 218,846.94  | X         |                                      |          |
| 3                        | KB Concrete                      | NO BID         |           |                                      |          |
| 4                        | K&S Enterprises                  | NO BID         |           |                                      |          |
| 5                        | Blue Ribbon                      | \$ 249,230.00  |           |                                      |          |
| 6                        | Coloscapes Concrete              | \$ 244,734.23  |           |                                      |          |
| Tilt-Up Panels           |                                  |                |           |                                      |          |
| 1                        | Panel Masters                    | \$ 384,075.00  | X         | Already has LOI.                     |          |
| 2                        | KB Concrete                      | NO BID         |           |                                      |          |
| 3                        | Lithko Contracting               | NO BID         |           |                                      |          |
| DIVISION 04 Masonry      |                                  |                |           |                                      |          |
| Masonry                  |                                  |                |           |                                      |          |
| 1                        | Monarch Stucco                   | \$ 42,300.00   | X         | Precast Benches and Column Caps Only |          |
| 2                        | Advanced Stucco                  | NO BID         | X         |                                      |          |
| 3                        | ARCO Concrete                    | \$ 1,967.25    |           |                                      |          |
| 4                        | Big Horn Masonry                 | NO BID         |           |                                      |          |
| 5                        | Big Horn Plastering              | NO BID         |           |                                      |          |
| DIVISION 05 Steel        |                                  |                |           |                                      |          |
| Structual Steel          |                                  |                |           |                                      |          |
| 1                        | Barton Supply                    | \$ 337,200.00  | X         | Install of Louvers included          |          |
| 2                        | High Plains                      | \$ 349,686.00  |           |                                      |          |
| 3                        | D&E Steel                        | \$ 344,300.00  |           |                                      |          |
| 4                        | Pikes Peak                       | NO BID         | X         | Supply Only                          |          |
| 5                        | Rons Welding                     | NO BID         |           |                                      |          |
| 6                        | Architectural Louvers            | \$ 13,839.00   |           |                                      |          |

| DIVISION 06 Casework                                                                 |                        |               |   |                                               |
|--------------------------------------------------------------------------------------|------------------------|---------------|---|-----------------------------------------------|
| Architectural Casework                                                               |                        |               |   |                                               |
| 1                                                                                    | Benchmark              | \$ 59,750.00  |   |                                               |
| 2                                                                                    | LA Woodworks           | \$ 64,904.00  |   |                                               |
| 3                                                                                    | Sun Construction       | \$ 59,600.00  | X |                                               |
| 4                                                                                    | Concepts in Millwork   | NO BID        |   |                                               |
| DIVISION 07 Moisture Protection                                                      |                        |               |   |                                               |
| Waterproofing, Fluid Applied Air Barrier, Foundation Insulation, Sealants, Expansion |                        |               |   |                                               |
| 1                                                                                    | RSI                    | \$ 23,900.00  | X |                                               |
| 2                                                                                    | Summit Sealants        | NO BID        |   |                                               |
| 3                                                                                    | MTN                    | NO BID        |   |                                               |
| Thermal Insulation                                                                   |                        |               |   |                                               |
| 1                                                                                    | MATO                   | \$ 3,550.00   | X |                                               |
| Roofing, Metal, Flashing/Trim                                                        |                        |               |   |                                               |
| 1                                                                                    | B&M                    | \$ 387,404.00 | X |                                               |
| 2                                                                                    | Front Range            | \$ 400,248.00 |   |                                               |
| 3                                                                                    | Advanced Roofing       | NO BID        |   |                                               |
| 4                                                                                    | Grabau Roofing         | NO BID        |   |                                               |
| DIVISION 08 Doors, Windows & Glass                                                   |                        |               |   |                                               |
| Doors, Frames & Hardware                                                             |                        |               |   |                                               |
| 1                                                                                    | Colorado Doorways      | \$ 112,931.00 |   | Supply Only                                   |
| 2                                                                                    | Architectural Concepts | \$ 136,769.00 |   | Supply Only                                   |
| 3                                                                                    | Architectural Doors    | NO BID        |   | Supply Only                                   |
| 4                                                                                    | Collins Door           | \$ 111,441.00 | X | Supply Only                                   |
| 5                                                                                    | Diversified Doorways   | NO BID        |   | Install Only                                  |
| Storefront and Glazing                                                               |                        |               |   |                                               |
| 1                                                                                    | Cutting Edge Glass     | \$ 178,750.00 |   |                                               |
| 2                                                                                    | Ken Caryl Glass        | \$ 149,996.00 |   |                                               |
| 3                                                                                    | Commercial Glass       | \$ 148,700.00 | X |                                               |
| 4                                                                                    | EAP Glass              | \$ 150,900.00 |   |                                               |
| DIVISION 09 Finishes                                                                 |                        |               |   |                                               |
| Framing/Drywall                                                                      |                        |               |   |                                               |
| 1                                                                                    | Copper Springs         | \$ 265,404.00 |   | Schedule and Manpower Concerns. Change Orders |
| 2                                                                                    | DELMC                  | \$ 277,675.00 |   |                                               |
| 3                                                                                    | Fossil Creek           | \$ 275,435.00 | X |                                               |
| 4                                                                                    | Lundquist Associates   | \$ 276,250.00 |   |                                               |
| 5                                                                                    | Phase 2                | \$ 295,270.00 |   |                                               |
| 6                                                                                    | Diversified Builders   | \$ 346,717.00 |   |                                               |
| 7                                                                                    | Drywall Partitions     | \$ 308,580.00 |   |                                               |
| Flooring                                                                             |                        |               |   |                                               |
| 1                                                                                    | ReSource               | NO BID        |   |                                               |
| 2                                                                                    | All Commercial Floors  | \$ 92,705.00  |   |                                               |
| 3                                                                                    | Commercial Flooring    | \$ 85,781.84  | X |                                               |
| 4                                                                                    | Gary Leimer            | \$ 89,230.00  |   |                                               |
| Concrete Flooring                                                                    |                        |               |   |                                               |
| 1                                                                                    | Axis Solutions         | \$ 4,475.00   | X |                                               |
| 2                                                                                    | Concrete Floor Systems | NO BID        |   |                                               |
| 3                                                                                    | The Art of Concrete    | NO BID        |   |                                               |
| 4                                                                                    | High Country Coatings  | NO BID        |   |                                               |
| 5                                                                                    | Concrete Visions       | NO BID        |   |                                               |
| Ceilings                                                                             |                        |               |   |                                               |
| 1                                                                                    | Innovative Interiors   | \$ 64,772.00  |   |                                               |
| 2                                                                                    | Heartland Acoustics    | \$ 64,750.00  |   |                                               |
| 3                                                                                    | Razor Acoustics        | \$ 59,850.00  | X |                                               |
| 4                                                                                    | SRB Acoustics          | NO BID        |   |                                               |
| Painting                                                                             |                        |               |   |                                               |
| 1                                                                                    | Maximum Painting       | \$ 79,704.00  |   |                                               |
| 2                                                                                    | Phase 2                | \$ 63,850.00  |   |                                               |
| 3                                                                                    | Lundquist Associates   | \$ 57,025.00  |   |                                               |
| 4                                                                                    | Painting Plus          | \$ 55,985.00  | X |                                               |
| 5                                                                                    | Pats Painting          | \$ 74,650.00  |   |                                               |

|                                                    |                                                |               |   |                                                   |
|----------------------------------------------------|------------------------------------------------|---------------|---|---------------------------------------------------|
| <b>DIVISION 10 Specialties</b>                     |                                                |               |   |                                                   |
| Signage                                            |                                                |               |   |                                                   |
| 1                                                  | FastSigns                                      | \$ 6,045.00   |   |                                                   |
| 2                                                  | Schlosser Signs                                | NO BID        |   |                                                   |
| 3                                                  | Avalis Wayfinding                              | \$ 4,034.00   | X |                                                   |
| Specialties (Toilet Acc, Postal, Site Furnishings) |                                                |               |   |                                                   |
| 1                                                  | ABS                                            | \$ 26,388.00  |   |                                                   |
| 2                                                  | Colorado Specialties                           | \$ 25,919.00  |   |                                                   |
| 3                                                  | Dynamic Specialties                            | \$ 23,577.00  |   |                                                   |
| 4                                                  | Specialties Contracting                        | \$ 22,705.00  | X |                                                   |
| Flagpoles                                          |                                                |               |   |                                                   |
| 1                                                  | AC Flag & Banner                               | \$ 5,973.00   | X |                                                   |
| 2                                                  | Rocky Mountain Flag                            | \$ 7,420.00   |   |                                                   |
| 3                                                  | Custom Flag                                    | \$ 8,587.00   |   |                                                   |
| 4                                                  | All Around Recreation                          | NO BID        |   |                                                   |
| 5                                                  | Colorado Specialties                           | \$ 8,716.00   |   |                                                   |
| 6                                                  | Dynamic Specialties                            | \$ 6,777.00   |   |                                                   |
| <b>DIVISION 11 Equipment</b>                       |                                                |               |   |                                                   |
| <b>DIVISION 12 Furnishings</b>                     |                                                |               |   |                                                   |
| Window Treatments                                  |                                                |               |   |                                                   |
| 1                                                  | Blind Shine                                    | \$ 9,125.00   |   |                                                   |
| 2                                                  | Lu-Tek                                         | \$ 6,837.00   | X | Approved Substitute                               |
| 3                                                  | Royal Textile                                  | \$ 10,900.00  |   |                                                   |
| 4                                                  | CCI Shading                                    | \$ 9,347.04   |   |                                                   |
| <b>DIVISION 13 Special Construction</b>            |                                                |               |   |                                                   |
| <b>DIVISION 14 Elevators</b>                       |                                                |               |   |                                                   |
| <b>DIVISION 15 Mechanical</b>                      |                                                |               |   |                                                   |
| HVAC & Plumbing                                    |                                                |               |   |                                                   |
| 1                                                  | Colorado Mechanical - HVAC and Plumbing        | \$ 412,529.00 |   |                                                   |
| 2                                                  | Mountain Aire Heating and Front Range Plumbing | \$ 375,247.00 | X |                                                   |
| 3                                                  | Atek Heating and Zastrow Plumbing              | \$ 387,740.00 |   |                                                   |
| 4                                                  | Frontier HVAC and Plumbing                     | \$ 332,826.00 |   | Manpower and Schedule Concerns                    |
| Fire Sprinklers                                    |                                                |               |   |                                                   |
| 1                                                  | American Sprinkler                             | \$ 39,600.00  |   |                                                   |
| 2                                                  | Johnson Controls                               | \$ 43,167.00  | X | Already has LOI.                                  |
| 3                                                  | Arapahoe Fire                                  | \$ 45,000.00  |   |                                                   |
| 4                                                  | All Pro Fire                                   | NO BID        |   |                                                   |
| 5                                                  | Frontier Fire                                  | \$ 43,662.00  |   |                                                   |
| <b>DIVISION 16 Electrical</b>                      |                                                |               |   |                                                   |
| Electrical                                         |                                                |               |   |                                                   |
| 1                                                  | J&R Electric                                   | \$ 435,750.00 | X | Already has LOI. Trident Security for Fire Alarm. |
| 2                                                  | ADK Electric                                   | \$ 469,250.00 |   |                                                   |
| 3                                                  | Duro Electric                                  | \$ 437,738.00 |   |                                                   |
| 4                                                  | Highpoint Electric                             | NO BID        |   |                                                   |

## EXHIBIT K

### Firestone Town Hall – 100% CD GMP

#### List of Allowances

1. Asphalt Patching
  - a. \$20,000
2. Site Concrete Patching
  - a. \$15,000
3. Wind and Weather Protection Allowance
  - a. \$75,000
4. Major Floor Preparation
  - a. \$15,000
5. Acoustical Wall and Ceiling Treatments
  - a. \$22,500

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#### Englewood (HQ)

**office** (303) 783-3900 9563 South Kingston Court, Suite 200  
**fax** (303) 783-3939 Englewood, CO 80112

#### Windsor

**office** (970) 460-5250 128 North 6th Street, Unit D  
**fax** (303) 783-3939 Windsor, CO 80550

**AGENDA INFORMATION  
MEMORANDUM**

**FIRESTONE  
TOWN BOARD OF TRUSTEES**



**AIM#:** 9.e

**Discussion/Action**

**Meeting Date:** October 14, 2020

**Initiated By:** Jessica Clanton

**Dept:** Finance

**AGENDA TITLE**

**Ordinance 980:** AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO AUTHORIZING THE FINANCING OF THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS AND THE REFINANCING OF CERTAIN OUTSTANDING LEASE OBLIGATIONS; AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO 2018 AND 2019 SITE LEASES AND 2018 AND 2019 LEASE PURCHASE AGREEMENTS AND APPROVAL OF CERTAIN OTHER DOCUMENTS AND MATTERS RELATED THERETO; AND AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY THERETO

**SUMMARY**

The purpose of this Ordinance is to authorize the Town to issue an additional \$4,000,000 of Certificates with Chase Bank. Approximately \$830,000 of the proceeds will be used to refinance the outstanding balance of the 2005 COP's. The remainder of the proceeds will be used for the construction and improvements of certain town facilities.

**HISTORY AND PREVIOUS BOARD ACTION**

**RECOMMENDATION**

Staff recommends the approval of Ordinance 980.

**ALTERNATIVES**

Provide staff further direction.

**ATTACHMENTS**

1. Ordinance - Additional COPs

**FINANCIAL CONSIDERATIONS**

The maximum total repayment shall not exceed \$450,000 annually and \$4,000,000 in total.

## ORDINANCE NO. 980

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO AUTHORIZING THE FINANCING OF THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS AND THE REFINANCING OF CERTAIN OUTSTANDING LEASE OBLIGATIONS; AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO 2018 AND 2019 SITE LEASES AND 2018 AND 2019 LEASE PURCHASE AGREEMENTS AND APPROVAL OF CERTAIN OTHER DOCUMENTS AND MATTERS RELATED THERETO; AND AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY THERETO**

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE:

### **Section 1. Recitals.**

(A) The Town of Firestone, Colorado (the “Town”) is a statutory town duly organized and existing under the Constitution and laws of the State of Colorado (the “State”).

(B) Members of the Board of Trustees of the Town (the “Board”) have been duly elected and qualified.

(C) The Town is authorized by Section 31-15-101(1)(d), Colorado Revised Statutes (“C.R.S.”), to acquire, hold, lease, and dispose of property, both real and personal.

(D) The Town is authorized by Section 31-15-801, C.R.S., to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes.

(E) The Town is authorized by Section 31-15-713(1)(c), C.R.S. to lease any real estate, together with any facilities thereon, owned by the Town when deemed by the governing body to be in the best interest of the Town

(F) Pursuant to such authority, and in order to finance the acquisition of certain real estate located at the southeast corner of Colorado Boulevard and Sable Avenue, and the buildings and/or improvements, if any, located thereon, the Town and the Firestone Finance Authority (the “Authority”) previously executed and delivered:

- a. A Lease Purchase Agreement dated as of May 1, 2005 (the “Original 2005 Lease”), by and between the Town, as lessee, and the Authority, as lessor; a First Amendment to Lease Purchase Agreement dated as of August 1, 2006 (the “First Amendment to 2005 Lease, and together with the Original 2005 Lease, the “2005 Lease”), by and between the Town, as lessee, and the Authority, as lessor; and
- b. A Mortgage and Indenture of Trust dated as of May 1, 2005 (the “Original 2005 Indenture”), by and between the Authority and Valley Bank & Trust (now Midwest Trust), as trustee thereunder (the “2005

Trustee”); a First Supplemental Mortgage and Indenture of Trust dated as of August 1, 2006 (the “First Supplement to 2005 Indenture” and together with the Original 2005 Indenture, the “2005 Indenture”), by and between the Authority and the 2005 Trustee, as trustee thereunder; and

- c. A Special Warranty Deed dated as of May 31, 2005, conveying the Leased Property (as defined in the 2005 Lease) (the “2005 Leased Property”) from the Authority to the Town, a Quitclaim Deed conveying certain water and water rights from the Authority to the Town, and a Bargain and Sale Deed conveying certain real property from the Authority to the Town (collectively, the “Escrowed Deeds”) to be held in escrow by the 2005 Trustee until the Town shall have paid the applicable Purchase Option Price or all Base Rentals and then current Additional Rentals as provided in Section 11.1 of the 2005 Lease.

(G) Pursuant to the 2005 Indenture, there were executed and delivered Certificates of Participation, Series 2005 (the “2005 Certificates”), evidencing assignments of the right to receive certain revenues pursuant to the 2005 Lease.

(H) The 2005 Certificates are currently outstanding in the aggregate principal amount of \$830,000.

(I) Also pursuant to such authority, and in order to finance the acquisition, construction and installation of a police building, to include a court facility and a multi-purpose police training/community room and related machinery, equipment and tangible personal property (the “2018 Project”), the Town previously entered into a Site Lease Agreement, dated as of April 26, 2018 (the “2018 Site Lease”), pursuant to which the Town leased to UMB Bank, n.a. (the “2018 Trustee”), acting solely in its capacity as trustee under an Indenture of Trust dated as of April 26, 2018 (the “2018 Indenture”), certain real property owned by the Town (the “2018 Site”), which 2018 Site and the 2018 Project constructed thereon (the “2018 Leased Property”) was leased back to the Town by the 2018 Trustee pursuant to the terms of a Lease Purchase Agreement dated as of April 26, 2018 (the “2018 Lease”).

(J) The 2018 Site Lease, the 2018 Lease and the 2018 Indenture are hereafter referred to as the “2018 Financing Documents.”

(K) Also pursuant to such authority and in order to finance the acquisition and construction of certain improvements to the existing Town Hall facility, the acquisition and construction of improvements to the public works facility, and the acquisition of certain telecommunication equipment improvements and other improvements to certain other Town owned facilities (the “2019 Project”), the Town entered into a Site Lease Agreement dated as of June 12, 2019 (the “2019 Site Lease”), pursuant to which the Town leased to UMB Bank, n.a. (the “Trustee”), solely in its capacity as trustee under an Indenture of Trust dated as of June 12, 2019 (the “2019 Indenture”), certain property (the “2019 Site”) and the buildings located thereon (collectively, the “2019 Leased Property”), which 2019 Leased Property was leased back to the

Town from the Trustee pursuant to the terms of a Lease Purchase Agreement dated as of June 12, 2009 (the “2019 Lease”).

(L) The consideration received by the Town pursuant to the 2019 Site Lease was delivered to the Town under the 2019 Indenture and was to be used for the construction of the 2019 Project.

(M) Pursuant to the 2019 Indenture there were executed and delivered certain Certificates of Participation, Series 2019 (the “2019 Certificates”), in the original principal amount of \$5,585,000.

(N) A portion of the proceeds of the 2019 Certificates were expected to be utilized to finance the construction of the 2019 Project.

(O) The 2019 Site Lease, the 2019 Lease and the 2019 Indenture are collectively referred to herein as the “2019 Financing Documents.”

(P) The 2019 Certificates were purchased by JPMorgan Chase Bank, N.A., as the Initial Purchaser (the “Initial Purchaser”), who is the current owner of 100% of the 2019 Certificates outstanding.

(Q) Subsequent to the execution and delivery of the 2019 Certificates, the Board determined, and now hereby determines, that it is in the best interest of the Town and the residents and taxpayers to utilize a portion of the proceeds of the 2019 Certificates, along with proceeds of the hereinafter defined 2020 Certificates, to construct a new Town Hall facility (the “Town Hall Project” and together with the 2019 Project, the “2019/2020 Project”) on a portion the 2018 Site and to fully refund, pay and defease the outstanding 2005 Certificates (the “Refunding Project” and together with 2019/2020 Project, the “Project”).

(R) Pursuant to Section 2.08 of the 2019 Indenture, under certain conditions, Additional Certificates may be executed and delivered under the terms of the 2019 Indenture upon the prior written consent of the Initial Purchaser if at such time it is Owner of 100% of the 2019 Certificates then Outstanding.

(S) Pursuant to Section 9.01 and 9.03 of the 2019 Indenture, the 2019 Financing Documents may be amended, with the prior written consent of the Initial Purchaser if at such time it is the Owner of 100% of the 2019 Certificates then Outstanding, to authorize the execution and delivery of Additional Certificates for the purposes and under the conditions set forth in Section 2.08 of the 2019 Indenture.

(T) The Initial Purchaser has consented to the execution and delivery of Additional Certificates under the terms of the 2019 Indenture and to the amendment of the 2019 Financing Documents.

(U) In order to complete construction of the 2019/2020 Project and to effect the Refunding Project, the Board has determined, and now hereby determines, that it is in the best interest of the Town and its inhabitants to amend and supplement the 2019 Indenture (the “First Supplement to 2019 Indenture” or, together with the 2019 Indenture, the “Indenture”), the 2019

Lease (the “First Amendment to 2019 Lease” or, together with the 2019 Lease, the “Lease”) and the 2019 Site Lease (the “First Amendment to 2019 Site Lease” or, together with the 2019 Site Lease, the “Site Lease”) to authorize the execution and delivery of Certificates of Participation, Series 2020 (the “2020 Certificates”), the proceeds of which, when combined with the proceeds of the 2019 Certificates, shall be used to finance the acquisition, construction, installation, and equipping of the 2019/2020 Project and to effect the Refunding Project.

(V) In connection with the Refunding Project, the 2005 Leased Property will be released from the terms and provisions of the 2005 Lease and the 2005 Indenture and the Authority’s interest in such 2005 Leased Property will be conveyed to the Town by the release of the Escrowed Deeds by the 2005 Trustee to the Town for recording.

(W) The 2020 Certificates will be purchased by the Initial Purchaser.

(X) The 2020 Certificates will be executed and delivered pursuant to certain amendments to the 2019 Financing Documents as further described below:

- a. Pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain recalculated Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property (as more particularly described in the Lease).
- b. The Town’s obligation under the Lease to pay recalculated Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect.
- c. The Trustee will execute and deliver the First Supplement to 2019 Indenture, pursuant to which there is expected to be executed and delivered the 2020 Certificates, dated as of their date of delivery, that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect.
- d. The net proceeds of the 2020 Certificates are expected to be used to provide funds, when combined with the 2019 Certificates, in an amount sufficient to finance the costs of the 2019/2020 Project and the Refunding Project and to pay the costs of execution and delivery of the 2020 Certificates.

(Y) In order to complete construction of the Town Hall Project, the Town has determined that it is in the best interest of the Town and its inhabitants and taxpayers that a portion

of the 2018 Site be released from the 2018 Lease and 2018 Site Lease, to allow the new Town Hall to be constructed thereon, and substituted with other real property owned by the Town (collectively, the “Property Substitution”).

(Z) Pursuant to Section 11.4 of the 2018 Lease, so long as no Event of Default or Event of Nonappropriation shall have occurred and be continuing, the Town shall be entitled to substitute any improved or unimproved real estate, for any 2018 Leased Property then subject to the 2018 Site Lease, the 2018 Lease, and the 2018 Indenture, upon receipt by the Trustee of a written request of the Town Representative (as defined in the 2018 Lease) requesting such release and substitution and satisfaction of certain conditions contained in the 2018 Lease.

(AA) The Town Representative has presented the Trustee with the appropriate certificates and documents to effect such partial release and substitution.

(BB) Pursuant to Section 9.03 of the 2018 Indenture, the 2018 Lease and the 2018 Site Lease may be amended without consent of or notice to the Owners of the Certificates (as defined in the 2018 Indenture), in order to more precisely identify the 2018 Leased Property, including any substitutions, additions or modifications to the 2018 Leased Property as the case may be, as authorized under the 2018 Site Lease and the 2018 Lease.

(CC) The Board has determined that it is in the best interests of the Town and its residents and taxpayers that the Town and the 2018 Trustee execute and deliver a First Amendment to 2018 Site Lease Agreement (the “First Amendment to 2018 Site Lease”) and First Amendment to 2018 Lease Purchase Agreement (the “First Amendment to 2018 Lease”) in order to more precisely identify the 2018 Leased Property after the Property Substitution.

(DD) There has been presented to the Board and are on file at the Town offices the following: (i) the proposed form of the First Amendment to 2019 Site Lease; (ii) the proposed form of the First Amendment to 2019 Lease; (iii) the proposed form of the First Amendment to 2018 Site Lease; and (iv) the proposed form of the First Amendment to 2018 Lease.

(EE) Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

(FF) Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act.

(GG) No member of the Board has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance.

**Section 2.** **Short Title.** This ordinance shall be known and may be cited by the title “2020 COP Ordinance.”

**Section 3.**     **Ratification and Approval of Prior Actions.** All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Board or the officers, agents or employees of the Board or the Town relating to the Site Lease, the Lease, the implementation of the Project and the Property Substitution, the execution and delivery of the First Amendment to 2019 Site Lease, the First Amendment to 2019 Lease, the First Amendment to 2018 Site Lease, the First Amendment to 2018 Lease, and the execution and delivery of the 2020 Certificates is hereby ratified, approved and confirmed.

**Section 4.**     **Finding of Best Interests.** The Board hereby finds and determines, pursuant to the Constitution and the laws of the State of Colorado, that the Project under the terms and provisions set forth in the First Amendment to 2019 Site Lease and the First Amendment to 2019 Lease and the First Supplement to 2019 Indenture, and that the Property Substitution under the terms and provisions of the First Amendment to 2018 Site Lease and the First Amendment to 2018 Lease, are necessary, convenient and in furtherance of the Town's purposes and is in the best interests of the inhabitants of the Town and the Board hereby authorizes and approves the same.

**Section 5.**     **Supplemental Act; Parameters.** The Board hereby elects to apply all of the provisions of the Supplemental Act to the First Amendment to 2019 Site Lease and the First Amendment to 2019 Lease, and in connection therewith delegates to the Mayor of the Town (the "Mayor"), the Town Manager of the Town (the "Town Manager") or the Finance Director of the Town (the "Finance Director") the independent authority to make any determination delegable pursuant to Section 11-57-205(1), Colorado Revised Statutes, in relation to the First Amendment to 2019 Site Lease and the First Amendment to 2019 Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the term of the Site Lease shall not extend beyond December 31, 2040;
- (b) the term of the Lease shall not extend beyond December 31, 2030;
- (c) the aggregate principal amount of the Base Rentals payable by the Town pursuant to the First Amendment to 2019 Lease shall not exceed \$4,000,000;
- (d) the maximum annual repayment amount of Base Rentals payable by the Town pursuant to the First Amendment to 2019 Lease shall not exceed \$450,000;
- (e) the maximum total repayment amount of Base Rentals payable by the Town pursuant to the First Amendment to 2019 Lease shall not exceed \$4,500,000; and
- (f) the maximum net effective interest rate on the interest component of the Base Rentals relating to the 2020 Certificates shall not exceed 2.00%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to the Mayor, the Town Manager or the Finance Director the independent authority to acknowledge a contract for the purchase of the 2020 Certificates between the Trustee and the Initial Purchaser (as defined in the Indenture).

The Board hereby agrees and acknowledges that the proceeds of the 2019 Certificates and the 2020 Certificates will be used to finance the costs of the Project and to pay other costs of execution and delivery.

The Town hereby consents to and acknowledges the execution and delivery of the First Supplement to 2019 Indenture by the Trustee and the use of the proceeds of the 2019 Certificates and the 2020 Certificates to effect the Project.

**Section 6.**     **Approval of Documents.** The First Supplement to 2019 Indenture, the First Amendment to 2019 Site Lease, the First Amendment to 2019 Lease, the First Amendment to 2018 Site Lease, and the First Amendment to 2018 Lease, in substantially the forms presented to the Board and on file with the Town, are in all respects approved, authorized and confirmed, and the Mayor is hereby authorized and directed for and on behalf of the Town to execute and deliver such documents in substantially the forms and with substantially the same contents as presented to the Board, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this ordinance.

**Section 7.**     **Authorization to Execute Collateral Documents.** The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this ordinance and to place the seal of the Town on any document authorized and approved by this ordinance. The Mayor and Town Clerk and other appropriate officials or employees of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance. The appropriate officers of the Town are authorized to execute on behalf of the Town agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance, and are specifically authorized and directed hereby to invest such funds in Permitted Investments as are defined and provided in the Indenture. The execution of any instrument by the aforementioned officers or members of the Board, whether executed manually or by electronic signature in accordance with Title 24, Article 71.3, C.R.S., shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms hereof and thereof.

**Section 8.**     **No General Obligation Debt.** No provision of this ordinance, the Site Lease, the Lease, the Indenture, or the 2020 Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the 2020 Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the 2020 Certificates shall constitute a

mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the 2020 Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the 2020 Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

**Section 9.**     **Reasonableness of Rentals.** The Board hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 5 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Trustee's leasehold interest in the Leased Property pursuant to the Lease. The Board hereby determines and declares that the period during which the Town has an option to purchase the Trustee's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property. The Board hereby further determines that the amount of rental payments to be received by the Town from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

**Section 10.**     **No Recourse against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the 2020 Certificates. Such recourse shall not be available either directly or indirectly through the Board or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2020 Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling a 2020 Certificate specifically waives any such recourse.

**Section 11.**     **Repealer.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

**Section 12.**     **Severability.** If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the Town during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the Town during the Lease Term and provisions for the conveyance of the Leased Property to the Town under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, the intent being that the same are severable.

**Section 13.**     **Effective Date and Disposition.** This ordinance shall be in full force and effect 30 days after its passage and publication. This ordinance, as adopted by the Board, shall be numbered and recorded by the Town Clerk in the official records of the Town. The adoption and publication shall be authenticated by the signatures of the Mayor and the Town Clerk, and by the certificate of publication.

**INTRODUCED, PASSED AND ADOPTED AT A REGULAR MEETING OF  
THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE THIS 14<sup>TH</sup> DAY OF  
OCTOBER, 2020.**

**TOWN OF FIRESTONE, COLORADO**

\_\_\_\_\_  
Bobbi Sindelar, Mayor

(S E A L)

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jessica Koenig, CMC, Town Clerk

\_\_\_\_\_  
William P. Hayashi, Town Attorney

STATE OF COLORADO )  
COUNTY OF WELD ) SS.  
TOWN OF FIRESTONE )

I, Jessica Koenig, the Town Clerk of the Town of Firestone, Colorado, do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the Ordinance adopted by the Board of Trustees constituting the governing board of the Town of Firestone (the “Board of Trustees”), by vote had and taken at an open, regular meeting of the Board of Trustees held at the Firestone Police and Municipal Court Facility, 2 Park Avenue, Firestone, Colorado, on October 14, 2020, convening at the hour of 7:00 p.m. as recorded in the regular book of official records of the proceedings of said Town of Firestone kept in my office.

2. The Ordinance was adopted at an open, regular meeting of the Board of Trustees on October 14, 2020, by an affirmative vote of a majority of the voting members of the Board of Trustees, as follows:

| Name                                                     | “Yes” | “No” | Absent | Abstain |
|----------------------------------------------------------|-------|------|--------|---------|
| Bobbi Sindelar, Mayor (votes only in the event of a tie) |       |      |        |         |
| Frank A. Jimenez, Mayor Pro Tem                          |       |      |        |         |
| Don Conyac                                               |       |      |        |         |
| Sean Doherty                                             |       |      |        |         |
| Samantha Meiring                                         |       |      |        |         |
| Douglas Sharp                                            |       |      |        |         |
| David Whelan                                             |       |      |        |         |

3. The members of the Board of Trustees were present at the meeting and voted on the passage of such Ordinance as set forth above.

4. There are no bylaws, rules or regulations of the Board of Trustees which might prohibit the adoption of said Ordinance.

5. Notice of the meeting of October 14, 2020, in the form attached hereto as Exhibit A was posted at the Firestone Town Hall, 151 Grant Avenue, Firestone, Colorado, not less than 24 hours prior to the meeting in accordance with law.

6. The Ordinance was published by title in the Longmont Times-Call, a newspaper of general circulation in the Town, on October 1, 2020, together with a statement that

the complete text of the Ordinance is available at Town Hall and on the Town's official website, and the affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this \_\_\_\_\_ day of October 2020.

(SEAL)

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Jessica Koenig, CMC, Town Clerk

EXHIBIT A  
(Attach Notices of Meeting)

EXHIBIT B  
(Attach Affidavit of Publication)

## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



AIM#: 9.f

Discussion/Action

Meeting Date: October 14, 2020

Initiated By: Matt Wiederspahn

Dept: Engineering - Town

#### **AGENDA TITLE**

**Resolution 20-94:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND BOHANNAN HUSTON INC FOR A TRANSPORTATION MASTER PLAN

#### **SUMMARY**

The Town currently does not have a Transportation Master Plan to identify future roadway improvements and plan its implementation. This project would create a full master plan that will evaluate current transportation conditions and safety concerns. Additionally, this project would model future transportation needs based on proposed land uses, and provide recommendations, costs, and timing for future transportation improvements.

The Town sent out Requests for Proposal ("RFP") on July 17, 2020, and received responses from two firms. Bohannan Huston was selected based upon their qualifications and experience to prepare a Transportation Master Plan for the Town. Bohannan Huston has completed several similar projects in the region and is proposing an approximately ten month-long schedule for completion.

If the agreement is approved, the next steps for the project will be a Project Kick-off Meeting with staff and to schedule a Board Workshop to receive input on the goals of the master plan.

#### **HISTORY AND PREVIOUS BOARD ACTION**

The Board approved the 2020 Budget which included \$150,000 for the creation of a Transportation Master Plan.

#### **RECOMMENDATION**

Staff recommends the Board approve Resolution 20-94, an agreement with Bohannan Huston to assist Firestone with preparing a Transportation Master Plan for the Town.

#### **ALTERNATIVES**

#### **ATTACHMENTS**

1. Transportation Master Plan Contract (FINAL)
2. Reso 20-94 Transportation Master Plan Bohannan Huston Inc

#### **FINANCIAL CONSIDERATIONS**

The agreement includes an amount not to exceed \$121,370. The 2020 Budget included \$150,000 for this project.

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## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between the **TOWN OF FIRESTONE**, a Colorado municipal corporation with an address of 151 Grant Avenue, P.O. Box 100, Firestone, Colorado 80520 (the "Town"), and **BOHANNAN HUSTON, INC.**, an independent contractor with a principal place of business at 9785 Maroon Circle, Englewood, Colorado 80112 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: **Transportation Master Plan (A2020-9903)**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

### **II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

### **III. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$121,370. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

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#### **IV. PROFESSIONAL RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

#### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

If the Town reuses or makes any modification to Consultant's designs, documents or work product without the prior written authorization of Consultant, the Town agrees, to the fullest extent permitted by law, to release the Consultant, its officers, directors, employees and sub-consultants from all claims and causes of action arising from such uses, and shall indemnify and hold them harmless from all costs and expenses, including the cost of defense, related to claims and causes of action to the extent such costs and expenses arise from the Town's modification or reuse of the documents.

The Town expressly acknowledges and agrees that the documents and data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

#### **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

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## **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VIII. INDEMNIFICATION**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

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B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who

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perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

**X. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF FIRESTONE, COLORADO**

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Bobbi Sindelar, Mayor

ATTEST:

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Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

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William P. Hayashi, Town Attorney

**CONTRACTOR: BOHANNAN HUSTON, INC.**

By: \_\_\_\_\_  
Denise Aten, Senior Vice President

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## EXHIBIT A

### SCOPE OF SERVICES

#### Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

##### Task 1: Project Management, Public Outreach, and Coordination:

- Conduct a project kickoff meeting with appropriate Town staff to review and discuss all work tasks, technical approaches, and work products and to determine details of a public outreach plan.
- Conduct regular progress meetings approximately monthly to provide updates on the progress of the plan.
- Conduct a public meeting during the planning process to inform the community about the goals of the TMP and better understand community values and vision with respect to transportation.
- Participate in a workshop with the Town Board to understand their desires for the community and to keep them informed of the progress that is being made and the issues that are being addressed.
- Coordinate with other entities such as the Denver Regional Council of Governments (DRCOG), Colorado Department of Transportation (CDOT), Weld County, and St. Vrain Valley School District as appropriate throughout the planning process.
- Present the final transportation plan to the Town Board for adoption.

##### Deliverables:

- Project schedule
- Public meeting
- Board workshop
- Meeting agendas and minutes

##### Task 2: Existing Conditions:

- Create a multimodal inventory of all existing transportation facilities.
- Compile inventory data for roadways with a functional classification of collector and higher including existing bicycle and pedestrian facilities. Such data shall include roadway laneage, sidewalk/trail locations, right-of-way, traffic volumes, historic traffic growth patterns, speed limits, and traffic control devices.
- Up to 15 traffic volume counts plus 5 intersection turning counts.
- Review relevant previous regional and Town studies, including the Town's Comprehensive Plan, Parks, Open Space and Trail Master Plan, and corridor plans for CDOT, and adjacent communities and counties.
- With the input of Town staff and the Firestone Police Department, identify known safety concerns. Compile crash records from the Town, CDOT and Weld County.

##### Deliverables:

- Technical Memorandum which describes the current condition of the transportation system and potential areas of concern.

##### Task 3: Travel Demand Model:

- Using the DRCOG travel demand model along with land use assumptions from the Town's Comprehensive Land Use Plan and current traffic counts, develop traffic forecasts within the Town's growth area.

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- Develop two travel demand scenarios: a 2045 scenario and a buildout scenario.

Task 4: Transportation Planning:

- Using the existing inventory and travel demand model, identify potential improvements and alternatives for the Town's future transportation system.
- Identify existing gaps or inadequacies in the Town's existing transportation system.
- Using the travel demand models, identify improvements and alternatives to the Town's Transportation system including roadway widening, road classifications, future connections, and potential arterial and collector corridors.
- Review the Town's existing road cross-sections and right-of-way widths and update as needed to meet future vehicular, bicycle, and pedestrian needs.
- Develop an implementation plan for the phasing (short-term, mid-term, and long-term) and funding of the improvements needed. The implementation plan shall identify triggers for implementation of priority improvements such as traffic volumes and population growth, and will identify opportunities with other public agencies and private entities to fund the needed improvements. Cost estimates for said improvements shall also be provided along with potential funding sources.

Deliverables:

- Provide five (5) copies and an original electronic version of a Draft Transportation Master Plan.
- Board workshop to receive input on the draft report.

Task 5: Final Report:

- Prepare a draft Transportation Master Plan and Report that provides clear direction for the Town's transportation vision, goals and needs, and provides an implementation plan to achieve those.
- Provide updated road cross-sections and right-of-way widths to be incorporated into the Town's Standards and Specifications.
- Based on Town input, provide a final Transportation Master Plan and Report to be presented to the Town's Board for adoption.

Deliverables:

- Provide five (5) copies and an original electronic version of a Final Transportation Master Plan.
- Board presentation for Master Plan adoption.

## EXHIBIT A



## FEES

| Firestone TMP Proposal Cost Sheet                 |                                             |            |                     |
|---------------------------------------------------|---------------------------------------------|------------|---------------------|
| Task                                              |                                             | Man Hours  | Cost                |
| <b>Task 1</b>                                     | <b>Project Management</b>                   |            |                     |
|                                                   | Coordination                                | 40         | \$7,300.00          |
|                                                   | Kick-Off Meeting                            | 14         | \$2,360.00          |
|                                                   | Public Meeting                              | 52         | \$7,140.00          |
|                                                   | Town Board Workshop                         | 18         | \$2,900.00          |
|                                                   | Stakeholder Coordination                    | 20         | \$2,980.00          |
|                                                   | Town Board Final Presentation               | 8          | \$1,300.00          |
|                                                   | Identify Goals and Objectives               | 24         | \$3,420.00          |
|                                                   | <b>Task 1 Total</b>                         | <b>176</b> | <b>\$27,400.00</b>  |
| <b>Task 2</b>                                     | <b>Data Collection</b>                      |            |                     |
|                                                   | Review of existing plans                    | 15         | \$1,780.00          |
|                                                   | Inventory (roadway/multimodal)              | 86         | \$9,610.00          |
|                                                   | <b>Task 2 Total</b>                         | <b>101</b> | <b>\$11,390.00</b>  |
| <b>Task 3</b>                                     | <b>Travel Demand Modeling</b>               |            |                     |
|                                                   | Coordination on Travel Demand Model         | 36         | \$5,120.00          |
|                                                   | Travel Demand Modeling- WSP (2 scenarios)   | 112        | \$20,000.00         |
|                                                   | <b>Task 3 Total</b>                         | <b>148</b> | <b>\$25,120.00</b>  |
| <b>Task 4</b>                                     | <b>Transportation Planning and Analysis</b> |            |                     |
|                                                   | Identify gaps and deficiencies              | 66         | \$7,740.00          |
|                                                   | Develop recommendations                     | 56         | \$7,280.00          |
|                                                   | Implementation plan                         | 44         | \$5,330.00          |
|                                                   | Cost Estimates                              | 17         | \$3,540.00          |
|                                                   | Develop design standards                    | 34         | \$4,130.00          |
|                                                   | <b>Task 4 Total</b>                         | <b>217</b> | <b>\$28,020.00</b>  |
| <b>Task 5</b>                                     | <b>Transportation Master Plan</b>           |            |                     |
|                                                   | Finalize design standards/cross sections    | 19         | \$2,400.00          |
|                                                   | Draft MTP                                   | 108        | \$12,550.00         |
|                                                   | Final MTP                                   | 46         | \$5,990.00          |
|                                                   | <b>Task 5 Total</b>                         | <b>173</b> | <b>\$20,940.00</b>  |
| <b>Labor Subtotal</b>                             |                                             | <b>815</b> | <b>\$112,870.00</b> |
| <b>Expenses</b>                                   |                                             |            |                     |
|                                                   | Production and Meeting Materials            |            | 1500                |
| <b>Expenses Subtotal</b>                          |                                             |            | <b>\$1,500.00</b>   |
| <b>Project Total (excluding applicable taxes)</b> |                                             |            | <b>\$114,370.00</b> |

# EXHIBIT A



## BOHANNAN HUSTON, INC. FEE SCHEDULE HOURLY RATES JULY 1, 2019

|                                                                                                       | 1     | 2     | 3     | 4     | 5     | 6     | 7     |
|-------------------------------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|
| <b>ENGINEER</b><br>Civil, Structural, Mechanical, Electrical                                          | \$100 | \$115 | \$135 | \$155 | \$175 | \$215 | \$240 |
| <b>SURVEYOR</b>                                                                                       | \$100 | \$115 | \$135 | \$155 | \$175 | \$215 | \$240 |
| <b>TECHNICAL MANAGER</b><br>IT, GIS, Spatial Data, Construction, Project Manager                      | \$100 | \$115 | \$135 | \$155 | \$175 | \$215 | \$240 |
| <b>PLANNER</b><br>Community, Transportation                                                           | \$95  | \$105 | \$120 | \$135 | \$150 | \$190 | \$230 |
| <b>SOFTWARE DEVELOPER</b>                                                                             | \$100 | \$125 | \$150 | \$175 | \$200 | \$225 | \$250 |
| <b>GIS PROFESSIONAL</b><br>Geographic Information Systems                                             | \$90  | \$100 | \$115 | \$130 | \$145 | \$180 | \$210 |
| <b>TECHNICAL CONSULTANT</b><br>IT & CADD Consulting                                                   | \$90  | \$110 | \$125 | \$135 | \$145 | \$155 | \$175 |
| <b>TECHNICAL SPECIALIST</b><br>Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist | \$72  | \$77  | \$82  | \$92  | \$102 | \$115 | \$135 |
| <b>CONSTRUCTION OBSERVER</b>                                                                          | \$70  | \$75  | \$80  | \$90  | \$105 | \$120 | \$160 |
| <b>MATERIALS TECHNICIAN</b><br>Field and Laboratory Materials Testing                                 | \$55  | \$65  | \$70  | \$75  | \$85  | \$105 | \$125 |
| <b>ADMINISTRATIVE PROFESSIONAL</b><br>Administrative, Marketing, Technical Writing                    | \$105 | \$115 | \$125 | \$140 | \$160 | \$210 | \$235 |
| <b>ADMINISTRATIVE ASSISTANT</b>                                                                       | \$55  | \$65  | \$75  | \$85  | \$95  | \$105 | \$120 |

### MATERIALS AND REIMBURSABLE EXPENSES

**Plotting, Printing, and Binding** – As invoiced at cost of labor and materials.

**Courier / Delivery Service** – As invoiced by provider.

**Mileage** – Two-Wheel Drive Vehicle rate as published for the IRS Standard Mileage Rate.

Four-Wheel Drive Vehicle rate is the IRS Standard Mileage Rate plus \$0.10 per mile.

**Per Diem / Travel** – Field personnel in accordance with the latest GSA Schedule based on location of service.

Office / Professional staff travel costs, meals and lodging will be billed at cost.

**Survey Equipment Charge** – \$25.00/Hour.

**Survey Material Charge** – \$2.00/Hour.

**Expert Witness** – Rates shall be negotiated based on the requirements of the contract with a minimum of four hours while in court.

**Other Direct Project Expenses** – At Cost.

**Overtime** – Performed upon request of the client; will be invoiced at 1.30 times the standard hourly rate.

**Applicable Gross Receipts or Sales and Use Tax** – Added to all fees charged for professional services unless they are exempt and official documentation is on file with Bohannon Huston, Inc.

**RESOLUTION NO. 20-94**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE,  
COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF  
FIRESTONE AND BOHANNAN HUSTON INC FOR A TRANSPORTATION MASTER  
PLAN**

WHEREAS, the Town of Firestone ("Town") is in need of professional services to develop a Transportation Master Plan for the Town which will guide and address the Town's current and future transportation needs; and

WHEREAS, Town staff solicited bids for such services and selected Bohannon Huston Inc as the lowest responsive qualified bidder.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Agreement between the Town of Firestone and Bohannon Huston Inc for a Transportation Master Plan is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2020.

TOWN OF FIRESTONE, COLORADO

\_\_\_\_\_  
Bobbi Sindelar, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, Town Attorney

## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



AIM#: 9.g

Discussion/Action

Meeting Date: October 14, 2020

Initiated By: Julie Pasillas

Dept: Public Works

#### **AGENDA TITLE**

**Resolution 20-96:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND WESTWATER RESEARCH LLC FOR WATER RIGHTS ACQUISITION ASSISTANCE REGARDING NATIVE DITCH WATER RIGHTS

#### **SUMMARY**

The Town of Firestone is actively looking to acquire native water rights in the lower St. Vrain River Basin. These water rights will provide raw water supplies to augment planned municipal wells, non-potable irrigation systems, and potential for direct municipal use. With the amount of water needed to fulfill the planned water incentives, WestWater Research, LLC, was selected to assist with the acquisitions of water rights.

#### **HISTORY AND PREVIOUS BOARD ACTION**

The Board of Trustees recently approved the 2020-2050 Water Action Plan and authorized the issuance of Water Enterprise Revenue Bonds. At the Board Retreat in September, Staff discussed the need for hiring a water rights acquisition professional to assist in identifying, negotiating, and successfully purchasing the raw water portfolio needed to secure the Town's water future.

#### **RECOMMENDATION**

Staff recommends approval of Resolution 20-96, a Professional Services Contract with WestWater Research, LLC.

#### **ALTERNATIVES**

The Board may choose not to approve Resolution 20-96 and provide Staff with additional direction.

#### **ATTACHMENTS**

1. Res 20-96 WestWater Research LLC
2. Professional Services Contract-WestWater Research LLC
3. Exhibit A Proposal and Scope of Work\_9.15.2020

#### **FINANCIAL CONSIDERATIONS**

The contract includes a retainer fee of \$5,000.00 per month, which will be credited at 100% to the incentive compensation fee equal to five percent (5%) of total gross consideration paid for water rights presented by WestWater Research, LLC. Sufficient funds have been budgeted and appropriated in the Water Fund.

## **RESOLUTION 20-96**

### **A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND WESTWATER RESEARCH LLC FOR WATER RIGHTS ACQUISITION ASSISTANCE REGARDING NATIVE DITCH WATER RIGHTS**

WHEREAS, the Town of Firestone (“Town”) is in need of professional services to provide assistance in its acquisition of native ditch water rights as part of its water rights augmentation plan; and

WHEREAS, Town staff reviewed the qualifications and recommendations for numerous water brokers and selected WestWater Research LLC based upon the quality of their recommendations and ability to meet the Town’s needs.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

The Agreement between the Town of Firestone and WestWater Research LLC for water rights acquisition assistance is approved in substantially the same form as the copy attached hereto and made a part of this resolution and the Mayor is authorized to execute the Agreement on behalf of the Town.

**INTRODUCED, READ AND ADOPTED** this 14th day of October, 2020.

TOWN OF FIRESTONE, COLORADO

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Bobbi Sindelar, Mayor

ATTEST:

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Jessica Koenig, CMC, Town Clerk

APPROVED AS TO FORM:

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William P. Hayashi, Town Attorney

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## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 14th day of October, 2020 (the "Effective Date"), by and between the **TOWN OF FIRESTONE**, a Colorado municipal corporation with an address of 151 Grant Avenue, P.O. Box 100, Firestone, Colorado 80520 (the "Town"), and **WESTWATER RESEARCH, LLC**, an independent contractor with a principal place of business at 320 E. Vine Dr. #223 Fort Collins, Colorado 80561 ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: **Water Rights (W2020-9510)**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

### **II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

### **III. COMPENSATION**

A. In consideration for the completion of the Scope of Services by Contractor, the Town shall as set forth in Exhibit A pay Contractor \$5,000.00 retainer fee per month, which will be credited at 100% to the incentive compensation fee equal to five percent (5%) of total gross consideration paid for water rights presented by Contractor and acquired by the Town. The retainer amount shall include all fees, costs and expenses incurred by Contractor, and no additional

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amounts shall be paid by the Town for such fees, costs and expenses for the retainer fee. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

- B. The Contractor shall be entitled to the incentive compensation for water rights that the Town places under contract that are identified and presented by Contractor during our engagement. Contractor shall not be entitled to the incentive compensation if it is determined that the transaction was originated without Contractor's direct or indirect involvement during the engagement period, and for water rights previously under negotiation by the Town. The Town shall provide a list of specific water right holdings that are exempt from Contractor's incentive compensation at the start of this engagement. Contractor will maintain records of its communications to assist a determination of whether incentive compensation is due. For water rights identified and presented by Contractor during our engagement, the incentive compensation shall be paid to Contractor if the Town later places the water rights under contract during an 18-month period following termination of our engagement.

#### **IV. PROFESSIONAL RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

#### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

If the Town reuses or makes any modification to Consultant's designs, documents or work product without the prior written authorization of Consultant, the Town agrees, to the fullest extent permitted by law, to release the Consultant, its officers, directors, employees and sub-consultants from all claims and causes

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of action arising from such uses, and shall indemnify and hold them harmless from all costs and expenses, including the cost of defense, related to claims and causes of action to the extent such costs and expenses arise from the Town's modification or reuse of the documents.

The Town expressly acknowledges and agrees that the documents and data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

## **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

## **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

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C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VIII. INDEMNIFICATION**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

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3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

#### **X. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF FIRESTONE, COLORADO**

\_\_\_\_\_  
Bobbi Sindelar, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, Town Attorney

**WESTWATER RESEARCH, LLC**

By: Clay Leding

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## NO EMPLOYEE AFFIDAVIT

To be completed only if Contractor has **no** employees

**1. Check and complete one:**

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Firestone (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- A valid Colorado driver's license or a Colorado identification card;
- A United States military card or a military dependent's identification card;
- A United States Coast Guard Merchant Mariner card;
- A Native American tribal document;
- In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or
- Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.*

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Signature

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Date

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## DEPARTMENT PROGRAM AFFIDAVIT

*To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program*

I, \_\_\_\_\_, as a public contractor under contract with the Town of Firestone (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to (or affirmed) before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

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## EXHIBIT A SCOPE OF SERVICES

### Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- See the attached proposal from WestWater Research, LLC for additional details.

### Contractor's Deliverables

In performance of the duties described above, Contractor shall deliver the following items to the Town, during the timeframes established by the Town:

- See the attached proposal from WestWater Research, LLC for additional details.

## Proposal

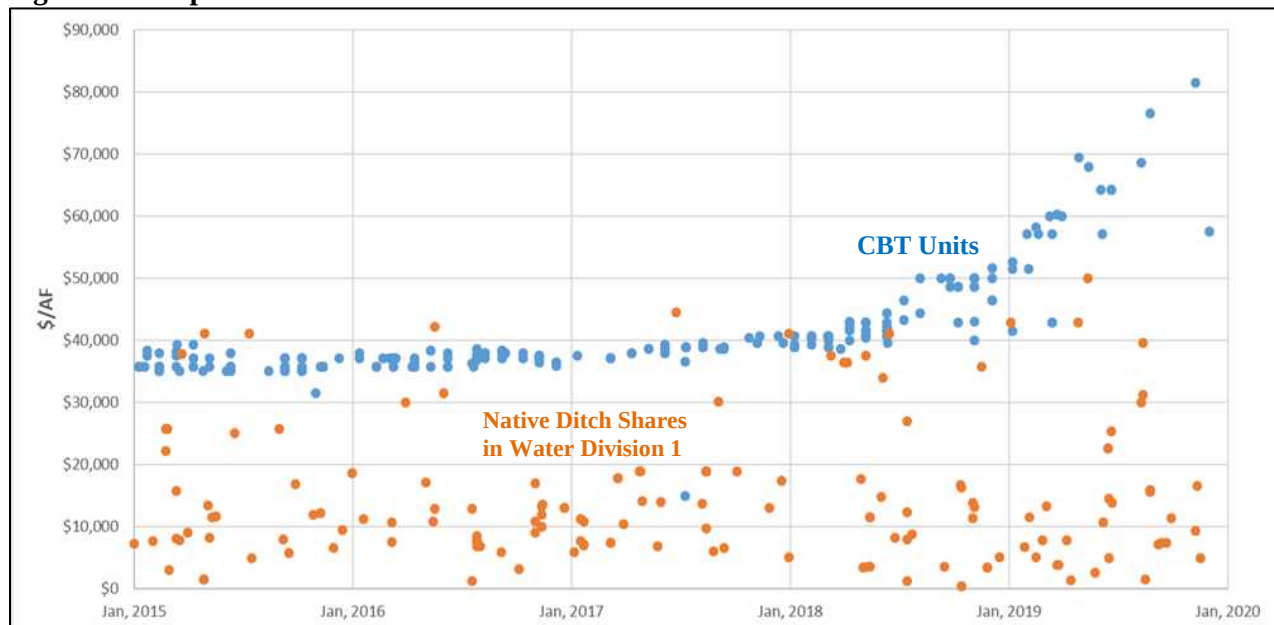
**To:** Julie Pasillas, Town of Firestone  
**From:** WestWater Research, LLC  
**Subject:** **Proposal for Water Rights Acquisition Assistance**  
**Date:** September 15, 2020

### Background and Purpose

The Town of Firestone is looking to acquire native ditch rights in the lower St. Vrain River Basin to provide raw water supplies for augmentation of planned municipal wells and potentially for direct municipal use. The Town has previously developed a list of priority acquisition targets, consisting of shares and/or excess carriage agreements in the following ditch companies: Last Chance Ditch, Godding Ditch, Lower Boulder Reservoir & Ditch, Rural Ditch, and Coal Ridge Ditch. In addition, the Town is interested in acquiring firm Windy Gap Project units and fully consumable effluent from the Saint Vrain Sanitation Plant. Over the next several years, the Town is looking to acquire at least 1,000 acre-feet of transferrable water supplies from these targets. The Town is willing to explore other water supplies, in addition to these seven targets, that meet its augmentation and/or direct use objectives.

A comparison of recent Colorado-Big Thompson (CBT) unit sale prices to known sale prices for native ditch water rights in Water Division 1 (South Platte Basin) illustrates the motivation for the Town's water acquisition plans and the cost effectiveness of pursuing alternative water supplies (see Figure 1). The water acquisition targets are local and can be delivered to the Town's reservoir(s), have manageable return flow obligations, and have experienced limited historical market demand so prices are expected to be relatively low.

**Figure 1: Comparison of Recent 5 Years of CBT & Native Ditch Sale Prices**



The Town contacted WestWater Research, LLC (WestWater) to request a proposal to provide assistance in acquiring native ditch water rights. This proposal lays out the anticipated scope and services that WestWater will provide to the Town in the course of identifying, negotiating, and securing water rights for the Town.

## Scope of Services

WestWater will work with the Town to implement a professionally managed water rights acquisition program. The following tasks and services are expected to be completed by WestWater in the process of identifying, negotiating, and successfully closing on water right acquisitions for the Town.

1. **Develop Water Rights Acquisition Strategy.** WestWater will review past studies and documents supporting the Town's water acquisition strategy focused on the five target ditch companies. WestWater will also conduct an initial analysis of potential alternative water supply sources and will communicate any alternative concepts to the Town. This task will define any Town preferences in WestWater outreach efforts, protocol and procedures for communicating information between WestWater and the Town, and cost expectations.
2. **Prioritize Water Rights for Acquisition.** An initial economic analysis will be conducted to identify any unit price (\$ per acre-foot) disparities between the target water sources, leading to a prioritization of the five target ditch companies based on value. WestWater will develop an inventory of landowners within the five target ditch companies. The inventory will be developed as a spatial geodatabase based on land ownership, with attributes such as known share ownership and recent transactions. Selected owners and business contacts will be ranked to inform the order in which prospective sellers will be engaged. This process will consider various owner attributes — information and perspective of the prospective sellers, relative size (land acres or water volume), current use considerations, and other factors. Sometimes there is a story that informs potential willingness to sell, such as ownership by an estate or trust, absentee landowners, or recent life events. Each water right owner will be assigned a relative priority (high, medium, and low) reflecting the expected level of success for the transaction.
3. **Transaction Origination.** WestWater will develop and maintain market information relevant to the water acquisition targets and can provide periodic market updates to the Town's water team. WestWater will originate and manage water right transactions in coordination with the Town. WestWater will initiate contact with owners of high-priority water rights and manage on-going communications in an effort to solicit interest and initiate negotiations. This owner outreach will be conducted according to the outreach approaches and timelines recommended in the water acquisition strategy. Negotiations with water right owners can be lengthy and require multiple meetings. WestWater will manage and lead the negotiation process from initial meeting through execution of a purchase and sale agreement. In addition to coordinating and leading meetings, negotiation management services provided by WestWater typically include:
  - a. Initial "fatal flaw" due diligence (ownership review, historic use analysis, valuation analysis) to minimize "dead deal" costs.
  - b. Develop and recommend proposed transaction terms. For some water transactions, this may involve the development of Opportunity Assessments for review by the Town that include a summary of the water right, owner information, estimated water volume, initial due diligence findings, recommended additional research, and recommended price terms.
  - c. Meetings with the Town's water team (staff, attorneys, engineers)
  - d. Draft letter(s) of intent to be tendered to the water right owner, in coordination with the Town's water team and legal counsel.
  - e. Lead negotiations with the water right owner.
4. **Transactions Execution.** WestWater will support the Town through the transaction closing process. Transaction services provided by WestWater typically include:
  - a. Coordinate with attorneys on final due diligence on prospective water rights including liens and encumbrances or other issues that may prevent or delay the sale.
  - b. Coordinate with attorneys on the preparation of purchase agreements and related documents.
  - c. Assist and consult with legal counsel on structure of purchase agreements and documents.
  - d. Coordinate financial closing of transactions.



WestWater may complete other tasks and services as part of managing the water rights acquisition program for the Town. Periodic participation in the Town's regular water team meetings is anticipated.

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### **Deliverables**

Upon notice to proceed, this project will be operated as a program, with regular intermittent deliverables to the Town in the pursuit of water rights. Deliverables are expected to include items such as: recommendations on priority water right targets, acquisition strategy plans, opportunity assessments, and due-diligence reports for water rights transactions that advance. In addition to the intermittent deliverables listed above, WestWater anticipates regular meetings and conference calls with the Town to provide updates on status of the project and to make decisions on whether to proceed with specific actions.

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### **Timeline**

The initial two tasks (strategy and prioritization) are expected to require approximately 6 to 8 weeks to complete. The timeline and schedule for the remainder of the project will largely depend on the speed and success of negotiations with water right owners. Based on previous acquisition projects, the estimated time of completion is 24 to 36 months. Additional time will be required to complete regulatory approvals following acquisition. Most ditch companies have bylaws and required processes that impact the transfer of ownership (such as a right of first refusal) or the change of use (Catlin bylaws) The actual time required is highly variable based on the complexities of negotiations. WestWater will ensure that every effort is made to move the process along as quickly as possible.

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### **Compensation**

All services under the project will be compensated as follows:

- Monthly retainer fee of \$5,000 per month while the acquisition effort is active.
- Incentive compensation fee equal to five percent (5%) of total gross consideration paid for water rights presented by WestWater and acquired by the Town.
- Monthly retainer fees paid by the date of closing will be credited toward the incentive compensation. Any monthly retainer fees not credited for a particular transaction will be rolled over to the next transaction.
- WestWater shall be entitled to the incentive compensation for water rights that the Town places under contract that are identified and presented by WestWater during our engagement. WestWater shall not be entitled to the incentive compensation if it is determined that the transaction was originated without WestWater's direct or indirect involvement during the engagement period, and for water rights previously under negotiation by the Town. The Town shall provide a list of specific water right holdings that are exempt from WestWater's incentive compensation at the start of this engagement. WestWater will maintain records of its communications to assist a determination of whether incentive compensation is due. For water rights identified and presented by WestWater during our engagement, the incentive compensation shall be paid to WestWater if the Town later places the water rights under contract during an 18-month period following termination of our engagement.

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### **Qualifications**

WestWater is a leading economic and financial consulting firm specializing in water rights and water resource development in the United States. WestWater provides market intelligence, valuation, transaction advisory, strategic planning, and asset management services relating to water rights. WestWater utilizes water rights transaction data to guide its water acquisition plans and negotiations. WestWater maintains a proprietary database of water right transactions in Colorado and other Western states known as *Waterlitix*. Our commitment to data and analysis allows WestWater to bring more than just a broker relationship, instead backing up its recommendations with a data-informed perspective and providing comfort to clients in making good business decisions.

A company statement of qualifications and staff resumes can be provided if requested by the Town.



## AGENDA INFORMATION MEMORANDUM

### FIRESTONE TOWN BOARD OF TRUSTEES



**AIM#:** 9.h

**Discussion/Action**

**Meeting Date:** October 14, 2020

**Initiated By:** Raelynn Ferrera

**Dept:** Administration

#### **AGENDA TITLE**

Broadband Initiative Update

#### **SUMMARY**

During the August 12, 2020 Board of Trustees meeting, the Board was presented with the Firestone Broadband Assessment & Feasibility Study Final Report from Lori Sherwood of Vantage Point Solutions. During the course of the study, the Town issued a Request for Information for Enhanced Broadband Services to all internet service providers, including the incumbent providers. Allo Communications was recognized as having submitted a comprehensive response to the RFI. A key recommendation from the Final Report was for the Town to move forward with negotiations with Allo to bring a ubiquitous Fiber to the Premise (FTTP) high-speed broadband internet network servicing all residents and businesses to Firestone.

On September 11, 2020, staff and the Town's consultant, Fred Diehl of Fred Diehl Consulting, met with Allo Communications President Brad Moline and other staff to discuss options and opportunities. This presentation is to provide an update to the Board and seek direction.

#### **HISTORY AND PREVIOUS BOARD ACTION**

#### **RECOMMENDATION**

#### **ALTERNATIVES**

#### **ATTACHMENTS**

1. 10-14-2020 Firestone Broadband Initiative Update

#### **FINANCIAL CONSIDERATIONS**

# **Town of Firestone Broadband Initiative Update**

**October 14, 2020**



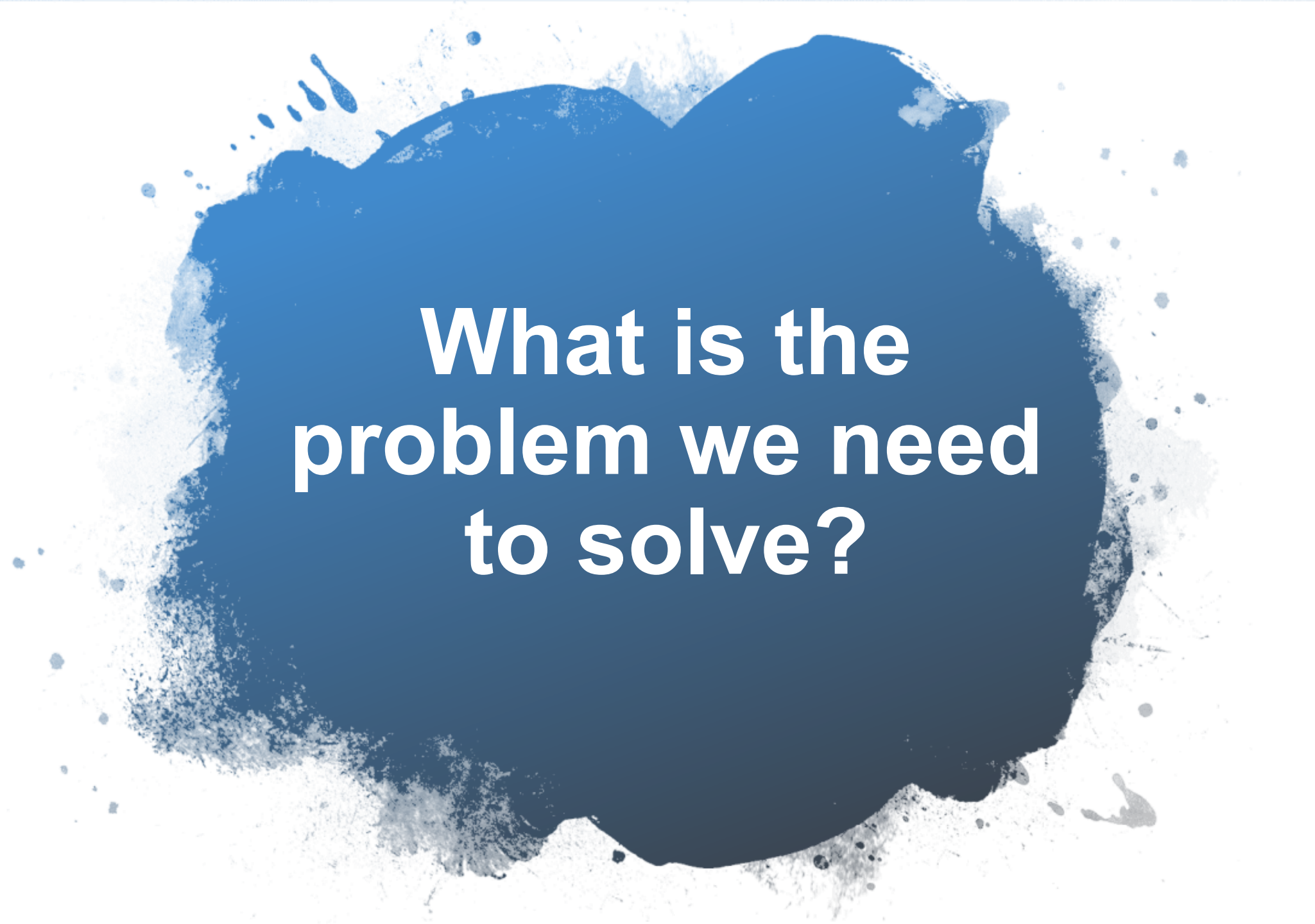
# Quick View

- Recognized enhanced broadband as priority
- Conducted outreach and study to identify problems
- Identified problems
- Developed recommendations
- Recruited partner to assist with fixing key problem



| Initial Phase Activity                                                       | Timeline                  |
|------------------------------------------------------------------------------|---------------------------|
| Firestone voters overturn SB-152                                             | April 3, 2018             |
| Board approves Broadband Initiative scope of services                        | August 28, 2019           |
| Leadership team meets and kicks off Broadband Initiative                     | September 2019            |
| Stakeholder identification and engagement: <b>Public</b>                     | Sept. / Oct. 2019         |
| Public Communications: News & Announcement Issued                            | September 23, 2019        |
| Review of existing conditions, development activity and broadband asset maps | September 2019            |
| Review of franchise agreements and studies                                   | September 2019            |
| Stakeholder identification and engagement: <b>Private</b>                    | 4 <sup>th</sup> Qtr. 2019 |
| Firestone Broadband Initiative Website - Live                                | 10/14/19                  |
| Presentation of Project & Timeline – Board Work Session                      | 10/16/19                  |
| Community Outreach Meeting                                                   | 10/22/19                  |
| Community Outreach Meeting – Economic Development                            | 4 <sup>th</sup> Qtr. 2019 |

| Phase 2 Activity                                                                                                       | Timeline                  |
|------------------------------------------------------------------------------------------------------------------------|---------------------------|
| Development and review of RFP for Assessment & Feasibility Study                                                       | 4 <sup>th</sup> Qtr. 2019 |
| Conduct Assessment and Feasibility Study                                                                               | February – July 2020      |
| Public Communications                                                                                                  | Ongoing                   |
| Stakeholder meetings and presentations                                                                                 | February – July 2020      |
| Issue RFI for enhanced broadband services                                                                              | May 20, 2020              |
| Review RFI responses                                                                                                   | June/September 2020       |
| Final report and presentation of findings to Board of Trustees. BoT direction: staff to meet with Allo Communications. | August 12, 2020           |
| Meeting with Town and Allo Communications to discuss plans for a FTTP build out in Firestone                           | September 11, 2020        |



**What is the  
problem we need  
to solve?**

# Broadband Assessment & Feasibility Study

- The biggest issue facing Firestone is...
  - *Lack of competition among broadband providers*

# Broadband Assessment & Feasibility Study

- Issued RFI for enhanced broadband services
  - *Allo Communications submitted comprehensive response*

## 8/12 Broadband Study Recommendation:

- *The Town should move forward with negotiations with Allo Communications to bring a FTTP network to all residents & businesses in Firestone*

## 8/12 Board of Trustees Direction:

- *Staff to meet with Allo*

## About Allo Communications

- ALLO – [allocommunications.com](http://allocommunications.com) Parent company Nelnet (NYSE:NNI)
- \$200 million equity investment w/ SDC Capital Partners for fiber network expansion
- Home office: Lincoln, NE
- President, Brad Moline
- In business since 2004. 500 Employees.
- Currently serving approximately 400,000 customers in Nebraska and Colorado
- Current networks in Colorado: Fort Morgan, Breckenridge
- Willing to consider variety of ownership/operating options with the Town
- Interested in constructing in Firestone in 2021
- Available to speak to Board of Trustees during October 21 Work Session if needed

## **Opportunity with Allo Communications**

- Increase competition – lower prices
- Provide ubiquitous all fiber ‘Fiber to the Premise’ network
- Deliver symmetrical upload/download speeds – (50 Mbps, 500 Mbps, 1 G and soon 10G)
- Voice, Over the Top TV, Smart Home Services, free router and installation, no contracts
- Wifi options providing high-speed coverage throughout entire home
- Smart City applications
- Establishment of a local customer service office
- Build out to all residential neighborhoods, commercial centers including planned growth areas
- Estimated build out completion – 12 months
- Customers located in initial service areas connected withing 6 months

# Moving Forward

- *Allo - network engineering being developed*
- *Town – assisting with engineering info. requests*
- *Allo - reiterated interest in partnering w/ Town*
- *Allo - would like to know Town's interest*
- *Allo - President and staff available for 10/21 mtg.*



# Questions?

