
Tuesday, April 22, 2025, 6:00 PM
Council Chambers
One DesCombes Drive
Broomfield, CO 80020

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1. Meeting Commencement

- 1A. Pledge of Allegiance
- 1B. Review and Approval of Agenda

2. Petitions and Communications

- 2A. Proclamation Military Appreciation Month
 - 2B. Proclamation Declaring May as Income Aligned Housing Month
 - 2C. Proclamation Declaring May 4-10, 2025 Broomfield Small Business Week
-

3. Councilmember Reports

4. Public Comment

5. Reports

- 5A. Expense Report for Elected Officials- First Quarter 2025
- 5B. Broomfield Voice Website Refresh Update
 - Providing input on City and County of Broomfield projects that may impact your day-to-day is now easier than ever! Last year, the Communications and Engagement team revamped Broomfield Voice to improve site navigation, standardize pages, update the home page layout and more. These changes help the community more easily engage with projects they care about. You can visit BroomfieldVoice.com to share your experience, ideas and opinions on projects ranging from transportation to public art to development and more.
- 5C. Waste Connections Monthly Update

6. Consent Items

- 6A. Minutes for Approval
- 6B. Proposed Resolution for Lowell/Broadlands and Willow Run/Midway Traffic Signals Construction Agreement
 - Resolution 2025-58 Construction Agreement with Sturgeon Electric Company, Inc. for the Willow Run at Midway and Lowell at Broadlands Dr. Traffic Signal Project

7. Action Items

7A. Public Hearing Ordinance Approving a Business Incentive Agreement with Restaurant Depot - Second Reading

— Ordinance No. 2257 approving a Business Incentive Agreement with Restaurant Depot LLC

7B. Proposed Resolution Construction Agreement for Utility Infrastructure Rehabilitation

— Resolution No. 2025-41 Approving a Construction Agreement for Utility Infrastructure Rehabilitation for 2025

7C. Proposed Resolution to Approve a Design Agreement for the Lift Station Rehab (Site App Project): Outlook Lift Station

— Resolution No. 2025-27 Approving a Consulting Agreement between The City and County of Broomfield and Burns & McDonnell Engineering Co., Inc. for the Outlook Lift Station Site Application Project

7D. Ordinance Amending Chapter 2-60 of the Broomfield Municipal Code to Change Administrative Organization - First Reading

— Ordinance 2269 Amending Chapter 2-60 of the Broomfield Municipal Code to Change Administrative Organization

8. Mayor and Councilmember Requests for Future Action

8A. Councilmembers Henkel, Leslie and Cohen's Request for Future Action Regarding Staff Exploring an Evaluation Tool for Direct Hires by Council

9. Adjournment

The City and County of Broomfield operates without regard to race, color, national origin, ethnicity, citizenship, immigration status, gender, age, sex, sexual orientation, gender identity, gender expression, marital status, source of income, military status, or disability in all programs and activities.

Individuals with disabilities requiring accommodation or persons needing a language interpreter must submit such a request to the City Clerk no later than noon on Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. Please call 303.438.6332 or TDD 303.465.5411 or write cityclerk@broomfield.org to make your request.

During the meeting, individuals can click the "CC" button on Live Council meeting video feeds to view closed captioning. Auxiliary hearing aid equipment can be requested on the night of the meeting with our AV team located at the back of the Council Chambers.



Date Posted: April 16, 2025



City and County of Broomfield

City Council Regular Meeting

A. Proclamation Military Appreciation Month

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Petitions and Communications Item: 2A.
Presented By	
Lisana Muñoz, Director of Human Services	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

Overview

The City and County of Broomfield is home to many veterans and military families who have contributed greatly to the strength and prosperity of our community. The Broomfield Veteran Services Officer provides free assistance for veterans and their families in filing for veteran benefits, and provides information about resources for veterans in the Broomfield area. In an effort to further our outreach to veterans, military members, and their families, the Broomfield Workforce Center, along with their partners, have planned veteran-focused events to take place during the month of May to include a Veteran-focused job and resource fair, luncheon, workshops, and Memorial Day celebration and picnic.

Attachments

[Memo - Military Appreciation Month 4-2025.pdf](#)

[Military Appreciation Month Proclamation 04-22-2025.pdf](#)

Summary

[View Correspondence](#)

[View Presentation](#)

The City and County of Broomfield is home to many veterans and military families who have contributed greatly to the strength and prosperity of our community.

The public workforce system is rooted in veteran services with the creation of the Department of Labor to assist veterans returning from World War I. All Colorado Workforce Centers provide priority of service to veterans in most workforce programs.

The Broomfield Workforce Center values its partnership with the Colorado Department of Labor and the Jobs for Veterans State Grant, specifically the Employment Regional Veteran Employer Representative and Disabled Veteran Outreach Specialist that serve Broomfield.

The Broomfield Library and Veterans Museum honor veterans and military families.

The Broomfield Veteran Services Officer provides free assistance for veterans and their families in filing for veteran benefits, and provides information about resources for veterans in the Broomfield area.

In an effort to further our outreach to veterans, military members, and their families, the Broomfield Workforce Center in partnership with the Broomfield Library, Arts & History; Broomfield Veterans Museum; Broomfield Senior Services; and the Broomfield Diversity, Equity, and Organizational Development Office have planned veteran-focused events to take place during the month of May. The events include:

- A veteran-focused job and resource fair with employers that prioritized veterans in their hiring process and resources available to veterans in and around Broomfield,
- A Honoring our Veterans Luncheon;
- Workshops for businesses and veterans to provide employment and community resources, and;
- The month will close with the Memorial Day Celebration and Picnic.

Prior Council or Other Entity Actions

Prior Council Action - [Memo for Proclamation Declaring May 2024 as Military Appreciation Month](#)

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

N/A

Alternatives

N/A



Proclamation

PROCLAMATION DECLARING MAY, 2025 AS MILITARY APPRECIATION MONTH

- WHEREAS, *in 1999, the United States Congress passed a resolution proclaiming May as National Military Appreciation Month, calling for all Americans to honor and recognize the courage, dedication, and sacrifices made by the men and women of the United States Armed Forces; and*
- WHEREAS, *the City and County of Broomfield is home to many veterans, and military families who have contributed greatly to the strength and prosperity of our community; and*
- WHEREAS, *the public workforce system is rooted in veteran services with the creation of the Department of Labor to assist veterans returning from World War I. All Colorado Workforce Centers provide priority of service to veterans in most workforce programs. The Broomfield Workforce Center values its partnership with the Colorado Department of Labor and the the Jobs for Veterans State Grant, specifically the Employment Regional Veteran Employer Representative and Disabled Veteran Outreach Specialist that serve Broomfield; and*
- WHEREAS, *several City and County of Broomfield departments provide services and events for veterans and military families to include the annual Memorial Day Celebration and Picnic, Honoring our Veterans Luncheon, and ongoing free assistance for veterans and their families in filing for any veteran benefits; and*
- WHEREAS, *it is fitting and proper to pay tribute to the bravery and unwavering commitment of all those who have served in the United States Armed Forces and to acknowledge the importance of supporting veterans, service members, and military families in our community, we encourage all residents to show their gratitude by displaying the flag of the United States at their homes and businesses throughout the month of May.*

NOW, THEREFORE, I, Guyleen Castriotta, Mayor of the City and County of Broomfield, do hereby declare and proclaim May, 2025 as:

MILITARY APPRECIATION MONTH IN BROOMFIELD

In witness whereof, I hereunto set my hand and official seal on this the 22 day of April 2025.

Guyleen Castriotta
Mayor



City and County of Broomfield

City Council Regular Meeting

B. Proclamation Declaring May as Income Aligned Housing Month

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Petitions and Communications Item: 2B.
Presented By	
Sharon Tessier, Housing Policy and Development Manager	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

Overview

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Proclamation declaring May as Income-Aligned Housing Month.

Attachments

[Memo - Income-Aligned Housing Month](#)

[Proclamation - Income-Aligned Housing Month](#)

Summary

[View Correspondence](#)

[View Presentation](#)

The Declaration of May as Income-Aligned Awareness Month is an opportunity to highlight the way the City and County of Broomfield (CCOB) has addressed and will continue to address housing security, which is a critical need in the community.

As housing costs continue to outpace wage growth, families and individuals are finding it increasingly difficult to secure stable, quality affordable housing within their means. The affordable housing phenomenon represents one of the most pressing opportunities facing communities across the nation. Low to moderate income households (LMI) as well as middle income earner households experience many ripple effects that clearly show the intersectionality between housing and nearly every aspect of social engagement and community living. This includes increased homelessness, longer commutes as workers seek affordable options farther from employment centers, and diminished economic mobility for affected families.

According to the [Housing Needs Assessment Update](#) in 2023, Broomfield housing costs have consistently outpaced wage growth over the past two decades. This widening affordability gap has forced 50% of renter households earning up to 80% AMI in Broomfield to spend more than 35% of their income on housing, meeting the federal definition of "cost-burdened."

By officially recognizing the housing challenges, local governments can help secure awareness and raise opportunities to highlight current data, challenges and solutions. For example, Broomfield possesses several powerful tools. Zoning reforms that both fast track and permit higher density development from Affordable Housing Developers, securing accessory dwelling units (ADUs), and providing transit-oriented development can significantly increase housing supply.

By leveraging local, state, and federal dollars, CCOB and its partners address home rehabilitation so households earning up to 80% AMI can preserve their homes and continue to safely age in place. CCOB has been able to utilize the cash in lieu from the Inclusionary Housing Ordinance (IHO) to assist partners with the construction of rental units up to 60% AMI, acquire land, and provide operational support to the local housing authority, The Broomfield Housing Alliance.

By combining regulatory reforms with targeted investment and thoughtful incentive structures, CCOB and partners continue to make meaningful progress toward ensuring that housing remains affordable for all residents, regardless of income level.

Stay tuned during the month of May as Broomfield Staff work together with both internal and external partners to provide facts, solutions, opportunities to learn and stay engaged with issues surrounding housing security in Broomfield.

Financial Considerations

N/A

Prior Council or Other Entity Actions

N/A

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

N/A



Proclamation

PROCLAMATION DECLARING THE MONTH OF MAY, 2025 AS INCOME-ALIGNED HOUSING AWARENESS MONTH

- WHEREAS, On December 10, 1948 The United Nations signed the Universal Declaration of Human Rights, recognizing adequate (quality) housing as a component of human rights; and
- WHEREAS, Access to quality housing is a cross-cutting issue that affects and intersects with every aspect of a community, including economic vitality, public health, as well as physical, mental, intellectual, and emotional health; and
- WHEREAS, Broomfield recognizes there must be remembering before the healing and grieving of the negative impacts of systemic racism and classism happen, which have kept the following populations housing insecure: older adults on limited incomes, LGBTQIA+ people, Black and Indigenous People of Color, single parents, and people with documented disabilities; and
- WHEREAS, Federal Funding is unreliable and unpredictable, as well as currently the only way the City and County of Broomfield is subsidizing severely cost-burdened older adults; and
- WHEREAS, In Broomfield, we are shifting a culture by approaching complex issues with a person-centered, holistic approach that avoids criminalizing and demoralizing people living in poverty; and
- WHEREAS, Broomfield recognizes the last 15 years of grass-roots efforts which have culminated into the recently formed Housing Solutions Forum: A collective of over 40 partners who mutually assist with producing housing units, progressing housing opportunities, and protecting people

NOW, THEREFORE, I, Guyleen Castriotta, Mayor of the City and County of Broomfield, do hereby declare and proclaim The Month of May in 2025 as:

INCOME-ALIGNED HOUSING AWARENESS MONTH IN BROOMFIELD

In witness whereof, I hereunto set my hand and official seal on this the ____ day of ____ 2025.

Guyleen Castriotta
Mayor



City and County of Broomfield

City Council Regular Meeting

C. Proclamation Declaring May 4-10, 2025 Broomfield Small Business Week

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Petitions and Communications Item: 2C.
Presented By	
Jeffrey Schreier	
Community Goals	

Overview

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Small Business Week is a nationally recognized program, led by the United States Small Business Administration (SBA) for more than 50 years, to celebrate the contributions and role small businesses play in creating a thriving and sustaining community. To honor the importance of Broomfield businesses of all sizes, this year the City and County will recognize Broomfield Business Week, which will occur the same week as SBA's national Small Business Week scheduled for May 4-10, 2025.

Attachments

[Proclamation -Small Business Week May 4-10, 2025 \(1\).pdf](#)

[Attachment 1 -Broomfield Business Week Proclamationion for 2025.pptx \(1\).pdf](#)

Summary

[View Correspondence](#)

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Small Business Week is a nationally recognized program, led by the United States Small Business Administration (SBA) for more than 50 years, to celebrate the contributions and role small businesses play in creating a thriving and sustaining community.

Historically, Broomfield has recognized Small Business Week as an opportunity for community leaders to encourage the public, customers, and shoppers to patronize small businesses.

To honor the importance of Broomfield businesses of all sizes, this year the City and County will recognize Broomfield Business Week, which will occur the same week as SBA's national Small Business Week scheduled for May 4-10, 2025.

In addition to our small business development programs, like the Enhance Broomfield and Entrepreneur Micro Grant Programs, the Economic Vitality Department, partnering with the Broomfield Workforce Center, is hosting a number of workshops during the week to support local businesses. The topics are based on feedback from business during our joint listening sessions with the Small Business Development Center.

The City and County of Broomfield continually supports, encourages and celebrates our local small businesses as they employ thousands in our community, contribute and support charitable group-organizations, schools, and other various organizations, and daily lead our local economy and community.

Attached is a proclamation declaring the week of May 4, 2025, as Broomfield Business Week.

Financial Considerations

No additional funds will be allocated to support the proclamation of the Broomfield Business Week activities, beyond those already approved in the 2025 EVD program budget.

Prior Council or Other Entity Actions

N/A

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

N/A

Alternatives

N/A



Proclamation

PROCLAMATION DECLARING MAY 4- MAY 10, 2025 AS BROOMFIELD BUSINESS WEEK

- WHEREAS, *the City and County of Broomfield celebrates our local businesses and the contributions they make to our local economy and community; and*
- WHEREAS, *according to the United States Small Business Administration, there are over 715,500 small businesses in Colorado, which represent 99.5% of Colorado businesses, employing 1.1 million employees, over 47.5% of all Colorado employed-persons; and*
- WHEREAS, *Broomfield's economy is concentrated with small business with over 92% of all Broomfield businesses employing less than 50 persons, and nearly half the firms employ less than 5 persons; and*
- WHEREAS, *business owners and managers have created and supported economic opportunities for all persons irrespective of gender, race, ethnicity, or socioeconomic status; and*
- WHEREAS, *for many people, small businesses were their first job or training opportunity, the place where many of us learned customer and communication skills, got their first paycheck, and supervised a team of coworkers; and*
- WHEREAS, *from the storefront shops that anchor our community to the high-tech startups that keep us on the cutting edge, small businesses are the backbone of our community and cornerstone of our economy; and*
- WHEREAS, *the City and County of Broomfield supports small business through our Enhance Broomfield and Entrepreneur Microgrant programs which have invested over \$2,000,000 since 2015 to aid in expansion efforts as Broomfield businesses create jobs and generate activity for the benefit of our economy and vitality; and*
- WHEREAS, *the City and County of Broomfield, along with its partners, the Broomfield Area Chamber of Commerce, will be hosting workshops as part of the Broomfield Business Week to support and grow local businesses; and*
- WHEREAS, *for more than 50 years, the President of the United States has issued a proclamation announcing Small Business Week, recognizing the critical contributions of America's small business owners;*

NOW, THEREFORE, I, Guyleen Castriotta, Mayor of the City and County of Broomfield, do hereby declare and proclaim May 4 through May 10, 2025 as:

BROOMFIELD BUSINESS WEEK

And encourage the residents of our community to support small businesses and merchants not just during Broomfield Business Week but throughout the year.

In witness whereof, I hereunto set my hand and official seal on this the 22nd day of April 2025.

Guyleen Castriotta
Mayor



City and County of Broomfield

City Council Regular Meeting

A. Expense Report for Elected Officials- First Quarter 2025

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Reports Item: 5A.
Presented By	
Ashandra Corman	
Community Goals	

Overview

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The 1st quarter report for Council's 2025 training and travel expenses and community relations events.

Attachments

[Memo- Expense Report for Elected Officials - 1st Quarter 2025 \(1\).pdf](#)

[2025 EXPENSE REPORT FOR ELECTED OFFICIALS - 2025 \(3\).pdf](#)

Summary

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Sections 3.10(b) of the City Council's Expense Policy for Elected Officials states that after attending a training or travel event, each elected official shall provide a written or oral report.

If a Councilmember submitted a written report regarding conferences and travel, they are available on Broomfield's [website](#).

Section 3.10(c) of the City Council's Expense Policy for Elected Officials requires quarterly reports by the finance department regarding current expenses for training and travel, and community relations activities.

Attached is the first quarter report for Council's 2025 training and travel expenses and community relations events.

It should be noted that the Mayor and Councilmembers may share allocations with other Councilmembers not to exceed the overall budgeted amount (\$76,000); transfers between Councilmembers are captured under Budget Transfers/Adjustments.

In this quarter, \$23,392.95 of the Travel and Training Budget was used with the Council's permission and pursuant to their policies. These expenditures did not cause the Council to exceed the overall budget of \$76,000.

Quarter 1 (January 1 - March 31, 2025): \$23,392.95 used

Quarter 2 (April 1 - June 30, 2025)

Quarter 3 (July 1 - September 30, 2025)

Quarter 4 (October 1 - December 31, 2025)

Total used Year to Date: \$23,392.95, with a remaining balance of \$52,607.05.

Financial Considerations

The total 2025 budget for the Mayor's and Council's Training & Travel and Community Relations expenses is \$76,000, as broken down below:

Annual Training & Travel Allowance for the Mayor	\$10,000.00
Annual Training & Travel Allowance for 10 Councilmembers (\$6,000 per Councilmember)	\$60,000.00
Annual Community Relations Allowance for the Mayor	\$1,000.00
Annual Community Relations Allowance for 10 Councilmembers (\$500 per Councilmember)	\$5,000.00
Annual Total	\$76,000.00

It is important to note that in the Expense Policy, these line items are not provided but for tracking purposes; Training & Travel and Community Relations expenses are tracked separately due to IRS policies for training and travel expenses.

Prior Council or Other Entity Actions

The City Council approved [Resolution No. 2008-133](#), adopting an Expense Policy for Elected Officials on July 8, 2008.

The City Council approved [Resolution No. 2010-92](#), revising the Expense Policy for Elected Officials on July 13, 2010.

The City Council approved [Resolution No. 2018-181](#), revising the Expense Policy for Elected Officials on December 11, 2018.

The City Council approved [Resolution No. 2025-09](#), revising the Expense Policy for Elected Officials on January 14, 2025.

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

N/A - Information Only

Alternatives

N/A

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]



City and County of Broomfield

City Council Regular Meeting

A. Minutes for Approval

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Consent Items Item: 6A.
Presented By	
Crystal Clemens, City Clerk	
Community Goals	

Overview

[View Presentation](#)

Approval of Minutes for Regular Council Meeting of April 8, 2025 and Special Meeting April 10, 2025.

Attachments

[April 8, 2025 Regular City Council Meeting Minutes.pdf](#)

[April 10, 2025 Special City Council Meeting Minutes.pdf](#)

Minutes for the City Council Regular Meeting

One DesCombes Drive, Broomfield, CO 80020

April 8, 2025, 6:00 PM - April 8, 2025, 8:09 PM

Roll Call: *(The following members were in attendance)*

- **James Marsh-Holschen**, Ward 1
- **Kenny Van Nguyen**, Ward 1
- **Paloma Delgadillo**, Ward 2
- **Austin Ward**, Ward 2
- **Jean Lim**, Ward 3
- **Deven Shaff**, Mayor Pro Tem, Ward 3
- **Laurie Anderson**, Ward 4
- **Bruce Leslie**, Ward 4
- **Heidi Henkel**, Ward 5
- **Todd Cohen**, Ward 5

Not Present:

- **Guyleen Castriotta**, Mayor - absent and excused

Also Present:

- Jennifer Hoffman, City and County Manager
- Anna Bertenzetti, Deputy City and County Manager
- Dan Casey, Deputy City and County Manager
- Nancy Rodgers, City and County Attorney
- Michelle Parker, Deputy City and County Clerk
- And various staff members

1. Meeting Commencement

1A. Pledge of Allegiance- 6:02 PM

1B. Review and Approval of Agenda- 6:02 PM

2. Petitions and Communications

2A. Proclamation Declaring April 7-13, 2025 as National Public Health Week- 6:03 PM

3. Councilmember Reports

4. Public Comment

5. Reports

5A. Colorado General Assembly Legislative Update April 8- 6:31 PM

Councilmember Ward moved to take an Amend position on SB25-001 Colorado Voting Rights Act, seconded by Councilmember Anderson. The motion passed 10-1.

Councilmember Henkel moved to take a Support position on HJR25-1023 Require General Assembly TABOR Constitutionality Lawsuit, seconded by Councilmember Marsh-Holschen. The motion passed 9-1, with Councilmember Anderson voting no.

6. Consent Items

Councilmember Ward moved to approve the Consent Items 6A - 6E, seconded by Councilmember Nguyen. Motion passed 10-0.

6A. Minutes for Approval- 6:59 PM

6B. Proposed Resolution Norman Smith Service Center Furniture Purchase Order Approval- 6:59 PM

6C. Proposed Resolution for Early Learning Paul Derda Recreation Center (PDRC) Playground Replacement- 6:59 PM

6D. Proposed Resolution Approving a Trash, Rubbish, and Garbage Hauling License for Fuzion Field Services LLC- 6:59 PM

6E. Request for Executive Session Requesting Legal Advice Related to Local Land Use - 6:59 PM

7. Action Items

7A. Public Hearing - 11961 Quay Street Rezoning Ordinance Second Reading- 7:08 PM

Public Hearing was opened at 7:09 PM and closed at 7:10 PM

Councilmember Ward moved to approve on second reading and order published by title Ordinance No. 2264 Rezoning 11961 Quay Street from Commercial C-1(J) to General Industrial I-2. The motion was seconded by Councilmember Henkel and passed 10-0.

7B. Public Hearing - Matters related to Marijuana Operations and Cultivation Ordinance Second Reading- 7:11 PM

Public Hearing was opened at 7:11 PM and closed at 7:14 PM

Councilmember Henkel moved to approve on second reading and order published by title Ordinance No. 2266 - An Ordinance to Amend the Broomfield Municipal Code, Title 17, to Remove the Prohibition on Retail Marijuana Stores and Make Permanent Prohibitions on Marijuana Cultivation and Manufacturing Facilities. The motion was seconded by Councilmember Delgadillo and passed 10-0.

Councilmember Nguyen moved to approve on second reading and order published by title Ordinance No. 2267 - An Ordinance Amending the Broomfield Municipal Code to Permit the Sale of Non-Marijuana Consumable Food and Drink at Marijuana Establishments. The motion was seconded by Councilmember Henkel and passed 10-0.

7C. Ordinance Approving a Business Incentive Agreement with Restaurant Depot - First Reading - 7:16 PM

Councilmember Nguyen moved to approve on first reading and order published in full Ordinance No. 2257 - An Ordinance Approving A Business Agreement with Restaurant Depot. The motion was seconded by Councilmember Henkel and passed 10-0.

7D. Ordinance Proposed Amendments to Broomfield's Off-Street Parking and Bicycle Parking Code Requirements - First Reading- 7:23 PM

Councilmember Ward moved to approve on first reading and order published in full Ordinance No. 2268 - An Ordinance to Amend the Broomfield Municipal Code, Title 17-32 Accessory Buildings and Uses to Revise the Regulations for Off-Street and Bicycle Parking. The motion was seconded by Councilmember Delgadillo.

Councilmember Lim moved to amend the motion, seconded by Councilmember Ward. The motion passed 10-0.

Councilmember Ward moved to introduce another amendment on the floor, which passed unanimously. Councilmember Ward's motion to further amend the motion was seconded by Councilmember Delgadillo, and passed 10-0.

The original motion, as amended by Lim and Ward, passed 10-0.

8. Mayor and Councilmember Requests for Future Action

9. Adjournment

APPROVED:

Mayor Castriotta

Office of the City and County Clerk

Minutes for the City Council Special Meeting

One DesCombes Drive, Broomfield, CO 80020

April 10, 2025, 6:01 PM - April 10, 2025, 8:25 PM

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Roll Call: *(The following members were in attendance)*

- **Deven Shaff**, Mayor Pro Tem, Ward 3
- **Laurie Anderson**, Ward 4
- **Paloma Delgadillo**, Ward 2
- **Jean Lim**, Ward 3
- **James Marsh-Holschen**, Ward 1
- **Kenny Van Nguyen**, Ward 1
- **Austin Ward**, Ward 2

Not Present:

- **Guyleen Castriotta**, Mayor
- **Todd Cohen**, Ward 5
- **Heidi Henkel**, Ward 5
- **Bruce Leslie**, Ward 4

Also Present:

- Jennifer Hoffman, City and County Manager
- Anna Bertenzetti, Deputy City and County Manager
- Dan Casey, Deputy City and County Manager
- Nancy Rodgers, City and County Attorney
- Crystal Clemens, City and County Clerk
- And various staff members

1. Meeting Commencement

2. Action Items

2A. Discussion of Personnel Matters - City and County Manager- 6:01 PM

Under the Colorado Open Meetings law, discussion of personnel matters can take place in a closed executive session. However, if the employee who is the subject of the session requests that the discussion take place in an open meeting, there is no executive session.

Manager Hoffman requested the discussion take place in public.

3. Adjournment

APPROVED:

Mayor Castriotta

Office of the City and County Clerk



City and County of Broomfield

City Council Regular Meeting

B. Proposed Resolution for Lowell/Broadlands and Willow Run/Midway Traffic Signals Construction Agreement

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Consent Items Item: 6B.
Presented By	
Brian Graham, CIP Manager	
Community Goals	

Overview

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The Willow Run/Midway and Lowell/Broadlands Traffic Signal Project includes the installation of new traffic signals and ADA-compliant curb ramps at two key intersections to improve traffic operations and enhance safety for all users. The project also includes associated sidewalk, curb, gutter, signage, and pavement marking improvements.

Attachments

[Council Memo Willow Run at Midway and Lowell at Broadlands Dr. Traffic Signal Project Construction Agreement \(1\).pdf](#)

[Resolution 2025-58 \(1\).pdf](#)

[1556250062 City and County of Broomfield PE.pdf](#)

Summary

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Proposed Resolution No. 2025-58 will authorize a construction agreement between the City and County of Broomfield and Sturgeon Electric Company, Inc. for the construction of two traffic signals located at Willow Run Parkway & Midway Boulevard and at Lowell Boulevard & Broadlands Drive.

This project aims to improve safety and traffic operations at these two key intersections through the installation of new traffic signals and associated infrastructure upgrades. This vicinity map shows the location of the [Willow Run Parkway & Midway Boulevard](#) intersection and [this vicinity map Lowell Boulevard & Broadlands Drive](#).

The work will include, but is not limited to, installation of signal poles and mast arms, controller cabinets, conduits, pull boxes, and pedestrian push buttons. The project also includes curb ramp reconfiguration to ensure compliance with the Americans with Disabilities Act (ADA), as well as associated improvements to sidewalks, curbs, gutters, signage, crosswalks, and pavement markings. At the Willow Run Parkway & Midway Boulevard intersection, there is also approximately 800 lineal feet of fiber optic conduit and cable installation on the east side of the intersection. [Striping plans are shown here for each intersection.](#)

The lane configuration on both minor arterials (Lowell Boulevard and Midway Boulevard) will remain the same; however, added striping will channelize traffic coming from each connector street (Broadlands Drive and Willow Run) to ensure safe navigation. The channelizing on the connector streets will separate left-turning vehicles from those turning right or driving straight through the intersection. Vehicles will continue to be able to navigate and turn in all directions currently allowed in each intersection.

An invitation to bid was posted to BidNet in February 2025, and four contractors submitted bids by the bid opening deadline in March 2025. The lowest responsive and responsible bidder was Sturgeon Electric Company, Inc. for \$1,487,417 and is recommended by staff to complete the project.

If proposed Resolution No. 2025-58 is approved, construction is anticipated to begin in June 2025, with the project slated for completion by the end of the fourth quarter of 2025.

Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
Willow Run at Midway Traffic Signal (24T0007) (20-70090-55200)	\$1,029,000
Lowell at Broadlands Dr Traffic Signal (24T0008) (20-70090-55200)	\$970,000
Total Budget	\$1,999,000
Consulting Agreement (JMT)	-\$161,450

Sources and Uses of Funds	Amount
Construction (Sturgeon Electric Company, Inc.)	-\$1,487,417
10% Construction Contingency	-\$148,742
Environmental Clearance/Materials Testing/Inspection	-\$30,000
Total Use of Funds	-\$1,827,609
Projected Balance	\$171,391

Prior Council or Other Entity Actions

On October 22, 2024 Council authorized funds in the [2025 Budget](#).

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

If Council desires to proceed with the project, the appropriate motion is...
That Resolution 2025-58 be adopted.

Alternatives

Decide not to proceed with the project.

RESOLUTION NO. 2025-58

A resolution approving the Construction Agreement with Sturgeon Electric Company, Inc. for the Willow Run at Midway Boulevard and Lowell Boulevard at Broadlands Drive Traffic Signal Project

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

Section 1.

The Construction Agreement by and between the City and County of Broomfield and Sturgeon Electric Company, Inc, for the Willow Run at Midway Boulevard and Lowell Boulevard at Broadlands Drive Traffic Signal Project in the amount not to exceed \$1,487,417 is hereby approved.

Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the agreement, in form approved by the City and County Attorney.

Section 3.

The City and County Manager or a designee thereof is authorized to approve change orders in an aggregate amount not to exceed ten percent.

Section 4.

This resolution is effective upon its approval by the City Council.

Approved on April 22, 2025.

The City and County of Broomfield, Colorado

Mayor

Attest:

Office of the City and County Clerk

Approved as to form:

NCR

City and County Attorney

A CONSTRUCTION AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF BROOMFIELD
AND STURGEON ELECTRIC COMPANY, INC. FOR THE WILLOW RUN AT MIDWAY AND LOWELL AT
BROADLANDS DR. TRAFFIC SIGNAL PROJECT

1. **PARTIES.** The parties to this Construction Agreement (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and Sturgeon Electric Company, Inc. (the “Contractor”), collectively, the “Parties,” or individually, a “Party.”
2. **RECITALS.** The Recitals to this Agreement are incorporated herein by this reference as though fully set forth within the body of this Agreement.
 - 2.1. The City, seeking construction services for **Willow Run at Midway and Lowell at Broadlands Dr. Traffic Signal Project** completed a competitive selection process by invitation for bid (IFB) issued on **February 18, 2025**.
 - 2.2. The Contractor’s response to the above referenced IFB was determined to be of best value, responsible, responsive bidder to the City for the procurement of the services requested.
 - 2.3. The Parties therefore desire to enter into this Agreement for completion of the services further described herein.
3. **TERMS AND CONDITIONS.** In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:
 - 3.1. **Work.** The Contractor agrees to furnish all necessary labor, materials, equipment, tools, and services necessary to perform in a workmanlike manner the work (hereinafter “Work”) described in the Scope of Work attached hereto as **Exhibit A** and incorporated by this reference.
 - 3.1.1. ***Key Personnel.*** The Contractor’s key personnel shall include (i) the Project Executive - Jim Bushnell; (ii) the Field Superintendent - Justin Brown and (iii) the Project Manager - Josh Ivy. The Contractor’s obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the key personnel without the City’s prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with this Agreement due to death, illness, discharge or resignation, then the Contractor shall promptly appoint a replacement acceptable to the City. The City shall be entitled to complete

information on each such replacement, including a current resume of his or her qualifications and experience.

- 3.2. Contract Documents. The Contract Documents shall consist of the following:
- 3.2.1. This Agreement; and
 - 3.2.2. The Scope of Work attached hereto as Exhibit A;
 - 3.2.3. The Contractor's Cost Proposal dated March 19, 2025, attached hereto as Exhibit B; and
 - 3.2.4. The IFB including all links and attachments; and
 - 3.2.5. The Construction Plans for Project Nos. 24T0007 / 24T0008; and
 - 3.2.6. Project Special Provisions for Project Nos. 24T0007 / 24T0008; and
 - 3.2.7. Any change orders and contract amendments, as applicable; and
 - 3.2.8. The Insurance Requirements attached hereto as Exhibit C,

all of which are incorporated by reference as though set forth in full herein, whether or not attached hereto and shall form an integral part of this Contract. If there is any conflict between this Agreement and the other Contract Documents, this Agreement shall control.

- 3.3. Access and Inspection. The City and its representatives shall at all times have access to the Work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. All materials, equipment and supplies used in the performance of the Work shall be subject to adequate inspection and testing in accordance with generally accepted standards. The City Representative may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing at no additional cost. The Contractor shall provide all labor, tools, materials, equipment and supplies necessary to comply with the request of the City Representative. If any portion of the Work is determined to be defective, the Contractor shall bear all costs involved to bring the Work into compliance with the Agreement, including without limitation the cost to replace any materials, to re-perform or to reconstruct. The Contractor shall remove from the work site all work or materials rejected by the City for failure to comply with the Contract whether incorporated in the Work or not at no additional cost to the City.
- 3.4. Site Clean-Up. On a daily basis, the Contractor shall maintain the work site free from accumulation of waste materials or rubbish caused by performance of the Work. The Contractor shall remove all rubbish, tools, construction equipment, machinery, and surplus material from the work site. If the Contractor fails to maintain the work site in an appropriate condition, the City may, after notice to the Contractor, perform any necessary clean-up and charge the clean-up costs to the Contractor.

- 3.5. Protection of Property. All existing finishes, structures, utilities, services, roads, trees, shrubbery, etc. located on City property and adjacent property impacted by the Work shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to the satisfaction of the City within three (3) weeks of the notification of such damage, which may be extended with written approval of the City.
- 3.6. Utilities. The Contractor shall fully comply with the provisions of Article 1.5 of Title 9 of the Colorado Revised Statutes including, but not limited to, providing notices to the notification association. Unless otherwise provided in the Scope of Work, the Contractor shall be responsible for communicating and coordinating with utilities, as necessary. The Contractor shall cooperate with utilities and the City as provided in this Agreement and as required by law. The Contractor shall be responsible for determining the exact location of utilities that may interfere with construction of the Work by exploratory excavation sufficiently in advance of beginning construction in an area so that potential conflicts may be resolved. The Contractor will consider in the Contract Price all of the utility appurtenances within the project; and the Contractor shall not make a claim for delay or additional compensation due to any relocation operations by a utility.
- 3.7. Documents on Site. The Contractor shall maintain at the site for the City one electronic or hard copy of all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction. At the City's option, the referenced record drawings will be reviewed monthly by the City for acceptability. If, in the judgment of the City, the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.
- 3.8. Differing Site Conditions. The Contractor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and review of the Contract Documents.
- 3.8.1. Contractor shall give immediate written notice to the City Representative if it encounters a "Differing Site Condition," defined as either:

- 3.8.1.1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or
 - 3.8.1.2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Agreement.
 - 3.8.2. Contractor acknowledges that no request for a change order or modification in Contract Price resulting from a Differing Site Condition shall be allowed unless immediate written notice is provided and the conditions remain undisturbed until the City has the opportunity to investigate.
4. Completion Date. Within ten (10) calendar days of receipt of executed Agreement, the Contractor shall provide the City acceptable bonds, if applicable, and certificates of insurance. A Notice to Proceed will be issued upon City approval of the bonding and insurance. The Contractor shall perform no Work until the City Representative issues a Notice to Proceed.

The Contractor shall begin the Work on or before the fifth (5th) calendar day after receipt of the Notice to Proceed. The Notice to Proceed will stipulate the date on which the contract time count commences (the "Start Date"). The Contractor shall complete the Work and fulfill all of its other obligations within **one hundred eighty (180) calendar days** of the Start Date (the "Completion Date"). The time between the Start Date and the Completion Date shall be known as the "Contract Time."

All time limits are of the essence in this Agreement. The Contractor acknowledges that a notice to proceed will not be issued until the City has received acceptable certificates of insurance and bonds, if applicable.

5. CONTRACTOR'S PROJECT SCHEDULE. The Contractor shall submit a completion schedule for the Work (the "Project Schedule") beginning with receipt of the signed Agreement and concluding with Project Completion prior to the commencement of the Work and shall coordinate on a daily basis with the City's project manager. The Project Schedule shall include all lead time for the order and delivery of equipment for the Work. Schedule updating shall be done on a **weekly basis**, or more often as necessary (each a "Schedule Update"). The revision shall indicate actual progress to date, changes resulting from change orders, and planned changes as necessary to complete the Work in accordance with the Contract Documents. All costs associated with the development and maintenance of the Project Schedule shall be borne by the Contractor. Acceptance by the City of the Contractor's Project Schedule does not relieve the Contractor of any of its responsibility whatsoever for the accuracy or feasibility of the Project Schedule, or of the Contractor's ability to meet the Contract

Time, nor does such acceptance expressly or impliedly warrant, acknowledge or admit the reasonableness of the activities, duration, or cost loading of the Contractor's Project Schedule.

6. UNUSUALLY SEVERE WEATHER CONDITIONS.

- 6.1. It is expressly understood and agreed, by and between the Contractor and the City, that the Contract Time for the completion of the Work is a reasonable time, taking into consideration the climatic and economic conditions and other factors prevailing in the locality of the Work. The Contract Time anticipates "Normal" weather and climate conditions in and around the vicinity of the project site during the times of year that the construction will be carried out. Extensions of time based upon weather conditions shall be granted only if the Contractor demonstrates clearly that such conditions were "unusually severe," would not have been reasonably anticipated, and that such conditions adversely affected the Contractor's Work and thus required additional time to complete the Work.
- 6.2. The following specifies the procedure for the determination of time extensions for unusually severe weather. The listing below defines the anticipated number of calendar days lost to adverse weather for each month and is based upon National Oceanic and Atmospheric Administration (NOAA) or similar data for the geographic location of the project.

ANTICIPATED CALENDAR DAYS LOST TO ADVERSE WEATHER CONDITIONS:												
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
7	5	4	3	3	2	2	2	2	3	3	7	43 day

- 6.3. The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgement of the notice to proceed and continuing throughout the Agreement on a monthly basis, actual adverse weather days and the impact of adverse weather days that delay the Work will be recorded on a day-to-day basis. It is assumed that the Work will be carried out Mondays through Fridays (holidays excepted); however, non-standard work hours will be required as specified in the Statement of Work and as shown on the Project Schedule. The

number of calendar days of delayed Work due to adverse weather or the impact thereof will then be compared to the monthly adverse weather schedule above.

- 6.4. An actual adverse weather day must prevent Work for 50 percent or more of the Contractor's workday, delay Work critical to the timely completion of the Project, and be documented by the Contractor. The Contractor shall notify the City Representative in writing if work cannot proceed on a given date, within two calendar days of that date. The City will use the above written notification in determining the number of calendar days for which Work was delayed during each month.
 - 6.5. At the end of each month if the number of calendar days for which Work was delayed due to adverse weather exceeds that shown in the above schedule a change order will be executed which increases the Contract Time.
 - 6.6. The Contractor's Project Schedule must reflect the above-anticipated adverse weather delays on all weather-dependent activities. While extension of time shall be granted for "unusually severe" weather or climate conditions, or the impact thereof, the City shall make no monetary compensation for any costs to the Contractor arising out of such delays. The Contractor shall comply with the portions of the Contract Documents relating to its Project Schedule and amendments thereto which result from the "unusually severe" weather condition.
7. **PRICE AND PAYMENT.** The City shall pay the Contractor for performance of the Work an amount not to exceed **\$1,487,417** (the "Contract Price") based upon the unit prices set forth on Contractor's Cost Proposal attached hereto as Exhibit B and in accordance with the following schedule:
- 7.1. If the Contractor is satisfactorily performing the Agreement, the City shall make partial payments at the end of each calendar month or as soon thereafter as practicable of ninety-five percent (95%) of the Contract Price based on the calculated value of the Work completed (the "Partial Payments") and shall retain five percent (5%) of the amount due to the Contractor (the "Retained Amount") until the Work is complete. If applicable, the Contractor shall make payments to its subcontractors in accordance with C.R.S. §24-91-103.
 - 7.2. The City shall retain the Retained Amount until Final Acceptance (as defined in Final Acceptance and Final Payment below). If the Contractor has completed the Work in a manner finally acceptable to the City, the City may authorize final payment from the Retained Amount upon written request by invoice of the Contractor (the "Final Payment"). Before the Final Payment is made, the City and the Contractor, as applicable, shall comply with the Final Acceptance and Payment paragraph of this Agreement.

7.3. The Contractor shall, as soon as practicable after the end of each calendar month during performance of the Work, submit an itemized invoice for services performed, stating the percentage of the Work that has been completed and the type of services performed. Each invoice will also include an Application and Certificate of Payment form (AIA Document G702) or equivalent form approved by the City. The Contractor shall prepare the invoices at its sole cost and shall include sufficient detail to enable the City to verify the appropriateness of the invoice. Each invoice shall be subject to review and approval by the City Representative. The City shall not be required to pay disputed items until the dispute is resolved. Payment of any invoice shall not act as a waiver of the City's right to recover in full any over-payment revealed by any subsequent audit or inspection. No air travel, car rental, entertainment, education expense, meals or similar or related costs shall be payable without prior written approval of the City. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments due the Contractor under this Contract or other contracts between City and Contractor.

7.4. Change Orders. The Contractor will do nothing to cause the Contract Price to increase without prior execution of a change order by the City. The City will issue no change order requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for this Agreement. Except as provided below and as provided in C.R.S. 24-91-103.6, the City shall have no duty or obligation whatsoever to compensate or to reimburse the Contractor for any additional work not specifically authorized as provided herein. In the event (i) the City requires additional compensable work to be performed by the Contractor prior to the execution or other finalization of a change order or contract amendment, and (ii) the Contractor has submitted to the City an estimate of the cost for the additional compensable work, then the City shall reimburse the Contractor for the costs associated with such additional work on a periodic basis in accordance with the terms of this Agreement.

8. FINAL INSPECTION AND FINAL PAYMENT.

8.1. Final Inspection. The Contractor shall notify the City when the Work is complete and ready for final inspection by means of a letter of completion (the "Letter of Completion"). Within ten (10) calendar days of the City's receipt of the Letter of Completion, the City Representative shall make a final inspection to determine whether the Work has been completed in accordance with this Agreement and shall submit a written list of any defects to the Contractor (the "Punchlist"). The Contractor shall promptly correct all Punchlist items without

additional cost to the City within ten (10) calendar days after receipt of the Punchlist. If any Punchlist item cannot be corrected within ten (10) calendar days, the Contractor shall submit a letter to the City Representative for approval requesting an extension of time to complete such item (the "Request for Extension"). The Request for Extension must be received by the City Representative within seven (7) calendar days of the Contractor's receipt of the Punchlist and shall include the Contractor's justification for the request and a schedule for completion of the Punchlist item. The Contractor shall also deliver to the City, all statements to support state sales and use tax refunds and any as-built drawings. The Contractor shall provide the City with a letter of approval for contract closure from any surety furnishing bonds for the Work provided on AIA Form G707 (Consent of Surety Letter) or equivalent form.

- 8.2. Final Payment. Upon satisfactory completion of the Work, the City Representative will provide the Contractor with a written acceptance of the Work (the "Final Acceptance"). Payment shall not be made until the City Representative has approved the payment and a notice of contractor's settlement has been published in accordance with C.R.S. §38-26-107. The City shall condition publication and final settlement upon receipt of any duly executed approvals of the corporate surety or sureties issuing the bonds required hereunder. Such final settlement shall be advertised as provided by statute at least twice, the last publication appearing at least ten (10) days prior to the date of final settlement. On the date of final settlement (or such later date as may be permitted by statute if claims are asserted or litigation is commenced alleging nonpayment of funds due for labor, materials, supplies, etc.), payment and final settlement shall be made in full.

9. CONTRACTOR'S REPRESENTATIONS. In order to induce the City to enter into this Agreement, the Contractor makes the following representations:

- 9.1. The Contractor has familiarized itself with the nature and extent of the Agreement, Work, the locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. The Contractor acknowledges an obligation to comply with all applicable laws, including the Broomfield Municipal Code, to respect property rights by working within the defined work limits or designated staging areas, and to work within the prescribed work hours. The Contractor acknowledges that use of air compression brakes ("jake brakes") within City limits is prohibited, unless otherwise posted by the City Traffic Engineer.
- 9.2. Before submitting a proposal, the Contractor has become fully informed regarding the Work and any materials or equipment required, including the amount or quantity thereof. No adjustment or modification shall be allowed for

any misunderstanding of the Work or of equipment or material requirements, or of the provisions contained in this Contract and in the other Contract Documents.

- 9.3. Contractor has given the City written notice of any conflicts, errors or discrepancies that he has discovered in the Agreement and exhibits incorporated therein and the written resolution thereof by the City is acceptable to the Contractor.

10. **NOTICE AND AUTHORIZED REPRESENTATIVES.** Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Contractor. The Contractor shall not replace the Contractor Representative unless: (a) the City requests a replacement, or (b) the Contractor terminates the employment of the Contractor Representative and provides a satisfactory substitute. The City must approve a substitute Contractor Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

5.1 The City designates **Kelly Behling** as the authorized representative of the City under this Agreement. Email address is kbehling@broomfield.org.

5.2 The Contractor designates **Jim Bushnell** as the authorized representative of the Contractor under this Agreement. Email address is jbushnell@myrgroup.com.

If the Contractor is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to citycountyattorney@broomfield.org.

Failure of City's on-site representative to call to the attention of the Contractor any defective work or deviations from the Contract Documents shall not constitute acceptance of such work by the City or relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract Documents.

11. **TIME EXTENSIONS AND COMPENSATION FOR DELAY.**

- 11.1. **Remedy.** If the Contractor is delayed or disrupted in the performance of the Work, the Contractor's exclusive remedy with respect to such delay or disruption shall be as stated in this Section.
- 11.2. **Time Extensions.** Evaluation of all time extension requests shall be based upon the latest updated project schedule submitted to the City by the Contractor.

- 11.3. **Definitions.** The following words shall have the meaning set forth below:
- 11.3.1. “Contractor Delay” is defined as delay on a particular date resulting from acts or omissions within the control of the Contractor or its subcontractors, agents or suppliers, including any delay within their joint control.
 - 11.3.2. “No-Fault Delay” is defined as delay on a particular date resulting from events beyond the reasonable control of and without the fault or negligence of either the Contractor or the City or their agents, employees, contractors, subcontractors, sub-subcontractors or suppliers.
 - 11.3.3. “Owner Delay” is defined as delay on a particular date resulting from acts or omissions within the control of the City, its agents, employees or contractors, including the City’s Representative.
 - 11.3.4. “Concurrent Delay” is defined as the occurrence on a particular date of one or more instances of Owner Delay and Contractor Delay, Owner Delay and No-Fault Delay or Contractor Delay and No-Fault Delay.
- 11.4. **Completion Date Adjustment.** An adjustment in the Completion Date for delay on a particular date shall be made under this subparagraph if any delay on such date is classified as either Owner, No-Fault or Concurrent Delay. The adjustment in the Completion Date shall only be in proportion to the amount of the delay, which is attributable to Owner, or No-Fault Delay. No adjustment in the Completion Date shall be allowed for the portion of the delay that is attributable to Contractor Delay, including but not limited to, that portion of a Concurrent Delay which includes Contractor Delay.
- 11.5. **Price Adjustment.** An adjustment in the Contract Price for delay on a particular date shall be made under this subparagraph only if such delay is classified as either Owner Delay or Concurrent Delay when such Concurrent Delay includes Owner Delay. The adjustment in the Contract Price shall only be in proportion to the portion of the delay costs, which is directly attributable to Owner Delay. No adjustment in the Contract Price shall be made for the portion of the delay costs, which is attributable to Contractor Delay, or No-Fault Delay, or that portion of a Concurrent Delay which includes Contractor Delay or No-Fault Delay or both.
- 11.6. **Mitigation.** An adjustment in Contract Price shall be made under this subparagraph only to the extent to which the Contractor can demonstrate that its time-related costs to complete the Work will be increased. The Contractor expressly acknowledges its obligation to minimize the cost impact of compensable delays. The Contractor shall, to the best of its ability, re-assign

labor and equipment, commence unaffected portions of the Work, and otherwise minimize delay costs. In no event shall the City be liable for payment of delay costs, which could have been avoided or mitigated by any means reasonably available to the Contractor or for consequential damages.

- 11.7. Notification of Delay and Recovery. The Contractor shall notify the City as soon as practicable regarding the nature and starting date of a delay, and the activities affected, but in no case later than seven (7) calendar days after the event giving rise to the delay. In the case of a continuing delay, only one notification shall be necessary. Any claim for an extension of time for delay shall be made in writing to the City not more than ten (10) calendar days after the end of the delay; otherwise, such claim shall be waived. Recovery of delay costs shall be waived unless a request for a change order for delay costs is submitted within ten (10) calendar days after the end of the delay period. The Contractor must also provide a cost and time impact analysis with any request for a change order for delay costs. The cost impact analysis shall contain all direct and indirect labor costs, all material and equipment expenses, any and all documented impact costs related to, and/or occasioned by the Work described therein, as well as all taxes (if applicable under the provisions of this Contract), insurance and profit. Documentation supporting this cost impact analysis must be submitted at the time of the request for change order for delay costs.
12. DEFAULT AND DAMAGES. If the Contractor fails to comply with any provision of this Agreement, the Contractor shall be liable for any and all damages, including without limitation, the cost of procuring similar supplies and services and all other costs and expenses incurred by the City because of such failure. If the Contractor fails or refuses to perform the Work on schedule, or to complete the Work in a timely and satisfactory manner, the City may terminate this Contract and the Contractor's right to proceed hereunder. If the City terminates this Contract under this paragraph, the Contractor may, at the option of the City, be required to cease any or all Work provided for under this Contract and shall be liable for any additional cost to the City for services acceptable to the City from another contractor as well as any actual damages associated with such failure to perform. The cost to complete the Work or any portion thereof which remains unperformed at the time of such termination, together with any other damages, shall be deducted from any sum payable hereunder before final payment to the Contractor.
13. LIQUIDATED DAMAGES. Time is of the essence in completing the Work. Alternatively, and in lieu of actual damages for delay, in the event of delay in the completion of the Work as specified beyond the Completion Date, it would be difficult to determine the exact amount of the loss or damages suffered by the City due to delays in completion of the Work. However, the City has attempted to forecast a reasonable daily amount as compensation for the damages incurred due to late completion caused by the

Contractor, based upon considerations which include, but are not limited to, public inconvenience and additional contract administration costs. Therefore, the Contractor will be liable to the City, as liquidated damages (and not as a penalty), in the amount of \$1,000 for each and every calendar day beyond the Completion Date. The City reserves the right to deduct said liquidated damages from any amount due the Contractor under this Agreement or, at its option, to collect such liquidated damages directly from the Contractor or its surety.

14. PERFORMANCE AND PAYMENT BONDS. In accordance with C.R.S. §38-26-105, if the Contract Price exceeds \$50,000, the Contractor shall furnish at its expense a separate performance bond and labor and materials bond, each for an amount not less than one hundred percent (100%) of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the City. The bonds shall remain in effect through Final Acceptance, and continuing in effect through completion of all warranty and guaranty work and shall be delivered to the City prior to the commencement of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.
15. COLORADO LABOR. If the Contract Price exceed \$500,000, the Contractor shall employ not less than eighty percent of Colorado labor of each type or class of labor in the several classifications of skilled and common labor to perform the work under this Agreement in accordance with the provisions of C.R.S. §8-17-101 et seq.
16. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor as provided in C.R.S. § 8-40-202(2). The Contractor is not entitled to workers' compensation benefits and the Contractor is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.
17. INDEMNIFICATION. The Contractor expressly agrees to indemnify, defend and hold harmless the City, its officers, employees and insurers from and against all claims, damages, losses, expenses and demands, including court costs, attorney's fees and expenses, due to injuries, losses or damages arising out of, resulting from, or in any manner connected with the Contractor, its officers, employees, subcontractors or agents in connection with the performance of the services pursuant to this Agreement. Except for workers' compensation, disability benefits or other similar employee benefit claims, Contractor is not obligated to indemnify the City hereunder for that portion of any claims, damages, losses, demands, and expenses arising out of or resulting from any negligent act or omission of the City, or its agents and employees. This indemnification is intended to comply with and be subject to C.R.S. 13-50.5-102(8), as amended from time to time. In the event that any such suit or

action is brought against the City, the City will give timely notice thereof to the other Party.

18. INSURANCE. To assure the City that the Contractor is always capable of fulfilling specified indemnification obligations, the Contractor shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit C. Current proof of such insurance is attached at Exhibit C, incorporated by this reference. However, proof of insurance attached as Exhibit C shall not be deemed to limit or define obligations of Contractor as provided elsewhere in this Agreement, and Contractor should rely on its expertise to obtain additional insurance coverage needed for the City and Contractor in its performance hereunder.
19. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Contractor shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall provide the appropriate insurance as required for the Contractor under this Agreement. The Contractor shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Contractor without the express written consent of the City.
20. WARRANTY.
 - 20.1. Warranty Period. The Contractor warrants that it will perform the Work in a timely, accurate and complete manner in accordance with the provisions of this Agreement. The Contractor warrants that the materials and/or workmanship will conform to the Contract Documents and that the materials used will be of good quality and new and that the Work shall be free from defects. The Contractor shall guarantee the Work against defects in workmanship and materials for a period of **2 years**, commencing on the date of final acceptance of the Work by the City Representative (the "Warranty Period"). The Contractor shall also assign to the City any longer term guarantee of materials used by the Contractor as may be provided by the manufacturer. The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with this Agreement and without expense to the City. The time allowed for such corrective action shall be mutually agreed upon by the City and the Contractor. If the Contractor fails to proceed promptly in accordance with these guarantees, the City reserves the right to place the Contractor in default of its contractual obligations and may have the Work performed at the expense of the Contractor. This provision shall survive the completion of the Work and the termination of this

Agreement. The above guarantee does not limit any claims that the City may otherwise have against the Contractor.

- 20.2. Warranty Verification. At least 60 calendar days prior to the expiration of the Warranty Period, the City Representative shall have the option to make an inspection to determine whether the Work has been completed in accordance with this Agreement and may submit a written list of any defects to the Contractor (the "Warranty Work"). In the event the City chooses this option, the Contractor shall promptly correct all Warranty Work without additional cost to the City within the Warranty Period. If any Warranty Work cannot be corrected within the Warranty Period, the Contractor shall submit a letter to the City Representative for approval requesting an extension of time to complete such item (the "Request for Extension of Warranty Work"). The Request for Extension of Warranty Work must be received by the City Representative within seven calendar days of the Contractor's receipt of the Warranty Work and shall include the Contractor's justification for the request and a schedule for completion of the Warranty.
21. NO THIRD PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
22. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Contractor. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Contractor. The City's fiscal year is currently the calendar year.
23. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
24. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Contractor invoice, Contractor timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Contractor's rights and obligations shall be solely governed by the terms and conditions of this Agreement.

25. SEVERABILITY. If any provision of this agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances, or the validity or enforceability of the Agreement as a whole.
26. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.
27. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.
28. DOCUMENTS. All drawings, analyses, plans, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall remain the sole and exclusive property of the City, and the other Party shall not provide copies of any such material to anyone without the express written consent of the City.
29. RECORDS RETENTION. The Contractor shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Contractor for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.
30. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement.
31. SALES TAX EXEMPTION. The Contractor and its subcontractors, consultants and suppliers will not be required to pay Colorado state sales and use taxes on property incorporated into the Work. The Contractor shall obtain a sales tax exemption permit from the State of Colorado Department of Revenue, if necessary, to obtain materials for the Work without the payment of Colorado state sales tax.
32. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
33. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, heirs, and assigns,

provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

34. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.
35. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.
36. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
37. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
38. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Any claims or litigation arising under this Agreement will be brought by the Parties solely in the District Court, Broomfield County, Colorado.
39. LAWS TO BE OBSERVED. The Contractor shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees. The Contractor shall procure all necessary approvals, licenses and permits at its own expense; provided, that, the Contractor will be able to receive no cost permits when such permits are issued by the City directly.
40. TERMINATION. The City reserves the right to terminate this Contract, in whole or in part, with or without cause by written notice to the Contractor. In the event of termination, the Contractor shall incur no additional expenses and shall perform no

further Work for the City under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the City. The City shall pay the Contractor for all work satisfactorily performed prior to receipt of the notice of termination and for other services required by the City to be completed prior to termination and satisfactorily performed.

41. SURVIVAL OF OBLIGATIONS. Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that require continued performance or compliance beyond the termination or expiration of this Agreement, including without limitation the indemnification provision, shall survive such termination or expiration and shall be enforceable against a Party if such Party fails to perform or comply with such term or condition.
42. DIGITAL ACCESSIBILITY STANDARDS. In 2021, the State of Colorado adopted HB21-1110 relating to the digital accessibility standards required to be implemented under the Colorado Anti-Discrimination Act which makes it unlawful to discriminate against individuals with a disability. In order to comply with the law on or before July 1, 2024, the Contractor shall ensure that all digital deliverables and digital technology provided pursuant to the terms of this Agreement shall comply with at least the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, or such updated standard as the Colorado Governor's Office of Information Technology may adopt from time-to-time.
43. EXECUTION; ELECTRONIC SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

[The remainder of this page is intentionally left blank.]

This Agreement is executed by the Parties hereto in their respective names as of _____, 20____.

THE CITY AND COUNTY OF BROOMFIELD,
a Colorado municipal corporation and county

Mayor
One DesCombes Drive
Broomfield, CO 80020

APPROVED AS TO FORM:

City and County Attorney's Office

CONTRACTOR:

Sturgeon Electric Company, Inc.

By: 

Name: Jim Bushnell

Address: 12150 E 112th Ave
Henderson, CO 80640

EXHIBIT A

SCOPE OF WORK

SCOPE OF WORK

The Work includes, but is not limited to the refurbishment of signal poles and mast arms, installation of traffic signals, reconfiguration of curb ramps, removal and replacement of sidewalk, removal and replacement of curb and gutter, installation of pedestrian push buttons, signal poles, mast arms, controller cabinets, conduit, pull boxes, signage, and pavement markings at two separate locations (the intersection Midway Boulevard and Willow Run and the intersection of Broadlands Drive and Lowell Boulevard) in the City, together with all incidentals and miscellaneous items necessary to do the Work.

EXHIBIT B

CONTRACTOR'S COST PROPOSAL

City and County of Broomfield
BID FORM Lowell Boulevard and Broadlands Drive

ITEM NO.*	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
201-00001	CLEARING AND GRUBBING	LS	1	\$ 4,600.00	\$ 4,600.00
202-00009	TREE TRIMMING	LS	1	\$ 5,900.00	\$ 5,900.00
202-00200	REMOVAL OF SIDEWALK	SY	85	\$ 54.00	\$ 4,590.00
202-00203	REMOVAL OF CURB AND GUTTER	LF	130	\$ 18.00	\$ 2,340.00
202-00206	REMOVAL OF CONCRETE CURB RAMP	SY	55	\$ 54.00	\$ 2,970.00
202-00210	REMOVAL OF CONCRETE PAVEMENT	SY	28	\$ 54.00	\$ 1,512.00
202-00220	REMOVAL OF ASPHALT MAT	SY	136	\$ 48.00	\$ 6,528.00
202-00810	REMOVAL OF GROUND SIGN	EACH	10	\$ 150.00	\$ 1,500.00
202-00825	REMOVAL OF FLASHING BEACON	EACH	2	\$ 1,700.00	\$ 3,400.00
203-00010	UNCLASSIFIED EXCAVATION (COMPLETE IN PLACE)	CY	120	\$ 110.00	\$ 13,200.00
203-01597	POTHOLING	HOUR	72	\$ 600.00	\$ 43,200.00
208-00020	SILT FENCE	LF	400	\$ 3.00	\$ 1,200.00
208-00054	STORM DRAIN INLET PROTECTION (TYPE II)	EACH	2	\$ 350.00	\$ 700.00
208-00200	EROSION CONTROL MANAGEMENT	LS	1	\$ 1,200.00	\$ 1,200.00
212-01200	LANDSCAPE RESTORATION	SF	150	\$ 50.00	\$ 7,500.00
304-06007	AGGREGATE BASE COURSE (CLASS 6)	SY	140	\$ 82.00	\$ 11,480.00
403-00720	HOT MIX ASPHALT (PATCHING) (ASPHALT)	SY	120	\$ 200.00	\$ 24,000.00
503-00200	CAISSON (SPECIAL)(36 INCH)	LF	76	\$ 450.00	\$ 34,200.00
608-00006	CONCRETE SIDEWALK (6 INCH)	SY	15	\$ 110.00	\$ 1,650.00
608-00010	CONCRETE CURB RAMP	SY	170	\$ 200.00	\$ 34,000.00
609-21010	CURB AND GUTTER TYPE 2 (SECTION I-B)	LF	10	\$ 53.00	\$ 530.00
609-21020	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	25	\$ 64.00	\$ 1,600.00
613-00206	2 INCH ELECTRICAL CONDUIT (BORED)	LF	800	\$ 29.00	\$ 23,200.00
613-00306	3 INCH ELECTRICAL CONDUIT (BORED)	LF	790	\$ 32.00	\$ 25,280.00
613-01200	2 INCH ELECTRICAL CONDUIT (PLASTIC)	LF	90	\$ 23.00	\$ 2,070.00
613-01300	3 INCH ELECTRICAL CONDUIT (PLASTIC)	LF	36	\$ 24.00	\$ 864.00
613-07003	TYPE THREE PULL BOX (17" X 30" X 12")	EACH	1	\$ 1,600.00	\$ 1,600.00
613-07005	TYPE FIVE PULL BOX (30" X 48" X 30")	EACH	4	\$ 3,200.00	\$ 12,800.00
613-10000	WIRING	LS	1	\$ 24,000.00	\$ 24,000.00
613-50150	SECONDARY SERVICE PEDESTAL	EACH	1	\$ 11,000.00	\$ 11,000.00
614-00011	SIGN PANEL (CLASS I)	SF	76	\$ 70.00	\$ 5,320.00
614-00214	STEEL SIGN POST (1.75X1.75 INCH TUBING)	LF	60	\$ 46.00	\$ 2,760.00
614-00216	STEEL SIGN POST (2X2 INCH TUBING)	LF	45	\$ 47.00	\$ 2,115.00
614-10130	ILLUMINATED STREET SIGN	EACH	8	\$ 4,900.00	\$ 39,200.00
614-70150	PEDESTRIAN SIGNAL FACE (16) (COUNTDOWN)	EACH	8	\$ 1,000.00	\$ 8,000.00
614-70200	ACCESSIBLE PEDESTRIAN SIGNAL	EACH	8	\$ 1,700.00	\$ 13,600.00
614-70336	TRAFFIC SIGNAL FACE (12-12-12)	EACH	8	\$ 1,500.00	\$ 12,000.00
614-70448	TRAFFIC SIGNAL FACE (12-12-12-12)	EACH	4	\$ 1,800.00	\$ 7,200.00
614-72848	TRAFFIC SIGNAL CONTROLLER AND CABINET	EACH	1	\$ 35,000.00	\$ 35,000.00
614-72866	FIRE PREEMPTION UNIT AND TIMER	EACH	1	\$ 12,000.00	\$ 12,000.00
614-72886	INTERSECTION DETECTION SYSTEM (CAMERA)	EACH	2	\$ 21,500.00	\$ 43,000.00
614-81130	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-30 FOOT MAST ARM) (INSTALL AND TEST)	EACH	2	\$ 3,700.00	\$ 7,400.00
614-81135	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-35 FOOT MAST ARM) (INSTALL AND TEST)	EACH	1	\$ 3,700.00	\$ 3,700.00
614-81140	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-40 FOOT MAST ARM) (INSTALL AND TEST)	EACH	1	\$ 3,700.00	\$ 3,700.00
614-84000	TRAFFIC SIGNAL PEDESTAL POLE STEEL (10 FOOT)	EACH	1	\$ 4,300.00	\$ 4,300.00
614-84000	TRAFFIC SIGNAL PEDESTAL POLE STEEL (5 FOOT)	EACH	5	\$ 3,600.00	\$ 18,000.00
614-86800	UNINTERRUPTED POWER SUPPLY	EACH	1	\$ 7,100.00	\$ 7,100.00
614-87350	TEST FIBER OPTIC CABLE	LS	1	\$ 3,000.00	\$ 3,000.00
614-87401	FIBER OPTIC CABLE (SINGLE MODE) (12 STRANDS) (INSTALL AND TEST)	LF	900	\$ 3.00	\$ 2,700.00
614-87601	TERMINATE FIBER OPTIC CABLE (1 STRAND)	EACH	12	\$ 62.00	\$ 744.00
614-87690	ETHERNET SWITCH	EACH	1	\$ 4,700.00	\$ 4,700.00
625-00000	CONSTRUCTION SURVEYING	LS	1	\$ 11,000.00	\$ 11,000.00
626-00000	MOBILIZATION	LS	1	\$ 43,000.00	\$ 43,000.00
627-00011	PAVEMENT MARKING PAINT (WATERBORNE)	GAL	3	\$ 450.00	\$ 1,350.00
627-30405	PREFORMED THERMOPLASTIC PAVEMENT MARKING (WORD-SYMBOL)	SF	65	\$ 23.00	\$ 1,495.00
627-30410	PREFORMED THERMOPLASTIC PAVEMENT MARKING (XWALK-STOPLINE)	SF	1016	\$ 17.00	\$ 17,272.00
630-00016	TRAFFIC CONTROL (SPECIAL) LUMP SUM	LS	1	\$ 54,000.00	\$ 54,000.00
700-70010	F/A MINOR CONTRACT REVISIONS	FA	1	\$ 15,000.00	\$ 15,000.00
F/A	FURNISH AND INSTALL ELECTRICAL SERVICE	LS	1	\$ 15,000.00	\$ 15,000.00
F/A	EROSION CONTROL	LS	1	\$ 5,000.00	\$ 5,000.00
				TOTAL	\$ 707,270.00

City and County of Broomfield
BID FORM Midway Boulevard & Willow Run Parkway

ITEM NO.*	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
201-00001	CLEARING AND GRUBBING	LS	1	\$ 4,550.00	\$ 4,550.00
202-00009	TREE TRIMMING	LS	1	\$ 3,500.00	\$ 3,500.00
202-00200	REMOVAL OF SIDEWALK	SY	105	\$ 54.00	\$ 5,670.00
202-00203	REMOVAL OF CURB AND GUTTER	LF	390	\$ 18.00	\$ 7,020.00
202-00206	REMOVAL OF CONCRETE CURB RAMP	SY	40	\$ 54.00	\$ 2,160.00
202-00210	REMOVAL OF CONCRETE PAVEMENT	SY	88	\$ 53.00	\$ 4,664.00
202-00220	REMOVAL OF ASPHALT MAT	SY	130	\$ 48.00	\$ 6,240.00
202-00810	REMOVAL OF GROUND SIGN	EACH	10	\$ 150.00	\$ 1,500.00
203-00010	UNCLASSIFIED EXCAVATION (COMPLETE IN PLACE)	CY	140	\$ 110.00	\$ 15,400.00
203-01597	POTHOLING	HOURL	52	\$ 590.00	\$ 30,680.00
208-00020	SILT FENCE	LF	400	\$ 3.00	\$ 1,200.00
208-00054	STORM DRAIN INLET PROTECTION (TYPE II)	EACH	2	\$ 350.00	\$ 700.00
208-00200	EROSION CONTROL MANAGEMENT	LS	1	\$ 1,200.00	\$ 1,200.00
304-08007	AGGREGATE BASE COURSE (CLASS 6)	SY	165	\$ 82.00	\$ 13,530.00
403-00720	HOT MIX ASPHALT (PATCHING) (ASPHALT)	SY	85	\$ 200.00	\$ 17,000.00
503-00200	CAISSON (SPECIAL)(36 INCH)	LF	76	\$ 450.00	\$ 34,200.00
608-00006	CONCRETE SIDEWALK (6 INCH)	SY	45	\$ 110.00	\$ 4,950.00
608-00010	CONCRETE CURB RAMP	SY	170	\$ 190.00	\$ 32,300.00
609-21010	CURB AND GUTTER TYPE 2 (SECTION I-B)	LF	115	\$ 54.00	\$ 6,210.00
609-21020	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	65	\$ 64.00	\$ 4,160.00
610-00026	MEDIAN COVER MATERIAL (6 INCH PATTERNED CONCRETE)	SF	275	\$ 31.00	\$ 8,525.00
613-00306	3 INCH ELECTRICAL CONDUIT (BORED)	LF	855	\$ 36.00	\$ 30,780.00
613-01200	2 INCH ELECTRICAL CONDUIT (PLASTIC)	LF	100	\$ 23.00	\$ 2,300.00
613-01300	3 INCH ELECTRICAL CONDUIT (PLASTIC)	LF	165	\$ 24.00	\$ 3,960.00
613-07003	TYPE THREE PULL BOX (17" X 30" X 12")	EACH	2	\$ 1,600.00	\$ 3,200.00
613-07005	TYPE FIVE PULL BOX (30" X 48" X 30")	EACH	3	\$ 3,200.00	\$ 9,600.00
613-10000	WIRING	LS	1	\$ 24,000.00	\$ 24,000.00
613-50150	SECONDARY SERVICE PEDESTAL	EACH	1	\$ 11,000.00	\$ 11,000.00
614-00011	SIGN PANEL (CLASS I)	SF	53.5	\$ 70.00	\$ 3,745.00
614-00214	STEEL SIGN POST (1.75X1.75 INCH TUBING)	LF	48	\$ 46.00	\$ 2,208.00
614-00216	STEEL SIGN POST (2X2 INCH TUBING)	LF	36	\$ 47.00	\$ 1,692.00
614-10130	ILLUMINATED STREET SIGN	EACH	8	\$ 4,900.00	\$ 39,200.00
614-70150	PEDESTRIAN SIGNAL FACE (16) (COUNTDOWN)	EACH	8	\$ 1,000.00	\$ 8,000.00
614-70200	ACCESSIBLE PEDESTRIAN SIGNAL	EACH	8	\$ 1,700.00	\$ 13,600.00
614-70336	TRAFFIC SIGNAL FACE (12-12-12)	EACH	8	\$ 1,500.00	\$ 12,000.00
614-70448	TRAFFIC SIGNAL FACE (12-12-12-12)	EACH	4	\$ 1,800.00	\$ 7,200.00
614-72848	TRAFFIC SIGNAL CONTROLLER AND CABINET	EACH	1	\$ 35,000.00	\$ 35,000.00
614-72866	FIRE PREEMPTION UNIT AND TIMER	EACH	1	\$ 12,000.00	\$ 12,000.00
614-72886	INTERSECTION DETECTION SYSTEM (CAMERA)	EACH	2	\$ 21,500.00	\$ 43,000.00
614-81140	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-40 FOOT MAST ARM)	EACH	1	\$ 25,500.00	\$ 25,500.00
614-81150	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-50 FOOT MAST ARM)	EACH	1	\$ 27,000.00	\$ 27,000.00
614-81155	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-55 FOOT MAST ARM)	EACH	2	\$ 27,500.00	\$ 55,000.00
614-84000	TRAFFIC SIGNAL PEDESTAL POLE STEEL (5 FOOT)	EACH	7	\$ 3,600.00	\$ 25,200.00
614-86800	UNINTERRUPTED POWER SUPPLY	EACH	1	\$ 7,100.00	\$ 7,100.00
614-87350	TEST FIBER OPTIC CABLE	LS	1	\$ 3,000.00	\$ 3,000.00
614-87401	FIBER OPTIC CABLE (SINGLE MODE) (12 STRANDS) (INSTALL AND TEST)	LF	210	\$ 4.00	\$ 840.00
614-87601	TERMINATE FIBER OPTIC CABLE (1 STRAND)	EACH	12	\$ 62.00	\$ 744.00
614-87690	ETHERNET SWITCH	EACH	1	\$ 4,700.00	\$ 4,700.00
625-00000	CONSTRUCTION SURVEYING	LS	1	\$ 11,000.00	\$ 11,000.00
626-00000	MOBILIZATION	LS	1	\$ 43,000.00	\$ 43,000.00
627-00011	PAVEMENT MARKING PAINT (WATERBORNE)	GAL	3	\$ 450.00	\$ 1,350.00
627-30405	PREFORMED THERMOPLASTIC PAVEMENT MARKING (WORD-SYMBOL)	SF	48	\$ 23.00	\$ 1,104.00
627-30410	PREFORMED THERMOPLASTIC PAVEMENT MARKING (XWALK-STOPLINE)	SF	1045	\$ 17.00	\$ 17,765.00
630-00016	TRAFFIC CONTROL (SPECIAL) LUMP SUM	LS	1	\$ 54,000.00	\$ 54,000.00
700-70010	F/A MINOR CONTRACT REVISIONS	FA	1	\$ 15,000.00	\$ 15,000.00
F/A	FURNISH AND INSTALL ELECTRICAL SERVICE	LS	1	\$ 15,000.00	\$ 15,000.00
F/A	EROSION CONTROL	LS	1	\$ 5,000.00	\$ 5,000.00
				TOTAL	\$ 780,147.00

* Pay item numbers are from the Colorado Department of Transportation's (CDOT) 2024 Item Code Book. Pay items will be measured and paid for according to requirements outlined in the latest published version of the CDOT Standard Specifications.

EXHIBIT C
INSURANCE REQUIREMENTS

City and County of Broomfield Insurance Requirements

Including General Liability, Automobile, and Workers' Compensation

General Requirements (Version dated December 2024)

1. All insurers shall be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers shall have an A.M. Best Company rating of at least A- Class VII.
3. Additional Insured. City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, umbrella liability, excess liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage. Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield.
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver. All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits. The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates. Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
 - a. the effective date of the Contract
 - b. the expiration date of any coverage
 - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

Insurance Requirements

The Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense, and for the duration of the Agreement including any warranty periods under which the Agreement are satisfied, the following:

Commercial General Liability

Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability. For contracts involving vendor/contractor contact with minors or at risk adults, Sexual Abuse and Misconduct Coverage should be included in the coverage requirements and listed on the certificate.

Minimum limits:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate (per project aggregate for construction contracts)
- \$2,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)

Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired, and non-owned autos).

Minimum limits:

- \$1,000,000 each accident combined single limit
- If hazardous materials are transported, an MCS 90 form shall be included on the policy

Workers' Compensation

Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment. This requirement shall not apply when a contractor or subcontractor is exempt under the Colorado Workers' Compensation Act and when such contractor or subcontractor provides an appropriate sole proprietor letter.

Employer's Liability with minimum limits:

- \$100,000 Each Accident
- \$100,000 Each Employee by Disease
- \$500,000 Disease Aggregate

Deviations

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to RiskManagement@broomfield.org.

Certificate Holder/Certificate of Insurance (COI)

On all Certificates of Insurance the following shall be named an Additional Insured and included on the Certificate provided:

The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Umbrella Liability, Excess Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.

City and County of Broomfield
One DesCombes Drive
Broomfield, CO 80020-2495
certificates@broomfield.org



City and County of Broomfield

City Council Regular Meeting

A. Public Hearing Ordinance Approving a Business Incentive Agreement with Restaurant Depot -Second Reading

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Action Items Item: 7A.
Presented By	
Jeffrey Schreier	
Community Goals	

Overview

[View Correspondence](#)

[View Presentation](#)

Ordinance No. 2257 would approve a new business incentive agreement for Restaurant Depot. Restaurant Depot plans to expand and grow in Broomfield, bringing increased job opportunities, investing in development, and generating ample retail activity, resulting in a growth in the tax base, diversifying while developing the local economy, and thus, increasing annual tax revenues.

Attachments

[Memo for Ordinance No 2257 Approving A Business Incentive Agreement with Restaurant Depot- 2nd Reading.pdf](#)

[Ordinance No. 2257 - Approving A Business Incentive Agreement With Restaurant Depot - 2nd Reading.pdf](#)

[Restaurant Depot Investment Agreement - Signed by RD 3.11.2025.pdf](#)

Summary

[View Correspondence](#)

[View Presentation](#)

[Restaurant Depot LLC](#), is planning to expand to Broomfield by investing \$5,000,000 in equipment and other investments into a roughly 54,000 square foot wholesale food service supply store site located at 112th and Main Street (11280 Reed Way). The expansion and the anticipated growth will increase job opportunities, deepen private investment, further diversify the local economy, and grow the tax base; and thus, increase annual tax revenues. Ordinance 2257 would approve a business incentive agreement with Restaurant Depot LLC. The agreement is limited to total reimbursement of sales and use tax revenues paid by the business for the location and establishment of a retail space within Broomfield, with a maximum amount of up to \$1,100,000.



Broomfield has built and maintained a strong, diversified tax base ([Community Goal 1: Financial Sustainability and Resilience, Indicator 1.D](#)), through balancing residential and business development and growth. To support business success and growth, our continuing efforts range from developing a productive, talented workforce, supporting commercial development matching current demands and next-generation needs for workspace, and maintaining a focus on reasonable, reliable business costs in providing quality services and effective infrastructure.

Businesses are facing several challenges as they strive to meet customer demands, innovate new products and services, and support their employees and their families. Business decisions, on where and when to locate and grow, are increasingly being influenced by preferences and behavior choices of future employees. Broomfield programs and services align with these factors, including ensuring a range of housing choices (access, location, and costs), transportation mobility, workforce development, education programs, and opportunity. The staff works closely with commercial developers to encourage new and redeveloped workspaces to increase the amount and type of spaces. These work efforts include work with the owners

and developers of Simms Technology Park, Baseline, and existing buildings and spaces around West Midway and Interlocken.

Balancing the cost of doing business while making strategic investments in infrastructure and services continues to be a primary goal and outcome for Broomfield, area, and state leaders. Like other communities in the Denver metro, Broomfield occasionally provides business incentive agreements to specific businesses in targeted business sectors as a means to maintain and strengthen our local economy and tax base.

In 2024 and early 2025 Council approved incentive agreements for La Belle Bakery, SiNaptic Tech, and Peak Energy which add to a number of previous business incentive and development agreements ([2025 Proposed Budget, Table 19A](#)). Previous agreements range from supporting Ball Aerospace's new Technology and Research facility and operations (approved in 2020, a total commitment of \$2.65M) to the Residence Inn/Fairfield Suites (approved in 2016, a total commitment of \$52,590).

Broomfield's approach to business incentive agreements has followed a consistent model, with the terms of the agreement requiring specific performance related to new investment, employment, and taxes generated, which is demonstrated through employment certification and tax payments. Upon receipt of the tax payment, a portion of the generated taxes are then remitted to the company. Both the specific application of taxes (sales and use, real property, and business personal property) and the shares are prescribed in the agreement.

Broomfield has generally capped the share of the tax revenue remitted in a direct business incentive agreement to less than fifty percent (50%) of the new taxes generated, and generally limits the agreements to a 10-year reimbursement period. As a note, development support agreements (such as the Baseline Managed Growth and Development Agreement (MGDA) and the Broomfield Town Square Redevelopment and Reimbursement Agreement (BTS RRA) may have different approaches and terms.

Incentive Agreement for Restaurant Depot LLC

Ordinance 2257 would approve a business incentive agreement with [Restaurant Depot LLC](#), who will expand into and grow in Broomfield. The expansion and the anticipated growth will increase job opportunities, deepen private investment, further diversify the local economy, and grow the tax base; and thus, increase annual tax revenues.

Restaurant Depot LLC, will construct nearly 54,000 square feet of retail space near 112th and Main Street for a wholesale foodservice supply store. This store would add to the company's stock of 161 stores located across the United States. Restaurant Depot LLC has been supplying small restaurants and food businesses since 1990 with wholesale access to equipment, food, kitchenware, and other supplies. The business will hire 50 employees in Broomfield to staff their new location. The current capital investment is projected to be \$5,000,000 at this location including equipment and construction.

The proposed business investment agreement is limited to total reimbursement of tax revenues paid by the business for the location and establishment of new business and facility, with a maximum amount of up to \$1,100,000 over a 5-year tax payment period (2025-2029). This agreement includes:

- partial reimbursement of fifty percent (50%), of the company's payment made for the general fund portion (3.5%) of Broomfield's use tax remitted by the company, or its contractors; and
- partial reimbursement, twenty percent (20%), of the company's payment made for the general fund portion (3.5%) of Broomfield's sales tax remitted by the company.

Business support (incentive) agreements are approved by ordinance. The agreement is a pledge by Broomfield to reimburse a business all or a portion of the sales, use, and personal property taxes generated by the taxable activity of the business over multiple years, thereby creating an indebtedness requiring approval by ordinance, per the City and County Attorney.

Financial Considerations

The proposed business, and the related property development, will have a net positive fiscal benefit. The anticipated property, use and sales tax revenue over the term of this agreement is estimated to be \$11.4M, with the majority being generated through on-site sales to commercial and residential patrons. The business, which operates other locations in Colorado, has provided information on the anticipated sales and taxes paid for the on-site business customer sales. Other tax revenue payments will be made related to the building construction and operations; the Use Tax on construction materials, Ad Valorem (Real Property) Tax, and Business Personal Property Tax. Property tax revenues will be generated and support other taxing entities, including Jefferson County R1 Schools and the North Metro Fire Rescue District.

The proposed business will increase food and kitchen equipment purchase choices for area restaurant and food businesses, as well as local and area residents. This activity, which in general, is net new sales activity within the City and County of Broomfield is the primary fiscal basis for the recommended business support. The combined Sales Tax and Use Tax (on construction materials for the building) is estimated to total \$9.1M over the term of the agreement (based on information provided by Restaurant Depot).

The proposed Restaurant Depot site is within the Original Broomfield Urban Renewal Area, and a portion of the sales and use tax revenues generated in this area have been previously pledged to support the broader Interpark development. The 2017 Interpark Redevelopment and Development called for \$1.8M in funding (from sales and use tax payments), with \$1.0M still due. The planned development in this area was flex, innovation and light industrial buildings and uses. The proposed business and the sales greatly increases the sales tax revenues generation, resulting in the payoff of the support under the 2017 agreement to be completed within one to two years. Combining the proposed business support and the remaining balance payment balance, the total support for the area and business would total \$2.1M. With the estimated total tax revenues of \$11.4M and the proposed and outstanding obligations of \$2.1M, this proposed business and activity would result in a 5.4:1 investment return (or 72% of generated revenue).

Sources and Uses of Funds	Amount
General Fund Use and Sales Tax Payments from Restaurant Depot LLC (2025-2029) <i>(Tax payments are estimated based on company provided information)</i>	\$9,100,000
Restaurant Depot LLC (sharing agreement, maximum)	\$1,100,000
Net Sales and Use Tax Revenues Balance	\$8,000,000

Prior Council or Other Entity Actions

Ordinance 2257 was approved on first reading on [April 8, 2025](#).

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

If Council desires to proceed with the incentive agreement and provide business support through reimbursement of a share of added sales/use taxes derived from the location of the specific business to Broomfield, it is recommended...

That Ordinance 2257 be adopted on second and final reading and ordered published.

Alternatives

Do not approve Ordinance 2257, to provide business support through reimbursement of a share of added sales/use taxes derived from the location and expansion of the specific businesses.

ORDINANCE NO. 2257

An Ordinance approving a Business Incentive Agreement with Restaurant Depot LLC.

Recitals.

Whereas, Broomfield has built and maintained a strong, balanced tax base through balancing residential and business development and growth.

Whereas, in order to attract, grow and retain businesses within the community, Broomfield occasionally provides business incentives to specific businesses in targeted business sectors.

Whereas, the benefits of expanding and relocating businesses within Broomfield include an increase in employment and wage earning opportunities for residents and an increase to local tax revenue from real and personal property, lodgers and sales and use taxes.

Whereas, Broomfield is intentionally limited in its use of business incentives to support businesses. Business incentive agreements are performance based, with a reimbursement to the recipient company from collected revenues resulting from the business's taxable activity over a period of up to ten years.

Whereas, the revenues subject to reimbursement pursuant to a business incentive agreement may include sales taxes, use taxes and personal property taxes paid by the business to Broomfield. Business incentives do not include tax revenues collected by Broomfield on behalf of other governmental entities.

Whereas, the City has determined that supporting the growth of local businesses and the relocation or expansions of selected businesses to Broomfield is in the best interest of the City, serves the public interest, and benefits the public.

Whereas, pursuant to Section 6.4 of the Home Rule Charter, every act making an appropriation, creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing a burden upon or limiting the use of private property, shall be by ordinance.

Whereas, Chapter 3-40 of the Broomfield Municipal Code authorizes the City Council to enter into an agreement to provide all or a portion of Broomfield's retail sales and use tax revenue generated by taxable activity to be used to provide incentives to attract individual retail or commercial businesses to Broomfield.

Whereas, the pledge by Broomfield to reimburse a business all or a portion of sales, use and personal property taxes generated by the taxable activity of the business over multiple years creates an indebtedness requiring approval by ordinance.

Whereas, City Council has determined it appropriate to enter into business incentive agreements to Restaurant Depot LLC.; a form of which is on file with the City Clerk.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

Section 1.

The business incentive agreement, by and between the City and County of Broomfield and Restaurant Depot LLC, in substantially the form presented to the City Council and on file with the City Clerk, is hereby approved.

Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the business incentive agreement, in a form approved by the City and County Attorney.

Section 3.

This ordinance shall be effective seven days after public notice following final passage.

Introduced and approved after first reading on April 8, 2025, and ordered published in full.

Introduced a second time and approved on April 22, 2025, and further ordered published.

The City And County Of Broomfield, Colorado

Mayor

Attest:

Office of the City and County Clerk

Approved As To Form:

City and County Attorney

KF

**INVESTMENT AGREEMENT BETWEEN THE
CITY AND COUNTY OF BROOMFIELD AND
RESTAURANT DEPOT LLC**

1.0 PARTIES. The parties to this Agreement (hereinafter referred to as the "Agreement") are the City and County of Broomfield, a Colorado municipal corporation and county, (hereinafter referred to collectively as the "City") and Restaurant Depot LLC (hereinafter referred to as "Restaurant Depot") and provided that City and Restaurant Depot may be individually referred to herein as a "Party" and together may be referred to as the "Parties."

2.0 RECITALS.

2.1 Restaurant Depot is a restaurant supply business which will build a retail site within Broomfield, Colorado.

2.2 Restaurant Depot desires to grow and invest in building a retail facility located in Broomfield.

2.3 Restaurant Depot will invest in fixtures and equipment for the site, and will continue to invest in their operations in the City. The capital investment is expected to be more than \$5,000,000.00, for equipment and other investments in the new facility. The facility is expected to generate considerable sales taxes to support infrastructure and services provided by the City and County of Broomfield.

2.4 It is the policy of the City to support its local businesses, encourage the creation and retention of local jobs, increase economic activity, and to generate new sales and property taxes.

2.5 The City finds and determines that the development proposed by Restaurant Depot is in the best interest of the City, serves the public interest, and benefits the public.

3.0 THE OBLIGATIONS OF RESTAURANT DEPOT. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Restaurant Depot agrees as follows:

3.1 Restaurant Depot shall maintain a retail sales facility by occupying no less than 54,000 square feet of retail sales space in the City. This space may be company-owned or company-leased. Evidence of meeting this requirement will be:

3.1.1 By an existing lease, future lease, and/or building ownership; and

3.1.2 Property tax records, *Ad Valorem* Property and Business Personal

Property, showing the location, tax liability, and payment by Restaurant Depot as an entity within the City and with taxes owed to the City.

3.2 Restaurant Depot may operate in other work spaces, office space and additional retail space. If this space is located within the City, then it will be included in any calculations for business support.

3.3 In exchange for the receipt of any tax rebates from the City, Restaurant Depot shall employ no less than 50 full time employees at its Broomfield location or operate at least 54,000 square feet of retail space beginning April 1, 2025 through March 31, 2030.

4.0 THE OBLIGATIONS OF THE CITY. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City agrees as follows:

4.1 Use Tax Rebate. The City agrees to rebate and pay to Restaurant Depot an amount equal to fifty percent (50%) of the City's 3.50% use tax, which percentage excludes 0.25% presently allocated for open space and 0.40% presently allocated for the county functions, levied and collected on building construction materials used in the initial construction of the proposed development (hereinafter referred to as the "Use Tax Rebate"). The City estimates the maximum amount of the Use Tax Rebate to be a total of \$195,050.

4.2 Sales Tax Rebate. The City agrees to rebate and pay to Restaurant Depot an amount equal to twenty percent (20%) of the City's 3.50% sales tax, which percentage excludes 0.25% presently allocated for open space and 0.40% presently allocated for the county functions, levied and collected on taxable retail sales made (hereinafter referred to as the "Sales Tax Rebate"). The City estimates the maximum amount of the Sales Tax Rebate to be a total of \$904,950.

4.3 Maximum Rebate. The maximum rebate to be paid by the City to Restaurant Depot from the shared use and sales tax when combined shall not exceed \$1.1 million.

5.0 Term. The Term of this Agreement shall commence on the date of final approval by the Parties and shall continue for five years at which time the Agreement will automatically terminate. All obligations of the City to rebate and pay use tax and sales tax shall terminate upon termination of the Agreement.

6.0 Repayment Conditions. During the term of the agreement, year one to year five, if in any year Restaurant Depot fails to maintain the required full time employment minimums pursuant to Section 3.3 above, no rebate for that year shall be made to Restaurant Depot.

7.0 Miscellaneous.

7.1 The City shall calculate and pay Restaurant Depot any rebate authorized by the Agreement based upon the actual taxes levied and collected and not the amounts of tax estimated herein.

7.2 The City's obligations pursuant to this Agreement terminate if Restaurant Depot does not maintain a physical presence (including a retail sales facility) in the City following the commencement of this agreement. The City agrees to use its best efforts, including but not limited to, assigning a senior level staff person to assist Restaurant Depot with the process necessary for obtaining the permits and approvals required for the development and operation of the facility.

8.0 ASSIGNMENT. This Agreement shall not be assigned by the other Party without the prior written consent of the City, provided, however, that Restaurant Depot shall have the right to assign this Agreement to any wholly owned affiliate of Restaurant Depot without prior written consent of the City, but with prior written notice to the City.

9.0 NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other Party or Parties. Such notice shall be deemed to have been given when deposited in the mail of the United States Postal Service.

10.0 EXHIBITS. All exhibits referred to in this Agreement, if any, are by reference incorporated herein for all purposes.

11.0 DELAYS. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, acts of terrorism, regulations or order by civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.

12.0 DEFAULT. Time is of the essence. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by either Party within ten (10) business days following receipt of notice to the non-performing Party, then this Agreement, at the option of the Party who is not in default, may be terminated by the non-defaulting Party, in which case, the non-defaulting Party may recover such damages as may be proper. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, the non-defaulting Party shall have the right to an action for damages that is limited to the amount of use and personal property taxes rebated under this Agreement.

13.0 PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

14.0 ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

15.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

16.0 WAIVER OF BREACH. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

17.0 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado.

18.0 BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

19.0 EXECUTION IN COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

20.0 NO THIRD-PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

21.0 FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. In the event the City fails to appropriate funds for this Agreement beyond the current fiscal year, the City shall have no obligations for rebates for future fiscal years. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the other Party.

22.0 NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

23.0 SEVERABILITY. If any provision of this Agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

24.0 EXECUTION REQUIRED. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement.

25.0 MINOR CHANGES. The Parties executing this Agreement are authorized to make non-substantive corrections to this Agreement and attached exhibits, if any, as the Parties mutually consider necessary; provided, however, that a copy of any correction made to this Agreement and attached exhibits, if any, by a Party shall immediately be provided to the other Party and, further, no such correction shall be effective unless the other Party has indicated its agreement with such correction

26.0 DAYS. If the day for any performance or event provided for herein is a Saturday, Sunday, or a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

27.0 GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, extension of time, or appropriation, budgeting, or payment action, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

28.0 PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and neither Party shall be deemed to be partners or joint venturers, and neither Party shall be responsible for any debt or liability of the other Party.

29.0 PRIOR AGREEMENTS. By entering into this Agreement, the Parties terminate any prior existing agreements entered into between the Parties.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of March 11, 2025.

THE CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation and county

Mayor

ATTEST:

Clerk & Recorder

APPROVED AS TO FORM:

City & County Attorney

Restaurant Depot, LLC.

Allen Dal
By: Auben Vogel
As: COO 3/11/25

State of Colorado)
) ss.
County of Broomfield)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025 by _____ as _____ of Restaurant Depot, LLC.

Notary Public

My Commission expires: _____

SEE
ATTACHED

NOTARY PUBLIC CERTIFICATE OF
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Orange }

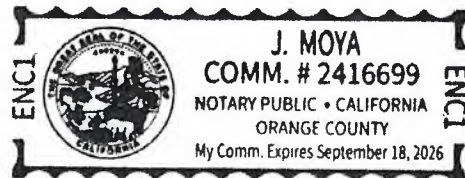
On March 11, 2025 before me, J. Moya Notary Public
(insert name and title of the officer)

personally appeared Ruben Roger Vogel,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf
of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

J. Moya
Notary Public Signature



(Seal)

OPTIONAL INFORMATION

DOCUMENT

Investment Agreement
(name or type of document)

6
(number of pages)

3-11-25
(document date)

SIGNER CAPACITY

COO
(capacity claimed by the signer)

NOTICE

THE NOTARY PUBLIC DOES NOT
CERTIFY THE AUTHORIZED
CAPACITY OF THE SIGNER



B. Proposed Resolution Construction Agreement for Utility Infrastructure Rehabilitation

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Action Items Item: 7B.
Presented By	
Ken Rutt, Director of Public Works	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience	

Overview

[View Correspondence](#)

[View Presentation](#)

Resolution 2025-41 would approve a construction agreement with Insituform Technologies, LLC d/b/a C & L Water Solutions in the amount of \$1,650,600 for stormwater rehabilitation. Stormwater collection systems are large, complex underground piping networks that represent a significant portion of the physical infrastructure for managing stormwater runoff. These systems help control and direct stormwater flow, preventing contamination from external sources and ensuring proper drainage. Broomfield's closed-circuit television (CCTV) inspection program plays a crucial role in identification of defective stormwater pipes before they fail. By detecting potential issues early, the City can implement targeted rehabilitation efforts, preventing the need for costly emergency dig-and-replace operations, which are often more disruptive and expensive. The cost for a dig-and-replace is, on average, \$800.00 per foot vs. the alternative rehabilitation of trench less lining technology which is, on average, \$140.00 per foot. This rehabilitation project will safeguard the long-term functionality of the stormwater collection system, mitigate flooding risks, and meet regulatory compliance with environmental standards.

Attachments

[Memo for Stormwater Rehab.pdf](#)

[Resolution No. 2025-41.pdf](#)

[C & L Water Solutions - Utility Infrastructure Repairs 2025 Agreement- Final- Vendor Signed.pdf](#)

Summary

[View Correspondence](#)

[View Presentation](#)

Overview

Stormwater collection systems are large, complex underground piping networks that represent a significant portion of the physical infrastructure for managing stormwater runoff. These systems help control and direct stormwater flow, preventing contamination from external sources and ensuring proper drainage. Municipal Stormwater Systems have several essential components, including Broomfield's stormwater assets listed below:

Pipes - Broomfield currently maintains 174 miles of stormwater collection mains, ranging from 6-inch diameter to 288-inch (24 foot) diameter. Stormwater pipe materials are Concrete, Corrugated metal/plastic, and PVC to efficiently convey stormwater to ponds and state waters. These pipes play a crucial role in directing and managing stormwater runoff, helping to prevent flooding and protect water quality.

Inlets - Broomfield maintains 3,504 stormwater inlets, which are the entry points for stormwater runoff into the drainage system. These inlets are designed to capture and convey stormwater runoff from paved surfaces, preventing pooling or property damage while ensuring the effective flow of stormwater into the underground stormwater system.

Manholes - Broomfield maintains 2,617 stormwater manholes, which provide access points for the underground stormwater piping. These manholes are essential for inspecting, cleaning, maintaining, and upgrading the stormwater collection system. Stormwater manholes allow access, ensure the system operates smoothly and allows for efficient management of stormwater flow.

Together, these components work in unison to ensure the proper conveyance and maintenance of stormwater, helping to protect the community from flooding and maintaining water quality in natural waterways to protect public health and infrastructure.

Recommendation for the Stormwater Rehabilitation Project :

Broomfield's closed-circuit television (CCTV) inspection program plays a crucial role in identification of defective stormwater pipes before they fail. By detecting potential issues early, the City can implement targeted rehabilitation efforts, preventing the need for costly emergency dig-and-replace operations, which are often more disruptive and expensive. The cost for a dig-and-replace is on average \$800.00 per foot vs. the alternative rehabilitation of trenchless lining technology which is on average \$140.00 per foot. This will safeguard the long-term functionality of the stormwater collection system, mitigate flooding risks, and meet regulatory compliance with environmental standards.

The map below represents this year's stormwater rehabilitation sites:



The key reasons for rehabilitating a corrugated metal pipe (CMP) using methods like UV CIPP liner rehabilitation include:

- **Corrosion Resistance** - Over time, CMPs are highly susceptible to corrosion, particularly when exposed to moisture, chemicals, and environmental elements. The CIPP liner provides a durable, corrosion-resistant layer that extends the life of the pipe and prevents further degradation.
- **Structural Integrity** - CMPs can experience structural damage from soil settlement, ground movement, or external loads. The rehabilitation strengthens the pipe, restoring its structural integrity without needing full pipe replacement, which can be costly and disruptive.
- **Cost-Effectiveness** - Rehabilitation methods, such as UV CIPP, are typically more cost-effective than complete pipe replacement. The CIPP method eliminates the need for extensive excavation and allows for a less disruptive, quicker installation.
- **Minimizing Disruption** - Rehabilitating the existing CMP with a CIPP liner is less invasive than full replacement, reducing traffic disruptions, environmental impact, and disturbance to surrounding areas.
- **Improved Flow and Reduced Risk of Blockages** - The CIPP liner restores a smooth, consistent interior surface, improving flow capacity and reducing the likelihood of blockages caused by corrosion or debris accumulation.
- **Point Repairs for Specific Damage** - Point repairs allow for targeted rehabilitation of localized pipe defects, such as holes or cracks, without the need for extensive replacement. This minimizes the amount of work needed and focuses resources on the areas of most concern.

- **Extended Service Life** - The CIPP liner effectively extends the service life of the existing pipe, often by up to 50 years, by providing a new, robust interior that is resistant to future damage, thereby deferring the need for future costly repairs or replacements.
- **Environmental Considerations** - CIPP rehabilitation methods are more environmentally friendly compared to traditional pipe replacement. They minimize excavation, reduce material waste, and have a lower carbon footprint, contributing to sustainability goals.
- **Avoiding Full Excavation** - In many cases, the CMP may be located in hard-to-reach or sensitive areas (such as under roads, buildings, or water bodies). CIPP rehabilitation eliminates the need for digging up the pipe, preserving the surrounding environment and infrastructure.

These factors combined make rehabilitation an attractive alternative to traditional pipe replacement, offering long-term benefits and minimizing disruptions

Project

The 2025 Stormwater Rehabilitation Project includes four main areas.

1. **Miramonte Park Area** - This project involves the rehabilitation of existing 334-feet, 24-inch diameter corrugated metal pipes (CMP) using the UV-cured-in-place-pipe (CIPP) liner method. The work will include a full liner installation along the entire length of the pipes with a point repair to address specific damaged sections. This project also includes the rehabilitation of existing 81-feet, 18-inch diameter corrugated metal pipes (CMP) using the UV-cured-in-place-pipe (CIPP) liner method. The work will include a full liner installation along the entire length of the pipes.

UV CIPP Liner Installation:

- **Liner Material:** Utilize a UV-cured, resin-impregnated CIPP liner that is designed specifically for the diameter of the corrugated metal pipes.
- **Installation:** Use an inflatable bladder to insert the UV CIPP liner into the pipe. The liner will be pulled through the pipe from one end to the other and inflated by air
- **Curing:** Use UV light to cure the resin-impregnated liner, which will bond to the inner surface of the pipe and form a strong, durable, and impermeable liner.

Point Repair:

- Identify specific locations of damage or weakness in the CMP that require point repair (e.g., holes, cracks, or severe corrosion).
 - Perform the necessary point repair work to restore the pipe's integrity, including the application of CIPP materials or other suitable methods.
 - The point repair will be designed to seamlessly integrate with the main UV CIPP liner, ensuring the long-term durability of the entire system.
2. **Broomfield Plaza Area (Sheridan Blvd.)** - This project includes the rehabilitation of existing 377-feet, 24-inch diameter corrugated metal pipes (CMP) using the UV-cured-in-place-pipe (CIPP) liner method. The work will include a full liner installation along the entire length of the pipes.
 3. **Northmoor Area (E. 7th Ave.)** - This project includes the rehabilitation of existing 1,343-feet, 24-inch diameter corrugated metal pipes (CMP) using the UV-cured-in-place-pipe (CIPP) liner method. The work will include a full liner installation along the entire length of the pipes.
 4. **Lac Amora Area** - This project involves the rehabilitation of existing 455-feet, 40-inch diameter corrugated metal pipes (CMP) using the UV-cured-in-place-pipe (CIPP) liner method. The work will include a full liner installation along the entire length of the pipes with a point repair to address

specific damaged sections. This project also includes the rehabilitation of existing 114-feet, 36-inch / 39-feet, 32-inch / 140-feet, 28-inch and 53-feet, 18-inch diameter corrugated metal pipes (CMP), using the UV-cured-in-place-pipe (CIPP) liner method. The work will include a full liner installation along the entire length of the pipes.

Broomfield seeks to enter a contract agreement for Storm Mainline Rehabilitation.

The City of Longmont completed a competitive solicitation for Stormwater Mainline Rehabilitation through a cooperative agreement and selected the contractor to provide such services that other local governments can utilize through a cooperative purchasing effort. C&L Water Solutions was awarded the contract with the City of Longmont. C&L Water Solutions is currently contracted with the City and County of Broomfield for sewer mainline rehabilitation and has provided services for the past 4 years. C&L has provided excellent service and within budget the last 4 years. However, the existing contract specifies sewer rehabilitation only, and Procurement's recommendation is to have a new contract for Stormwater rehabilitation. Staff desires to utilize the terms of the cooperative agreement with C&L Water Solutions Inc., and the parties therefore desire to enter into an Agreement for completion of the services.

If the agreement is approved, construction will begin in early summer 2025, depending on the contractor's availability. Construction is expected to be completed by fall 2025. If the construction agreement is approved, the contractor will begin procurement of materials and an exact start date will be determined.

Public Notice

- Postcard Notification - Residents will be notified of the upcoming construction two weeks before construction starts with postcard notifications to residents within 1000 ft of the project area.
- Variable Message Boards - Variable message boards (VMB) will be placed in the vicinity of the project at least 1 week before the start of the project.

All traffic control plans will be approved by Broomfield's Traffic Engineer. Due to the location of the existing stormwater lines within the street sections, detours, flagging, and minor street closures may be required.

Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
Fund 1 (45-70020-55200 0AZ0084) Stormwater Rehabilitation - City Wide	\$1,405,600
Fund 2 (45-70621-552000 0AZ0446) Stormwater Conveyance Maintenance and Repairs - City Wide	\$200,000
Rehabilitation /Maintenance and Repair of Stormwater lines	-\$1,445,040
Construction Contingency (10%)	-\$160,560

Sources and Uses of Funds	Amount
Projected Balance	\$0

Prior Council or Other Entity Actions

[Proposed Revised 2024 Budget and 2025 Budget; Second Reading of Water / Wastewater Enterprise Ordinances](#)

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

If Council desires to proceed with the project and approve the contract for stormwater rehabilitation, the appropriate motion is...

That Resolution 2025-41 be adopted.

Alternatives

Do not approve the contract, which would delay the high-priority rehabilitation needed on the stormwater mainlines and leave the system susceptible to failure because of age and structural defects and lead to the closure to roadways due to failures.

RESOLUTION NO. 2025-41

A Resolution Approving a Construction Agreement with Insituform Technologies, LLC d/b/a/ C&L Water Solutions for Utility Infrastructure Rehabilitation for 2025

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

Section 1.

The Construction Agreement, by and between the City and County of Broomfield and Insituform Technologies, LLC d/b/a C & L Water Solutions, a Delaware limited liability company, in the amount of \$1,650,600, is hereby approved.

Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the agreement, in form approved by the City and County Attorney.

Section 3.

The City and County Manager or a designee thereof is authorized to approve change orders in an aggregate amount not to exceed ten percent.

Section 4.

This resolution is effective upon its approval by the City Council.

Approved on April 22, 2025

The City and County of Broomfield, Colorado

Mayor

Attest:

Office of the City and County Clerk

Approved as to form:

KKH

City and County Attorney

A CONSTRUCTION AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND
INSITUFORM TECHNOLOGIES, LLC DBA C&L WATER SOLUTIONS FOR UTILITY INFRASTRUCTURE
REHABILITATION FOR 2025

1. PARTIES. The parties to this Construction Agreement (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and Insituform Technologies, LLC DBA C&L Water Solutions, a Delaware limited liability company (the “Contractor”), collectively, the “Parties,” or individually, a “Party.”
2. RECITALS. The Recitals to this Agreement are incorporated herein by this reference as though fully set forth within the body of this Agreement.
 - 2.1. The City seeks to purchase services for utility infrastructure repairs. It is anticipated that there will be four main areas, or projects, for the rehabilitation work planned in 2025 represented by separate purchase orders for each phase of the projects.
 - 2.2. The City of Westminster completed a competitive solicitation for on-call utility infrastructure repairs through the Request for Proposal #RFP-PWU-24-445 and selected the Contractor to provide such services which other local governments can utilize through a cooperative purchasing effort as documented in the contract attached hereto as Exhibit A (the “Cooperative Contract”).
 - 2.3. The City desires to utilize the terms of the Cooperative Contract with the agency indicated above, and the Parties therefore desire to enter into an Agreement for completion of the services further described herein.
3. TERMS AND CONDITIONS. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:
 - 3.1. Work. The Contractor agrees to furnish all necessary labor, materials, equipment, tools, and services necessary to perform in a workmanlike manner the work (hereinafter “Work”) described in the Scope of Work attached hereto as Exhibit A and incorporated by this reference.
 - 3.2. Contract Documents. The Contract Documents shall consist of the following:
 - 3.2.1. This Agreement;
 - 3.2.2. The Cooperative Contract attached hereto as Exhibit A;
 - 3.2.3. The General Conditions attached hereto as Exhibit B;
 - 3.2.4. Any Purchase Orders issued pursuant to this Agreement, which shall include a description of the project/task, any applicable construction plans for the project, the Purchase Order Price, the period of performance for the Purchase Order and a liquidated damages amount if different from the amount set forth in this Agreement; and

- 3.2.5. Any change orders and contract amendments, as applicable;
- 3.2.6. City and County of Broomfield Standards and Specifications, as amended; and
- 3.2.7. The Insurance Requirements attached hereto as Exhibit C,

all of which are incorporated by reference as though set forth in full herein, whether or not attached hereto and shall form an integral part of this Contract. If there is any conflict between this Agreement and the other Contract Documents, this Agreement shall control.

- 3.3. Access and Inspection. The City and its representatives shall at all times have access to the Work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. All materials, equipment and supplies used in the performance of the Work shall be subject to adequate inspection and testing in accordance with generally accepted standards. The City Representative may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing at no additional cost. The Contractor shall provide all labor, tools, materials, equipment and supplies necessary to comply with the request of the City Representative. If any portion of the Work is determined to be defective, the Contractor shall bear all costs involved to bring the Work into compliance with the Agreement, including without limitation the cost to replace any materials, to re-perform or to reconstruct. The Contractor shall remove from the work site all work or materials rejected by the City for failure to comply with the Contract whether incorporated in the Work or not at no additional cost to the City.
- 3.4. Site Clean-Up. On a daily basis, the Contractor shall maintain the work site free from accumulation of waste materials or rubbish caused by performance of the Work. The Contractor shall remove all rubbish, tools, construction equipment, machinery, and surplus material from the work site. If the Contractor fails to maintain the work site in an appropriate condition, the City may, after notice to the Contractor, perform any necessary clean-up and charge the clean-up costs to the Contractor.
- 3.5. Protection of Property. All existing finishes, structures, utilities, services, roads, trees, shrubbery, etc. located on City property and adjacent property impacted by the Work shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to the satisfaction of the City within three (3) weeks of the notification of such damage, which may be extended with written approval of the City.

- 3.6. Utilities. The Contractor shall fully comply with the provisions of Article 1.5 of Title 9 of the Colorado Revised Statutes including, but not limited to, providing notices to the notification association. Unless otherwise provided in the Scope of Work, the Contractor shall be responsible for communicating and coordinating with utilities, as necessary. The Contractor shall cooperate with utilities and the City as provided in this Agreement and as required by law. The Contractor shall be responsible for determining the exact location of utilities that may interfere with construction of the Work by exploratory excavation sufficiently in advance of beginning construction in an area so that potential conflicts may be resolved. The Contractor will consider in the Contract Price all of the utility appurtenances within the project; and the Contractor shall not make a claim for delay or additional compensation due to any relocation operations by a utility.
- 3.7. Documents on Site. The Contractor shall maintain at the site for the City one electronic or hard copy of all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction. At the City's option, the referenced record drawings will be reviewed monthly by the City for acceptability. If, in the judgment of the City, the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.
- 3.8. Work By Owner and Coordination. The City reserves the right to perform work related to this Agreement and any Purchase Orders with its own forces, and to award separate contracts in connection with other portions of work on the site that are outside the scope of this Agreement. The City will provide for the coordination of the work of its own forces and of each separate contractor, as applicable, with the Work of the Contractor, who shall cooperate with the City in coordinating all of the work. The Contractor shall indemnify, defend and hold harmless the City from claims by other contractors that the Contractor interfered with work performed by other contractors or caused damage to property or work of other contractors.
- 3.9. Differing Site Conditions. The Contractor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and review of the Contract Documents.
- 3.9.1. Contractor shall give immediate written notice to the City Representative if it encounters a "Differing Site Condition," defined as either:

- 3.9.1.1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or
 - 3.9.1.2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Agreement.
 - 3.9.2. Contractor acknowledges that no request for a change order or modification in Contract Price resulting from a Differing Site Condition shall be allowed unless immediate written notice is provided and the conditions remain undisturbed until the City has the opportunity to investigate.
- 4. Term. The term of this Agreement shall commence on April 22, 2025, and extend and be effective through December 31, 2025, unless earlier terminated in accordance with the terms of this Agreement.
 - 4.1. Period of Performance. The Contractor shall begin the Work on or before the fifth calendar day after receipt of the notice to proceed (the “Start Date”) and shall complete the Work on such project and fulfill all its obligations within the number of days set forth in each Purchase Order. The notice to proceed shall also set forth the Start Date and the Completion Date. All time limits are of the essence in this Agreement. The Contractor acknowledges that a notice to proceed with a Purchase Order will not be issued until the City has received acceptable certificates of insurance and bonds, if applicable.
 - 4.2. Project Schedule. If applicable, the Contractor shall submit, prior to commencement of the Work, a completion schedule in accordance with any project special provisions from the Purchase Order and shall update the schedule for approval by the City Representative as specified in the Purchase Order. No time extensions will be granted for delays in the schedule approval. Failure by the Contractor to comply with the project schedule, other than for approved time extensions by the City, shall constitute a material breach of this Agreement. The initial progress payment shall not be made to the Contractor until the City Representative approves the completion schedule, if applicable. No subsequent payments shall be made until the City Representative approves a schedule update for each payment.
- 5. PRICE AND PAYMENT. The City shall pay the Contractor for performance of the Work the amount set forth in each Purchase Order issued for each specific project (the “Purchase Order Price”) based upon the unit prices set forth in the Cooperative Contract; provided that the total not to exceed price for the Work under this Agreement shall not exceed \$1,650,600.

- 5.1. Projects Without Retainage. For all Purchase Orders with a Purchase Order Price less than \$150,000, the Contractor shall submit an itemized invoice for services performed, stating the percentage of the Work that has been completed and the type of services performed as more particularly described below under Invoices. If applicable, the Contractor shall make payments to its subcontractors in accordance with C.R.S. §24-91-103.
- 5.2. Project With Retainage. For all Purchase Orders with a Purchase Order Price in excess of \$150,000, the City shall pay the Contractor according to the following schedule:
- 5.2.1. If the Contractor is satisfactorily performing the Agreement, the City shall make partial payments at the end of each calendar month or as soon thereafter as practicable of ninety-five percent (95%) of the Purchase Order Price based on the calculated value of the Work completed (the "Partial Payments") and shall retain five percent (5%) of the amount due to the Contractor (the "Retained Amount") until the Work is complete. If applicable, the Contractor shall make payments to its subcontractors in accordance with C.R.S. §24-91-103.
- 5.2.2. The City shall retain the Retained Amount until Final Acceptance (as defined in Final Acceptance and Final Payment below). If the Contractor has completed the Work in a manner finally acceptable to the City, the City may authorize final payment from the Retained Amount upon written request by invoice of the Contractor (the "Final Payment"). Before the Final Payment is made, the City and the Contractor, as applicable, shall comply with the Final Acceptance and Payment paragraph of this Agreement.
- 5.3. Invoices. The Contractor shall, as soon as practicable after the end of each calendar month during performance of the Work, submit an itemized invoice for services performed, stating the percentage of the Work that has been completed and the type of services performed. Each invoice will also include an Application and Certificate of Payment form (AIA Document G702) or equivalent form approved by the City. The Contractor shall prepare the invoices at its sole cost and shall include sufficient detail to enable the City to verify the appropriateness of the invoice. Each invoice shall be subject to review and approval by the City Representative. Invoices shall be paid within thirty (30) days of approval by the City Representative. The City shall not be required to pay disputed items until the dispute is resolved. Both Parties will use best efforts to resolve any dispute within 180 days. Payment of any invoice shall not act as a waiver of the City's right to recover in full any over-payment revealed by any subsequent audit or inspection. No air travel, car rental, entertainment, education expense, meals or similar or related costs shall be payable without

prior written approval of the City. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments due the Contractor under this Contract or other contracts between City and Contractor.

- 5.4. Change Orders. The Contractor will do nothing to cause the Purchase Order Price to increase without prior execution of a change order by the City. The City will issue no change order requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for this Agreement. Except as provided below and as provided in C.R.S. 24-91-103.6, the City shall have no duty or obligation whatsoever to compensate or to reimburse the Contractor for any additional work not specifically authorized as provided herein. In the event (i) the City requires additional compensable work to be performed by the Contractor prior to the execution or other finalization of a change order or contract amendment, and (ii) the Contractor has submitted to the City an estimate of the cost for the additional compensable work, then the City shall reimburse the Contractor for the costs associated with such additional work on a periodic basis in accordance with the terms of this Agreement. For emergency services, the Contractor shall use commercially reasonable efforts to notify the City if the scope of the Work is greater than what was originally anticipated and obtain authorization to proceed.

6. FINAL INSPECTION AND FINAL PAYMENT.

- 6.1. Final Inspection. The Contractor shall notify the City when the Work is complete and ready for final inspection by means of a letter of completion (the "Letter of Completion") for acceptance to warranty as provided in the City and County of Broomfield's Standards and Specifications Section 200 - Acceptance Procedures. The Contractor shall also deliver to the City, all statements to support state sales and use tax refunds and any as-built drawings. The Contractor shall provide the City with a letter of approval for contract closure from any surety furnishing bonds for the Work provided on AIA Form G707 (Consent of Surety Letter) or equivalent form.
- 6.2. Final Payment. Upon satisfactory completion of the Work, the City Representative will provide the Contractor with a written acceptance of the Work (the "Construction Acceptance into Warranty"). For Purchase Orders with a Purchase Order Price in excess of \$150,000, the payment shall not be made until the City Representative has approved the payment and a notice of contractor's settlement has been published in accordance with C.R.S. §38-26-107. The City shall condition publication and final settlement upon receipt of any duly executed approvals of the corporate surety or sureties issuing the bonds required hereunder. Such final settlement shall be advertised

as provided by statute at least twice, the last publication appearing at least ten (10) days prior to the date of final settlement. On the date of final settlement (or such later date as may be permitted by statute if claims are asserted or litigation is commenced alleging nonpayment of funds due for labor, materials, supplies, etc.), payment and final settlement shall be made in full.

7. CONTRACTOR'S REPRESENTATIONS. In order to induce the City to enter into this Agreement, the Contractor makes the following representations:
 - 7.1. The Contractor has familiarized itself with the nature and extent of the Agreement, Work, the locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. The Contractor acknowledges an obligation to comply with all applicable laws, including the Broomfield Municipal Code, to respect property rights by working within the defined work limits or designated staging areas, and to work within the prescribed work hours. The Contractor acknowledges that use of air compression brakes ("jake brakes") within City limits is prohibited, unless otherwise posted by the City Traffic Engineer.
 - 7.2. Before submitting a proposal, the Contractor has become fully informed regarding the Work and any materials or equipment required, including the amount or quantity thereof. No adjustment or modification shall be allowed for any misunderstanding of the Work or of equipment or material requirements, or of the provisions contained in this Contract and in the other Contract Documents.
 - 7.3. Contractor has given the City written notice of any conflicts, errors or discrepancies that he has discovered in the Agreement and exhibits incorporated therein and the written resolution thereof by the City is acceptable to the Contractor.
8. NOTICE AND AUTHORIZED REPRESENTATIVES. Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Contractor. The Contractor shall not replace the Contractor Representative unless: (a) the City requests a replacement, or (b) the Contractor terminates the employment of the Contractor Representative and provides a satisfactory substitute. The City must approve a substitute Contractor Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

5.1 The City designates the Superintendent Manager, Thomas Hill, as the authorized representative of the City under this Agreement. Email address is thill@broomfield.org.

5.2 The Contractor designates _____ as the authorized representative of the Contractor under this Agreement. Email address is _____.

If the Contractor is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to citycountyattorney@broomfield.org.

Failure of City's on-site representative to call to the attention of the Contractor any defective work or deviations from the Contract Documents shall not constitute acceptance of such work by the City or relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract Documents.

9. TIME EXTENSIONS AND COMPENSATION FOR DELAY.

9.1. Remedy. If the Contractor is delayed or disrupted in the performance of the Work, the Contractor's exclusive remedy with respect to such delay or disruption shall be as stated in this Section.

9.2. Time Extensions. Evaluation of all time extension requests shall be based upon the latest updated project schedule submitted to the City by the Contractor.

9.3. Definitions. The following words shall have the meaning set forth below:

9.3.1. "Contractor Delay" is defined as delay on a particular date resulting from acts or omissions within the control of the Contractor or its subcontractors, agents or suppliers, including any delay within their joint control.

9.3.2. "No-Fault Delay" is defined as delay on a particular date resulting from events beyond the reasonable control of and without the fault or negligence of either the Contractor or the City or their agents, employees, contractors, subcontractors, sub-subcontractors or suppliers.

9.3.3. "Owner Delay" is defined as delay on a particular date resulting from acts or omissions within the control of the City, its agents, employees or contractors, including the City's Representative.

- 9.3.4. “Concurrent Delay” is defined as the occurrence on a particular date of one or more instances of Owner Delay and Contractor Delay, Owner Delay and No-Fault Delay or Contractor Delay and No-Fault Delay.
- 9.4. Completion Date Adjustment. An adjustment in the Completion Date for delay on a particular date shall be made under this subparagraph if any delay on such date is classified as either Owner, No-Fault or Concurrent Delay. The adjustment in the Completion Date shall only be in proportion to the amount of the delay, which is attributable to Owner, or No-Fault Delay. No adjustment in the Completion Date shall be allowed for the portion of the delay that is attributable to Contractor Delay, including but not limited to, that portion of a Concurrent Delay which includes Contractor Delay.
- 9.5. Price Adjustment. An adjustment in the Contract Price for delay on a particular date shall be made under this subparagraph only if such delay is classified as either Owner Delay or Concurrent Delay when such Concurrent Delay includes Owner Delay. The adjustment in the Contract Price shall only be in proportion to the portion of the delay costs, which is directly attributable to Owner Delay. No adjustment in the Contract Price shall be made for the portion of the delay costs, which is attributable to Contractor Delay, or No-Fault Delay, or that portion of a Concurrent Delay which includes Contractor Delay or No-Fault Delay or both.
- 9.6. Mitigation. An adjustment in Contract Price shall be made under this subparagraph only to the extent to which the Contractor can demonstrate that its time-related costs to complete the Work will be increased. The Contractor expressly acknowledges its obligation to minimize the cost impact of compensable delays. The Contractor shall, to the best of its ability, re-assign labor and equipment, commence unaffected portions of the Work, and otherwise minimize delay costs. In no event shall the City be liable for payment of delay costs, which could have been avoided or mitigated by any means reasonably available to the Contractor or for consequential damages.
- 9.7. Notification of Delay and Recovery. The Contractor shall notify the City as soon as practicable regarding the nature and starting date of a delay, and the activities affected, but in no case later than seven (7) calendar days after the event giving rise to the delay. In the case of a continuing delay, only one notification shall be necessary. Any claim for an extension of time for delay shall be made in writing to the City not more than ten (10) calendar days after the end of the delay; otherwise, such claim shall be waived. Recovery of delay costs shall be waived unless a request for a change order for delay costs is submitted within ten (10) calendar days after the end of the delay period. The Contractor must also provide a cost and time impact analysis with any request for a change order for delay costs. The cost impact analysis shall contain all

direct and indirect labor costs, all material and equipment expenses, any and all documented impact costs related to, and/or occasioned by the Work described therein, as well as all taxes (if applicable under the provisions of this Contract), insurance and profit. Documentation supporting this cost impact analysis must be submitted at the time of the request for change order for delay costs.

10. DEFAULT AND DAMAGES. If the Contractor fails to comply with any provision of this Agreement, the Contractor shall be liable for any and all damages, including without limitation, the cost of procuring similar supplies and services and all other costs and expenses incurred by the City because of such failure. If the Contractor fails or refuses to perform the Work on schedule, or to complete the Work in a timely and satisfactory manner, the City may terminate this Contract and the Contractor's right to proceed hereunder. If the City terminates this Contract under this paragraph, the Contractor may, at the option of the City, be required to cease any or all Work provided for under this Contract and shall be liable for any additional cost to the City for services acceptable to the City from another contractor as well as any actual damages associated with such failure to perform. The cost to complete the Work or any portion thereof which remains unperformed at the time of such termination, together with any other damages, shall be deducted from any sum payable hereunder before final payment to the Contractor.
11. LIQUIDATED DAMAGES. Time is of the essence in completing the Work. Alternatively, and in lieu of actual damages for delay, in the event of delay in the completion of the Work as specified beyond the Completion Date, it would be difficult to determine the exact amount of the loss or damages suffered by the City due to delays in completion of the Work. However, the City has attempted to forecast a reasonable daily amount as compensation for the damages incurred due to late completion caused by the Contractor, based upon considerations which include, but are not limited to, public inconvenience and additional contract administration costs. Therefore, the Contractor will be liable to the City, as liquidated damages (and not as a penalty), in the amount of \$500 for each and every calendar day beyond the Completion Date. The City reserves the right to deduct said liquidated damages from any amount due the Contractor under this Agreement or, at its option, to collect such liquidated damages directly from the Contractor or its surety.
12. PERFORMANCE AND PAYMENT BONDS. In accordance with C.R.S. §38-26-105, if the Purchase Order Price exceeds \$50,000, the Contractor shall furnish at its expense a separate performance bond and labor and materials bond, each for an amount not less than one hundred percent (100%) of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the City. The

bonds shall remain in effect through Final Acceptance, and continuing in effect through completion of all warranty and guaranty work and shall be delivered to the City prior to the commencement of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.

13. COLORADO LABOR. If the Purchase Order Price exceed \$500,000, the Contractor shall employ not less than eighty percent of Colorado labor of each type or class of labor in the several classifications of skilled and common labor to perform the work under this Agreement in accordance with the provisions of C.R.S. §8-17-101 et seq.
14. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor as provided in C.R.S. § 8-40-202(2). The Contractor is not entitled to workers' compensation benefits and the Contractor is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.
15. INDEMNIFICATION. The Contractor expressly agrees to indemnify, defend and hold harmless the City, its officers, employees and insurers from and against all claims, damages, losses, expenses and demands, including court costs, attorney's fees and expenses, due to injuries, losses or damages arising out of, resulting from, or in any manner connected with the Contractor, its officers, employees, subcontractors or agents in connection with the performance of the services pursuant to this Agreement. Except for workers' compensation, disability benefits or other similar employee benefit claims, Contractor is not obligated to indemnify the City hereunder for that portion of any claims, damages, losses, demands, and expenses arising out of or resulting from any negligent act or omission of the City, or its agents and employees. This indemnification is intended to comply with and be subject to C.R.S. 13-50.5-102(8), as amended from time to time. In the event that any such suit or action is brought against the City, the City will give timely notice thereof to the other Party.
16. INSURANCE. To assure the City that the Contractor is always capable of fulfilling specified indemnification obligations, the Contractor shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit C. Current proof of such insurance is attached at Exhibit C, incorporated by this reference. However, proof of insurance attached as Exhibit C shall not be deemed to limit or define obligations of Contractor as provided elsewhere in this Agreement, and Contractor should rely on its expertise to obtain additional insurance coverage needed for the City and Contractor in its performance hereunder.
17. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Contractor shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall

provide the appropriate insurance as required for the Contractor under this Agreement. The Contractor shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Contractor without the express written consent of the City.

18. WARRANTY.

18.1. Warranty Period. The Contractor warrants that it will perform the Work in a timely, accurate and complete manner in accordance with the provisions of this Agreement. The Contractor warrants that the materials and/or workmanship will conform to the Contract Documents and that the materials used will be of good quality and new and that the Work shall be free from defects. The Contractor shall guarantee the Work against defects in workmanship and materials for a period of 2 years, commencing on the date of final acceptance of the Work by the City Representative (the "Warranty Period"). The Contractor shall also assign to the City any longer term guarantee of materials used by the Contractor as may be provided by the manufacturer. The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with this Agreement and without expense to the City. The time allowed for such corrective action shall be mutually agreed upon by the City and the Contractor. If the Contractor fails to proceed promptly in accordance with these guarantees, the City reserves the right to place the Contractor in default of its contractual obligations and may have the Work performed at the expense of the Contractor. This provision shall survive the completion of the Work and the termination of this Agreement. The above guarantee does not limit any claims that the City may otherwise have against the Contractor.

18.2. Warranty Verification. At least 60 calendar days prior to the expiration of the Warranty Period, the Contractor shall submit a written request for Final Acceptance/Release from Warranty in accordance with Section 200 of the City and County of Broomfield Standards and Specifications. The City shall make an inspection to determine whether the Work has been completed in accordance with this Agreement and may submit a written list of any defects to the Contractor (the "Warranty Work") in accordance with the City and County of Broomfield's Standards and Specifications. The Contractor shall promptly correct all Warranty Work without additional cost to the City within the Warranty Period in accordance with the City and County of Broomfield's Standards and Specifications, which indicates all deficiencies shall be corrected within 30 calendar days of receipt of the punch list. If any Warranty Work cannot be corrected within the Warranty Period, the Contractor shall submit a letter to the City Representative for approval requesting an extension of time

to complete such item (the "Request for Extension of Warranty Work"). The Request for Extension of Warranty Work must be received by the City Representative within seven calendar days of the Contractor's receipt of the Warranty Work and shall include the Contractor's justification for the request and a schedule for completion of the Warranty. The City Engineer shall approve or deny all requests for extensions based on the Contractor's justification.

19. NO THIRD PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
20. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Contractor. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Contractor. The City's fiscal year is currently the calendar year.
21. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
22. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Contractor invoice, Contractor timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Contractor's rights and obligations shall be solely governed by the terms and conditions of this Agreement.
23. SEVERABILITY. If any provision of this agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances, or the validity or enforceability of the Agreement as a whole.
24. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

25. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.
26. DOCUMENTS. All drawings, analyses, plans, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall remain the sole and exclusive property of the City, and the other Party shall not provide copies of any such material to anyone without the express written consent of the City.
27. RECORDS RETENTION. The Contractor shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Contractor for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.
28. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement.
29. SALES TAX EXEMPTION. The Contractor and its subcontractors, consultants and suppliers will not be required to pay Colorado state sales and use taxes on property incorporated into the Work. The Contractor shall obtain a sales tax exemption permit from the State of Colorado Department of Revenue, if necessary, to obtain materials for the Work without the payment of Colorado state sales tax.
30. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
31. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.
32. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.
33. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this

Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

34. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
35. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
36. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Any claims or litigation arising under this Agreement will be brought by the Parties solely in the District Court, Broomfield County, Colorado.
37. LAWS TO BE OBSERVED. The Contractor shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees. The Contractor shall procure all necessary approvals, licenses and permits at its own expense; provided, that, the Contractor will be able to receive no cost permits when such permits are issued by the City directly.
38. TERMINATION. The City reserves the right to terminate this Contract, in whole or in part, with or without cause by written notice to the Contractor. In the event of termination, the Contractor shall incur no additional expenses and shall perform no further Work for the City under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the City. The City shall pay the Contractor for all work satisfactorily performed prior to receipt of the notice of termination and for other services required by the City to be completed prior to termination and satisfactorily performed.
39. SURVIVAL OF OBLIGATIONS. Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that require continued performance or compliance beyond the termination or expiration of this Agreement, including without limitation the indemnification provision, shall survive

such termination or expiration and shall be enforceable against a Party if such Party fails to perform or comply with such term or condition.

40. DIGITAL ACCESSIBILITY STANDARDS. In 2021, the State of Colorado adopted HB21-1110 relating to the digital accessibility standards required to be implemented under the Colorado Anti-Discrimination Act which makes it unlawful to discriminate against individuals with a disability. In order to comply with the law on or before July 1, 2024, the Contractor shall ensure that all digital deliverables and digital technology provided pursuant to the terms of this Agreement shall comply with at least the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, or such updated standard as the Colorado Governor's Office of Information Technology may adopt from time-to-time.
41. EXECUTION; ELECTRONIC SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

[The remainder of this page is intentionally left blank.]

This Agreement is executed by the Parties hereto in their respective names as of April
____, 2025.

THE CITY AND COUNTY OF BROOMFIELD,
a Colorado municipal corporation and county

Mayor
One DesCombes Drive
Broomfield, CO 80020

APPROVED AS TO FORM:

Kourtney Hartmann
Kourtney Hartmann (Mar 28, 2025 13:58 MDT)

City and County Attorney's Office

CONTRACTOR:

Insituform Technologies, LLC

D/B/A C&L Water Solutions,

a Delaware limited liability company

By: Whitney Schulte

Name:

Address: 12249 Mead Way, Littleton CO 80125

EXHIBIT A
COOPERATIVE CONTRACT

City Project No. PWU-24-445-C&L

**CONSTRUCTION CONTRACT (CITY PROJECT MANAGER)
FOR THE FOLLOWING PROJECT:
On-Call Utility Infrastructure Repairs**

This Construction Contract, effective July 01, 2024, by and between **Insituform Technologies, LLC** (hereinafter, "Contractor"), a limited liability company organized pursuant to the laws of the State of Delaware and located at P.O. Box 674060 Dallas, TX 75267-4060 and the **CITY OF WESTMINSTER** (hereinafter, "City" or "Owner"), a home-rule municipal corporation organized pursuant to the laws of the State of Colorado, located at 4800 West 92nd Avenue, Westminster, Colorado, 80031, provides that the Contractor and City, in consideration of the mutual covenants hereinafter set forth, agree as follows:

PART 1 – WORK; TIME

1.01 The Contractor agrees to furnish all of the technical, administrative, professional, and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to perform in a workmanlike manner all Work required by the Contract Documents.

1.02 The Contractor agrees to undertake the performance of the Work within ten (10) days after receipt of the Notice to Proceed and agrees that the Work will be completed within twelve (12) months of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

1.03 The Parties agree that, in any section in which the Contractor prepares any document for "the approval of the City," such approval does not mean that City is responsible for the accuracy, thoroughness, or judgment contained in the document. City does not waive the right to hold the Contractor responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the City is relying on the expertise of the Contractor.

1.04 The term of this Construction Contract shall be commenced upon receipt of the Notice to Proceed. The initial term shall begin on the date of commencement of the project and shall expire on June 30, 2025. Subject to annual appropriation by the City, and subject to the provisions of section 2.05, below, this Construction Contract may renew for four (4) additional 12 month terms unless the City gives written notice of its intent not to renew this agreement no less than sixty (60) days prior to its expiration.

This Agreement is expressly contingent upon the appropriation of funds by the City of Westminster's City Council for each year of the Agreement. In the event the Westminster City Council does not appropriate the funds after the first 12 months of the Agreement it will be treated as if the City had given its notice to terminate the Agreement in compliance with Article VI. As a result, nothing in this Agreement shall be deemed or construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment.

PART 2 - CONTRACT PRICE AND PAYMENT

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Bid Proposal, not to exceed five hundred thousand dollars (\$500,000.00) annually.

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the

City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

2.03 Prior to final payment, all Work specified by the Contract Documents must be completed. Payment shall be made only after the procedure specified by the General Conditions is completed.

2.04 The City represents that either an appropriation for the price specified in this Construction Contract has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Construction Contract.

2.05 The Contract Sum for renewal periods following the initial term shall be negotiated and agreed to in writing by both parties, and any adjustment shall not exceed the annual percent change of the Denver-Boulder-Greeley Consumer Price Index for All Urban Consumers and All Items not seasonally adjusted (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics. The annual CPI-U reference period shall be January to January. The adjustment of the Contract Sum for renewal periods shall not be retroactive, and shall apply only to services provided after agreement on such adjustment.

PART 3 - CONTRACTOR'S REPRESENTATIONS

3.01 In order to induce the City to enter into this Construction Contract, the Contractor makes the following representations:

(a) The Contractor has familiarized himself with the nature and the extent of the Contract Documents, Work, the location and site of the Work and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

(b) Contractor has carefully studied all physical conditions at the site and existing facilities affecting cost, progress or performance of the Work.

(c) Contractor has given the City written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the City is acceptable to the Contractor.

3.02 Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished and the workmanship performed under this Construction Contract for a period of one (1) year or such other time that is specified in the Contract Documents after the date of acceptance of the Work by the City, and further agrees to indemnify and save the City harmless from any costs encountered in remedying such defects. Contractor shall provide a performance bond that shall remain in effect until all defects are corrected as required by this paragraph.

3.03 Contractor is an independent contractor and nothing herein contained shall constitute or designate the Contractor or any of its employees or agents as agents or employees of the City.

PART 4 - CONTRACT DOCUMENTS

4.01 In the event of inconsistencies among two or more Contract Documents, precedence will be given in the same order as enumerated, or if two documents share the same numerical value, to the more specific of the documents. The following enumerated documents comprise the Construction Documents, which

comprise the entire Construction Contract between the City and the Contractor, are attached to this Construction Contract and made a part hereof, including:

1. Change Orders;
2. Construction Contract;
3. The following Addenda, if any;
4. Special Conditions (Exhibit B)
5. City of Westminster Construction Contract General Conditions (Exhibit A);
6. Notice to Proceed;
7. Notice of Award;
8. Invitation for Bid;
9. Bid Bond, if any;
10. Submitted Proposal (Appendix C);
11. 2024 Rate Sheet (Appendix D);
12. Information and Instructions to Bidders;
13. Original Request For Proposal (Appendix E);
14. Performance Bond and Payment Bond;
15. Insurance Certificates; and
16. Work Schedule (if applicable).

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be altered, amended or repealed by a modification, in writing, executed by the City and the Contractor.

PART 5 – PROJECT MANAGER

5.01 The Project Manager, for the purposes of the Contract Documents, is the following, or such other person or firm as the City may designate in writing:

Name: Andrew Hawthorn, PE

Address: 6575 W. 88th Ave Westminster, CO 80031

Telephone: 303-658-2428

The Project Manager is authorized to represent and act as agent for the City with respect to City's rights and duties under the Contract Documents, provided, however, the Project Manager shall not have any authority to approve any Change Order or approve any amendment to the Construction Contract or Contract Documents, except for those minor Change Orders defined in paragraph 7.4.1 of the General Conditions, such authority being specifically reserved to the duly authorized official of the City having such approval authority pursuant to the City's Charter and ordinances. In the event of doubt as to such authority, the Contractor may request a written representation from the City Manager resolving such doubt and designating the person with authority under the circumstances, which written representation shall be conclusive and binding upon the City.

PART 6 - ASSIGNMENT

6.01 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This

restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

6.02 It is agreed that this Construction Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

PART 7 - GOVERNING LAW AND VENUE

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster.

7.02 This Construction Contract shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the Owner's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

PART 8 - LIQUIDATED DAMAGES

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor state in each task order as outlined below a minimum of five hundred dollars (\$500.00) for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Contractor.

It is the City's intent that liquidated damages may be established based on the project. By submitting a bid response, the contractor has acknowledged that the City reserves the right to establish liquidated damages criteria on task order requests. If the Vendor shall fail to pay such liquidated damages promptly upon demand therefore, the Surety on the Performance Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Vendor. The City and the Vendor recognize that time is of the essence in this Construction Contract and that the City may suffer financial loss if the Work is not substantially completed within the time specified on the Task Order(s), plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Vendor agree that as liquidated damages for delay (but not as a penalty) the Vendor shall pay the City an amount identified on a Task Order for each day that expires after the time specified in the Task Order until the Work is complete. By signing the Task Order, Vendor agrees that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Vendor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Vendor.

PART 9 - MODIFICATIONS

This Construction Contract shall be modified only by written Change Orders or Addenda agreed upon by the parties hereto, duly issued in form approved by the City Attorney and in conformance with the other Contract Documents.

PART 10 - AUTHORITY

The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

PART 11 - CONTINGENCY

This Construction Contract is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Construction Contract.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO Public Works and Utilities DEPARTMENT, ATTENTION: Andrew Hawthorn, PE.

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract in triplicate. Two counterparts have been delivered to the City and one counterpart has been delivered to the Contractor. All portions of the Contract Documents have been signed or identified by the City and the Contractor.

Insituform Technologies, LLC

CITY OF WESTMINSTER

By: Whittney Schulte

By: Mark A. Freitag

Printed Name: Whittney Schulte

Printed Name: Mark A. Freitag

Title: Contracting & Attesting Officer

Title: City Manager

STATE OF _____)
COUNTY OF _____) ss

ATTEST:

[Signature]
City Clerk

The foregoing instrument was acknowledged before me this ____ day of _____, 20__.

(Seal)

by _____ the
(name)
_____ of
(title)



Witness my hand and official Seal

My commission expires: _____

(SEAL)

Notary Public

APPROVED AS TO LEGAL FORM

By: [Signature]
City Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.

Mark A. Freitag
City Manager

Account No. Multiple

Address for giving notice:

P.O. Box 674060
Dallas, TX 75267-4060

Address for giving notice:

4800 West 92nd Avenue
Westminster, Colorado 80031

EXHIBIT A

City Project No. PWU-24-445-C&L

**GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT
(CITY PROJECT MANAGER)**

TABLE OF CONTENTS

ARTICLE 1	GENERAL PROVISIONS
1.1	Definitions
1.2	Execution, Correlation and Intent
1.3	Ownership and Use of Documents
ARTICLE 2	OWNER
2.1	Information and Services Required of the Owner
2.2	Owner's Right to Stop the Work
2.3	Owner's Right to Carry Out the Work
ARTICLE 3	CONTRACTOR
3.1	Review of Contract Documents and Field Conditions by Contractor
3.2	Supervision and Construction Procedures
3.3	Labor and Materials
3.4	Reserved
3.5	Warranty
3.6	Taxes
3.7	Permits, Fees and Notices
3.8	Allowances
3.9	Superintendent
3.10	Contractor's Construction Schedule
3.11	Documents and Samples at the Site
3.12	Shop Drawings, Product Data and Samples
3.13	Use of Site
3.14	Cutting and Patching of Work
3.15	Cleaning Up
3.16	Communications
3.17	Royalties and Patents
3.18	Indemnification
3.19	Attorneys Fees
ARTICLE 4	ADMINISTRATION OF THE CONTRACT
4.1	Project Manager
4.2	Project Manager's Administration of the Construction Contract
4.3	Claims and Disputes
4.4	Resolution of Claims and Disputes

ARTICLE 5 SUBCONTRACTORS

- 5.1 Award of Subcontracts and Other Contracts for Portions of the Work
- 5.2 Subcontractual Relations
- 5.3 Contingent Assignment of Subcontracts

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 6.1 Owner's Right to Perform Work and to Award Separate Contracts
- 6.2 Mutual Responsibility
- 6.3 Owner's Right to Clean Up

ARTICLE 7 CHANGES IN THE WORK

- 7.1 Changes
- 7.2 Change Orders
- 7.3 Construction Change Directives
- 7.4 Minor Changes in the Work

ARTICLE 8 TIME

- 8.1 Date of Commencement of the Work
- 8.2 Progress and Completion
- 8.3 Delays and Extensions of Time

ARTICLE 9 PAYMENTS AND COMPLETION

- 9.1 Contract Sum
- 9.2 Schedule of Values
- 9.3 Applications for Payment
- 9.4 Certificates for Payment
- 9.5 Decisions to Withhold Certification
- 9.6 Progress Payments
- 9.7 Failure of Payment
- 9.8 Substantial Completion
- 9.9 Partial Occupancy or Use
- 9.10 Final Completion and Final Payment

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

- 10.1 Safety Precautions and Programs
- 10.2 Safety of Persons and Property
- 10.3 Emergencies
- 10.4 Use of Explosives, Driving or Removal of Piles, Wrecking, Excavation Work or Other Similar and Potentially Dangerous Work
- 10.5 Underground Utilities

ARTICLE 11 INSURANCE REQUIREMENTS

- 11.1 Contractor's Insurance
- 11.2 Additional Named Insured

- 11.3 Builder's Risk/Property Insurance
- 11.4 General Requirements

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

- 12.1 Uncovering of Work
- 12.2 Correction of Work
- 12.3 Acceptance of Defective or Non-Conforming Work

ARTICLE 13 MISCELLANEOUS PROVISIONS

- 13.1 Governing Law
- 13.2 Successors and Assigns
- 13.3 Written Notice
- 13.4 Claims for Damages
- 13.5 Performance and Payment bond
- 13.6 Rights and Remedies
- 13.7 Tests and Inspections
- 13.8 Litigation and Work Progress
- 13.9 Equal Employment Opportunity
- 13.10 Commercial Driver's License Substance Screening

ARTICLE 14 TERMINATION OF THE CONTRACT

- 14.1 Termination by the Contractor
- 14.2 Termination by the Owner for Cause
- 14.3 Suspension by the Owner for Convenience

ARTICLE 1

GENERAL PROVISIONS

1.0 This Construction Contract is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Construction Contract is not approved in its entirety by City Council neither Party shall be bound to the terms of this Construction Contract.

1.1 DEFINITIONS

1.1.1 "Application for Payment" means the Contractor's request for payment submitted to the Project Manager according to the process set forth in paragraphs 9.3.1- 9.3.4.

1.1.2 "Bidding Documents" means the Bid Packet including its Bid Notice, Invitation to Bid, Instructions to Bidders, Bid Form, Non-Collusion Affidavit of Prime Bidder, Bidder's Certification, Bid Bond, and any attachments and exhibits to the Bid Packet.

1.1.3 "Certificate for Payment" means the amount approved for payment by the Project Manager after the receipt of the Contractor's Application for Payment, as more fully defined in paragraph 9.4.1.

1.1.4 "Change Order" means a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; or the extent of the adjustment in the Contract Time, if any, as more fully defined in paragraph 7.2.

1.1.5 "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Construction Contract, or other disputes between the Owner and Contractor arising out of or relating to the Construction Contract.

1.1.6 "Construction Change Directive" means a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, as defined more fully in paragraphs 7.3.1-7.3.9.

1.1.7 "Construction Contract" or "Contract" means the entire and integrated agreement between the parties hereto, evidenced by the Contract Documents, which supersedes all prior negotiations, representations, or agreements, either written or oral, subject only to amendment or modification as permitted by Article 7.

1.1.8 "Contract Documents" means the Construction Contract, the Conditions of the Contract (General, Special, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all other documents listed in the Contract, including the Bidding Documents, the Notice of Award, Notice to Proceed; Performance Bond; Payment Bond; Certificates of Insurance; and Tax-Exempt Certificates. Nothing contained in the Contract Documents creates any contractual relationship between the Owner any subcontractor, sub-subcontractor, or supplier of equipment or materials (except as provided in paragraph 5.4 hereof).

1.1.9 "Contract Sum" means the amount stated in paragraph 2.01 of the Construction Contract and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for

the performance of the Work under the Contract Documents.

1.1.10 “Contract Time” means the period of time allotted in the Contract Documents for Substantial Completion of the Work, including authorized adjustments thereto.

1.1.11 “Contractor” means the person or entity identified as such in the Construction Contract or an authorized representative thereof.

1.1.12 “Date of Commencement of the Work” is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Construction Contract or such other date as may be established therein.

1.1.13 The “Date of Substantial Completion” is the date certified by the Project Manager in accordance with paragraph 9.8.

1.1.14 “Day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

1.1.15 “Drawings” are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.16 “Final Completion” means the finding by the Project Manager that the final Certificate for Payment should be issued based on his knowledge, information and belief that the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate for Payment, is due and payable, as more fully defined in paragraph 9.10.1.

1.1.17 “Modification” means (1) a written amendment to the Construction 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 approved by the Owner pursuant to paragraph 7.4.

1.1.18 “Notice to Proceed” means the form issued by the City and accepted in writing by the Contractor that notifies Contractor to begin work on or before a date certain, establishes an end date, and returns bid security.

1.1.19 “Order for a Minor Change in the Work” means an order issued by the Project Manager adjusting the Contract Sum or extending the Contract Time as permitted by paragraph 7.4.1.

1.1.20 “Owner” means the person or entity identified as such in the Construction Contract or an authorized representative thereof. The term “City” may be used interchangeably with the term “Owner.”

1.1.21 “Project” means 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 or by separate contractors.

1.1.22 “Project Manager” means the City representative identified as such in Part 5 of the Contract.

1.1.23 “Project Manual” means the volume usually assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contract, and Specifications.

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

1.1.25 "Subcontractor" means a person or entity who has a direct contract with the Contractor to perform any of the Work at the site or an authorized representative thereof. "Subcontractor" does not include any separate contractor or his subcontractor.

1.1.26 "Substantial Completion" means the stage in the progress of the Work when the Work (or designated portion thereof that the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended use as more fully explained in paragraph 9.8.1.

1.1.27 "Sub-subcontractor" means a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work at the site or an authorized representative thereof.

1.1.28 "Underground Utilities" means any below ground line, structure, facility or installation used by a utility or service provider including, but not limited to, telephone company lines, cable and conduit; cable television lines, cable and conduit; internet lines, cable and conduit; sewer lines and water lines, including individual sewer and water service lines; stormwater lines; gas lines; electrical lines, cables and conduit; and traffic signal lines, cable and conduit.

1.1.29 "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 for the completed construction required by the Contract Documents. The Work may constitute the whole or a part of the Project.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor and shall be maintained by the Project Manager.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the Site, and having familiarized himself with the urban site construction circumstances of the Project, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Project Manager of such fact.

1.2.3 The Contract Documents include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the Drawings and the Specifications or any differences within the Drawings themselves or within the Specifications themselves have been

referred to the Owner by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all Bidders.

If any such differences or conflicts were not called to the Owner's attention prior to submission of bids, the Project Manager shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform the work at no additional cost or time to the Owner in accordance with the Project Manager's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the 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.

1.2.5 Unless otherwise stated in the Contract Documents, words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an." 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.

1.2.7 Interpretation of Contract Documents - masculine includes both the masculine and the feminine; singular includes the singular and the plural; headings are for reference only and are not substantive

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 The Drawings, Specifications, and other similar or related documents and copies thereof are furnished to the Contractor for the purpose of performing the Work and are, and shall remain, the property of the Owner. The Contractor may retain one record set. Neither the Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents, and Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). All copies of such documents shall be returned to the Owner upon completion of the Work. The Drawings, Specifications, and other similar or related documents and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyright or other reserved rights.

ARTICLE 2

OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall furnish surveys describing the physical characteristics, legal limitations and utility locations, if such utilities are the property of Owner, for the site of the Project, and a legal description of the site, if necessary. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine site characteristics and conditions. In connection with the foregoing, Contractor shall locate prior to performing any work, all Underground Utilities. If utility locate services are provided in the field by utility owners, Contractor nonetheless remains solely responsible to determine the actual location of all Underground Utilities.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Such approvals and the like shall be provided by Owner within a time and in a manner as to avoid any unreasonable delays in the Work or schedule of Contractor and shall include only such approvals for permanent facilities which are necessary to perform the Work as set forth in the Contract Documents.

2.1.3 Information or services required to be furnished by Owner shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

2.1.5 The Owner shall forward all instructions to the Contractor through the Project Manager.

2.1.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9, and 11 respectively.

2.2 OWNER'S RIGHT TO STOP THE WORK

2.2.1 If the Contractor fails to correct defective Work as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instructions of the Project Manager or Owner when based on the requirements of the Contract Documents, the Owner or the Project Manager, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner and the Project Manager to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under paragraph 2.3.1 hereof, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued

deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation and additional services and expenses made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission discovered. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents hereof unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity involving an error, inconsistency or omissions in the Contract Documents that Contractor recognized or reasonably should have recognized, without such notice to the Owner, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

3.1.1.1 If any errors, inconsistencies, or omissions in Contract Documents are recognized or reasonably should have been recognized by the Contractor, any member of its organization, or any of its subcontractors, the Contractor shall be responsible for notifying the Owner in writing of such error, inconsistency, or omission before proceeding with the Work. The Owner will take such notice under advisement and within a reasonable time commensurate with job progress, render a decision. If Contractor fails to give such notice and proceeds with such work, it shall correct any such error, inconsistency, or omission at no additional cost to Owner.

3.1.2 In addition to and not in derogation of Contractor's duties under paragraphs 1.2.2 and 1.2.3 hereof, the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Project Manager at once.

3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to paragraph 3.12.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely (subject to the terms and provisions of Article 4 hereof), responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

The Contractor shall review any specified construction or installation procedure, including those recommended by manufacturers, and shall advise the Owner if the specified procedure deviates from

good construction practice or if following the procedure will affect any warranties, and may propose any alternative procedure which the Contractor will warrant.

3.2.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract or other arrangements with the Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.2.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Project Manager in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 13.7 by persons other than the Contractor.

3.2.4 The Contractor shall be solely responsible for locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the owners thereof and prospecting. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor remains ultimately responsible to determine the actual location of all Underground Utilities, facilities, structure, or installations. The Contractor shall use his own information and shall not rely upon any information shown or not shown on the plans or on field locates provided by the utility owner concerning existing Underground Utilities, facilities, structure, or installations. Any delay, additional work, or extra cost to the Contractor caused by existing Underground Utilities, facilities, structures or installations shall not constitute a claim for extra work, additional payment, or damage.

3.2.5 The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient methods of overall installation.

3.2.6 The Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work, report errors or inconsistencies to the Owner before commencing work, and review the placement of the structure(s) and permanent facilities on the site with the Owner after all lines are staked out and before foundation work is started. Contractor shall provide access to the Work for the Owner, the Project Manager, other persons designated by Owner, and governmental inspectors. Any encroachments, as revealed by an improvement survey, made by Contractor or its subcontractors (of any tier) on adjacent properties due to construction, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of the Contractor and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole expense, either by the removal of the encroachment (and subsequent reconstruction on the project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion)

allowing the encroachments to remain.

3.3 LABOR AND MATERIALS

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

3.3.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

3.4.3 Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

3.3.4 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by the Contractor in accordance with the Contract Documents.

3.4 RESERVED

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Experienced manufacturer's representatives shall be used to supervise the installation of equipment as may be required by the Owner. Any special tools or equipment which may be required for first class work shall be provided by the Contractor.

3.5.3 The acceptance at any time of materials or equipment by or on behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality or uniformity, to the material or equipment specified, or are not as represented to the Owner.

3.5.4 In the absence of detailed specifications, all materials shall conform to the latest standards of the American Society for Testing Materials (ASTM) available at the time notice inviting Contractors to bid is published unless otherwise indicated.

3.5.5 Any reference to standard specifications in any of the Contract Documents shall always imply the latest edition of such standard specifications or specifications available at the time notice inviting contractors to bid is published unless otherwise indicated.

3.5.6 Within one year after the date of Final Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to the Contractor or his agent, the Contractor shall neglect to make, or undertake with due diligence to make the aforesaid repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense. In case of an emergency, the Contractor will be notified and shall correct and make repairs within the necessary time constraints. Failure of the Contractor to respond to the notification shall result in the Owner making the necessary repairs at the Contractor's expense. This obligation shall survive termination of the Contract.

3.5.7 Should the Owner claim by written communication before the warranty period expires that certain defects exist and that these require repair or replacement, the warranty period and applicable surety shall be automatically extended for as long as these defects remain unremedied.

3.6 TAXES

3.6.1 All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by the Owner are exempt from State and other State-collected sales and use taxes and from Westminster sales and use taxes. However, such materials may be subject to sales and use taxes imposed by other local taxing authorities.

3.6.2 Prior to City's issuance of the Notice to Proceed and start of work, the Contractor shall deliver to the Project Manager two copies of the completed and executed "Application for Exemption Certificate" with the approval of the Department of Revenue, State of Colorado, affixed. These certificates will serve as an indication to the Owner that the Contractor has acquired the necessary exemption for State and other State-collected sales and use taxes. The Contractor also agrees to make the same requirement, as contained above, of the material suppliers and subcontractors on this project.

3.6.3 Westminster use tax will be due on construction tools and equipment used on the Project if a legally imposed local sales or use tax was not paid on the full purchase price of these items. If such local sales or use tax was less than that of the City of Westminster, Contractor, equipment suppliers, and subcontractors shall pay to Westminster the difference between such local sales or use tax and the tax imposed by Westminster. Any sales or use tax due Westminster may be prorated according to the time the tools or equipment are located within the City, providing an equipment declaration form is properly filed with the City. This paragraph 3.6.3 shall apply to all construction tools and equipment which had a purchase price of \$2,500 or more.

3.6.4 All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and be kept available for inspection by the City for three years after the completion of the Project.

3.6.5 All applicable taxes are to be paid by Contractor and are to be included in appropriate bid items; except that, the Contractor shall not be reimbursed for any State or other sales or use taxes incurred as a result of failure to obtain an exemption certificate prior to City's issuance of the Notice to Proceed.

3.6.6 A copy of the Construction Equipment Declaration for Proration of Municipal Use Tax form shall be obtained from the City's Finance Department.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall obtain any necessary building permits and applicable inspections and shall secure and pay for all other permits and governmental fees, licenses and inspections, including but not limited to City right-of-way permits and street cut impacts fees, necessary for the proper execution and completion of the Work, which are customarily secured after execution of the Contract and are legally required. Contractor shall secure and pay for such permits, fees, licenses, and inspections as may be required for the Work by any jurisdiction.

3.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes or in the exercise of due care should observe that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Manager in writing, and any suggested changes shall be made to the Owner. The Contractor shall notify the Project Manager of all conflicts between the Drawings and Specifications and any laws, ordinances, rules, regulations, or restrictions that come to the Contractor's attention or should have come to his attention in the exercise of due care.

3.7.4 It is the responsibility of the Contractor to make certain that all his Work is done in accordance with applicable laws, statutes, building codes and regulations, and the Contractor shall bear any costs related to his failure to do so.

3.7.5 If the Contractor performs Work, including without limitations, the installation of any materials or equipment that it knows, or reasonably should know, would be contrary to laws, statutes, ordinances, building codes, rules, and regulations, the Contractor shall assume full responsibility for such work and shall bear all costs attributable to the correction thereof or related thereto, including all fines and penalties.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid unreasonable delay in the Work;
- .2 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
- .3 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- .4 whenever the cost is more than or less than the allowance, the Contract Sum shall be

adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

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 the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

3.9.2 Contractor shall assign a person to be and remain the Superintendent to generally and directly supervise and coordinate the performance of the Work. The naming of such person is and was a material inducement to Owner to enter into the Contract. If such person is not the Superintendent or does not remain the Superintendent for any reason whatsoever, the Owner reserves the right to review and approve or disapprove said Superintendent's replacement, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause.

3.9.3 Owner shall have the right, upon notice, to demand that the Superintendent or other key personnel retained by Contractor be replaced by Contractor. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract, may, at Owner's option, be terminated for cause.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.10.1 A preconstruction conference shall be scheduled at the time the Notice of Award is issued. The Contractor, at the preconstruction conference, shall prepare and submit for the Owner's review and approval a Contractor's construction schedule for the Work, in such form and detail as Owner may require. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to the Project Manager with Contractor's applications for payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to the Owner for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts (with hours of work approved by the Project Manager). In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Schedule.

3.10.2 The Contractor shall prepare and keep current, for the Project Manager's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Project Manager reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections (all changes and selections to be approved by the Owner in advance) made during construction, and approved Shop Drawings, Product Data and Samples and similar required submittals. These shall be available to the Project Manager and shall be delivered to him for the Owner upon completion of the Work.

3.11.2 At the date of Substantial Completion and as a condition precedent to Final Payment, the Contractor shall furnish the following documents (unless directed otherwise by Owner) to the Project Manager for submittal to the Owner: record drawings showing the field changes and selections affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of the Drawings. The Contractor shall maintain at the job site one (1) set of Drawings and indicate thereon each field change as it occurs.

3.11.3 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be maintained and delivered in hard copy **and** in an electronic/digital format acceptable to the Owner.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any 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 a material, product or system for some portion of the Work.

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

3.12.4 The Contractor shall review, approve and submit to the Owner, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

3.12.5 The Contractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Owner. Such Work shall be in accordance with approved submittals.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has 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 not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's or Project Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

3.12.8 The Contractor shall direct specific attention, in writing, on resubmitted Shop Drawings, Product Data, Samples, or similar submittals to revisions other than those required by the Owner on previous submittals.

3.12.9 When professional certification of performance criteria of materials, systems, or equipment is required of the Contractor by the Contract Documents, the Owner shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications. If any or all such calculations or certifications are found to be inaccurate or incomplete, Contractor shall assume full responsibility and bear all costs attributable or related thereto, including, without limitation, the expense of Owner's additional services associated with the verification of such calculations or certifications, and the expense of Owner's additional services made necessary by the failure of such calculations or certifications to be accurate or complete.

3.12.10 Contractor shall furnish Owner with copies of all operator's instructions, service and parts manuals, and all other literature received by Contractor from the manufacturer or supplier of equipment furnished under the Contract. All operator's instructions, service and parts manuals, and all other such literature shall be bound in permanent binders satisfactory to the Project Manager.

3.12.11 Copies of any manufacturer's guaranty or certificate as may be required by the Contract Documents or normally included with the product, shall be submitted to the Owner through the Project Manager prior to Substantial Completion of the Work issued by the Owner.

3.12.12 Throughout the progress of construction, the Contractor shall maintain a careful up-to-date record of all changes on the plans and drawings during actual construction. Upon completion of Work, and prior to Substantial Completion issued by the Owner, the Contractor shall file with the Project Manager one set of complete drawings with all changes and Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall indicate in part the exact routing, if changed from drawing location, of Underground Utilities, oxygen supply, condenser water lines, fuel oil tanks and lines, fire protection lines and any other major buried utility lines, and routing of conduit runs which are buried or concealed in concrete slabs. Such information may be used to prepare record drawings for the Owner.

3.12.13 All documents and records required to be prepared or maintained by Contractor for eventual delivery to the Owner shall be maintained and delivered in hard copy **and** in an electronic/digital format acceptable to the Owner.

3.13 USE OF SITE

3.13.1 The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the plans and shall use due care in placing construction tools, equipment, excavated materials, materials and equipment for installation and supplies, so as to cause the least possible damage to property and interference with traffic. The placing of such tools, equipment, and materials shall be subject to the approval of the Project Manager. If it is necessary or desirable that the Contractor use land outside the

Owner's right-of-way, the Contractor shall obtain consent from, and shall execute a written agreement with, the owner and tenant of the land and shall be responsible for all associated costs, including clean-up and restoration.

3.13.2 The Contractor shall protect, shore, brace, support and maintain all Underground Utilities, drains, and underground construction uncovered or otherwise affected by the construction work performed by him.

3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. It is the intent of the Contract Documents that all areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the Owner.

3.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation.

The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the prior written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 COMMUNICATIONS

3.16.1 The Contractor shall forward all communications to the Owner through the Owner's Project Manager, except as the Owner may otherwise direct in writing.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall protect, defend, indemnify and save harmless the Owner, and each of Owner's officers, agents, servants and employees, including the Project Manager from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, or the Owner's officers, agents, servants, or employees, unless otherwise specifically stipulated in the Contract Documents.

3.17.2 If the Contractor uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Contractor or his Surety shall indemnify and save harmless the Owner from any and all

claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under the Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

3.17.3 The Contractor shall pay all royalty and license fees.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner and the Project Manager and their agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor, any sub-subcontractor, supplier of equipment or materials, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 3.18.

3.18.2 In any and all claims against the Owner or any of Owner's agents or employees by any employee of the Contractor, any subcontractor, any sub-subcontractor, any supplier of equipment or materials, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor, sub-subcontractor, supplier of equipment or materials under the workers' compensation act, disability benefit acts, or other employee benefit acts.

3.18.3 RESERVED

3.18.4 The Contractor's indemnification hereunder shall apply without regard to whether acts or omissions of one or more of the Indemnitees hereunder would otherwise have made them jointly or derivatively negligent or liable for such damage or injury, excepting only that the Contractor shall not be obligated to so protect, defend, indemnify, and save harmless if such damage or injury is due to the sole negligence of one or more of the Indemnitees.

3.19 ATTORNEYS FEES

3.19.1 In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Construction Contract, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 PROJECT MANAGER

4.1.1 Subject to the limitations set forth in paragraph 5.01 of the Construction Contract, the Project Manager is empowered to act for Owner during the construction of the Work.

4.1.2 In case of termination of employment of the Project Manager, Owner may at any time employ or retain any other person it may deem qualified to perform all or any part of the duties of the Project Manager hereunder or to exercise any of its rights hereunder. Owner shall notify all parties in writing, setting forth the scope of said replacement of Project Manager's duties and responsibilities, prior to making this change.

4.2 PROJECT MANAGER'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Project Manager will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative during construction and until final payment is due. The Owner's instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 OMITTED

4.2.3 The Project Manager will not have control or charge of safety precautions and programs or any construction means, methods or decision-making in connection with the Work.

4.2.4 The Project Manager shall at all times have access to the Work wherever it is in preparation and progress.

4.2.5 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by Owner, the Owner and Contractor shall endeavor to communicate through the Project Manager, provided, however, that Owner may instruct, correspond, or negotiate with Contractor directly. Communications by and with subcontractors and suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Project Manager.

4.2.6 Based on the progress and quality of the Work, an evaluation of the Contractor's Applications for Payment, and all other information available, the Project Manager will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in paragraph 9.4.

4.2.7 The Project Manager will have the responsibility and authority to reject Work which does not conform to the Contract Documents. Whenever the Project Manager considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Paragraph 13.7 whether or not such Work has been fabricated, installed or completed.

4.2.8 The Project Manager will promptly review and approve or reject or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, for conformance with information given and the design concept expressed in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the Work or in the activities of the Contractor or separate contractors, while allowing sufficient time in the Project Manager's reasonable judgment to permit adequate review. The Project Manager's review of the Contractor's submittals shall not relieve the Contractor of any of Contractor's obligations under the Contract Documents. The Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Project Manager will prepare Change Orders in accordance with Article 7, and will have authority to order Minor Changes in the Work as provided in paragraph 7.4.1. All Change Orders,

Construction Change directives, and Field Directives shall require the approval of Owner in writing to be binding on Owner.

4.2.10 The Project Manager shall determine the date(s) of Substantial Completion and Final Completion, shall issue a Certificate of Substantial Completion when and as required by the Contract Documents, will receive, review, and maintain written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Claims must be made by written notice to the Project Manager. The responsibility to substantiate claims shall rest with the party making the claim.

4.3.2 OMITTED

4.3.3 Time limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by change order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making and acceptance 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;
- .2 Failure of the Work to comply with the requirements of the Contract Documents;
- .3 Terms of special warranties required by the Contract Documents; or
- .4 Faulty or defective Work appearing after Substantial Completion.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the site, familiarizing himself with the local conditions under which the Work is to be performed and correlating his observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. If the Owner 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 Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within twenty-one (21) days after the Owner has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceeding pursuant to paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3.

If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Project Manager, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension, or (7) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive. Such claims shall be subject to Paragraph 8.3.

4.3.8 Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein 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. Such claims shall be subject to Paragraph 8.3

4.3.9 Injury or damage to person or property. Subject to the Parties' obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in paragraphs 4.3.7 OR 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Project Manager will review all claims by the Contractor and take one or more of the following preliminary actions within ten days of receipt of a claim: (1) request additional supporting data from the Contractor, (2) submit a schedule to the Contractor indicating when the Owner expects to take action, (3) reject the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the Owner, or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.4.2 If a claim has been resolved, the Project Manager will prepare or obtain appropriate documentation.

4.4.3 If a claim has not been resolved, the Contractor shall within ten (10) days after the Project Manager's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Project Manager, (2) modify the initial claim, or (3) notify the Project Manager that the initial claim stands.

4.4.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Project Manager, the Project Manager will notify the Contractor in writing that the Project Manager's decision will be made within seven (7) days, which decision shall be considered advisory only and not binding in the event of litigation in respect of the claim. Upon expiration of such time period, the Project Manager will render to the parties the Owner's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be 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.

ARTICLE 5

SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Construction Contract, shall furnish to the Project Manager in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity.

5.1.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable and timely objection under the provisions of paragraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.1.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by paragraph 5.1.1.

5.1.4 The Contractor shall make no substitution for any subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By an 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 the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract

Documents to which the subcontractor will be bound by this paragraph 5.3, and, upon written request of the subcontractor, identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Contractor hereby assigns to Owner (and Owner's assigns) all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in writing. It is agreed and understood that Owner may accept said assignment at any time during the course of construction prior to Final Completion. Upon such acceptance by Owner, (1) Contractor shall promptly furnish to Owner true and correct copies of the designated subcontract agreements and purchase orders, and (2) Owner shall be required to compensate the designated subcontractors or suppliers only for compensation accruing to such parties for work done or materials delivered from and after the date on which Owner determines to accept the subcontract agreements or purchase orders. All sums due and owing by Contractor to the designated subcontractors or suppliers for Work performed or material supplied prior to Owner's acceptance of the subcontract agreements or purchase orders shall constitute a debt between such parties and Contractor. It is further agreed that all subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and Owner's assigns under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Construction Contract with Contractor and may not be withdrawn prior to Final Completion. Contractor shall deliver or cause to be delivered to Owner a written acknowledgment in form and substance satisfactory to Owner from each of its subcontractors and suppliers of the contingent assignment described herein no later than ten (10) days after the date of execution of each subcontract agreement and purchase order with such parties.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Construction Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Construction Contract.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule as requested by

the Owner. If the Contractor claims additional cost or time or both because of any such revisions, the Contractor shall make such claim as provided elsewhere in the Contract Documents. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors access to the site and all areas of the Work as may be reasonably necessary for the performance of their work, reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for proper execution and results of Contractor's Work or render it incompatible with Contractor's Work. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work, except as to defects not then reasonably discoverable.

6.2.3 Subject to Paragraph 8.3 hereof, any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor cause damage to the work or property of the Owner, or to other completed or partially completed construction or property on the site or to property of any adjoining owner or other party, the Contractor shall promptly remedy such damage as provided in paragraph 10.2.4.

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor, or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, employees, and agents, to the full extent as agreed to under paragraph 3.18.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor, separate contractors, and the Owner as to their responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in paragraph 3.15, the Owner may clean up and allocate the cost thereof among the contractors responsible therefor.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Construction Contract, and without invalidating the Construction Contract, only 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 between the Owner and the Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an Order for a Minor Change in the Work may be issued by the Project Manager alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or Order for a Minor Change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted; provided however, that Owner may increase the number of units without change in the unit price if reasonable.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written order to the Contractor, signed by the Contractor and the Owner stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

The Contract Sum and the Contract Time may be changed only by Change Order.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in paragraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Construction Contract, order changes in the Work within the general scope of the Construction 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 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in paragraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise Owner 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.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

7.3.6 If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner 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, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Contractor and ten percent (10%) of such Work's actual cost to be apportioned between any and all subcontractors and sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this paragraph 7.3.6, actual costs shall be defined as and limited to the following:

- .1 costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;
- .3 reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Contractor or others; and
- .4 costs of premiums for all bonds (if any), permit fees, and sales, use or similar taxes directly attributable to such Work. Actual cost does not include any item which could be deemed to be a general conditions cost or overhead, such as but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses.

7.3.7 Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Project Manager. 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.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Paragraph 8.3 hereof.

7.3.9 When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Project Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DATE OF COMMENCEMENT OF THE WORK

8.1.1 The Date of Commencement of the Work shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Construction Contract. By executing the Construction Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall begin the Work on the Date of Commencement of the Work. The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed, disrupted, or otherwise interfered with at any time, or from time to time, in the performance of the Work, the rights and obligations of the parties with respect to such delay shall be as set forth in this subsection 8.3. Contractor's exclusive remedy for any delay, disruption, or interference shall be as set forth in this subsection 8.3.

8.3.1.1 Any delay within the control of the Contractor or within the control of any subcontractor, agent or supplier thereof (including, without limitation, delay within the joint control of the Contractor or one or more of his subcontractors, agents or suppliers) shall be the sole responsibility of the Contractor, and the Contractor shall not be entitled to any extension of time or to any increase in the Contract Sum as the result of any such delay.

8.3.1.2 Upon the occurrence of any delay which will affect the date of Substantial Completion caused by

fire, flood, unusually severe weather or other act of God, or by court order, unforeseen, concealed, or differing condition related to the Work or other factors beyond the reasonable control of any party hereto or his agents, employees or subcontractors, then the period of performance specified herein shall be extended by Change Order or Construction Change Directive, on a day-for-day basis, but such extension shall not result in any increase in the Contract Sum, and provided that Contractor complies with subsection 8.3.1.4 below.

8.3.1.3 Upon the occurrence of any delay which will affect the date of Substantial Completion not concurrent with delays described under subsections 8.3.1.1 and 8.3.1.2 above, which is proximately caused by acts or omissions within the control of the Owner, his agents or employees, the period of performance specified herein shall be extended by Change Order or Construction Change Directive on a day-for-day basis and the Contractor shall be entitled to reimbursement of actual, proven costs reasonably and necessarily incurred as a direct consequence of such delay, but not in excess of the amount above the Contract Sum for each day of such delay as specified in the Contract Documents.

8.3.1.4 Any claim for an extension of time under subsections 8.3.1.2, and 8.3.1.3 above, and any claim for additional compensation authorized by subsection 8.3.1.3 above, shall be made as follows:

- .1 The Contractor shall, within five (5) days after the onset of any delay, notify the Project Manager in writing of the causes of delay, the facts relating thereto, and the requested time extension. In the case of a continuing delay, only one claim is necessary. Proof of any recoverable delay costs shall be submitted within fifteen (15) days after the end of any period of delay.
- .2 The Project Manager shall determine whether the cause for the claim for an extension of time is beyond the control of the Contractor pursuant to subsections 8.3.1.1, 8.3.1.2, AND 8.3.1.3 above. Owner shall either approve or disapprove the extension requested or claim made.
- .3 Should a time extension or delay cost claim be granted by the Owner, a Change Order or other notice, signed by the Owner, shall be issued to indicate the new date for completion, and/or the adjustment to the Contract Sum.
- .4 Failure by Contractor to timely provide, in writing, a request for time extension, claim for delay costs, or proof of such costs, shall constitute a waiver by Contractor of any time extension or reimbursement of delay costs which Contractor may have otherwise been granted pursuant to this subsection 8.3.
- .5 Nothing herein shall prevent Contractor from requesting, and Owner granting, an extension of time contingent upon payment by Contractor of an agreed amount of liquidated damages in consideration of the time extension.

8.3.2 Contractor expressly acknowledges and confirms his obligation to minimize the cost impact of any delay, delay charges being an unproductive expenditure of public funds. Therefore Contractor shall, to the best of his ability, re-assign personnel and equipment, commence or accelerate unaffected portions of the Work, and otherwise employ all prudent measures available to minimize delay costs. In no event shall the Owner be liable for payment of delay costs which could have been avoided or mitigated by any means reasonably available to the Contractor.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contractor will not be allowed any claims for anticipated profits, for loss of profits, or for any damages or additional costs incurred because of a difference between the estimate of any item and the amount of the item actually required, or for the elimination of any part of the Work. Funds for construction of the Work herein contemplated are limited. The Owner reserves the right to eliminate or reduce the items of the proposal or any of the Work as may be required to bring the cost of the Work within the limits of available funds.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to subcontractors, supported by such evidence of correctness as the Project Manager may direct. This Schedule, when approved by the Project Manager, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Construction Contract, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing for subsequent incorporation in the Work. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 When application for payment includes materials stored off the project site or stored on the project site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is off the project site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly tagged and identifiable for this project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole discretion.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Project Manager will, within seven (7) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor in writing his reasons for withholding a certificate in whole or in part as provided in paragraph 9.5.1.

9.4.2 No Certificate for Payment shall be issued unless it appears to the Project Manager that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, but without in any way waiving any of Owner's rights or claims under the Contract Documents, the quality of the Work is in accordance with the Contract Documents and that all certificates required under the Contract Documents have been furnished in proper form. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has 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 Project Manager may decline to certify payment and may withhold his certificate in whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make the determinations as provided in paragraph 9.4.2. If the Project Manager is unable to make such determinations as provided in paragraph 9.4.2 and to certify payment in the amount of the application, he will notify the Contractor as provided in paragraph 9.4.1. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which he is able to make such determinations. The Project Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to subcontractors or 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 another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or

that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 failure to carry out the Work in accordance with the Contract Documents; or

.8 failure to maintain accurate and up-to-date as-built drawings.

9.5.2 When the above grounds are removed, Certificates for Payment shall be made by the Project Manager for amounts withheld because of them.

9.6 PROGRESS PAYMENTS

9.6.1 After the Project Manager has issued a Certificate for Payment, the Owner shall make payment in a timely manner not to exceed thirty (30) days from the time the Project Manager issued the Certificate for Payment. The Owner may refuse to make payment on any Certificate for Payment for any default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8. The Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

9.6.2 The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such subcontractor's Work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

9.6.3 The Project Manager may, on request and at his discretion, furnish to any subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such subcontractor.

9.6.4 The Owner shall not have any obligation to pay or to see the payment of any monies to any subcontractor except as may otherwise be required by law.

9.6.5 Payment to suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6.7 RETAINAGE

9.6.7.1 In addition to any amounts withheld from payment pursuant to any other provision of this Construction Contract, Owner shall retain from each progress payment five percent (5%) until such time payment is due under the terms and conditions governing final payment.

9.7 FAILURE OF PAYMENT

9.7.1 If the Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the

Owner does not, for reasons other than a default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8, pay the Contractor within thirty (30) days after the date established in the Contract Documents any amount certified by the Project Manager, then the Contractor may, upon seven (7) additional days' written notice to the Owner, 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 shut-down, delay and start-up, which shall be effected by appropriate Change Order.

9.8 SUBSTANTIAL COMPLETION

9.8.1 The Work will not be considered suitable for Substantial Completion review until all project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Construction Contract are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the building or utilize the improvements on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the date of Substantial Completion.

9.8.2 When the Contractor considers that the Work, or a designated portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Project Manager a list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Project Manager. The Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, which time shall be no longer than thirty (30) days after the scheduled completion date. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Project Manager, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in 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 of construction regardless of whether the Contract Time has expired (hereinafter sometimes referred to as "partial occupancy"). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.

9.9.2 In the event of partial occupancy, the Contractor shall promptly secure endorsement from its insurance carriers and consent from its sureties, if any.

9.9.3 In the event of partial occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.4 In the event of partial occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of the operation and cost of necessary security, maintenance and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Owner shall assume proportionate and reasonable responsibility for the cost of the above services, reduced by any savings to Contractor for such services realized by reason of partial occupancy. Further, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of insurance and damage to the Work. Contractor's acceptance of arrangements proposed by Owner in respect of such matters shall not be unreasonably withheld, delayed, or conditioned. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

9.9.5 In each instance, when the Owner elects to exercise its right of partial occupancy as described herein, Owner will give Contractor advance written notice of its election to take the portion or portions involved, and immediately prior to partial occupancy, Contractor, and the Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the same.

9.9.6 It shall be understood, however, that partial occupancy shall not: (1) constitute final acceptance of any Work, (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents; provided that Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy.

9.9.7 Subject to the terms and conditions provided herein, if the Contractor claims that delay or additional cost is involved because of partial occupancy by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Project Manager will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Construction Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The

Project Manager's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in paragraph 9.10.2 have been fulfilled. Final Payment is also subject to all City Charter and City Code requirements. Warranties required by the Contract Documents shall commence on the date that the Project Manager issues a final Certificate of Payment to the Owner.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Project Manager:

9.10.2.1 Evidence of compliance with all requirements of the Contract Documents: notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents, including but not limited to (a) instruction of Owner's representatives in the operation of mechanical, electrical, plumbing and other systems, (b) delivery of keys to Owner with keying schedules, sub-master and special keys, (c) delivery to Owner of Contractor's general warranty as described in Paragraph 3.5, and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for Project Manager's review and delivery to Owner, (d) delivery to Project Manager of printed or typewritten operating, servicing, maintenance and cleaning instructions for the Work; parts lists and special tools for mechanical and electrical work;

9.10.2.2 If required by the Owner, (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Construction Contract, to the extent and in such form as may be designated by the Owner, and (d) a final waiver of liens in a form satisfactory to Owner, covering all Work including that of all subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized;

9.10.2.3 In addition to the foregoing, all other submissions required by other articles and paragraphs of the specifications including final construction schedule shall be submitted to the Project Manager before approval of Final Payment;

9.10.2.4 If any 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 any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, 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 the issuance of Change Orders affecting final completion, and the Project Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Project Manager, and without terminating the Construction Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior to certification of such payment. Such payment shall be made under the 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 all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any special warranties required by the Contract Documents, or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Project Manager and Owner.

9.10.5 The acceptance of final payment by the Contractor, a subcontractor, or supplier shall constitute a waiver of all claims by that payee.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

10.1.2 Unless otherwise provided in the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or when it has been rendered harmless, upon written direction of Owner.

10.1.3 Unless otherwise provided in the Contract Documents, the Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

- .1 all persons involved in or affected by the Work;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors or sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including but not limited to trees, shrubs,

lawns, walks, pavements, roadways, structures, private property, and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss, including but not limited to the Occupational Safety and Health Act (OSHA), as applicable.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 The Contractor shall promptly remedy all damage or loss at its sole cost and expense (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor. Utility locate services provided in the field by the Owner shall not be deemed an act or omission that relieves Contractor of its responsibility hereunder. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 3.5.

10.2.5 The Contractor shall designate a responsible member of his 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.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided in Paragraph 4.3, Paragraph 8.3 and Article 7.

10.4 USE OF EXPLOSIVES, DRIVING OR REMOVAL OF PILES, WRECKING, EXCAVATION WORK OR OTHER SIMILAR AND POTENTIALLY DANGEROUS WORK.

10.4.1 When the use of explosives, driving or removal of piles, wrecking, excavation work or other similarly potentially dangerous work is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property and shall carry on such activities under the supervision of properly qualified personnel. The Contractor shall be fully responsible for, and shall save and hold Owner harmless from, any and all damages, claims, and for the defense of any actions against the Owner resulting from the prosecution of such Work in connection with or arising out of the Construction Contract.

10.4.2 The Contractor shall notify each public utility company or other owner of property having

structures or improvements in proximity to the site of the Work, of his intent to perform potentially dangerous work. Such notice shall be given sufficiently in advance to enable the companies or other owners of property to take such steps as they may deem necessary to protect their property from injury. Such notice shall not relieve the Contractor of responsibility for any damages, claims, or the defense of any actions against the Owner resulting from the performance of such Work in connection with or arising out of the Construction Contract.

10.4.3 All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF" and shall be in the care of competent watchmen at all times.

10.5 UNDERGROUND UTILITIES

10.5.1 Known Underground Utilities and other underground structures are shown on the Drawings only to the extent such information has been made available to or discovered by the Owner. It is expected that there may be discrepancies and omissions in the location and quantities of actual Underground Utilities and other underground structures and those shown. This information is shown for the convenience of the Contractor, but is not guaranteed to be either correct or complete, and all responsibility for the accuracy and completeness thereof is expressly disclaimed by Owner. The Contractor shall, ahead of excavation, confirm the location of all Underground Utilities and other underground structures so that they will not be accidentally damaged by the construction operation. Contractor shall be responsible for contacting all utility owners concerning location of all above ground utilities and Underground Utilities before proceeding with the Work. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor shall verify actual location, and Contractor remains solely responsible for any claims or damage to Underground Utilities or other facilities or structures caused by excavating. Contractor is responsible for, at no additional cost to the owner, potholing all existing Underground Utilities to be crossed or that may otherwise affect their means and methods for constructing the Project prior to beginning any construction on the Project.

ARTICLE 11

INSURANCE REQUIREMENTS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Neither the Contractor nor any of its Subcontractors may commence work under this Agreement until all insurance required by the contract documents has been obtained and such insurance has been approved by Owner. For the duration of this Agreement, the Contractor and Subcontractors must maintain the insurance coverage required in this section.

11.1.2 The Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

11.1.3 Contractor shall procure and maintain, and shall cause each Subcontractor to procure and maintain (or shall insure the activity of Subcontractors in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Owner. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.

.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and \$TWO MILLION DOLLARS (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each accident with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

11.1.4 The policies required, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include Owner, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, or its officers or employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. If the Work includes excavation or drilling of any kind the insurance required shall not contain any exclusion for pollutants. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.

11.1.5 Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by Owner. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to Owner. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

11.1.6 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate the Construction Contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Contractor from Owner.

11.1.7 The parties hereto understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this Construction Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, section 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to Owner, its officers, or its employees.

11.1.8 Umbrella/Excess Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Umbrella (excess) Liability policy throughout the entire term of its obligations to Owner. A copy of the policy or a signed certificate of insurance shall be on file with Owner at all times. The policy shall be in excess of all underlying insurance including employer's liability. The policy shall not contain any exclusions for hazards, or contractual hazards. Limits of liability shall be a minimum of TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate.

11.2 BUILDER'S RISK/PROPERTY INSURANCE

11.2.1 Unless otherwise directed in writing by Owner, before starting Work, the Contractor shall purchase and maintain a Builder's Risk Policy upon the entire Project and Work at the site to the full cost of replacement at the time of loss, including existing structures. The policy shall include the interests of Owner, the Contractor, subcontractors and sub-subcontractors in the Work as additional insureds, provide that such insurance is primary with respect to claims made by the additional insureds. The policy shall be in the form of "all risk" insurance for physical loss or damage with all exclusions deleted. If not covered under all risk insurance or otherwise provided in the Contract Documents, the Contractor shall procure and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

11.2.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, with the concurrence of Owner, to increase the mandatory deductible amounts or purchase this insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim. If separate contractors are added as insureds to be covered by this policy, the separate contractor shall be responsible for payment of appropriate parts of any deductibles in the event claims are paid on their part of the Project.

11.2.3 This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner.

11.3 GENERAL REQUIREMENTS

11.3.1 All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

.1 Underwriter shall have no right of recovery or subrogation against Owner, it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

.2 The clause entitled "Other Insurance Provisions" contained in any policy including Owner as an additional insured shall not apply to Owner.

.3 The insurance companies issuing the policy or policies shall have no recourse against Owner for payment of any premiums due or for any assessments under any form of any policy.

.4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

11.3.2 Additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All liability insurance and

builder's risk/property insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorneys' fees.

11.3.3 The Contractor shall be solely responsible for ensuring that all subcontractors obtain and maintain in force, for the term of this Construction Contract, insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

11.3.4 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under the Construction Contract. The Contractor agrees that it alone shall be completely responsible for procuring and maintaining full insurance coverage to adequately insure against the risk attendant to the performance of this Construction Contract. Any approvals of the Contractor's insurance coverages by Owner or the Project Manager shall not operate to the contrary.

11.3.5 The risk of loss to any property to be provided by the Contractor to Owner pursuant to this Construction Contract shall be upon the Contractor until Owner issues a signed certificate of substantial completion.

11.4.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

11.3.6 The Contractor shall provide the certificates of insurance and any endorsements to a policy required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of the Contractor to provide written notice to Owner within ten (10) days of the cancellation of or substantive change to any of the policies required herein and failure to do so shall constitute a breach of the Contract.**

11.3.7 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies, licensed in the State of Colorado and approved by Owner and shall be maintained until the Work is accepted by Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents.

11.3.8 All policies under the Contract Documents that are scheduled to expire prior to the time the Work is finally accepted by Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to Owner for approval.

11.3.9 If any of the policies required under the Contract Documents shall be or at any time become unsatisfactory to Owner as to form or substance, or if an Insurer issuing any such policy shall be or at any time become unsatisfactory to Owner, Owner shall so advise the Contractor who shall promptly obtain a new policy, submit the same to Owner for approval, and thereafter submit a certificate of insurance as hereinabove provided.

11.3.10 All liability insurance and builder's risk/property insurance policies required by this Article shall be occurrence-based policies.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to the request of the Project Manager or Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Project Manager, be uncovered for his observation and shall be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

12.1.2 If any other portion of the Work has been covered which the Owner or Project Manager has not specifically requested to observe prior to being covered, the Project Manager or Owner 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 cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for the payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct all Work rejected by the Project Manager as incomplete, defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for any additional services made necessary thereby.

12.2.2 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after Final Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year 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 performance of the Work. This obligation shall survive acceptance of the Work and termination of the Construction Contract. The Owner shall give such notice promptly after discovery of the condition by the Owner.

12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected or accepted by the Owner.

12.2.4 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.3.

12.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Manager, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an

appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.6 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused, in whole or in part, by the Contractor's correction or removal of Work which is defective or not in accordance with the requirements of the Contract Documents.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof, or under law or in equity. The establishment of the time period of one year after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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 his obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

12.3.1. If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Construction Contract shall be governed by the law of the State of Colorado. Those provisions of law applicable but discretionary because of the Owner's status as a home-rule municipality shall be binding at the Owner's election.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Construction Contract shall assign, sublet, or transfer (by operation of law or otherwise) any interest in the Construction Contract without the prior written consent of the other. The Contractor shall not assign the whole or any part of the Construction Contract or any monies due or to become due thereunder without the prior written consent of the Owner and of the surety on the Contractor's bond. Any assignment without such written consent shall be void. A copy of such consent of surety, together with a copy of the assignment, shall be filed with the Project Manager. In case the Contractor assigns all or part of any monies due or to become due under the Construction Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims and liens of all persons, firms and corporations for services rendered; for the payment of all laborers and

mechanics for labor performed; for the payment of all materials and equipment used or furnished and for payment of all materials and equipment used or rented in the performance of the Work called for in the Construction Contract; and for the payment of any liens, claims, or amounts due the Federal, State or local governments or any of their funds. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

13.3 WRITTEN NOTICE

13.3.1 All notices to be given hereunder shall be in writing, and may be given, served, or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same in person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Construction Contract from and after the fourth day next following the date deposited in the mail, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given shall be sent to or made at the last business address known to the party giving notice.

13.4 CLAIMS FOR DAMAGES

13.4.1 Should either party to the Construction Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All claims by Contractor against Owner that are within the scope of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, shall be subject to, and brought in accordance with, the provisions of said Act.

13.5 PERFORMANCE AND PAYMENT BOND

13.5.1 The Contractor will be required, simultaneously with the execution of the Construction Contract, to furnish separate Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Contract Sum. Said bonds shall be issued by a responsible surety approved by the Owner and shall guarantee the faithful performance of the Construction Contract and the terms and conditions herein contained and the maintenance of the proposed improvements in good repair according to the terms contained in the Construction Contract. Accompanying the bond form shall be a "Power of Attorney" authorizing the attorney in fact to bind the surety company and certified to include the date of the bond. Such bonds shall be on forms provided by the Owner.

13.5.2 The Contractor shall deliver said bonds to the Project Manager no later than the date of execution of the Construction Contract. If the Contractor fails or neglects to deliver the bonds, as specified, he shall be considered to have abandoned the Construction Contract and his bid security will be forfeited.

13.6 RIGHTS AND REMEDIES

13.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents.

13.6.2 No action or failure to act by the Owner, Project Manager or Contractor shall constitute a waiver of any right or duty afforded any of them under the Construction Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be

specifically agreed in writing.

13.6.3 In all actions by the Owner to enforce its rights and remedies hereunder, whether at law or equity, the Owner, in addition to all other remedies, shall be entitled to recovery of its reasonable attorney's fees and costs.

13.6.4 The Contractor agrees that the economic loss rule as set forth in the *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the Owner's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of the Contract Documents. Contractor further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under the Construction Contract.

13.7 TESTS AND INSPECTIONS

13.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. 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. The Contractor shall give the Project Manager and the Owner timely notice of its readiness so the Project Manager and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals.

13.7.2 If the Project Manager or public authority having jurisdiction determines that any Work requires additional or special inspection, testing, or approval which paragraph 13.7.1 does not include, the Project Manager may instruct the Contractor to order such additional or special inspection, testing or approval, and the Contractor shall give notice as provided in paragraph 13.7.1. If such additional or special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, the Contractor shall bear all costs of such testing, inspection, and approval procedures, including compensation for any additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

13.7.3 Required certificates of inspection, testing or approval, unless otherwise required by Contract Documents, shall be secured by the Contractor and promptly delivered by him to the Project Manager.

13.7.4 If the Project Manager is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the normal place of testing.

13.7.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid delay in the Work.

13.8 LITIGATION AND WORK PROGRESS

13.8.1 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any litigation proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13.9 EQUAL EMPLOYMENT OPPORTUNITY

13.9.1 In connection with the execution of this Construction Contract, the Contractor shall not

unlawfully discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, age, sex, handicap, immigration status, gender identity or expression, sexual orientation, disability, or national origin, if otherwise qualified. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor represents that it will require a similar affirmation of nondiscrimination in all contracts it enters into with subcontractors as part of the execution of this Construction Contract.

13.10 COMMERCIAL DRIVER'S LICENSE SUBSTANCE SCREENING

13.10.1 The Contractor shall provide written assurance to the Owner that each driver that provides services requiring a commercial driver's license pursuant to this Construction Contract participates in an alcohol and controlled substances testing program that meets the requirements of the Federal Motor Carrier Safety Regulations found at 49 C.F.R. Part 382.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Construction Contract if the Work is stopped for a continuous period of sixty (60) days through no act or fault of the Contractor or a subcontractor, sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because the Project Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in paragraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment (without cause) within the time stated in the Contract Documents; or
- .4 if repeated suspensions, delays, or interruptions by the Owner as described in paragraph 14.3 constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

14.1.2 If one of the above reasons exists, the Contractor may, upon fourteen (14) days' written notice to the Owner, terminate the Construction Contract, unless this reason is cured prior to the expiration of the notice period. Contractor may recover from the Owner payment for Work properly executed in accordance with Contract Documents (the basis for such payment shall be as provided in the Construction Contract) and payment for costs directly related to work thereafter performed by Contractor in terminating such work, including reasonable demobilization and cancellation charges. The Owner shall not be responsible for damages for loss of anticipated profits on work not performed on account of any termination described in paragraphs 14.1.1 and 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Construction Contract if the Contractor:

- .1 refuses or fails to supply, in a timely manner, enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors or suppliers for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the subcontractors or suppliers;
- .3 disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- .4 disregards the instructions of Owner when such instructions are based on the requirements of the Contract Documents;
- .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and Contractor's surety, if any, seven (7) days' written notice, (except in cases of emergency as reasonably determined by Owner), terminate the services of the Contractor and may:

- .1 take possession of the site and project and of all materials, equipment, tools, and construction equipment and machinery thereon owned, rented, or leased by the Contractor; and
- .2 finish the Work by whatever method the Owner may deem expedient.

14.2.3 When the Owner terminates the Construction Contract for one of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 To the extent the costs of completing the Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the Work except for Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Construction Contract.

14.2.5 In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated, if any. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.2.6 In the event of termination pursuant to paragraph 14.2.5, Owner shall pay as the sole amount due to Contractor in connection with the Construction Contract, (i) sums due for Work properly executed in accordance with Contract Documents to date, including allowable profit and overhead (except retainage sums shall not be paid prior to one hundred twenty (120) days following the date of termination); (ii)

reasonable cost of demobilization and cancellation charges; and as additional and special consideration for this provision; (iii) a profit for underperformed work equal to one-half percent (0.5%) of the cost of the Work actually performed to date.

14.2.7 Upon a determination by a court of competent jurisdiction that the termination of Contractor pursuant to paragraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to paragraph 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in paragraph 14.2.6.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, suspend, delay, or interrupt any part of the Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving written notice to Contractor specifying the part of the Work or subcontract to be suspended, delayed, or interrupted and the effective date of such suspension, delay, or interruption. Contractor shall continue to prosecute the part of the Work not suspended, delayed, or interrupted and shall properly protect and secure the part of the Work so suspended, delayed, or interrupted. If any part of the Work or subcontract is so suspended, delayed, or interrupted, Contractor shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been suspended, delayed, or interrupted under the Contract Documents or an equitable adjustment is made or denied under another provision of the Construction Contract. In case of such suspension, delay, or interruption, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the date of Substantial Completion or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.3.2 The rights and remedies of Owner under this Section shall be non-exclusive, and shall be in addition to all the other remedies available to Owner at law or in equity.

Rev. 03/2019

EXHIBIT B

City Project No. PWU-24-445-C&L

SPECIAL CONDITIONS TO THE CONSTRUCTION CONTRACT

Westminster standards and specifications most recent edition, CDOT standards and specifications, most recent edition, Mile High Flood District Vol 3 most recent edition shall govern. Additional conditions are listed in the attached original Request for Proposal (Appendix E).

**1st AMENDMENT TO THE
CONSTRUCTION CONTRACT (CITY PROJECT MANAGER)
FOR On-Call Utility Infrastructure Repairs
BETWEEN THE CITY OF WESTMINSTER AND Insituform Technologies, LLC
DATED July 01, 2024**

The City of Westminster (hereinafter referred to as “City” or “Owner”) and Insituform Technologies, LLC (hereinafter referred to as “Contractor”) agree to amend the Agreement described above as follows:

1. PART 2 - CONTRACT PRICE AND PAYMENT, shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~striketrough~~:

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Bid Proposal, not to exceed ~~five hundred thousand dollars (\$500,000.00)~~ one million dollars (\$1,000,000.00) annually.

2. All other terms and conditions of this Agreement shall remain in effect.

SIGNATURE PAGE FOLLOWS

This Amendment is dated the 26th day of November, 2024.

Insituform Technologies, LLC

CITY OF WESTMINSTER

By: Christlanda Adkins

By: Jody Andrews

Printed Name: Christlanda Adkins

Printed Name: Jody Andrews

Title: Contracting and Attesting Officer

Title: City Manager

STATE OF _____)
) ss
COUNTY OF _____)

ATTEST:

[Signature]
City Clerk

The foregoing instrument was acknowledged
before me this ____ day of _____, 20__,

(Seal)

by _____ the
(name)
_____ of
(title)



Witness my hand and official Seal

My commission expires: _____

(SEAL)

Notary Public

APPROVED AS TO LEGAL FORM

By: [Signature]
City Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.

Jody Andrews
City Manager

Account No. _____

Award

Award Type	Intent to Award
Solicitation Information	
Solicitation Title	On-Call Utility Infrastructure Repairs
Reference Number	0000342231
Solicitation Closing Date	03/06/2024

Awardees

Supplier Awarded	American West Construction, LLC	Awarded Value	Undisclosed
Address	275 E. 64th Avenue Denver, Colorado, 80221 United States	Award Date	04/11/2024 12:00 AM MDT
Supplier Awarded	C & L Water Solutions, Inc.	Awarded Value	Undisclosed
Address	12249 Mead Way Littleton, Colorado, 80125 United States	Award Date	04/11/2024 12:00 AM MDT



WESTMINSTER



WESTMINSTER

COLORADO

REQUEST FOR PROPOSAL

On-Call Utility Infrastructure Repairs

Solicitation No. RFP-PWU-24-445

SCHEDULE OF EVENTS

Virtual Pre-Proposal	2/14/2024	3:00 PM	MST
Deadline to Submit Questions	2/23/2024	5:00 PM	MST
Response to Questions	2/28/2024	2:00 PM	MST
Proposal Due Date	3/6/2024	2:00 PM	MST
Evaluation	3/7/2024 – 3/21/2024		
Tentative Interviews	Week of 4/8/2024		

The party submitting a proposal, hereinafter referred to as the Proposer, offers to furnish to the City of Westminster the materials, supplies, products, or services requested in accordance with the specifications and subject to the Terms and Conditions described herein.

The City utilizes the Rocky Mountain E-purchasing System (BidNet®) in the advertisement and facilitation of solicitations administered by the City's Procurement Division; therefore, respondents must ONLY rely on documents provided on the Rocky Mountain E-purchasing System (BidNet®) website or as communicated directly from the Procurement official. Only rely on this web address: <https://www.bidnetdirect.com/colorado>

Table of Contents

SECTION A: GENERAL INFORMATION & RFP INSTRUCTIONS	4
A.1 PURPOSE:	4
A.2 ROCKY MOUNTAIN E-PURCHASING (BidNet®):	4
A.3 ELECTRONIC SUBMISSION OF PROPOSALS:	4
A.4 RFP ATTACHMENTS:	5
A.5 PRE-PROPOSAL CONFERENCE:	5
A.6 CLARIFYING QUESTIONS:	5
A.7 ADDENDA:	6
A.8 ACCEPTANCE PERIOD:	6
A.9 EVALUATION AND AWARDS:	6
A.10 PAYMENT CONDITIONS AND NOTICE TO PROCEED:	6
A.11 CONTRACT DOCUMENTS:	7
A.12 RFP CONDITIONS AND PROVISIONS:	7
A.13 GRATUITIES AND KICKBACKS:	9
A.14 NON-COLLUSIVE PROPOSER CERTIFICATION:	9
A.15 DISCLOSURE OF CONTENTS OF PROPOSALS:	10
A.16 REGISTRATION WITH THE COLORADO SECRETARY OF STATE:	10
A.17 COOPERATIVE PURCHASING:	10
SECTION B: SCOPE OF WORK/ REQUIREMENTS	11
B.1 INTENT:	11
B.2 TERM:	11
B.3 BACKGROUND	11
B.4 GENERAL MINIMUM REQUIREMENTS	11
B.5 UTILITY SPECIFICATIONS AND SPECIAL PROVISIONS	13
B.6 NON-EMERGENCY REPAIRS AND REPLACEMENTS	14
B.7 EMERGENCY ON-CALL 24-HOUR	15
B.8 PRICING:	15
B.9 INVOICING:	16
B.10 INSURANCE REQUIREMENTS:	16
B.11 SURETY BONDABILITY LETTER:	16
B.12 PAYMENT AND PERFORMANCE BONDS:	16
B.13 LIQUIDATED DAMAGES	17
B.14 DELIVERY CONSIDERATIONS:	18
B.15 WARRANTY GUARANTEE:	18
B.16 SPILLAGE:	18
B.17 PATENTS:	18
SECTION C: PRICING / PROPOSAL ITEMS	19
C.1 GENERAL SUBMISSION INFORMATION:	19
C.2 CHANGES:	19
C.3 MODIFICATION AND WITHDRAWAL OF PROPOSAL:	19
C.4 PROPOSAL CONTENTS AND FORMAT:	19
SECTION D: EVALUATION AND AWARDS	22

D.1 EVALUATION OVERVIEW:	22
D.2 PROPOSAL EVALUATION ITEMS:	22
D.3 AWARD OF PROJECT:	22

SECTION A: GENERAL INFORMATION & RFP INSTRUCTIONS

A.1 PURPOSE:

The City of Westminster, hereinafter referred to as the City, is soliciting proposals from qualified firms capable of performing On-Call Utility Infrastructure Repairs.

The City's detailed Scope of Work and Requirements are included in Section B.

A.2 ROCKY MOUNTAIN E-PURCHASING (BidNet®):

The City is collaborating with Rocky Mountain E-purchasing System (BidNet®) in the advertisement and facilitation of Formal solicitations administered by the City's Procurement Division.

Registration with BidNet® is available at NO CHARGE and allows Proposers access to view governmental proposals posted on BidNet®; they offer an additional notification service option with an associated fee.

The City is not responsible for the actions or lack thereof on the part of the Proposer in regards to their interaction with BidNet®, or any other third-party bid notification service in relation to this RFP.

More information is available at:

<https://www.bidnetdirect.com/colorado/cityofwestminster> or by calling 1-800-835-4603, Option 2.

A.3 ELECTRONIC SUBMISSION OF PROPOSALS:

Submission of proposals for this solicitation may only be done electronically through

BidNet® at <https://www.bidnetdirect.com/colorado/cityofwestminster>, no later than the date and time indicated in the proposal.

Please Note: Proposers are encouraged to submit their proposals as early as possible, allowing enough time for any technical difficulties they may encounter as the BidNet® system does not allow the option to accept any late proposals. Please be assured that all proposals are locked for viewing by the system and cannot be accessed until after the due date.

Proposers who feel they are unable to prepare and submit an electronic submittal should submit a request in writing to the Procurement Division, no later than the Question due date, for permission and instructions for submitting a hardcopy proposal.

A.4 RFP ATTACHMENTS:

Exhibit A	Sample Service Contract
Exhibit B	Example Task Order Form
Exhibit C	Rate Sheet

Attachment 1	Offeror Certification Form
Attachment 2	Payment Bond
Attachment 3	Performance Bond

A.5 PRE-PROPOSAL CONFERENCE:

A recommended pre-bid conference will be conducted on the date and time listed in the Schedule of Events on the cover page. The solicitation terms and conditions will be reviewed and discussed at this time. Interested Proposers may attend virtually via Microsoft Teams.

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 261 918 058 459

Passcode: ix8mfD

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 720-739-8152](#) United States, Denver

Phone Conference ID: 653 019 259#

A.6 CLARIFYING QUESTIONS:

The City shall not be bound by and the Proposer shall not request or rely on any oral interpretation or clarification of this RFP.

All Questions must be submitted online via Bidnet, no later than the date and time indicated in the Schedule of Events. Answers to all questions will be posted on Bidnet and will be available to view by all Parties.

All other communications regarding this RFP shall only be through the City's Procurement Division. **No communication is to be directed to any other City personnel, except for locating a site inspection.**

Any communication directed to other City personnel, may result in disqualification of the Proposer's submission.

A.7 ADDENDA:

In the event it becomes necessary to revise, change, modify or cancel this RFP or to provide additional information, addenda will be issued and made available on BidNet®. It is the responsibility of the Proposer to confirm that they have acquired all addenda related to this solicitation and they have reviewed/complied with the requirements therein.

A.8 ACCEPTANCE PERIOD:

Proposals in response to this RFP shall indicate that they are valid for a period no less than 90 days from the closing date, and if awarded, through the initial contract period.

A.9 EVALUATION AND AWARDS:

The criteria used for the proposal evaluation and the scoring weights are defined in Section D of this RFP.

Any award as a result of this RFP shall be contingent upon the execution of a City contract.

One award will be made on an "all or none" basis. Prices must be shown for each item listed. Proposals submitted without individual item prices listed will be considered as non-responsive and rejected.

A.10 PAYMENT CONDITIONS AND NOTICE TO PROCEED:

No performance of any work or shipment of any goods shall proceed the issuance and acceptance of a City Task Order, City Purchase Order and Notice to Proceed by the Awarded Proposer, hereinafter referred to as the Service Provider.

Payment to Service Provider will be due within 30 days after receipt of goods or completion of services and acceptance of a proper invoice. The City may withhold payment due to Service Provider's failure to comply with the PO or because unacceptable goods were delivered as determined by the City's inspection. The City shall notify Service Provider of any unsatisfactory performance as soon as reasonably practical so that it may be corrected before payment is delayed, if possible. Payment alone does not constitute acceptance.

Should final inspection reveal that work accomplished under any resulting purchase order is incomplete, or has not been made in accordance with drawings, specifications and authorized changes thereto, then the Service Provider shall be required to correct or complete the project before final payment will be made.

Under no circumstances will a Service Provider receive payment for work which was not authorized by the City representative and evident by a Purchase Order.

A.11 CONTRACT DOCUMENTS:

The City's Sample Contract is included as Exhibit A of this RFP. The awarded Service Provider will be expected to sign a reasonable facsimile of the Contract as presented in Exhibit A of this RFP packet, except that the Contract will be modified to reflect the actual scope of services being provided.

Any exceptions to the Contract documentation will be taken into consideration when evaluating proposals submitted. Proposers should submit any proposed exceptions in a redlined copy of the City's Contract when submitting their proposal. The City reserves the right to reject any or all proposed modifications.

A.12 RFP CONDITIONS AND PROVISIONS:

- 1) All participating Proposers, by their signature hereunder, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure or interlineation by the Proposer in this proposal shall constitute cause for rejection by the Procurement Manager. Exceptions or deviations to this RFP must not be added to the proposal pages, but must be on the Proposer's letterhead and accompany the proposal. Should the City omit anything from this RFP that is necessary to a clear understanding of the work, or should it appear that various instructions are in conflict, then the Proposer shall secure written instructions from the Procurement Manager at least forty-eight (48) hours prior to the time and date of the proposal opening shown on page one.
- 2) Typographical errors in entering quotations on the proposal may result in loss of award of the contract.
- 3) All Proposers are required to complete all information requested in this RFP. Failure to do so may result in the disqualification of the proposal.
- 4) The City reserves the right to postpone or cancel this RFP, or reject all proposals if determined to be in the best interest of the City.
- 5) The unit price for each item proposed on shall be shown and shall be for the unit of measurement indicated. In case of an error in the extension of prices, the unit price will govern.

- 6) Any omissions as to the manufacturer's brand name, code or stock number, or style that is asked for shall be considered cause to reject any or all items in the proposal if deemed to be in the best interest of the City to do so.
- 7) The Procurement Manager reserves the right to waive any technical or formal errors or omissions and to reject any and all proposals, or to award a contract for the items hereon, either in part or whole, if deemed to be in the best interests of the City.
- 8) The successful Proposer, hereinafter referred to as the Service Provider, shall be in complete compliance with all of the specifications, terms and conditions of this RFP as outlined above. The City shall have the right to inspect the facilities and equipment of the Service Provider to insure such compliance.
- 9) No proposal shall be accepted from, and no purchase order or contractual agreement will be awarded to, any person, firm or corporation that is in arrears to the City of Westminster, upon debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the City, or that has failed to attain or demonstrate compliance with any law, ordinance, City regulation, or contract term or condition as may be provided for or required in any City contract, or that may be deemed irresponsible or unreliable by the Procurement Manager.
- 10) The Proposer agrees to abide by all the laws, regulations and administrative rulings of the United States, the State of Colorado and the City of Westminster, securing all necessary licenses and permits in connection with the proposals.
- 11) All materials, supplies and equipment furnished or services performed under the terms of this purchase order or contractual agreement shall comply with the requirements and standards in all federal, state and local codes.
- 12) The Service Provider shall properly sign and furnish any necessary insurances, Workers' Compensation, etc., as required by the respective proposal within ten (10) days (unless a longer period is allowed) from the date of receipt of the formal contract forms.
- 13) The City shall not be liable for any costs incurred by the Proposer in the preparation of proposals or for any work performed in connection therewith or any work subsequent to the submission and prior to the execution of any contract.
- 14) The Service Provider shall procure all permits and licenses, pay all charges, taxes and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.

15) The City is exempt from City, State, and Federal sales/excise taxes. Certificates will be issued upon request. Any appropriate taxes shall be shown as a separate item in the proposal.

A.13 GRATUITIES AND KICKBACKS:

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Service Provider or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City of Westminster employee, the proposal shall be disqualified and shall not be reinstated.

A.14 NON-COLLUSIVE PROPOSER CERTIFICATION:

By the submission of this proposal, the Proposer certifies that:

- 1) The proposal has been arrived at by the Proposer independently and has been submitted without collusion with any other Proposer.
- 2) The contents of the proposal have not been communicated by the Proposer, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the Proposer or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
- 3) No Proposer shall submit more than one proposal for this purchase. It shall be the responsibility of each Proposer to obtain the prior written permission

of the Procurement Manager before the proposal opening in every situation in which the Proposer, due to a corporate association or other affiliation, may be found to be impermissibly associated with another Proposer. Failure to observe this requirement could result in all such affiliated proposals being rejected.

A.15 DISCLOSURE OF CONTENTS OF PROPOSALS:

The contents of all proposals become a matter of public record and a "Record" under the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. ("CORA"). Upon request to the City, the disclosure of Records is mandatory, with the exception of those Records under CORA which are excluded from disclosure, sometimes identified as business or trade secrets or proprietary matters ("Protected Items"). Protected Items so marked may not be disclosed unless disclosure is otherwise required under CORA. If a request is made under CORA for Records, the City will use reasonable efforts to notify the Proposer of the request, and it will be the responsibility of the Proposer to appropriately redact Protected Items from its submittal to the City. If an Proposer does not respond to the City to redact Protected Items as requested all Records may be disclosed by the City. If necessary, an Proposer shall seek a court order to protect their Protected Items and will defend, indemnify, and hold harmless the City from any claim or action related to the City's withholding of Protected Items.

A.16 REGISTRATION WITH THE COLORADO SECRETARY OF STATE:

Service Provider is required to furnish a Certificate of Good Standing from the Colorado Secretary of State's Office, as proof that they are properly registered to do business in the State of Colorado, prior to finalization of the award and contracting.

A.17 COOPERATIVE PURCHASING:

The City of Westminster encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions including the Multiple Assembly of Procurement Officials (MAPO) and the Cooperative Educational Purchasing Council (CPEC). We hereby request that any member of MAPO/CPEC be permitted to avail itself of this contract and purchase as specified by the contract resulting from this solicitation request, at the contract prices established therein. Each governmental entity would establish its own contract, issue its own orders, be invoiced directly, make its own payments and issue its own exemption certificates as required.

It is understood and agreed that the City of Westminster is not a legally binding party to any contractual agreement made between another governmental entity and the Service Provider as a result of this solicitation. The City shall not be liable for any costs or damages incurred by any other entity

SECTION B: SCOPE OF WORK/ REQUIREMENTS

B.1 INTENT:

The City of Westminster, hereinafter referred to as the City, is soliciting proposals from qualified firms capable of performing On-Call Utility Infrastructure Repairs.

The City of Westminster desires to execute a contract for pipe, valve, manhole and inlet repair and replacement services for Water, Wastewater, Reclaimed and Stormwater infrastructure (collectively called Utility infrastructure). For each section, water, wastewater, reclaimed and stormwater Utilities, the contractor shall perform both known point repairs or replacements and shall also provide 24 hour on-call response as needed.

B.2 TERM:

It is the City's intention to award this Contract for a term of one (1) year with the option of four (4) 1-year renewals. Any additional Contract extensions shall be in accordance with the City's Procurement Policy.

B.3 BACKGROUND

The first year of the contract shall not exceed \$1,000,000, with a not to exceed value of \$250,000 for each infrastructure component (Water, Wastewater, Reclaimed, and Stormwater). Future years funding is dependent upon annual City Council approval and cannot be guaranteed in advance.

B.4 GENERAL MINIMUM REQUIREMENTS

The Contractor shall provide all personnel, subcontractors, materials, equipment and supplies necessary to complete services included in contract. The following provisions are common to all work performed under this project scope.

1. Contractor shall follow all applicable American Water Works Association (AWWA) and American National Standards Institute (ANSI) standards and rules as it relates to installation and repair of public utility infrastructure.
2. Contractor shall confirm with the Utility whether a right of way permit shall be required for any specific project and follow City Municipal Code for right of way contractor licensing and permitting.
3. The Contractor shall be responsible for obtaining any necessary licenses, fees or permits, including right of way permits, without additional expense to the City.
4. All equipment shall be properly licensed and insured, carry the appropriate permits and be placarded as required by law.

5. Contractor shall provide all traffic control devices and method of handling traffic sketches required. Adequate traffic control must accompany all Contractor activities. Cost must be included in proposed pricing
6. Contractor is responsible for any sales and use tax obligations owed to the city for any work performed within the City.
7. Pavement restoration including asphalt and concrete paving and patching, curb and gutter removal and replacement, and general flatwork replacement
8. All asphalt and concrete work shall conform to City standards and specifications. Standards and specifications can be found on the City's website.
9. Contractor shall clean up all mud and/or debris to the full extent as necessary downstream of any pressure pipe discharges. Contractor shall properly dispose of any soils or debris at no additional expense to the City.
10. Contractor shall check with the appropriate Utility Supervisor to confirm whether the City has any pipes, valves, or supplies on hand that the contractor may use for any repairs or replacements.
11. General site work including clearing and grubbing, excavation of backfill, earth moving, compaction, mulch excavation and soil disposal shall be included in the Contractor's pricing. Cost must be included in proposed pricing.
12. Contractor is responsible for repair or replacement of water distribution, wastewater and stormwater appurtenances such as but not limited to manholes, valves, water meters, air vacs, fire hydrants, cathodic protection, etc.
13. Contractor shall never mix debris or fluids from potable water, sanitary, reclaimed or storm sewer repair operations. Separate equipment must be used for each type of system. If the same equipment is used, that equipment must be thoroughly cleaned before use on any of the other systems and, that cleaning discharge must be disposed of properly. Cleaning of contractor's equipment, waste disposal or any disposal requirements must be included in proposed pricing.
14. The Contractor shall obtain, as needed, a fire hydrant meter from the Utilities Operations Division before commencing any services. No water shall be drawn in the City of Westminster without the use of a City-issued fire hydrant meter. Water shall be furnished by the City of Westminster at no cost to the Contractor. The fire hydrant meter must only be used for City of Westminster work.
15. All work sites must implement appropriate erosion control protections and clean-up site before de-mobilizing. A stormwater inspector must approve the site before contractors de-mobilizes.
16. Contractor shall clean up area of all grit, soils or muck from the project and properly dispose of it. The City must be given copies of any waste profiles used by the Contractor when disposing grit or other materials taken from the City's sanitary or storm sewer mains to area landfills.

17. The Contractor shall meet or exceed all applicable Occupational Safety and Health Administration (OSHA) regulations, including but not limited to, the following:
 - a. Confined Space Entry.
 - b. Hazardous Material and Right to Know Information
 - c. Personal Protective Equipment
 - d. Shoring
18. All response personnel shall have access to, at all times, all necessary equipment needed to enter a confined space or trench, including but not limited to a tripod, harness, mechanical retrieval device, gas detector and shoring.
19. Contractor is responsible for any utility damage and repairs due to unlocated or mis-located utility damages.

B.5 UTILITY SPECIFICATIONS AND SPECIAL PROVISIONS

Each type of Utility shall have its own specifications and details that the contractor must comply with. Any deviations from the standards and specifications must be approved in writing by the appropriate Utility supervisor. Standards and specifications with detail sheets can be found on the City's website.

Water Utility Special Provisions

1. Contractor shall not be responsible for electrical repairs or pump repairs.
2. Contractor shall provide all necessary tools equipment and supplies for flushing, testing, chlorination/dichlorination.

Wastewater Utility Special Provisions

1. Contractor may be called upon to clean up any pollutant discharge from a sanitary overflow, in a stream, gutter or any catchment, such as, but not limited to, stormwater detention ponds where the pollutants were discharged. Any clean-up shall be to the City's Stormwater Administrator or their designee's satisfaction. If instructed by the City, clean up must be performed immediately after all necessary repairs have been finalized and before contractor de-mobilizes from the site.
2. Contractor shall provide all necessary tools equipment and supplies for any by-pass pumping.
3. Contractor shall not be responsible for electrical repairs or lift station repair.
4. Repair or replacement of manhole rings, lids and surrounding asphalt or concrete shall be included in this work.

Reclaimed Utility Special Provisions

1. Contractor may be called upon to clean up any pollutant discharge from a sanitary overflow, in a stream, gutter or any catchment such as, but not limited to, stormwater detention ponds where the pollutants were discharged. Any clean-up shall be to the City's Stormwater Administrator or their designee's satisfaction. If instructed by the City, clean up must be performed immediately after all necessary repairs have been finalized and before contractor de-mobilizes from the site.
2. Contractor shall not be responsible for electrical repairs or pump repairs.
3. Contractor shall provide all necessary tools equipment and supplies for flushing, testing, chlorination/dichlorination.

Stormwater Utility Special Provisions

1. For all storm pipe, manhole, inlet or other stormwater infrastructure repairs or replacements the following specifications shall be followed:
 - a. Westminster Standards and Specifications, latest edition,
<https://www.cityofwestminster.us/standardsandspecifications>
 - b. CDOT Standards and Specifications, latest edition
<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2022-construction-specifications/2022-specs-book>
 - c. Westminster Drainage Criteria, latest edition
<https://www.cityofwestminster.us/Government/Departments/CommunityDevelopment/engineering>
 - d. Mile High Flood District Volume 3, latest edition
<https://mhfd.org/resources/criteria-manual>
2. Contractor shall be responsible for cleaning up any pollutant discharge in a stream or any catchment such as, but not limited to, stormwater detention ponds where the pollutants were discharged. Any clean-up shall be to the City's Stormwater Administrator or their designee's satisfaction.
3. Contractor shall report to the City's Stormwater Administrator any occurrence of pollutants entering a receiving stream.
4. Typically, the City does not stock any stormwater pipes, manhole lids, rings risers, grates or any other stormwater infrastructure supplies.
5. Repair or replacement of manhole rings, lids, inlet grates and surrounding asphalt or concrete shall be included in this work.

B.6 NON-EMERGENCY REPAIRS AND REPLACEMENTS

Each Utility shall require point repairs or replacements that the contractor shall work through on a Task Order basis during normal business hours 7:00 AM to 5:00 PM Monday through Friday. Refer to Exhibit B for example Task Order.

Non-Emergency Repair or Replacement work performed before 7:00 AM or after 5:00 PM Monday through Friday or on weekends shall not be paid overtime or

regarded as On-Call Emergency response in any way. No Task Order work is allowed on Federal Holidays.

All Non-Emergency repairs or replacements shall be managed through a Task Order process for each location and type of Utility work. The Contractor shall prepare all Task Orders for the City's review. Task orders shall include plan of work, schedule, and cost estimate. Task order services must be fully completed within 30 days of receiving the specific Task Order notice to proceed. The intent of this work is point repair and not linear pipe replacements. The City understands there may be instances where several linear sections of pipe may need replacement and expects that scenario to be out of the ordinary for the purposes of this project. If this linear repair scenario is encountered the City's Utility person shall determine if the project shall be performed by the contractor. Design drawings for these point repairs typically shall not be provided.

Each Task Order form must include a start and completion date, schedule of values, total cost, and a general summary of work. Subsequent supporting documentation pages shall include the Contractor's quote, project schedule, cost details supporting total project cost including hourly labor rates, equipment rates, material quotes as required and subcontractor quotes as required. Quotes from sub-contractors must be included in each Task Order as applicable.

B.7 EMERGENCY ON-CALL 24-HOUR

These services are considered to be urgent and shall require the contractor to respond to city emergency call-outs 24 hours-a-day, 365/366 days-a-year verbally within one (1) hour of being contacted. Contractor shall then have three (3) hours to mobilize to the site and 24 hours to substantially repair or stabilize the issue. A Task Order is not required for emergency repairs. The City understands that each urgent scenario shall be different. Contractor and City shall collaborate on the best approach to stabilize, secure, then repair under urgent circumstances. The City has final authority and contractor shall follow City direction under these circumstances. Public health/safety and regulatory requirements shall govern. Design drawings for these repairs shall not be provided. In some instances, once an issue has been stabilized and secured, the City may instruct the Contractor to repair the problem under Non-Emergency Task Order process and not under Emergency repairs.

B.8 PRICING:

Task Order schedule of values pricing shall be based on the Price Schedule incorporated into the Master Agreement.

All prices quoted shall be formatted as shown in Exhibit C. Do not include cost or price figures anywhere except in the defined cost and pricing section of Section C.5.

All rates and mark up must reflect 2024 costs. Awarded contractor will be allowed to annually negotiate their pricing for the year with each new term. Contractor's rates will not change during the year. Pricing increases must be submitted to the City within 90 days of the term expiration. The City will reject any contract renewal if it deems any annual pricing is out of line with market conditions.

Unit price for each item proposed on, shall be shown and shall be for the unit of measurement indicated. In case of error in extension of prices, the unit price will govern.

B.9 INVOICING:

Contractor shall invoice each type of Utility separately and shall be paid separately. Contractor shall send invoices to the appropriate Utility supervisor as needed.

B.10 INSURANCE REQUIREMENTS:

The Service Provider shall carry the insurance specified in the Services Contract, which is included with this RFP, and shall submit proof of such insurance when delivering the executed Contract to the City of Westminster.

The City shall be named as an additional insured on the specified liability insurance policies and certificates of insurance. Insurance certificates required for this project shall be sent to the Project Manager after the project has been awarded.

B.11 SURETY BONDABILITY LETTER:

All proposing contractors are required to submit proof of bonding as part of their proposal, to ensure that contractors have the financial capacity to fulfill their contractual obligations. The letter should contain the following information:

- a) Licensed to do business in the City of Westminster, Colorado,
- b) How long the bond company has been providing bonding for the contractor,
- c) Rated "A" or better by a recognized rating agency,
- d) Listed on the U.S. Department of the Treasury's Listing of Approved Sureties,
- e) Provides the single and aggregate bond limits that the bond company will support the contractor,

Failure to provide valid and acceptable proof of bonding may result in the rejection of the proposal.

B.12 PAYMENT AND PERFORMANCE BONDS:

The Vendor will be required to furnish a payment and performance bond or, in the alternative, an irrevocable letter of credit from a local financial institution, in the amount of the work listed on the task order if a Project exceeds \$50,000. A Project will consist reasonably related Work at a location assigned by one or more Task Orders. If a performance bond is furnished by the Vendor, it must be executed by the owner, a general partner or, if a corporation, the secretary's signature and the seal of the corporation must be affixed.

If the Successful bidder fails to execute and deliver the Construction Contract, furnish the required evidence of insurance, or satisfy all conditions precedent to execution of the Construction Contract within ten (10) days of the date of Notice of Award, Owner may annul the Notice of Award and the Bid Security of that bidder will be forfeited, not as a penalty, but as liquidated damages to compensate the City for the cost of delay and also as an estimate of the difference between the successful bidder's bid and that of the next lowest acceptable bid. The Bid Security of any bidder whom the City believes to have a reasonable chance of receiving the award may be retained by the City (a) until seven (7) days after the effective date of the Construction Contract or (b) until the bids expire, whichever is earlier.

A performance bond may be used in place of Surety as required for obtaining a Class D Right of Way contractor license (City Code Title 5, Section 5-7), all other licensing requirements apply.

B.13 LIQUIDATED DAMAGES

It is the City's intent that liquidated damages may be established based on the project. By submitting a bid response, the contractor is acknowledging that the City reserves the right to establish liquidated damages criteria on task order requests. If the Vendor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Vendor.

The City and the Vendor recognize that time is of the essence in this Construction Contract and that the City may suffer financial loss if the Work is not substantially completed within the time specified on the Task Order(s), plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Vendor agree that as liquidated damages for delay (but not as a penalty) the Vendor shall pay the City an amount identified on a Task Order for each day that expires after the time specified in the Task Order until the Work is complete. By signing the Task Order, Vendor agrees that this is a reasonable estimate of the

damages likely to be suffered by the City for late completion of the Work. If the Vendor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Vendor.

B.14 DELIVERY CONSIDERATIONS:

Prices quoted shall be F.O.B. From Supplier deliver to City of Westminster, Municipal Services Center, 6575 W. 88th Avenue, Westminster CO 80031. unloaded and installed.

B.15 WARRANTY GUARANTEE:

Proposer shall be fully responsible for any and all warranty work for one (1) year, regardless of whether or not manufacturers of equipment, and/or its component parts, provide the actual warranty coverage. In addition, bidder shall have or establish a single, local source that will accomplish or coordinate any necessary warranty work. Bidder shall respond to requests for warranty assistance within twenty-four (24) hours.

B.16 SPILLAGE:

Bidder will be responsible for the cleanup of any contamination or spillage resulting from the delivery and unloading within twenty-four (24) hours of such spillage.

B.17 PATENTS:

Seller agrees to defend the City of Westminster at seller's own expense, in all suits, actions or proceedings in which the City of Westminster is made a defendant for actual or alleged infringement of any United States of America or foreign letters patent resulting from the City of Westminster's use of the goods purchased as a result of this Invitation For Bid. Seller further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the City of Westminster.

Seller agrees to indemnify and hold harmless the City of Westminster from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City of Westminster's purchase and use of goods supplied by the seller.

It is expressly agreed by seller that these covenants are irrevocable and perpetual.

SECTION C: PRICING / PROPOSAL ITEMS

C.1 GENERAL SUBMISSION INFORMATION:

This section shall include detailed instructions on the submittal requirements for all required documents and pricing. Proposers should follow these instructions carefully and provide all data requested in the formats specified herein and in any referenced attachments.

The City will not increase the contract (either dollar amount or time) for items not included in the submitted proposal documents.

C.2 CHANGES:

All items not itemized in the pricing above which are instrumental to completing the project will be at the cost of the Proposer to supply at no additional charge to the City.

C.3 MODIFICATION AND WITHDRAWAL OF PROPOSAL:

Proposals submitted early may be modified or withdrawn, subject to the Procurement Manager's discretion. Withdrawn proposals may be resubmitted until the deadline for submission of proposals.

Once submitted, a proposal becomes City property. The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Proposer of the conditions contained in this RFP.

C.4 PROPOSAL CONTENTS AND FORMAT:

Each bid should not exceed 15 pages of text and figures. Cover letters, resumes and exhibits to the bid do not count toward the bid page limit.

All proposals must be in either Microsoft Word or an original PDF (not a scanned copy) as well as Excel when specified.

Proposals must specifically include the following, at a minimum and must be submitted electronically with all proposals:

1. **Project Approach.** Proposer must submit a detailed narrative describing their understanding of these project objectives and outlining their approach to it. Proposer must acknowledge they have the resources and experienced

personnel to provide both Emergency and Non-Emergency infrastructure repairs and replacements.

2. **Company Qualifications.** All Proposers must submit written evidence of their qualifications to perform the work. Include the following information, at a minimum:
 - a. A narrative describing similar work, including names of the entities
 - b. Key team members and their qualifications
 - c. In the past five (5) years, describe any past or present civil or criminal legal investigations, pertinent litigation and/or regulatory action involving your firm or its employees that could have an impact on your role or ability to serve the City.
3. **Resources and Availability.** All Proposers must submit written evidence of their access to the equipment necessary to perform work in a timely manner, especially in the case of an emergency repair.
4. **Cost Schedule.** Unit Costs shall include all costs and expenses.
 - a. Submit a fee schedule in a Microsoft Excel spreadsheet, separate from the written proposal, following the example provided in Exhibit C.

The following will be evaluated but not scored

5. **References.** Recent and relevant project experience in the Colorado region for projects of similar size, scope, and complexity.
 - a. Three references for previous work on similar projects within the last five (5) years; include contact person, e-mail address, and telephone number.
6. **Proposer Certification Form.** Proposers must complete and submit the attached complete Certification Form with their proposal, signed by an authorized representative.
7. **Sample Contract Redlines.** (if applicable)
8. **Certificate of Good Standing from the Colorado Secretary of State's Office.**
9. **Subcontractor List.** Proposers will be required to establish to the satisfaction of the City the reliability and responsibility of any proposed subcontractor pursuant to the criteria set forth in these Instructions and Proposal Requirements. Prior to the award of the Contract, the City will notify the Proposer in writing if the City has reasonable objection to any proposed subcontractors. In this event, Proposer may, at its option,
 - a. withdraw its proposal, or

- b. submit a substitute subcontractor acceptable to the City with an adjustment in the proposal to cover any difference in cost. The City may, at its discretion, accept the adjusted proposal.

SECTION D: EVALUATION AND AWARDS

D.1 EVALUATION OVERVIEW:

The City does not discriminate on the grounds of race, religion, color, age, sex, disability, immigration status, gender identity or expression, sexual orientation or national origin in consideration of an award. Disadvantaged business enterprises are afforded a full opportunity to submit proposals. Proposals will be evaluated on the criteria listed in section D.2.

Based on the preliminary review of the proposals, Proposers may then be interviewed prior to selection.

D.2 PROPOSAL EVALUATION ITEMS:

The Selection Committee will perform a preliminary evaluation of each proposal using the following criteria and weighting:

	Evaluation Criteria	Weight
1	Project Approach	20
2	Company Qualifications	35
3	Resources and Availability	20
4	Cost Schedule	25
	Total	% or points

D.3 AWARD OF PROJECT:

In evaluating proposals, the City shall consider the qualifications of the Proposers, and whether or not the proposals comply with the prescribed requirements. The City reserves the right to reject the proposal of any Proposer who does not pass any such evaluation to the City's satisfaction.

The award for this RFP will be made to the proposal(s) that offers the best value to the City, as determined by consensus of the Evaluation Committee, in accordance with Westminster Municipal Code (W.M.C.) Title XV, Chapter 1, Section 15-1-5.

If the Contract is to be awarded, the City will give the Service Provider a notice of award within 60 days of the RFP.



Proposal

On-Call Utility Infrastructure Repairs RFP

Solicitation Number – RFP – PWU – 24 – 445

City of Westminster

Contents

A. Project Approach.....	4
B. Company Qualifications.....	7
C. Resources and Availability.....	19
D. References.....	19
APPENDIX.....	22
E. Cost Schedule.....	22
F. Proposer Certification Form.....	22
G. Sample Contract Redlines. (if applicable) - Not Applicable.....	22
H. Certificate of Good Standing from the Colorado Secretary of State's Office.....	22
I. Subcontractor List.....	22

Re: Solicitation Number – RFP – PWU – 24 – 445

Dear Proposal Review Committee,

Based in Littleton, CO, C&L Water Solutions, Inc. opened its doors in 1979, and has become well known as a heavy civil utility contractor providing 24/7/365 service for water, sewer and storm sewer installation, repair and rehabilitation services for cities and municipalities throughout Colorado and most of Utah. Originally focused on open-cut methods and being an on-call provider for over 40 water and sewer districts and cities, we have incorporated ourselves as a leader of the latest technologies in the trenchless industry. In late 2023, we are proud to announce that we were acquired by Aegion/Insituform as part of a mutual initiative to have the ability to provide a deeper and more comprehensive offering of products and services.

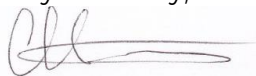
We feel we are an excellent fit for the scope of work and contractor the City is looking for. Our qualifications include but are not limited to:

1. On-call emergency response (24/7/365) for water and sewer: we carry 5 fully equipped crews to respond to emergencies and non-emergencies of any size with a fleet of our own equipment, shoring, inventory of standard repair parts and pipe as well as bypass pumps and pipe. We are also headquartered close to the City, within 1 hour.
2. Open Cut Services for water, sewer and storm.
3. Repair crews for maintenance, inspection and repair of water and sewer appurtenances.
4. UV CIPP Lining – Gravity and NSF Pressure Liners: Over 1,000,000 LF of 6" to 72" installed to date, the most in the U.S. for UV CIPP. This includes carrying a stock of liners in common dimensions for emergency response.
5. Pipe bursting for Water and Sewer, using both static and pneumatic methods: Over 18,000 LF installed to date.
6. Lateral Connection Rehabilitation: Over 2,000 lateral connections and associated lengths of lateral pipes rehabilitated or chemically grouted to date.
7. Geopolymer Cast in Place pipelining and manhole lining for larger diameter storm sewers and manhole structures.
8. Manhole Rehabilitation: Over 100 fiberglass or polymer inserts installed to date with dozens of other structures coated with epoxy coatings.
9. Slip lining with GRP, HDPE Pipe: over two dozen specialty slip-line projects of various diameters up to 84" completed.

This is what separates us from our competition. We are positioned to provide multiple services under one roof to drive value up and costs down.

Thank you for this great opportunity to continue our relationship with the City, and we look forward to working with you in the future!

Very Sincerely,



Chris Larson, Operations Manager

A. Project Approach.

C&L Water Solutions understands the objectives of the City. Since 1979, the company has been in the business of providing the exact services the City is requesting through this RFP. The core of the C&L model has been to support both local water and sewer districts and larger Cities around their infrastructure maintenance, repair, asset replacements, operation, and rehabilitation. We are not a traditional open cut company; our focused setup and company culture revolves around emergency (24/7/365) and non-emergency response for infrastructure operations and maintenance.

Through the presentation of this RFP, our intention is to provide the City with a clear picture of the following:

1. We are well qualified for the work requested, to include having class 1-4 operators on staff.
2. The company has more than 40+ customers that utilize us for the exact requirements laid out in this RFP. References shall be provided with many additional, if requested.
3. C&L is specifically equipped with both the personnel, technology, on-call response systems and equipment to support the efforts required by this RFP. We purposefully shy away from private and large open cut projects which may detract resources away from being able to respond to our on-call clients.
4. We are a vertically integrated solution provider. C&L began providing trenchless services in 2007. Since that point we have incorporated into a leading provider in most of these services which make them available to our clients on both a non-emergency and emergency basis. See – “Service Offerings.”

Project Approach Outline:

Our approach to our projects, whether they are a T&M based emergency or a non-emergency project requiring the repair, replacement, or rehabilitation of an asset are produced in the following manner:

1. Utilizing our “Proven Process” to discover and solve problems together. See “Figure 1 – C&L’s Proven Process.”

2. Be stewards to our community and the environment.

- a. Your customers are our customers. We demand that our teams be courteous in even the most difficult of moments when encountering the public. We recognize that construction is never convenient for the public and we should conduct ourselves to a higher standard.
- b. The environment should be protected for our future. Leave it and restore it as we found it. This means we install erosion control, use silt bags, chase the mud down, and clean equipment from job type to job type.

3. Being prepared.

- a. Come to the job prepared to handle the situation. We carry large inventory of brass, pipe, repair clamps, sewer fittings etc. to handle most repairs. We also carry standard pipe bedding materials in yard for squeegee, $\frac{3}{4}$ " crushed rock, road-base, and crusher fines.
- b. Our crews and their equipment are specifically equipped to handle emergencies and isolated spot repairs. The crew comes standard with safety in mind to include on board shoring systems, air compressors, generators, rubber-tired backhoes, tandem dump trucks, breakers, dewatering pumps, specialized tools such as snap cutters for AC pipe, Chlorine and more.

4. Process matters.

- a. We are flexible to turn-key the entire project or handle only the portions you don't want to. Our service division manager and their team support the project from:
 - i. Taking the call (24/7/365), inclusive of responding onsite with the owner's representative.
 - ii. Notifications
 - iii. Scheduling
 - iv. Permitting
 - v. Subcontractor coordination, including after hours:
 - 1. Traffic control
 - 2. Surface Restoration
 - 3. Flow/flash fill
 - 4. Erosion, landscaping and seeding
 - 5. Cathodic protection, etc.
 - vi. Locates and 811 coordination.
 - vii. Dispatch of the crew to include materials and equipment required.
 - viii. Coordination with the City.
 - ix. Follow-up and management of the crew
 - x. Close-out and billing of the job.

5. Response.

- a. C&L has been responding to emergencies during normal business hours and after hours since its inception (see "Willows Letter"). We have on-call managers with 20 to 30 years of experience with C&L, and crews available 24/7, including holidays. Our phone system provides our customers with on-call options for emergencies and allows our managers to respond nearly immediately. If in an after-hours condition a crew is requested, they are dispatched immediately. During business hours, we respond as soon as possible. Sometimes we need to make an active job safe to leave, however, we will respond as soon as we can that day. Should there be a failure with our primary call system, all our customers are provided with personal cell phone numbers of all our managers and foremen who would respond onsite.

6. Synergistic Relationships.

- a. Being an on-call services provider for the water industry can be difficult. Our desire is to provide the best service possible. We strive to develop relationships that are cooperative. We want to understand your needs and respond to those needs. To do so, we must have daytime work orders to feed our crews as we cannot stay in business on emergency-response alone.



Figure 1 - C&L's Proven Process

B. Company Qualifications.

Please see below for a list of general service offerings, detailed narratives, photos, similar work references and resumes.

1. Services

#	Description	Experience (yrs)	Self-Perform/Sub
1	Open Cut - Full replacements, installs, asset repairs and replacements.	44	Self-Perform
2	Services Division - Leak location, asset inspection, repair, and maintenance, hot taps, line freezing.	44	Self-Perform
3	24/7/365 Emergency Response - All Services	44	Self-Perform
4	Vacuum excavation and other services	34	Self-Perform
5	UV Cured CIPP - Fiberglass Based Liners	17	Self-Perform
6	UV Cured CIPP - Pressure - Fiberglass Potable (NSF) and Pressure (Non-NSF)	8	Self Perform
7	Pipe Bursting - Water and Sewer, static and pneumatic	17	Self-Perform
8	Slip Lining - Fusible PVC, HDPE, FRP Pipe, storm and sewer	13	Self-Perform
9	Chemical Grouting (Grout Truck) - Pipe Joints, Laterals and Structures	13	Self-Perform
10	Lateral Connection Rehabilitation - LMK T-Liner and UV Cosmic Process for connections and lateral pipe lining	17	Self-Perform
11	Lateral pipe lining - Residential or Commercial from the cleanout using steam or LED cure	7	Self-Perform
12	Manhole Rehabilitation - Structural Inserts, Epoxy coating, and Geopolymer coating.	11	Self-Perform
13	Cured in Place Point Repairs - Sectional Trenchless Repairs 6" to 60"	12	Self-Perform
14	Close Tolerance Pipe Slurification - EPA Approved Full Length AC Pipe Replacement	1	Self-Perform
15	CCTV and Cleaning - We perform some in house and subcontract major items.	44	Self-Perform/Sub
16	Bypass Pumping and Dewatering systems - In house, turnkey up to 30 MGD, deep well, eductor dewatering. Fast Hose Deployment Systems 4" to 8" - Emergency Response.	18	Self-Perform/Sub
17	Hot Tap Valve Insertion - Plug and resilient wedge types, diameters up to 60" - Stock on hand for quick response.		Culy Contracting - Sister Company
18	FRP Layup Lining - Carbon Fiber or Fiberglass reinforced advanced composite systems for large diameter pipelines.		Fibrwrap Construction - Sister Company
19	Cathodic Protection Services - Largest CP provider in the country.		Corrpro - Sister Company
20	Steam or Hot Water - Steam or hot water inversion felt lining - 6" - 120" Gravity and NSF pressure pipelining.		Insituform Technologies - Sister Company

2. Detailed Narratives

a. Underground Water Infrastructure Replacement or Rehabilitation

C&L has been replacing, installing and rehabilitating various diameter water pipeline infrastructure since its inception in 1979. Some items that may stand us apart are:

- i. We have the in-house capacity and components to run temporary bypass for potable water.
- ii. We have the required materials and equipment for disinfection of the lines to include swabbing of repairs, entire line slugging and flushing.
- iii. We have experience in running advanced condition assessment technology such as Sahara from Pure Technologies.
- iv. C&L has experience using static pipe bursting for trenchless replacement of water lines.
- v. C&L has the capability to line high pressure potable waterlines from 8" to 54" with an NSF 61 approved CIPP liner, all within its own resources.
- vi. We love complicated vault and pipe projects for PRVs, Butterfly Vaults, Pump Stations, Etc.

b. Repair or Replacement of Utility Appurtenances

- i. We have Class I to IV operators on staff, and several districts under our responsibility and charge.
- ii. C&L routinely performs appurtenance replacement/repair programs for our customers, to include but are not limited to:
 1. Valves R&R and Valve Packing Repairs – All valve types
 2. Blow-offs – all types
 3. Water Meters (all sizes) and Water Meter Transponders/Replacement programs or repair.
 4. Service Line Pulling/Replacement - Lead/Poly etc.
 5. Backflow Preventers/RPZ Devices
 6. Fire hydrant component repairs and partial/full replacements
 7. PRV Repairs/Replacements
 8. AC pipe removal and repairs
 9. ARV Repairs/Replacements
 10. Cathodic Protection – Annode Replacement/New Install
 11. Repair Clamp use, all types
 12. Sewer lift station repairs, all pumps (turbine, centrifugal etc), soft starts/VFDs, and power sources
 13. Pump Stations
 14. Sewer Repairs/Manhole Repairs/Replacements
 15. Turnkey Bypass Pumping/Temporary Water
 16. Potholing
 17. Line Freezing
 18. Appurtenance Inspections and Maintenance/Exercise/Flushing Programs. We do utilize de-chlorination diffusers for any flushing we provide.

c. Construction of New or Rehabilitation of Wastewater Systems

- i. C&L has extensive experience with removal and replacement and new construction of sanitary sewer pipelines and service connections.
- ii. Some items that may also stand us apart from our competition are:
 1. Our extensive trenchless capabilities.

2. We run our own entire bypass systems up to 30 MGD with our own pump and pipe. We also have fast deployment systems for our 8" EPDM hose systems for bypass up to 2000 GPM. This is very handy for emergency bypass conditions.
3. We are experienced with open cut sewer point repairs to depths of 40 feet.
4. We have UV cured CIPP Lining capabilities in house. We carry a revolving 6-month inventory of CIPP liner in 8", 10" and 12" for emergency response for on-call purposes. Having the option to dig, pipe-burst, or CIPP line within the same project provides options and cost saving flexibility.

d. **Construction of New or Rehabilitation of existing Stormwater Management Systems**

- i. As a company, we have many existing on-call and service agreements with stormwater related agencies such as Douglas County.
- ii. We are on-call and bid on various storm water projects for our clients, of which projects have included but are not limited to:
 1. Hazardous material spill mitigations – depending on the spill type, we utilize certified and licensed subcontractors to aid in the cleanup of these projects. We have experience with small SSOs to large overflows affecting buildings and residents.
 2. Detention/Retention Facilities
 3. Storm water pipe installations to include RCP/CBC/CMP/ADS and Ductile Iron Pipe.
 4. Storm water pre-cast and cast-in place structures and vaults to include inlets, junction boxes, diffusion structures, vortex vaults, manholes, channel-work, rip-rap (grouted and soiled), and erosion control implements.

3. Project Photos

a. **Water System Installations and Water System Repairs**



Figure 2: Open Cut Water Line R & R.



Figure 3: Water Line Install with Trencher



Figure 4: Temporary Water Example



Figure 5: Butterfly Valve Vault Install



Figure 6: Large Diameter Water Repairs



Figure 7: Valve Repairs/Replacements



Figure 8: PRV Installation



Figure 9: Fire Hydrant Replacement

b. Sanitary Sewer System Installations and Sewer System Repairs



Figure 10: Lift Station Refurbishment

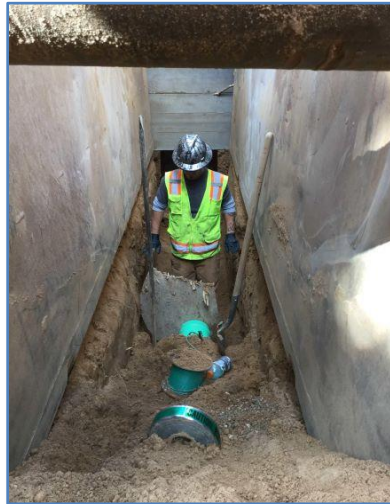


Figure 11: Remove and Replace

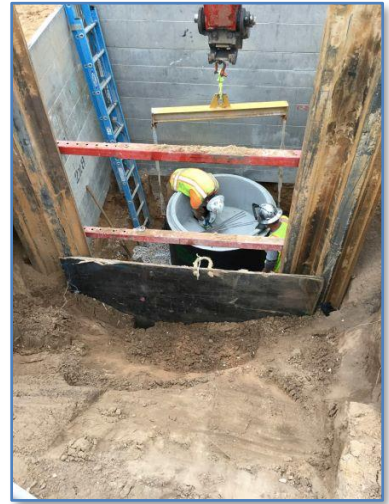


Figure 12: Manhole Installations



Figure 13: Emergency Sewer Repair



Figure 14: In-house bypass services

c. Storm Sewer System Installations and Storm System Repairs



Figure 15 + 16: Large Diameter Storm Sewer Repairs



Figure 17 + 18: Storm Sewer - New Installations

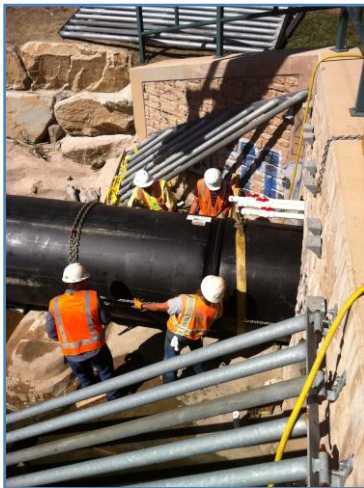


Figure 19: Sliplining of CMP Storm



Figure 20: UV CIPP Lining of CMP Storm

d. Trenchless Solutions

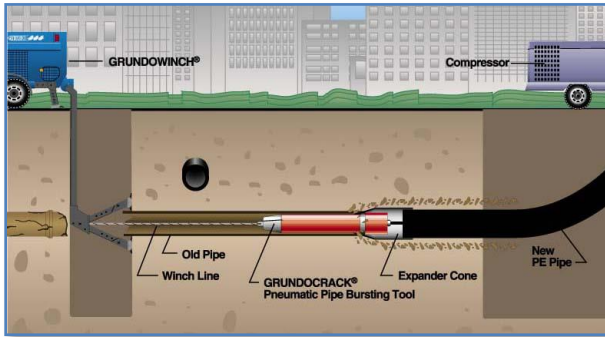


Figure 21: Pipebursting



Figure 22: Lateral Seals

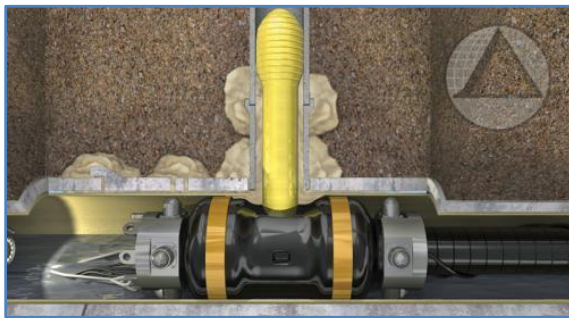


Figure 23: Chemical Grouting



Figure 24: Manhole Rehabilitation



Figure 25: UV Cured MH Rehab



Figure 26: LED Lateral Lining



Figure 27: UV Cure CIPP/Pressure and Gravity

e. On-Call Response 24/7/365



Figure 28: Emergency Valve Repair



Figure 29: Water Break Layout and Crew Setup



Figure 30: Emergency Response Water Break



Figure 32: Operations, Inspections and Maintenance



Figure 31: PVC Inventory Example

f. Entity and Contract Type

#	Entity	Contract Type
1	Bear Creek W&S District	O&M On-Call (24/7/365)
2	Bancroft-Clover W&S District	Maintenance On-Call (24/7/365)
3	Centennial W&S District	Maintenance On-Call (24/7/365)
4	Cherryvale Sanitation District	O&M On-Call (24/7/365)
5	Cherry Creek Village Water	O&M On-Call (24/7/365)
6	Cherry Creek Valley W&S	O&M On-Call (24/7/365)
7	Country Homes Metro District	O&M On-Call (24/7/365)
8	City of Englewood Utilities	ID/IQ On-Call (24/7/365)
9	East Lakewood Sanitation	Maintenance On-Call (24/7/365)
10	City of Fort Collins	ID/IQ On-Call (24/7/365)
11	Grant W&S District	O&M On-Call (24/7/365)
12	Inverness W&S	Maintenance On-Call (24/7/365)
13	Lakehurst W&S District	Maintenance On-Call (24/7/365)
14	City of Littleton	ID/IQ On-Call (24/7/365)
15	City of Longmont	ID/IQ On-Call (24/7/365)
16	City of Loveland	ID/IQ On-Call (24/7/365)
17	Northern Douglas County	O&M On-Call (24/7/365)
18	North Lincoln W&S District	O&M On-Call (24/7/365)
19	Platte Canyon W&S District	Maintenance On-Call (24/7/365)
20	Roxborough W&S District	Maintenance On-Call (24/7/365)
21	Southgate Water District	Maintenance On-Call (24/7/365)
22	Southgate Sanitation District	Maintenance On-Call (24/7/365)
23	South Sheridan W&S District	O&M On-Call (24/7/365)
24	Southwest Suburban	O&M On-Call (24/7/365)
25	Southwest Metro W&S	Maintenance On-Call (24/7/365)
26	Stonegate Village Metro W&S	Maintenance On-Call (24/7/365)
27	Thunderbird W&S District	Maintenance On-Call (24/7/365)
28	Valley Sanitation District	Maintenance On-Call (24/7/365)
29	City of Wheat Ridge	ID/IQ On-Call (24/7/365)
30	Willows Water District	O&M On-Call (24/7/365)
31	Willowcreek HOA	O&M On-Call (24/7/365)

g. Key Team Resumes



Christopher Larson
Operations Manager

EDUCATION & TRAINING

University of Denver,
RECM, BS

Safety Training
UV CIPP
HDPE Fusion
NACE Level 1 Cert
PACP/MACP
Osha 10
State Operators
Licenses
Level 1 Sewer
Collections Water
Distribution Cert

EXPERIENCE/ QUALIFICATIONS

Board Chairman and
President, Rocky
Mountain Chapter of
NASTT.

Board of Directors –
International Light
Curing Association

16 Years of
Construction
Experience

12 Years of
Management
Experience

National Ralston
Young Trenchless
Professional Award

REFERENCES

Swirvine Nyrienda
City of Aurora
303-886-9464

Chris Knott
BT Construction
303-591-7936

Bart Sperry
District Engineer
NTM W&S
303-279-2854

Career Notes: Chris has been instrumental in staging the company's operations. He is in charge of new technology implementation, client consultation and alternative procurement strategies. He has managed open cut and trenchless projects ranging in size from \$20,000.00 to over \$6,000,000.00



Danny Braning
Vice President of Operations

EDUCATION & TRAINING

Safety Training
EMT Training
Wildland Fire
Protective Systems
Soil Identification
SCBA Training
Osha 10
HIT Training

EXPERIENCE/ QUALIFICATIONS

2009 to Present
C&L Water Solutions

Vice President of
Operations

2004 to 2009 Grant
Miller

Estimator/PM

2000-2004 Arapahoe
Utilities Infrastructure
Ran 4 Pipe Crews

REFERENCES

Scott Rafferty
City of Northglenn
303-598-1204

Luis Tovar
Mulhern MRE
303-549-4538

Career Notes: Since coming on board in 2009, Danny has brought C&L to a new level with his expertise in managing multiple large, deep and wet projects. His pipeline experience over the years is unrivaled and he is our "trouble shooter". Danny brings the big business aspect to C&L having managed single project sizes greater than 100,000 LF of open cut pipeline installation.

Resumes Cont.



Tracy Stenger
Project Manager

EDUCATION & TRAINING

University of Arizona,
Construction
Management Degree

Safety Training

UV CIPP

Osha 30

Avanti Grout School

LMK Certification

SCBA Trained

EXPERIENCE/ QUALIFICATIONS

YP Member of NASTT

7 Years of
Management
Experience – C&L

REFERENCES

Noah Allison
Boxelder Sanitation
970-567-3005

Bill Taylor
City of Longmont
303-651-8366

Bart Sperry
District Engineer
NTM W&S
303-279-2854

Career Notes: Since beginning her career with C&L, Tracy has grown into one of the industries' most proficient and customer service orientated project managers. She takes our customers and her projects to heart. There is not a single customer who could be referenced that would not glow about Tracy. Now managing all of Colorado's trenchless crews, she is more than capable of taking on the most complex projects all with the City's needs in mind.



Christopher Jones
Project Manager

EDUCATION & TRAINING

Confined Space
Entry
Protective Systems
Training
Soil Identification
Training
Trench Safety
Training
Rigging and Hand
Signals
Asbestos Training

EXPERIENCE/ QUALIFICATIONS

2001 to Present – C&L
Field Foreman/PM

19 Years of
Experience with C&L

REFERENCES

Jan Walker
Bear Creek W&S
303-986-3442

Career Notes: Chris Jones is C&L's trouble shooter, he understands the repair and appurtenance side of the water business better than most. His experience includes working on 25 – 50 year infrastructure asset replacement programs, pulling over 25,000 LF of poly service piping, 250 Vault and meter pit replacements, and well over 10,000 commercial and residential meter replacements from 5/8" to 12".

Resumes Cont.



Albert McGough
Safety Manager

EDUCATION & TRAINING

So. Illinois University

BS in Work force Education

Safety Training

COSS -2017

COSM – 2018

Airman Leadership School - 2001

Non Commissioned Officer Training - 2001

OSHA 40 and 10

EXPERIENCE/ QUALIFICATIONS

2016 to Present – C&L Safety Officer

1996 to 2016 – United States Airforce

Decorated Airforce Tech-SGT

NCO of the Year Award

Oversaw Occupational Health Program at Stations.

REFERENCES

Swirvine Nyrienda
City of Aurora
303-886-9464

Steve Kovach
COO, PCL Construction
303-886-9464

Career Notes: Albert has provided C&L with a new level of commitment to safety. Just as serious as he took his career in the US Air Force, Al has found a way to connect with our crews in a way where safety is fun and is a part of the culture here at C&L. Al has worked hard at our safety program and it shows. In 2018 we were a National Circle of Safety winner through Pinnacol Assurance.



Tony Richard
Superintendent

EDUCATION & TRAINING

Safety Training

UV CIPP

HDPE Fusion

NACE Level 1 Cert

PACP/MACP

Osha 10

Sewer Shield Certification

FPVC Certification

EXPERIENCE/ QUALIFICATIONS

2010 to Present – C&L Water Solutions

Foreman Utility Projects

33 Years of Construction Experience

2008 to 2010 PAI Construction

REFERENCES

Bill Taylor
City of Longmont
303-651-8366

Noah Allison
Boxelder Sanitation
970-567-3005

Career Notes: If you've ever met good pipe layers, you would know they are a different breed. Tony is one of those "pipe guys". C&L is incredibly fortunate to have someone as knowledgeable and experienced as Tony. He comes from a long background of laying pipe for a living and has since adapted and become proficient at just about every technology C&L has to offer. He has 33 years of pipe experience and more than 9 years of experience with manhole rehabilitation, pipe bursting and CIPP. Best of all, Tony will never leave a job sub-par, every one of his projects are above expectations, no matter the cost.

- h. **Legal Proceedings or Regulatory Items:** “In the past five (5) years, describe any past or present civil or criminal legal investigations, pertinent litigation and/or regulatory action involving your firm or its employees that could have an impact on your role or ability to serve the City.” – **Response: None known.**

C. Resources and Availability. All Proposers must submit written evidence of their access to the equipment necessary to perform work in a timely manner, especially in the case of an emergency repair.

Crew Resources	Crew Quantity	Availability
On-Call Repair Crew – 4-man with rubber-tired backhoe, crew truck with tool/shoring trailer and tandem dump truck.	5	On-Call 24/7/365
Locate and Inspection Crew – 1-2 man with crew truck, vac trailer, wachs trailer etc.	2	Available as scheduled
Trenchless Crew – 5-7 man with UV or other trenchless equipment	2	Available as scheduled
Trenchless Service Crew – 4 man with manhole rehab, chemical grout or service connection equipment etc.	1	Available as scheduled

D. References.

Reference 1 – City of Thornton Valve Replacement Program	
Owner's Name	City of Thornton 2020-2022
Description of Work	Over 100+ Valve cut-ins throughout various areas of the City, including complex and dangerous intersections.
C&L Staff	Tim Cain; Superintendent, Danny Braning; PM, Pat Riggs; Foreman.
Owner Reference	City Project Manager: Kristin Schwartz -720-977-6208 – Kristin.schwartz@thornton@thorntonco.gov City Utility Maintenance Supervisor: Steve Crow - 720-977-6553
Reference 2 – City of Longmont On-Call	
Owner's Name	City of Longmont 2010 to Present
Description of Work	CIPP Lining, Pipebursting, Open-Cut, Maintenance, Raw Water Pressure Pipelining with NSF Resins and Emergency On-Call.
C&L Staff	Tracy Stenger, PM; Chris Larson, COO; Mike Robling, Superintendent; Tony Richard, Superintendent
Owner Reference	Andrew Carroll, PE – 970-214-3119; Andrew.carroll@longmontcolorado.gov

Reference 3 – Bear Creek Water and Sanitation District – O&M Contract	
Owner's Name	Bear Creek W&S District 1984 - Present
Description of Work	Emergency On-call, Locating Service, Operations and Maintenance, Repairs and Replacements for water and sewer.
C&L Staff	Christopher Jones, PM; Pat Riggs, Foreman; Tim Rush, Foreman; Kenny Borst, Foreman
Owner Reference	Jan Walker, District Manager – 303-986-3442; janwalker@bearcreekwater.org
Reference 4 – Douglas County On-Call	
Owner's Name	Douglas County
Description of Work	Emergency On-call, Lining work, and Stormwater infrastructure installations.
C&L Staff	Danny Braning, PM; Tracy Stenger, PM. Tony Richard, Super
Owner Reference	Debra Kula, PE – 303-518-4817; dkula@douglas.co.us

PRIMARY CONTACT INFORMATION

RFP Contact:
Christopher Larson
clarson@clwsi.com
720-980-6501 – C
303-791-2521 - P
12249 Mead Way
Littleton, CO 80125
www.clwsi.com

October 10, 1983

Mr. Larry Larson
C & L Backhoe Excavating
588 Helena Circle
Littleton, Colorado 80124

Dear Larry:

Thank you, it often times goes unsaid even though we think it. We would like to take this opportunity to thank C & L Backhoe Excavating along with yourself and Chris for all of those extras that you do for us. It is very enjoyable to do business with a company whose integrity and honesty is the motto of the company. We have never hesitated in recommending C & L to other Districts or homeowners.

One of your best representatives is Loyd Mouchet. His loyalty to C & L and to Willows Water District when he is working for us is very refreshing. When Loyd goes out on a job, it is an accepted fact that he will be fair to both the District and the homeowner/builder. We have gotten many compliments from our customers and the builders on the job that Loyd does. As of yet, we have never received a complaint nor have we ever detected a mistake on his part.

Again, thank you for all those nights that you have been called from your bed to answer a call, and all of those Bronco games you have missed because of a main break. Your consideration has not gone unnoticed.

Sincerely,

The Willows Water District staff
Khanh, Paul & Vicki

APPENDIX

- E. Cost Schedule.** Unit Costs shall include all costs and expenses.
- Submit a fee schedule in a Microsoft Excel spreadsheet, separate from the written proposal, following the example provided in [Exhibit C](#).
- F. Proposer Certification Form.** Proposers must complete and submit the attached complete Certification Form with their proposal, signed by an authorized representative. [Attachment 1](#).
- G. Sample Contract Redlines.** (if applicable) - [Not Applicable](#).
- H. Certificate of Good Standing from the Colorado Secretary of State's Office.** Bonding Letter, and Insurance Example [Exhibit D](#).
- I. Subcontractor List.** Proposers will be required to establish to the satisfaction of the City the reliability and responsibility of any proposed subcontractor pursuant to the criteria set forth in these Instructions and Proposal Requirements. Prior to the award of the Contract, the City will notify the Proposer in writing if the City has reasonable objection to any proposed subcontractors. In this event, Proposer may, at its option,
- withdraw its proposal, or
 - submit a substitute subcontractor acceptable to the City with an adjustment in the proposal to cover any difference in cost. The City may, at its discretion, accept the adjusted proposal. [Attachment 1](#)

OFFEROR CERTIFICATION
(MUST BE COMPLETED AND SUBMITTED WITH YOUR PROPOSAL)

To: City of Westminster, Colorado (hereinafter called "CITY").

From: Insituform Technologies, LLC dba C & L Water Solutions
_____ (hereinafter "Offeror"), organized and existing
under the laws of the State of Delaware doing business as (a corporation), (a
partnership), (an individual).

The Offeror, in compliance with the City's Request for Proposals (RFP), hereby proposes to perform all work in strict accordance with the Contract Documents within the time set forth therein, and at the prices stated on the included submittal as totaled (the "Proposal").

The Offeror certifies that no employee or related member of its organization has discussed this RFP with any member of the City of Westminster outside of the Procurement Office, unless permitted in writing in either the RFP, Addendum or other written communication issued by the Procurement Office.

The undersigned, having thoroughly inspected the existing conditions of the Project affecting the cost of the Work and having thoroughly examined all of the Contract Documents, together with all other forms, attachments, and information required or otherwise submitted with this Proposal, hereby offers to furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services and to perform and complete all work required for:

Project No. and Description:
RFP-PWU-23-445 On-Call Utility Infrastructure Repairs

It is understood by the Offeror that should the cost of the Proposal exceed budgeted funds; the City reserves the right to reject any or all Proposals. Offerors must propose on the complete work scope (Exhibit B).

The Proposal is based on subcontracting certain major portions of the work to subcontractors as listed below:

Task. Subcontractor

<u>Asphalt and Concrete</u>	<u>Metro Pavers, Inc.</u>
<u>Flashfill Backfill</u>	<u>Flashfill Services</u>
<u>Major CCTV and Clean</u>	<u>Kinetic Services</u>
<u>Traffic Control</u>	<u>AWP Services or Elite Traffic Control</u>
<u>Hydrovac</u>	<u>Badger Daylighting</u>
<u>Seeding and Erosion</u>	<u>EMR, Inc.</u>

(Add additional names on separate sheet, if necessary.)

In addition, by submission of this Proposal and this Certification, Offeror certifies as follows:

1. Offeror understands that the City reserves the right to reject any or all Proposals and to waive any informalities in the Proposal.
2. The Offeror agrees that this Proposal shall be good and will not be withdrawn for a period of one hundred and twenty (120) calendar days after the scheduled closing time for receiving Proposals. If awarded the project, the undersigned agrees to execute and deliver a Contract in the prescribed form within ten (10) days after the Contract is presented to them for signature.
3. The Offeror is submitting, or will submit upon request, such additional information as the City may require accordance with these Contract Documents with this Request for Proposals (RFP).
4. Offeror agrees to execute the Contract in the form presented in the RFP.

The undersigned Offeror hereby agrees to be ready to execute the Contract in conformity with his Bid.

The undersigned Offeror acknowledges receipt of the following addenda:

Addendum No. 1 Date 2/28/2024 Initial by Offeror CCL

Addendum No. _____ Date _____ Initial by Offeror _____

Addendum No. _____ Date _____ Initial by Offeror _____

Addendum No. _____ Date _____ Initial by Offeror _____

The undersigned Offeror certifies that he and each of his subcontractors employs the qualified personnel listed in the Proposal; and that it is prepared to comply fully with the provisions contained in the Contract Documents.

This Proposal is submitted upon the declaration that neither I (we) nor, to the best of my (our) knowledge, none of the members of my (our) firm or company have either otherwise taken any action in restraint of free competition in connection with this RFP.

Dated at Chesterfield, MO this 6th day of March, 2024.

Signature of Offeror:

If an Individual: _____
doing business as _____

If a Partnership: _____
by _____, General Partner.

If a Corporation: Whittney Schulte
a Limited Liability Company

by Whittney Schulte, Contracting & Attesting Officer

Attest:

Whittney Schulte
Contracting & Attesting Officer

Corporate Seal

Business Address of Offeror 580 Goddard Avenue

City, State, Zip Code Chesterfield, MO 63005

Telephone Number of Offeror 636-530-8000



OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that,
according to the records of this office,

INSITUFORM TECHNOLOGIES, LLC

is an entity formed or registered under the law of Delaware, has complied with all
applicable requirements of this office, and is in good standing with this office. This entity has
been assigned entity identification number 19981091819.

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 03/27/2019 that have been posted, and by documents delivered to this office
electronically through 03/28/2019 @ 12:50:24.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this
official certificate at Denver, Colorado on 03/28/2019 @ 12:50:24 in accordance with applicable law.
This certificate is assigned Confirmation Number 11480422.



Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



Marsh McLennan Agency
825 Maryville Centre Drive | Suite 200
Chesterfield | MO 63017
T +1 314 594 2700
MarshMMA.com

January 16, 2024

Re: Insituform Technologies, LLC

To Whom It May Concern:

Insituform Technologies, LLC is a valued Travelers Casualty and Surety Company of America surety customer. Travelers Casualty and Surety Company of America is one of the most financially sound insurance companies in the United States. Travelers Casualty and Surety Company of America is rated A++ (Superior) by A.M. Best Financial Size Category XIV with a combined United States Treasury Listing of \$1.87 Billion.

Due to Insituform Technologies, LLC's reputation, technical expertise, financial strength, quality equipment and experienced labor force, Marsh McLennan Agency is prepared to consider performance and payment bonds for single jobs in the \$250,000,000 range with an aggregate work program of \$700,000,000.

Insituform Technologies, LLC's pro-active approach to a safe worksite and a safe labor force enables owners to rest assured that a safe work environment will be provided. Marsh McLennan Agency is proud to be associated with Insituform Technologies, LLC.

Should a project be awarded to and accepted by Insituform Technologies, LLC, we are prepared to consider providing the required bonds on their behalf. Any bonds are subject to acceptable review of the contract terms and conditions, bond forms, confirmation of financing, and any other underwriting considerations at the time of the request. It should be understood that any arrangement for bonds is strictly a matter between Insituform Technologies, LLC and Travelers Casualty and Surety Company of America. We assume no liability to third parties or to you if for any reason we do not execute said bonds.

Please feel free to contact me if you have any specific questions regarding Insituform Technologies, LLC or their surety bond program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew P. Thome', with a stylized flourish at the end.

Andrew P. Thome, CEO

EXHIBIT C - Pricing Sheet - Strictly Confidential

C & L Water Solutions		Rates Effective: 01/01/2024	
City of Westminster - Non-Emergency/Emergency Project Rates			
LABOR RATES			
Labor Code	Labor Description	Total Labor Rate/HR - Non-Emergency	Total Labor Rate/HR - Emergency
DR1	Driver Group - CDL	\$ 90.00	\$ 90.00
F1	Foreman - General	\$ 120.50	\$ 120.50
L1	Labor Group 1 - Skilled/Pipelayer	\$ 82.00	\$ 82.00
L2	Labor Group 2 - General	\$ 61.50	\$ 61.50
OP1	Operator Group 1 - Heavy Equipment or Other	\$ 98.50	\$ 98.50
MC	Mechanic	\$ 109.00	\$ 109.00
ZPMS	Senior Project Manager	\$ 132.00	\$ 132.00
ZSUP	Superintendent	\$ 122.00	\$ 122.00
Overtime/Weekend/Night: 1.5 x hourly rate (5:00 PM to 7:00 AM Monday through Thursday nights, after 5:00 PM Friday, all day Saturday, Sunday and City Holidays)			
1 of 7			

C & L Water Solutions		Rates Effective: 01/01/2024		
City of Westminster - Non-Emergency/Emergency Project Rates				
EQUIPMENT RATES				
Equip Code	Description	Unit Rate/Hr - Active - 100%	Unit Rate/Hr - Standby - 50%	Emergency Call-out - Not Needed.
8AC	AIR COMPRESSORS			
8AC185	185 Air Compressor	\$ 22.06	\$ 11.03	0%
8AC375	375 Air Compressor	\$ 27.00	\$ 13.50	0%
8BB	BEDDING BOX			
8BB005	Bedding Box 5 YD	\$ 17.70	\$ 8.85	0%
8BB007	Bedding Box 7 YD	\$ 25.96	\$ 12.98	0%
8BH	BACKHOE LOADERS			
8BH430F	430F	\$ 80.54	\$ 40.27	0%
8BHHP	Hoe Pac	\$ 9.48	\$ 4.74	0%
8CTR	CUTTER TRUCKS			
8CTRP	Prokasro Cutter Truck	\$ 203.89	\$ 101.95	0%
8CTRS	Schwalm Cutter Truck	\$ 147.62	\$ 73.81	0%
8DT	DUMP TRUCK			
8DTS	Dump Truck Single	\$ 53.10	\$ 26.55	0%
8DTT	Dump Truck Tandem	\$ 91.50	\$ 45.75	0%
8ET	EXCAVATORS TRACK			
8ET005	Excavator TRK 5 K CAT 302	\$ 29.50	\$ 14.75	0%
8ET015	Excavator TRK 12 K CAT 305	\$ 41.30	\$ 20.65	0%
8ET018	Excavator TRK 18 K LB 80	\$ 76.70	\$ 38.35	0%
8ET033	Excavator TRK 33 K LB 145	\$ 146.32	\$ 73.16	0%
8ET043	Excavator TRK 43 K CAT 318	\$ 145.14	\$ 72.57	0%
8ET056	Excavator TRK 56 K LB 245	\$ 163.43	\$ 81.72	0%
8ET086	Excavator TRK 86 K VLV 360	\$ 172.87	\$ 86.44	0%
8FL	FORK LIFT			
8FL008	Fork Lift 8K	\$ 27.50	\$ 13.75	0%
8FL030	Fork Lift 30K	\$ 95.59	\$ 47.79	0%
8FL040	Fork Lift 40K	\$ 113.34	\$ 56.67	0%
8FL056	Fork Lift 56K	\$ 124.25	\$ 62.13	0%
8G	GENERATORS			

8G45	45 KW Generator	\$	27.05	\$	13.52	0%
8G65	65 KW Generator	\$	33.13	\$	16.57	0%
8G80	80 KW Generator	\$	41.02	\$	20.51	0%
8GRT	CHEMICAL GROUTING					
8GRTJ	Chemical Jetter Trailer	\$	19.90	\$	9.95	0%
8GRTT	Chemical Grout Truck	\$	181.79	\$	90.89	0%
8HT	HEAVY TRUCKS					
8HTCR	Knuckle Boom Crane Truck	\$	96.90	\$	48.45	0%
2 of 7						

C & L Water Solutions		Rates Effective: 01/01/2024			
City of Westminster - Non-Emergency/Emergency Project Rates					
EQUIPMENT RATES					
Equip Code	Description	Unit Rate/Hr - Active - 100%		Unit Rate/Hr - Standby - 50% Emergency Call-out - Not Needed.	
8HTFT	Flat Bed Truck	\$	93.19	\$	46.60 0%
8HTHH	Heavy Haul Tractor	\$	109.12	\$	54.56 0%
8HTTT	Tractor	\$	77.88	\$	38.94 0%
8LF	LAYFLAT SYSTEM				
8LFD	TPU Hose Deployer	\$	4.78	\$	2.39 0%
8LFR	Layflat Hose Roller	\$	0.80	\$	0.40 0%
8LFH	8" TPU Layflat Hose - (LF/DAY)	\$	3.00		
8LMK	LMK EQUIPMENT				
8LMKC	LMK Steam Cure Truck	\$	152.45	\$	76.23 0%
8LMKI	LMK Install Trk w/CCTV	\$	208.10	\$	104.05 0%
8LMKJ	LMK Jetter Trailer	\$	19.90	\$	9.95 0%
8LMKST	LMK Stubby Trailer	\$	5.70	\$	2.85 0%
8LMKT	LMK Tool Truck	\$	49.18	\$	24.59 0%
8MG	MOTOR GRADERS				
8MH	MANHOLE REHABILITATION				
8MHS	Sand Blast Equipment	\$	5.58	\$	2.79 0%
8MHT	Manhole Rehab Truck	\$	75.67	\$	37.83 0%
8P	PUMPS				0%
8P002	2" Pumps	\$	6.02	\$	3.01 0%
8P003	3" Pumps	\$	6.02	\$	3.01 0%
8P004	4" Pumps	\$	8.08	\$	4.04 0%
8P006	6" Pumps	\$	75.35	\$	37.67 0%
8P008	8" Pumps	\$	91.67	\$	45.83 0%
8PPB	PNEUMATIC PIPE BURSTING				
8PPB170	Pneumatic PCG 170 8" Tool	\$	117.19	\$	58.59 0%
8PU	PICKUP TRUCKS				
8PU1500	1/2 Tn Pick Up 1500	\$	45.68	\$	22.84 0%
8PU2500	3/4 Tn Pick Up 2500	\$	47.85	\$	23.93 0%
8PU3500	1 Tn Pick Up 3500	\$	50.75	\$	25.38 0%
8PU4500	1.5 Tn Pick Up 4500	\$	55.10	\$	27.55 0%
8PU5500	2 Tn Pick Up 5500	\$	59.45	\$	29.73 0%
8PUSP	Pickup Special	\$	58.47	\$	29.23 0%
8QL	QUADEX LINING				
8QLFBR	Quadex MH Lining Rig	\$	112.10	\$	56.05 0%
8RL	REACH LIFT				
8RL005	TH255 5K Reach Lift	\$	48.11	\$	24.06 0%
8RL008	TH406 8K Reach Lift	\$	70.80	\$	35.40 0%
8RL012	TH1255 12K Reach Lift	\$	77.91	\$	38.96 0%
8RL020	Manitwoc 28K Reach Lift	\$	106.20	\$	53.10 0%
8SL	SKID LOADERS				
8SL250	Skid Loader 250 Bct	\$	45.01	\$	22.50 0%
8SL650	Cat 242 Skidsteer	\$	53.32	\$	26.66 0%
8SL850	Skid Loader 850 Bct	\$	56.55	\$	28.27 0%
8SP	SUBMERSIBLE PUMP				
8SP3	Submersible Pump 3"	\$	16.93	\$	8.47 0%
8SP4	Submersible Pump 4"	\$	18.92	\$	9.46 0%
8SP6	Submersible Pump 6"	\$	29.87	\$	14.93 0%
8SPB	STATIC PIPE BURSTING				
8SPB8	800G Static PB Machine	\$	425.00	\$	212.50 0%
8SV	SERVICE VEHICLES				

C & L Water Solutions

Rates Effective: 01/01/2024

City of Westminster - Non-Emergency/Emergency Project Rates

EQUIPMENT RATES

Equip Code	Description	Unit Rate/Hr - Active - 100%	Unit Rate/Hr - Standby - 50%	Emergency Call-out - Not Needed.
8SVJC	Jeep Cherokee	\$ 16.56	\$ 8.28	0%
8SVMT	Mechanics Truck	\$ 70.09	\$ 35.05	0%
8SVVV	Van	\$ 13.84	\$ 6.92	0%
8T	TRENCHERS			
8T655	Vermeer T655	\$ 390.00	\$ 195.00	0%
8UV	UV EQUIPMENT			
8UVBL	UV Blower Skid	\$ 22.26	\$ 11.13	0%
8UVCC	UV Truck CCU	\$ 239.20	\$ 119.60	0%
8UVCP	UV Truck Professional	\$ 265.14	\$ 132.57	0%
8UVCT	UV CCTV Van	\$ 59.50	\$ 29.75	0%
8UVCV	UV Conveyor Trailer	\$ 74.89	\$ 37.45	0%
8UVHJ	UV Jet Truck	\$ 107.70	\$ 53.85	0%
8UVJT	UV Jetter Trailer	\$ 21.92	\$ 10.96	0%
8UVTT	UV Tool Truck	\$ 80.83	\$ 40.41	0%
8VBA	VIBRATORY ASPHALT COMP			
8VBA036	Vib Asphalt Comp 36"	\$ 7.78	\$ 3.89	0%
8VBS	VIBRATORY SOIL COMP			
8VBSWK	Compactor Wacker	\$ 13.32	\$ 6.66	0%
8W	WINCHES			
8W015	Winch 1.5 Ton	\$ 15.93	\$ 7.97	0%
8W03	Winch 3 Ton	\$ 4.78	\$ 2.39	0%
8W05	Winch 5 Ton	\$ 45.55	\$ 22.78	0%
8W10	Winch 10 Ton	\$ 54.49	\$ 27.24	0%
8WL	WHEEL LOADER			
8WL002	Wheel Loader 2 YD CAT 924	\$ 69.66	\$ 34.83	0%
8WT	WATER TRUCK			0%
8WT2	Water Truck 2000 GAL	\$ 49.83	\$ 24.92	0%
8YY	TRAILERS			
8YYBH	Backhoe Trailer	\$ 23.10	\$ 11.55	0%
8YYDD	Step Deck	\$ 30.80	\$ 15.40	0%
8YYDT	Dump Trailer	\$ 10.92	\$ 5.46	0%
8YYED	End Dump w Tractor	\$ 110.95	\$ 55.48	0%
8YYLB	Low Boy w Tractor	\$ 159.54	\$ 79.77	0%
8YYLP	Light Plant	\$ 17.72	\$ 8.86	0%
8YYML	Main Line Trailer	\$ 39.83	\$ 19.91	0%
8YYPT	Paving Trailer	\$ 7.34	\$ 3.67	0%
8YYST	Shoring Trailer Combo	\$ 49.65	\$ 24.83	0%
8YYUT	Utility Trailer	\$ 7.87	\$ 3.94	0%
8YYVT	Vacuum Trailer	\$ 41.82	\$ 20.91	0%
8YYWA	Wachs Valve Trailer	\$ 61.04	\$ 30.52	0%
8YYWW	Water Wagon	\$ 6.64	\$ 3.32	0%

C & L Water Solutions

Rates Effective: 01/01/2024

City of Westminster - Non-Emergency/Emergency Project Rates

Traffic Control Rates

PRODUCT	PRODUCT CODE	REG PRICE	RATE PER
<i>Barricades</i>			
Type I Barricade Only	T1O	\$0.85	Day
Type I Barricade w/ A Flasher	T1A	\$1.09	Day
Type I Barricade w/C Steady-Burn	T1C	\$1.09	Day
Type I Barricade w/Sign	T1OTS16	\$3.04	Day
Type II Barricade Only	T2O	\$0.85	Day
Type II Barricade w/ A Flasher	T2A	\$1.09	Day

Type II Barricade w/ C Steady-Burn	T2C	\$1.09	Day
Type II Barricade w/Sign	T2OTS16	\$3.04	Day
Type III Barricade Only	T3O	\$3.04	Day
Type III Barricade w/ 2 A Flashers	T32A	\$3.52	Day
Type III Barricade w/Sign	T3OTS16	\$6.08	Day
ADA Wall	ADAWALL	\$6.08	Day
Pedestrian Fence	PEDFENCE	\$4.86	Day
6' Water Filled Barrier	WFB6	\$7.90	Day
Airport Water Barrier/Barricade	APWBAR	Varies	Day
Airport Barricade Light	APBL	Varies	Day
Attenuator - TL2	ATTL2	\$81.00	Day
Attenuator - TL3	ATTL3	\$94.50	Day
<i>Channelizing</i>			
28" Reflectorized Cone	TC28R	\$0.73	Day
36" Reflectorized Cone	TC36R	\$0.97	Day
Grabber/Delineator w/ Base	GC42R	\$0.85	Day
Vertical Panel w/ Base	VPO	\$0.85	Day
Vertical Panel w/Sign	VPOTS16	\$3.04	Day
Vertical Panel w/ A Flasher	VPA	\$1.09	Day
Vertical Panel Base	VPBASE	\$0.41	Day
Vertical Panelw/ C Steady-Burn	VPC	\$1.09	Day
Traffic Drum w/ Base	TDO	\$1.70	Day
Traffic Drum w/ A Flasher	TDA	\$2.31	Day
<i>Fleet</i>			
TMA Truck Only - Daily	TMADLY	\$945.00	Day
Vehicle Charge	VEH	\$31.50	Day
<i>Fuel</i>			
Fuel Surcharge - Heavy Vehicle	FUELHVY	Varies	Day
Fuel Surcharge - Light Vehicle	FUELLGT	Varies	Day
Mileage	MILE	Varies	Mile
<i>LEO</i>			
Law Enforcement Officer (LEO)	LEO	Varies	Hour
Law Enforcement Officer Procurement and Processing	LEOP	\$101.25	Each
<i>Labor - Subcontractor</i>			
Flagging Employee - Hourly	IF	\$48.60	Hour
Flagging Employee - Overtime/Night	IFOT	\$72.90	Hour
Flagging Employee - Daily - 8 Hour Day	IF8D	\$388.80	Day
Flagging Employee - Daily - 10 Hour Day	IF10D	\$486.00	Day
Traffic Control Employee - Hourly	IM	\$48.60	Hour
Traffic Control Employee - Overtime/Night	IMOT	\$72.90	Hour
Traffic Control Employee - Daily - 8 Hour Day	IM8D	\$388.80	Day
Traffic Control Employee - Daily - 10 Hour Day	IM10D	\$486.00	Day
Traffic Control Supervisor - Hourly	ITCS	\$72.90	Hour
Traffic Control Supervisor - Overtime/Night	ITCSOT	\$109.35	Hour
Traffic Control Supervisor - Daily - 8 Hour Day	ITCS8D	\$583.20	Day
Traffic Control Supervisor - Daily - 10 Hour Day	ITCS10D	\$729.00	Day
TMA Truck Driver Labor - Hourly	TMAHRLY	\$72.90	Hour
TMA Truck Driver Labor - Daily - 8 Hour Day	TMAL8	\$583.20	Day
TMA Truck Driver Labor - Daily - 10 Hour Day	TMAL10	\$729.00	Day
Traffic Control Employee - Prevailing Wage	IMPV	Varies	Hour
Traffic Control Employee - Prevailing Wage Fringe	IMPVF	Varies	Hour
<i>Misc.</i>			
Sandbag	SNDBG	\$0.27	Day
Flag w/ Dowel	FLAGDWL	\$0.27	Day
Rumble Strips (6-pack)	RS	\$425.25	Day
Safety Flares (36-pack)	FLARE-S	\$249.75	Each
5 of 7			

C & L Water Solutions		Rates Effective: 01/01/2024	
City of Westminster - Non-Emergency/Emergency Project Rates			
Traffic Control Rates			
PRODUCT	PRODUCT CODE	REG PRICE	RATE PER
Mobilization			
Deliver Traffic Control	DEL	\$109.35	Each
Deliver Traffic Control - After Hours	DELAH	\$136.69	Each
Set up Traffic Control	SETUPTRFC	\$60.75	Each
Set up Traffic Control - After Hours	SETUPAH	\$81.00	Each
Tear Down Traffic Control	TEARDW	\$60.75	Each
Tear Down Traffic Control - After Hours	TEARDWAH	\$81.00	Each
Pick up Traffic Control	PICKUP	\$109.35	Each
Pick up Traffic Control - After Hours	PICKUPAH	\$136.69	Each

Port To Port	PORT	Varies	Hour
	<i>Per Diem</i>		
Per Diem - Per Person	PD	Varies	Day
Lodging - Per Person	LODGE	Varies	Day
	<i>Permit</i>		
Permit	PT	Varies	Each
	<i>Signs</i>		
Traffic Sign Small (<10 Sq. Ft.)	TS10	\$2.43	Day
Traffic Sign Medium (10 to 16 Sq. Ft.)	TS16	\$3.65	Day
Traffic Sign Large (>16 Sq. Ft.)	TS17	\$4.86	Day
Temporary No Parking Sign	TNP	\$0.61	Day
Flagger Paddle	PADRENT	\$2.31	Day
	<i>Stands</i>		
Sign Stand	SSO	\$1.46	Day
Large Sign Stand	LSSO	\$2.43	Day
Buster/Spring Sign Stand Only	SPG	\$3.65	Day
Buster/Spring Sign Stand w/A Flasher	SPGA	\$3.89	Day
Buster/Spring Sign Stand w/B Flasher	SPGB	\$4.86	Day
Embedded Sign Post	UCH	\$2.07	Day
	<i>TCP</i>		
Traffic Control Plan (TCP)	TCP	\$87.75	Page
Traffic Control Plan (TCP) - Engineer Stamped	TCPSTMP	\$438.75	Page
	<i>Trailerred Assers</i>		
AFAD - Automated Flagger Assistance Device	AFAD1	\$48.60	Hour
AFAD - Automated Flagger Assistance Device (8 Hour Day)	AFAD8	\$388.80	Day
AFAD - Automated Flagger Assistance Device (10 Hour Day)	AFAD10	\$486.00	Day
Arrow Board	ARWBRD	\$60.75	Day
Message Board	MSGBRD	\$133.65	Day
Light Tower	LT	\$236.25	Day
Variable Speed Trailer	VST	\$303.75	Day
Portable Traffic Signal (PTS)	PTS	\$668.25	Day
Flagger Station Light	FSL	\$30.38	Day
Radar Speed Trailer	RADAR	\$364.50	Day
	<i>Warning Lights</i>		
Type A Flasher	AFL	\$0.27	Day
Type C Steady-burn	CFL	\$0.27	Day
Type B Hi-Intensity Flasher	BFL	\$3.04	Day
6 of 7			

C & L Water Solutions		Rates Effective: 01/01/2024	
City of Westminster - Non-Emergency/Emergency Project Rates			
Markups and Other			
Subcontractor Markup		15%	
Materials Markup		18%	
Other		15%	
Dump Fees - Clean Dirt		\$700.00/Tandem - \$780/Trailer	
Dump Fees - Trash/Concrete with Bar		\$1500.00/Tandem/Trailer	
Dump Fees - Clean Asphalt/non-reinforced Concrete		\$255.00/Tandem/Trailer	
City Permits and Bonds		At Cost	
Use Tax on Materials and Equipment		3.85% As determined based on Materials supplied and Equipment value based on duration spent in City limits.	
7 of 7			

EXHIBIT B
GENERAL CONDITIONS

EXHIBIT C
INSURANCE REQUIREMENTS

Including General Liability, Automobile, Workers' Compensation, Environmental Liability

General Requirements (Version dated December 2024)

1. All insurers shall be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers shall have an A.M. Best Company rating of at least A- Class VII.
3. Additional Insured. City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, umbrella liability, excess liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage. Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield.
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver. All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits. The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates. Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
 - a. the effective date of the Contract
 - b. the expiration date of any coverage
 - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
14. Contractors must carry all insurance or purchase the below insurance.

Insurance Requirements

The Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense, and for the duration of the Agreement including any warranty periods under which the Agreement are satisfied, the following:

Commercial General Liability

Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability. For contracts involving vendor/contractor contact with minors or at risk adults, Sexual Abuse and Misconduct Coverage should be included in the coverage requirements and listed on the certificate.

Minimum limits:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate (per project aggregate for construction contracts)
- \$2,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)

Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired, and non-owned autos).

Minimum limits:

- \$1,000,000 each accident combined single limit
- If hazardous materials are transported, an MCS 90 form shall be included on the policy

Workers' Compensation

Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment. This requirement shall not apply when a contractor or subcontractor is exempt under the Colorado Workers' Compensation Act and when such contractor or subcontractor provides an appropriate sole proprietor letter.

Employer's Liability with minimum limits:

- \$100,000 Each Accident
- \$100,000 Each Employee by Disease
- \$500,000 Disease Aggregate

Environmental Liability

Contractor/Vendor will purchase an environmental liability policy covering bodily injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from contractor's/vendor's operations and completed operations.

Minimum limit:

- \$1,000,000 Each Occurrence/Aggregate

Deviations

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to RiskManagement@broomfield.org.

Certificate Holder/Certificate of Insurance (COI)

On all Certificates of Insurance the following shall be named an Additional Insured and included on the Certificate provided:

The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Umbrella Liability, Excess Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.

City and County of Broomfield
One DesCombes Drive
Broomfield, CO 80020-2495
certificates@broomfield.org



City and County of Broomfield

City Council Regular Meeting

C. Proposed Resolution to Approve a Design Agreement for the Lift Station Rehab (Site App Project): Outlook Lift Station

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Action Items Item: 7C.
Presented By	
Ken Rutt, Director of Public Works	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience	

Overview

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution No. 2025-27 would approve a design services agreement with Burns & McDonnell Engineering Co., Inc. (B&M) for preliminary engineering services and coordination with the state agencies for the Outlook Lift Station Site Application and Rehabilitation Project.

Attachments

[Memo - Resolution to Approve a Design Agreement for the Lift Station Rehab \(Site App Project\)_ Outlook Lift Station.pdf](#)

[Resolution No. 2025-27.pdf](#)

[Consulting Agreement Burns McDonnell_ Outlook Lift Station \(2\).pdf](#)

Summary

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution No. 2025-27 would approve a design services agreement with Burns & McDonnell Engineering Co., Inc. (B&M) for preliminary engineering services and coordination with the state agencies for the Outlook Lift Station Site Application and Rehabilitation Project.

The Colorado Department of Public Health and Environment (CDPHE) is the governing state agency for sewer lift stations within the state of Colorado. Municipalities are required to receive approval from CDPHE to build and operate lift stations by submitting site applications for each station.

Of the 13 existing lift stations Broomfield operates, there are four lift stations in which staff and CDPHE were unable to locate any existing/historical records or information on the site applications. These four stations were designed and constructed in the 1980s. Since the written records for the site applications cannot be located, CDPHE has notified Broomfield of their noncompliance and is requiring Broomfield to bring these four lift stations into compliance with current regulations. Other municipalities that constructed sewer lift stations during the same timeframe are in similar circumstances and are being required to comply with CDPHE regulations.

The 2021, 2022, 2023, 2024, and 2025 Budgets have provided funding for the Site Application process and complete rehabilitation work. Broomfield is working with B&M and Moltz Construction to sequentially design and construct the necessary improvements to the four lift stations in priority order. The four lift stations include the Interlocken Lift Station, Lac Amora Lift Station, Sunridge Lift Station, and Outlook Lift Station.

[Outlook Lift Station is located south of Berthod Trail, north of Powderhorn Trail and west of Outlook Trail.](#) It is located within Tract C of the Outlook Filing, No. 2 Final Plat. Tract C was designated as Open Space as a perpetual utility and drainage easement. [The plat can be found at this link.](#) The station was constructed in 1986 with the development of the Outlook subdivision.

Improvements to the Interlocken lift station along Industrial Lane and Lac Amora Lift Station along Oak Circle are complete. Broomfield has recently received approval from CDPHE for the Sunridge project. Construction easements have been requested from the Sunridge Condo Association.

Proposed Resolution No. 2025-27 would approve a consulting agreement for the preliminary engineering design services with Burns & McDonnell Engineering Co., Inc. in an amount not to exceed \$317,827.

If approved, B&M would begin the initial site investigation, conceptual design services including verification of existing flows and any existing reports, and begin the CDPHE Site Application Process.

Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
Sewer Lift Station Compliance (45-70621-55200, 21Q0038)	\$8,278,418
Consulting Agreement with Burns & McDonnell for the Preliminary Design of the Outlook Lift Station	-\$317,827
Design Contingency	-\$31,783
Estimate - Permitting Fees CDPHE	-\$50,000
Estimate - Remaining Design Fees for Outlook Lift Station	-\$800,000
Projected Balance	\$7,078,808

Prior Council or Other Entity Actions

Council authorized Resolution [2021-27](#) for a Consulting Agreement with Burns & McDonnell, Inc., for the Interlocken Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2021-133](#) for Amendment One to the Consulting Agreement with Burns & McDonnell for the Interlocken Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2021-141](#) for a Construction Agreement with Vortex, Inc. for the Interlocken Lift Station Utilities Project.

Council authorized Amendment One Resolution [2021-163](#) for a Construction Agreement with Moltz Construction, Inc. for the Interlocken Lift Station Rehabilitation Project.

Council authorized Resolution [2021-193](#) for Amendment Two to the Consulting Agreement with Burns & McDonnell for the Lac Amora Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2023-32](#) for an Amendment to the Construction Agreement with Moltz Construction, Inc. for the Lac Amora Lift Station Rehabilitation Project.

Council authorized Resolution [2023-58](#) for the Third Amendment to the Consulting Agreement with Burns & McDonnell for the Lac Amora Lift Station Rehabilitation Project.

Council authorized funds in the [2024 Budget](#) for the Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2024-152](#) for the Construction Agreement with Moltz Construction Inc. for the Sunridge Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2024-153](#) for the Consulting Agreement with Burns & McDonnell for design services for the Sunridge Lift Station Site Application and Rehabilitation Project.

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

If Council desires to proceed with the project; the appropriate motion is...
That Resolution 2025-27 be adopted.

Alternatives

Decide not to continue with the Sunridge Lift Station Site Application and Rehabilitation Project; continue to be in violation with CDPHE and possibly encounter fines for non-compliance with CDPHE.

RESOLUTION NO. 2025-27

A Resolution Approving a Consulting Agreement between The City and County of Broomfield and Burns & McDonnell Engineering Co., Inc. for the Outlook Lift Station Site Application Project

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

Section 1.

The Consulting Agreement by and between the City and County of Broomfield and Burns & McDonnell Engineering Co., Inc., in the amount of \$317,827, for consulting services for the Outlook Lift Station Site Application Project is approved.

Section 2.

The Mayor or Mayor Pro Term is authorized to sign and the office of the City and County Clerk to attest the Agreement, in form approved by the City and County Attorney.

Section 3.

The City and County Manager or a designee thereof is authorized to approve change orders in an aggregate amount not to exceed ten percent.

Section 4.

This resolution is effective upon its approval by the City Council.

Approved on April 22, 2025

The City and County of Broomfield, Colorado

Mayor

Attest:

Office of the City and County Clerk

Approved as to form:

KKH

City and County Attorney

CONSULTING AGREEMENT BY BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND
BURNS & MCDONNELL ENGINEERING CO., INC. FOR ENGINEERING SERVICES RELATED
TO THE BROOMFIELD'S SITE APPLICATION PROJECT: OUTLOOK LIFT STATION

1. PARTIES. The parties to this Agreement are The City and County of Broomfield, a Colorado municipal corporation and county, (the "City") and Burns & McDonnell Engineering Co., Inc., a Missouri corporation, (the "Consultant"), collectively, the "Parties," or individually, a "Party."

2. RECITALS. The Recitals to this Agreement are incorporated herein by this reference as though fully set forth in the body of this Agreement.

2.1 The City desires to obtain consulting services in connection with a project called Site Application Project: Outlook Lift Station (the "Project").

2.2 The Consultant provides professional services and is qualified to perform services required by the City for the Project.

3. TERMS AND CONDITIONS. in consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

3.1 Obligations of the Consultant.

3.1.1. *General*. The Consultant shall consult with and advise the City as the City requires in Exhibit A or elsewhere in this Agreement during the term of this Agreement. The Consultant shall act at the direction of the City employee assigned by the City to the Project as Project Manager. The Consultant shall communicate with the City about the Project only through the Project Manager.

3.1.2. *Basic Services*. The Consultant shall perform the Basic Services described in Exhibit A and elsewhere in this Agreement.

3.1.3. *Extra Services*. Upon the express, written consent of the City, the Consultant shall perform Extra Services. The Consultant shall charge the City for such Extra Services, if any, in accordance with such terms as the City may agree to in writing.

3.1.4. *Documents*. All drawings, computer programs, computer input and output, analyses, plans, photographic images, tests, maps, surveys, electronic files, and written material of any kind required to be generated by the Agreement for the performance of this Agreement or required to be developed by the Consultant specifically for the Project are and shall remain the sole and exclusive property of the City. All such documents and electronic files prepared by Consultant pursuant to this Agreement are instruments of service in respect of the Services specified herein. Such documents and electronic files are not intended or represented to be suitable for reuse by the City or others in extensions of the project beyond that contemplated in the Agreement. Any reuse, extension, or completion by the City or others will be at the City's sole risk and without liability or legal exposure to Consultant. The Consultant shall not provide copies of any such material to any other party without the prior written consent of the City. Rights to Consultant's intellectual property developed, utilized or modified in the performance of the Services, but not created as a specific requirement of this Agreement, shall remain the property of Consultant. Consultant grants to the City a royalty-free, irrevocable, worldwide, nonexclusive, perpetual license to use

such intellectual property to use in connection with the associated with the Project and related facilities. Consultant grants to the City a royalty-free, irrevocable, worldwide, nonexclusive, perpetual license, to use, disclose, reproduce, sublicense, modify, or prepare derivative works from such intellectual property as needed to maintain, modify or improve the facilities associated with the Project. Such use, reproduction, or modification by the City or others will be at the City's sole risk and without liability or legal exposure to Consultant.

3.1.5. *Authorization to Proceed.* No work on the Project shall be performed by the Consultant until written Authorization to Proceed has been issued by the City. If the Consultant proceeds with any work prior to receipt of said Authorization, the City is not responsible for payment for such work.

3.1.6. *Completion Date.* The Consultant shall complete the services of this Agreement within 180 days following the date of the authorization to Proceed. Additionally, the Consultant shall meet the midterm milestones outlined in Exhibit A.

3.2 Obligations of the City.

3.2.1. *General.* The City shall coordinate reviews, approvals, and authorizations of all stages of work. All approvals and authorizations shall be in writing.

3.2.2. *Changes in Work.* Any changes with regard to the Consultant's cost, time requirements of performance, or scope of the work must be in writing and approved by the Parties hereto prior to any work or services being performed in contemplation of said change.

3.2.3. *Materials and Services to be Furnished by the City.* The City agrees to furnish the Consultant any material in the possession of the City to the extent that such material, in the opinion of the Project Manager, is readily available and will assist the Consultant in performing the work. The Consultant agrees to request such material in advance so as not to jeopardize the work schedule or meeting arrangements. The City shall not unreasonably withhold such material.

3.3 Commencement and Completion.

3.3.1. The Consultant shall commence work on the first working day following receipt of a written Authorization to Proceed issued by the City, or such later date as indicated in the Authorization to Proceed.

3.3.2. Except as may be agreed upon in writing by the City and the Consultant, the Consultant shall follow the time schedule shown in Exhibit A.

3.3.3. If due to Acts of God, public emergency, changes in scope, or acts of a public enemy, it becomes apparent that this Agreement cannot be fully completed within the agreed time, the Consultant shall so notify the City in writing at least thirty days prior to any scheduled completion date, in order that the Consultant and the City may review the work accomplished to date and determine whether to amend this Agreement to provide additional time for completion.

3.4 Payments to Consultant.

3.4.1. *Aggregate Limit.* Unless extra services are authorized in writing, the amount paid by the City to the Consultant under this Agreement will not exceed the amount shown in subparagraph (b) below. The Consultant will complete the Work for the amount shown.

3.4.2. *Billing.* The Consultant shall bill the City monthly for work done in accordance with the terms and conditions of this Agreement, using the pay request form provided by the City. The total amount shall not exceed **\$317,827**, including reimbursables in accordance with the rates set forth in Exhibit A.

3.4.3. *Payment by City.* The City will pay each bill in full within 30 days of receipt of payment request and supporting documentation. Consultant shall furnish such additional documentation as the City shall reasonably require. Incorrect payments to the Consultant due to omission, error, fraud, or defalcation may be recovered from the Consultant by deduction for subsequent payments due to the Consultant under this Agreement or other contracts between the City and the Consultant.

3.4.4. *Inspection of Records.* The Consultant will permit the authorized agents and employees of the City at reasonable hours, to inspect, review, and audit all records of the Consultant related to this project and the work to be performed hereunder. The Consultant, its employees, subcontractors, and agents shall maintain all books, documents, papers, and accounting records related hereto, and all information regarding costs incurred herein, at their offices during the contract period and for three years thereafter. The audit rights of the City that are granted by this Agreement are not applicable to firm-fixed price or lump sum authorizations and are not applicable to any fixed labor rates or fixed expense charges, of any other type of contract whether compensation is based on time and material, rate schedule, guaranteed-maximum-price, or otherwise.

3.5 Termination.

3.5.1. *For Cause.* This Agreement may be terminated by either party for a material breach of this Agreement by the other party not caused by any action or omission of the terminating party by giving the other party written notice in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach and shall provide each party ten (10) days to cure the breach (or if such breach cannot be cured within ten (10) days, then the breaching party shall begin to cure such breach within three (3) days and continue to diligently pursue such cure until cured. If such breach is not reasonably subject to cure, such notice of termination shall be immediately affected upon receipt of the written notice. If this Agreement is so terminated by the Consultant, the Consultant will be paid for all services rendered up to the date of the termination. If this Agreement is so terminated by the City, the Consultant shall promptly deliver to the City all Documents as defined in Section 3.2(d) that are generated in the performance of this Agreement up to and including the date of termination. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

3.5.2. *Without Cause.* In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving the Consultant written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Consultant will be paid for all services rendered to the date of termination, and upon such payment, all obligations of the City to Consultant under this Agreement will cease. Furthermore, in the event of such termination, the

Consultant shall promptly deliver to the City all Documents as defined in Section 3.2(d) that are generated in the performance of this Agreement up to and including the date of termination. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

3.6 Suspension. Without terminating this Agreement or breaching its obligations hereunder, the City may, at its pleasure, suspend the services of the Consultant hereunder. Such suspension may be accomplished by giving the Consultant written notice one (1) day in advance of the suspension date. Upon receipt of such notice, the Consultant shall cease its work in as efficient a manner as possible so as to keep his total charges to the City for services under the Agreement to the minimum.

3.7 Laws to be Observed. The Consultant shall be cognizant of applicable federal and state laws and local ordinances and regulations in performance of its services that relate to Consultant's services performed hereunder, and shall observe and comply with such applicable existing laws, ordinances, and regulations.

3.8 Permits and Licenses. The Consultant shall procure all permits and licenses required by Exhibit A, and pay all related charges, fees and taxes and give all related notices necessary and incidental to such permits and licenses.

3.9 Patented Devices, Materials, and Processes. The Consultant shall hold and save harmless the City from any and all claims for infringement, to the extent caused by reason of the Consultant's (or its subconsultant's use of any tier or their respective employees) misappropriation or misuse of any patented design, device, material, process, any trademark, or copyright and shall indemnify the City for any costs, attorney's fees, expenses and damages which it might be obligated to pay by reason of such infringement, at any time during the prosecution or after completion of the work.

4. Liability and Indemnification.

4.1 Standard of Care.

4.1.1. *Professional Liability.* The Consultant shall exercise in its performance of the Basic Services and Extra Services, if any, the standard of care normally exercised by locally recognized consulting organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damage, or cost incurred by the City for the repair, replacement, or correction of any part of the Project that is deficient or defective as a result of any failure of the Consultant to comply with this standard.

4.1.2. *Indemnification.* The Consultant shall indemnify and hold harmless the City and its agents and employees from and against damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the performance of the Basic Services or Extra Services, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death or injury to or destruction of tangible property (other than the Project itself), including the loss of use resulting therefrom, and (2) is caused by any negligent act or error or omission of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise

exist as to any party or person described in this paragraph 4.1.2. Further, this indemnification is intended to comply with and be subject to Section 13-50.5-102 (8), C.R.S. as amended from time to time.

4.1.3. *No Limitation on Claims.* In any and all claims against the City or against any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under subparagraph 4.1.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subcontractor under Workers' Compensation Act of Colorado or other employee benefit legislation.

4.2. Insurance.

4.2.1. *Purchase and Maintain Insurance.* Consultant shall purchase and maintain insurance of the kind, in the amounts, and subject to the conditions specified herein in the Exhibit B. However, insurance requirements contained in this Agreement shall not be deemed to limit or define obligations of the Consultant as provided elsewhere in this agreement, and the Consultant should rely on its experience to obtain additional insurance coverage needed for the City and the Consultant in its performance hereunder.

4.2.2. *Coverage.* Said insurance shall be maintained in full force and effect during the term of this Agreement and shall protect the Consultant, its employees, subcontractors, agents and representatives, and the City from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from acts or omissions of the Consultant, its employees, agents or representatives, in the performance of the services covered herein.

4.2.3. *Valuable Papers.* Furthermore, the Consultant shall carry valuable papers insurance in an amount sufficient for the restoration of any plans, drawings, field notes or other similar data related to the services covered by this Agreement in the event of their loss or destruction until such time as the final submission by the Consultant has been made and accepted by the City.

4.2.4. *Certificates.* Certificates showing the Consultant is carrying the above-described insurance shall be furnished to the City within fifteen calendar days after the date on which this Agreement is made. Other than Workman's Compensation and Professional Liability, such certificates shall provide that the City is included as an additional insured and that the insuring company will provide thirty-day written notice prior to any alteration or cancellation of the above-described insurance.

5. NOTICE AND AUTHORIZED REPRESENTATIVES. Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Consultant. The Consultant shall not replace the Consultant Representative unless: (a) the City requests a replacement, or (b) the Consultant terminates the employment of the Consultant Representative and provides a satisfactory substitute. The City must approve a substitute Consultant Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

5.1. The City designates CIP and Construction Superintendent as the authorized representative of the City under this Agreement. Email address is ralford@broomfield.org.

5.2. Consultant designates Brian Knadle as the authorized representative of the Consultant under this Agreement. Email address is bknadle@burnsmcd.com.

If the Consultant is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to citycountyattorney@broomfield.org.

6. INDEPENDENT CONTRACTOR. **The Consultant is an independent contractor as described in C.R.S. § 8-40-202(2). The Consultant is not entitled to workers' compensation benefits and is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.**

7. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Consultant shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall provide the appropriate insurance as required for the Consultant under this Agreement. The Consultant shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Consultant without the express written consent of the City.

8. NO THIRD-PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

9. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Consultant. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Consultant. The City's fiscal year is currently the calendar year.

10. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.

11. CONFLICTS WITHIN THE CONTRACT DOCUMENTS. In the event that conflicts exist within the terms and conditions of this Agreement and the attached or referenced Agreement documents or exhibits the former shall supersede.

12. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Consultant invoice, Consultant timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Consultant's rights and obligations shall be solely governed by the terms and conditions of this Agreement.

13. SEVERABILITY. If any provision of this agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this

Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

14. ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

15. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.

16. DOCUMENTS.

16.1 All drawings, computer programs, computer input and output, analyses, plans, photographic images, tests, maps, surveys, electronic files, and written material of any kind generated in the performance of this Agreement or developed by the Consultant specifically for the Project are and shall remain the exclusive property of the City. The Consultant shall not provide copies of any such material to any other party without the prior written consent of the City.

16.2 The City uses Google Workspace (formerly G-Suite), including Google Docs, Sheets and Slides as its management system for City documents and collaboration. The Consultant shall produce all word processed documents, spreadsheets, and slide decks developed for the City under this Agreement using Google Workspace formats, unless otherwise indicated in this Agreement or expressly authorized in writing by the City Representative. No funding or extension on deadlines shall be provided to the Consultant to convert documentation from Microsoft or other format files into Google Workspace formats (i.e. Google Docs and Sheets) or back to the initial format, unless expressly authorized in writing by the City Representative.

17. RECORDS RETENTION. The Consultant shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Consultant for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.

18. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement.

19. ASSIGNMENT. This Agreement shall not be assigned by the other Party without the prior written consent of the City.

20. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

21. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

22. DELAYS. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.
23. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.
24. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
25. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
26. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Any claims or litigation arising under this Agreement will be brought by the Parties solely in the District Court, Broomfield County, Colorado.
27. SURVIVAL OF OBLIGATIONS. Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that require continued performance or compliance beyond the termination or expiration of this Agreement, including without limitation the indemnification provision, shall survive such termination or expiration and shall be enforceable against a Party if such Party fails to perform or comply with such term or condition.
28. LAWS TO BE OBSERVED. The Consultant shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees.
29. DIGITAL ACCESSIBILITY STANDARDS. In 2021, the State of Colorado adopted HB21-1110 relating to the digital accessibility standards required to be implemented under the Colorado Anti-Discrimination Act which makes it unlawful to discriminate against individuals with a disability. The Contractor shall ensure that all digital deliverables and digital technology provided pursuant to the terms of this Agreement shall comply with at least the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, or such updated standard as the Colorado Governor's Office of Information Technology may adopt from time-to-time.
30. EXECUTION: ELECTRONIC SIGNATURES. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement.

Consulting Agreement for Engineering Services for the Site Application Project: Outlook Lift Station
Burns & McDonnell Engineering Co., Inc.

The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

[The remainder of this page is intentionally left blank.]

This Agreement is executed by the Parties hereto in their respective names as of
_____, 2025.

THE CITY AND COUNTY OF BROOMFIELD,
a Colorado municipal corporation and county

Mayor

APPROVED AS TO FORM:

City and County Attorney

Consulting Agreement for Engineering Services for the Site Application Project: Outlook Lift Station
Burns & McDonnell Engineering Co., Inc.

Burns & McDonnell, Inc. a Missouri corporation

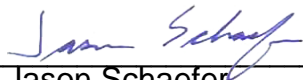

By: Jason Schaefer
Title: Regional GP Manager

EXHIBIT A
Scope of Services and Fees

EXHIBIT B
INSURANCE REQUIREMENTS

CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including Professional Liability

1. All insurers must be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers should have an A.M. Best Company rating of at least A- VII.
3. Additional Insured - City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage – Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver – All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation – The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor/Vendor and Contractor/ Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates – Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
 - a. the effective date of the Contract
 - b. the expiration date of any coverage
 - c. a request by the City and County of Broomfield
9. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
10. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
11. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.

Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the following:

Insurance Requirements - Including Professional Liability		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	Commercial General Liability Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability. Note: For contracts involving vendor/contractor contact with minors or at-risk adults, Sexual Abuse and Misconduct Coverage should be included in the coverage requirements.	<ul style="list-style-type: none"> • \$1,000,000 Each occurrence • \$2,000,000 General Aggregate (Per Project) • \$2,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)
2.	Automobile Liability Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).	<ul style="list-style-type: none"> • \$1,000,000 combined single limit • If hazardous materials are transported, an MCS 90 form shall be included on the policy
3.	Workers' Compensation Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment. This requirement shall not apply if exempt under Colorado Workers' Compensation Act, AND when providing the sole proprietor waiver form.	Employer's Liability with Limits: <ul style="list-style-type: none"> • \$100,000 Each Accident • \$100,000 Each Employee by Disease • \$500,000 Disease Aggregate
4.	Professional Liability Contractor will purchase and maintain professional liability insurance covering any damages caused by an error, omission or negligent professional act to include the following: Coverages: <ul style="list-style-type: none"> • Limited Contractual Liability • If coverage is Claims Made, a retroactive date prior to the inception of the work • If coverage is Claims Made, similar coverage must be maintained for three years following the completion of the work or an extended reporting period of 36 months must be purchased 	Limit: <ul style="list-style-type: none"> • \$1,000,000 Per Claim/Aggregate
Additional Insured - The following shall be named an Additional Insured: The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Umbrella Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies. Certificate Holder is: City and County of Broomfield One DesCombes Drive Broomfield, CO 80020-2495 certificates@broomfield.org		

Consulting Agreement for Engineering Services for the Site Application Project: Outlook Lift Station
Burns & McDonnell Engineering Co., Inc.

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to RiskManagement@broomfield.org



City and County of Broomfield

City Council Regular Meeting

D. Ordinance Amending Chapter 2-60 of the Broomfield Municipal Code to Change Administrative Organization - First Reading

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Action Items Item: 7D.
Presented By	
Anna Bertanzetti	
Community Goals	

Overview

[View Correspondence](#)

[View Presentation](#)

Ordinance No. 2269 would modify Chapter 2-60 of the Broomfield Municipal Code to reflect structural changes that have been made or are planned to be made to the organization to optimize resources, leverage staff expertise and enhance delivery of services.

Attachments

[Administrative Organization 2-60 1st Reading Council Memo.pdf](#)

[Ordinance No. 2269 Reorganization.pdf](#)

Summary

[View Correspondence](#)

[View Presentation](#)

Over the last several years, staff has worked to ensure the structure of the Broomfield organization is aligned with the priorities set forth by the City Council to best position staff to meet the evolving needs of our community, both now and in the future. The organization has undergone structural changes to optimize resources, leverage staff expertise, and enhance service delivery. The intent is to meet the community's expectations and ensure ongoing efficiency and effectiveness in our operations.

Throughout these organizational updates, the staff has kept City Council informed through a progressive process: through informal communications (emails and updates during public meetings), then through formal acknowledgment during annual budget approvals, amendments, and other considerations. The final step in this process is to formally amend Chapter 2-60 of the Broomfield Municipal Code regarding Administrative Organization, which officially defines departments for the City and County.

Ordinance No. 2269 would provide the following changes:

- The People and Innovation Department was an attempt to consolidate departments as more fully detailed below. Reestablishing separate departments with specialized areas of focus ensured precise budgeting and staffing aligned with specialized needs in community engagement, employee development, and human resource management.
- Splitting the People and Innovation Department into three departments: 1) Human Resources Department, 2) Communication and Engagement Department, and 3) Development, Diversity, Equity, and Inclusion Department. Splitting the Health and Human Services Department into two: 1) the Public Health and Environment Department and 2) the Human Services Department to enhance the delivery of targeted social and health programs while supporting our community's evolving needs.
- Splitting the Public Works Department into two: 1) Public Works Department and 2) the Water Utilities Department to better address infrastructure, and asset and resource management through more specialized, transparent service areas.
- Modify the description of the Courts Administration Department to ensure alignment with Charter changes approved by Broomfield voters in 2024 (Ballot Question 2F). This Charter change changed the supervision of the Courts Administration Department to be the responsibility of the Municipal Judge rather than a Director of Courts Services.

In accordance with Section 9.1 of the Charter, Department Directors serve at the pleasure of the City and County Manager and are not members of the personnel merit system. The new directors established by proposed Ordinance No. 2269 would be "at-will employees." The exception to this is the Presiding Municipal Judge. Similar to the City and County Attorney, she works at the pleasure of the Council and also supervises a department.

Most of the proposed modifications to the administrative organization represent the organization's actual practices as approved in recent budgets and will formalize an increased level of accountability. Proposed changes that have not been implemented are related to dividing the Public Works Department to form a Water Utilities Department.

Financial Considerations

The majority of the proposed modifications represent actual organizational practices, and individual budgets for these departments have been presented, reviewed, and approved as part of the annual budget process.

If Ordinance No. 2269 is approved, the salary of the Director of Water Utilities Department will be funded entirely from enterprise funds, while the salary of the Director of Public Works Department will be funded entirely from the general fund. This proposed restructuring of Public Works would result in approximately \$166,000 in additional personnel expenditures for 2025 across both departments, with the general fund decreasing by approximately \$33,000 and the enterprise fund increasing by approximately \$199,000. These figures represent estimates, as recruitment for the Public Works Director position has not yet begun.

The Public Works Department has worked with Finance to identify opportunities within the existing 2025 budget to absorb these costs without seeking an actual increase to the 2025 budget, but rather reallocating expenses within the department. Examples of areas where expenditures are projected to be less than the 2025 original budget include costs related to fuel & fuel prices in 2025. Additionally, by bringing the residential snow and ice operations in-house, approximately \$195,000 will be saved in 2025. In future years, the additional director position represents approximately \$255,000 annually.

Prior Council or Other Entity Actions

- [January 14, 2020 - Ordinance No. 2113](#) - combining and renaming the Human Resources and Communications Departments to the People and Innovation Department, renaming Economic Development to Economic Vitality, clarified language used to describe duties of the Performance and Internal Auditor to reflect best practice and reporting structure to City and County Manager, and modifications to accommodate the moving of work groups between departments to reflect a modified organizational chart. The modifications included in the ordinance were rolled out to employees throughout the fall of 2019 in preparation of the modified structure completion in January 2020.
- [June 14, 2016 - Ordinance No. 2027](#), created the Recreation Services Department, the Public Library and Cultural Affairs Department, and the Open Space and Trails Department. The ordinance also extinguished the Community Resources Department. The ordinance formalized the actual practice of the organization that had been in place since April 2006.
- [February 8, 2011 - Ordinance No. 1934](#), created the Departments of Economic Development and Performance and Internal Audit.
- [August 28, 2007 - Ordinance No. 1873](#), approved and modified the reporting structure for the Assessor and clarified the City and County Clerk Department.

Boards and Commissions Prior Actions and Recommendations

N/A

Proposed Actions / Recommendations

It is recommended that:

- Ordinance No. 2269 be adopted on first reading and ordered published in full;

- The second and final reading of the Ordinance will be scheduled for May 13, 2025.

Alternatives

Do not adopt Ordinance No. 2269 on first reading and do not schedule the public hearing.

If Ordinance No. 2269 is not adopted, the past and proposed departments that were developed to meet community and organizational needs will not be formally recognized, and the organization will be limited to the structure as last amended in 2020.

Background

Additional information regarding the timing for various changes to department structures is included below.

Human Resources, Communication and Engagement, and Development, Diversity, Equity, and Inclusion Departments

In January 2020, the responsibilities of the Human Resources Department were combined with the Communications Department, and the new overall department was renamed the People and Innovation Department through an amendment to Chapter 2-60. These changes had previously been presented as part of the 2020 budget reviewed and approved by the City Council in October 2019.

The pandemic in 2020 drove a significant emphasis on the need for enhanced community engagement and communication. As a result, the duties related to community communication and engagement were separated from those of the People and Innovation Department. This allowed specialized leadership for each department to ensure nimble and strategic responses to the challenges brought about initially by the pandemic. By October 2020, separate Human Resources and Communication and Innovation departments were identified in the 2021 budget reviewed by the City Council. Since this time, the Human Resources and Communications Departments have continued as separate departments, led by professional subject matter experts with budgets reviewed annually. Based on the continued emphasis on enhanced communication and community engagement, the staff believes it is appropriate to keep these departments separate.

As a part of the 2020 revised budget, a position was first created in the City Manager's Office to focus on diversity, equity, access, and inclusion in Broomfield. The 2021 budget was approved with \$300,000 to support contractual services related to these efforts. In October 2021, the 2022 budget was approved with a Development, Diversity, Equity, and Inclusion Department. The budget for the Director of Development, Diversity, Equity, and Inclusion position was transferred from the City Manager's Office to this new department. With the creation of this department, the role grew to emphasize employee training and development, which the Human Resources Department had previously led. The role of the DDEI Department has continued to grow to include enhancements to the onboarding process for new Broomfield employees, development of an online Learning Management System to provide a broader scope of training opportunities for staff, facilitation of the Teen Council, and development of Broomfield-specific leadership courses.

The division of the People and Innovation Department into three distinct departments allows strategic leadership of each area as summarized below:

Human Resources

- Talent Acquisition & Retention: Secures high-caliber talent to drive organizational success and sustain future growth.
- Total Compensation Strategy: Designs and manages competitive, equitable pay and benefits to attract, motivate, and retain top performers.
- Compensation & Classification Administration: Ensures consistent, market-aligned job structures that promote fairness, equity, and fiscal stewardship.
- Benefits & Leave Administration: Delivers comprehensive, compliant programs that support employee well-being and organizational resilience.
- Human Resources Information System (HRIS) Administration: Leverages data-driven systems to enhance HR efficiency, accuracy, and strategic decision-making.
- Payroll Administration: Manages and processes employee compensation accurately and on time, ensuring compliance with tax regulations, deductions, and benefits while maintaining financial integrity and employee trust.
- Employee Relations: Cultivates a respectful, legally sound, high-performing workplace through proactive conflict resolution and support.
- Employee Engagement: Strengthens organizational culture, performance, and retention by amplifying employee voice and connection.
- Employee Recognition: Creates formal and informal recognition programs to acknowledge and celebrate employee achievements and contributions while reinforcing organizational values, boosting morale, and motivating continued high performance.
- Employee Wellness: Creates employee wellness programs and initiatives to support the holistic health of the workforce to enhance productivity, reduce absenteeism, and improve job satisfaction.
- Performance Management & Employee Development: Drives continuous improvement and workforce excellence through clear expectations, regular feedback, and growth-focused development strategies.
- Leadership Development: Builds leadership capacity and aligns people strategies with evolving organizational goals.
- Regulatory Compliance & Risk Mitigation: Safeguards the organization through consistent adherence to employment laws and proactive risk management.

Communications and Engagement:

- Manages all official communications, including press releases, public information campaigns, public announcements, and emergency communications
- Collaborates with all city departments to provide tailored communication strategies and support for their unique initiatives and projects
- Maintains Broomfield's external and internal websites, engagement platform website, social media accounts, and other digital platforms
- Creates newsletters, annual reports, presentations, and other publications to keep the community informed
- Develops and implements public engagement strategies and initiatives for various projects and planning processes
- Develop marketing campaigns to promote Broomfield services and events
- Develops and creates video projects as part of the communication and engagement effort to reach target audiences in different ways

- Coordinates community and employee outreach events, town halls, and public meetings
- Develops and manages the CCOB volunteer initiatives through the Volunteer Coordination Specialist to be inclusive of all volunteer coordinators around the city and to have a more efficient and well-run volunteer program
- Manages media relations and serves as the liaison between city officials and news outlets
- Manages the branding and branding standards for all of CCOB to maintain a strong brand that builds trust with our residents and the community
- Supports the visual identity for all CCOB departments and divisions through graphic design ranging from digital images to multi-page mailers and brochures
- Conduct surveys and gather community feedback to inform decision-making
- Ensures accessibility and inclusivity in all communications to reach diverse populations, including implementation of the Broomfield Digital Access Project to improve the website experience

Development, Diversity, Equity, and Inclusion

- Implements and enhances the Learning Management System utilized by all Broomfield staff.
- Develops and delivers training in a range of topics based on organizational needs - including those required for compliance purposes
- Facilitates New Employee Orientations to instill inclusive values, ensuring a smooth transition and helping new hires feel welcomed, informed, and equipped to succeed in their roles from day one
- Serves as staff liaison supporting Teen Council and youth engagement initiatives
- Develops community engagement strategies to ensure diverse voices are represented
- Supports community cultural events and celebrations that promote understanding and inclusion
- Collaborates with community organizations to address community needs and foster partnerships

Human Services and Public Health and Environment Departments

In early 2020 (pre-pandemic), Broomfield informally split the Health and Human Services into two distinct departments with two directors. Due to developments in Oil and Gas, this decision was made to reflect our commitment to providing more focused, specialized, and practical support to our community's evolving needs. Public Health and Environment was critical in establishing the Broomfields O&G inspection program, air quality monitoring, and the subsequent management of pandemic response. Human Services continues to focus on child and family well-being, safety, employment, food assistance, Medicaid, and direct support for families and individuals. In October 2020, the 2021 Budget was approved with two separate budgets for the Public Health and Environment Department and the Human Services Department.

The division of the Health and Human Services Department into two distinct departments allows strategic leadership of each area as summarized below:

Human Services

- Administers public assistance programs (Supplemental Nutrition Assistance Program, Medicaid, Temporary Aid to Needy Families, Child Care Assistance, etc)
- Administers Child Support Services program
- Provides child welfare services (foster care, adoption, kinship care)
- Investigates allegations of child and adult maltreatment
- Connects seniors and aging adults to services

- Manages services and assistance programs for those experiencing housing instability and homelessness
- Offers youth development programs and diversion from juvenile justice opportunities
- Offers job training and employment assistance
- Conducts community needs assessments
- Coordinates with nonprofit organizations to deliver social services
- Provides case management for vulnerable populations

Public Health and Environment

- Conducts public health inspections of restaurants, pools, and other public facilities
- Monitors air, water, and soil quality throughout the jurisdiction
- Implements and manages disease prevention and control programs
- Coordinates mental health and substance abuse treatment services
- Issues health permits and licenses for businesses
- Responds to environmental hazards and public health emergencies
- Provides immunization services and health screenings
- Tracks and reports on community health indicators and trends
- Conducts health education and outreach efforts
- Coordinates with state and federal agencies on environmental issues
- Investigate environmental complaints from residents

Public Works and Water Utilities Departments

We are restructuring our current Public Works Department into two distinct but collaborative departments: Public Works and Water Utilities. This strategic reorganization will enable more focused management of our critical infrastructure while maintaining strong cross-functional collaboration.

The revised Public Works Department will concentrate on:

- **Streets & Transportation:** Maintenance, repair, and development of roadway infrastructure
- **Facilities Management:** Oversight of municipal buildings and properties
- **Fleet Services:** Implementation of municipal vehicle operations, procurement, reducing environmental footprint through investing in alternative fuel vehicles, monitoring driving habits
- **Environmental Sustainability:** Implementation of conservation initiatives, waste reduction programs, and climate action planning

The new Water Utilities Department will focus on:

- **Water Services:** Water supply, reservoir management, drinking water treatment, distribution, and resource management
- **Wastewater Systems:** Collection, treatment, reuse, odor control, and regulatory compliance
- **Stormwater Management:** Surface and sub-surface drainage infrastructure, flood prevention, regulatory compliance, and water quality protection
- **Capital Improvement and New Development Construction Inspection:** Ensuring new construction meets Broomfield standards and specifications for new utility infrastructure, maximization of water utility infrastructure, and timing replacement

The reorganization was developed with the following intended improvements:

- **Clear Accountability:** Distinct leadership for different infrastructure systems
- **Specialized Expertise:** Each department will develop more profound expertise in their respective areas
- **Targeted Resource Allocation:** More precise budgeting and staffing aligned with specific operational needs
- **Strategic Planning:** Ability to establish specialized long-term plans for distinct infrastructure systems
- **Streamlined Decision-Making:** More nimble responses to department-specific challenges
- **Dedicated Customer Service:** More specialized response to resident concerns
- **Improved Project Management:** More effective oversight of specialized capital projects

While creating distinct departments, we recognize the critical need for continued collaboration:

- **Coordinated Infrastructure Planning:** Joint planning for projects affecting multiple systems
- **Regular Cross-Department Coordination:** Structured communication between departments
- **Shared Emergency Response:** Collaborative approach during emergencies or significant events
- **Unified Public Communications:** Coordinated messaging to residents about infrastructure projects

Bold type indicates new material to be added to the Broomfield Municipal Code
~~Strikethrough type~~ indicates deletions from the Broomfield Municipal Code

ORDINANCE NO. 2269

An ordinance to amend Chapter 2-60 to the Broomfield Municipal Code to change administrative organization.

Be it ordained by the City Council of the City and County of Broomfield, Colorado:

Section 1.

Chapter 2-60 - Administrative Organization is amended as follows:

2-60-010 Purpose.

The purpose of this chapter is to establish administrative departments as provided for in section 8.8(a) of the Charter and to establish the executive offices for the city and county manager and city and county attorney.

2-60-020 Administrative policies and procedures.

The city and county manager is authorized to promulgate and enforce administrative policies and procedures consistent with law relating to the exercise by the city and county manager of supervision and control over the executive offices and administrative departments of the city and county and the employees thereof.

2-60-030 Office of the city and county manager.

- (A) The office of the city and county manager includes the city and county manager and such deputies and assistants as may be authorized by the city council.
- (B) In the absence or disability of the city and county manager, a deputy city and county manager or an assistant city and county manager designated by the city and county manager is hereby authorized to act for and on behalf of the city and county manager and shall have all responsibilities, duties, functions, and authority of the city and county manager.
- (C) The city and county manager may assign various functions and duties to the different departments and divisions.

2-60-040 Office of the city and county attorney.

(A) The office of the city and county attorney includes the city and county attorney and such deputies and assistants as may be authorized by the city council.

(B) In the absence or disability of the city and county attorney, a deputy city and county attorney designated by the city and county attorney is hereby authorized to act for and on behalf of the city and county attorney and shall have all responsibilities, duties, functions, and authority of the city and county attorney.

2-60-050 Strategic initiatives department.~~Reserved.~~

There is hereby established a strategic initiatives department, which shall be supervised by a director of strategic initiatives who shall be responsible for the Organizational Strategic Plan, key initiatives of interest to the community that are driven by specific community needs, and other responsibilities as designated by the city and county manager.

2-60-060 Police department.

There is hereby established a police department, which shall be supervised by a police chief. The police department includes all municipal police functions and all county sheriff functions, including but not limited to court security, jail management, and civil process.

2-60-065 Communication and engagement department.

There is hereby established a communication and engagement department, which shall be supervised by a director of community and engagement who shall be responsible for official communications, media relations, digital platforms, public engagement, marketing, outreach, and other responsibilities as designated by the city and county manager.

2-60-070 Courts administration department.

There is hereby established a courts administration department, which shall be supervised by ~~the presiding municipal judge a director of court service~~ who shall be responsible for the administration of the municipal court, ~~and other responsibilities as designated by the city and county manager.~~ **The municipal judge may hire and supervise a court administrator and other such staff as necessary for the operation of the municipal court.**

2-60-75 Public health and environment department.

There is hereby established a public health and environment department, which shall be supervised by a director of public health and environment who shall be responsible for public health services to protect and promote the health of the community, and other responsibilities as designated by the city and county manager.

2-60-080 ~~Health and~~ Human services department.

There is hereby established a ~~health and human services~~ department, which shall be supervised by a director of ~~health and human services~~ who shall be responsible for administration of all ~~health and human services~~ functions not otherwise delegated by the city and county manager or by ordinance and other responsibilities as designated by the city and county manager.

2-60-085 Public library and cultural affairs department.

Chapter 2-52, B.M.C., establishes a library department. There is hereby established a cultural affairs department, which shall be supervised by a director of public library and cultural affairs who shall oversee cultural affairs and shall, consistent with Chapter 2-52, B.M.C., oversee the library department.

2-60-090 Recreation services department.

There is hereby established a recreation services department, which shall be supervised by a director of recreation services who shall oversee all recreation services and other responsibilities as designated by the city and county manager.

2-60-095 Open space and trails department.

There is hereby established an open space and trails department, which shall be supervised by a director of open space and trails who shall be responsible for the planning, acquisition and management of open space properties and trails.

2-60-100 Finance department.

There is hereby established a finance department, which shall be supervised by the director of finance who shall oversee the operations of purchasing, fiscal management, risk management, budget and research, accounting, utility billing, and county treasurer, public trustee functions and responsibilities, and other responsibilities as designated by the city and county manager.

2-60-105 Assessor department.

There is hereby established an assessor department, which shall be supervised by the director of the assessor department, which shall perform the acts and duties required of assessors pursuant to the state constitution and the general laws of the state and oversee the operations of the assessor department, and other responsibilities as designated by the city and county manager.

2-60-110 City and county clerk department.

There is hereby established a city and county clerk department, the director of which shall be the city and county clerk, who shall oversee the operations of recording, elections, motor vehicles, central records and including the acts and duties required of clerk and recorders

pursuant to the state constitution and the general laws of the state, and who shall serve as the city clerk pursuant to section 8.6 of the charter and oversee and perform all functions and duties of the city clerk as set forth in the Home Rule Charter and the Broomfield Municipal Code.

2-60-115 Development, diversity, equity, and inclusion department.

There is hereby established a development, diversity, equity, and inclusion department, which shall be supervised by a director of development, diversity, equity, and inclusion who shall be responsible for ensuring inclusive policies, workforce development, and other responsibilities as designated by the city and county manager.

2-60-120 Information technology department.

There is hereby established an information technology department, which shall be supervised by a director of information technology who shall oversee all computer network and telecommunications systems within all city and county departments and facilities.

2-60-125 Performance and internal audit department.

There is hereby created a performance and internal audit department, whose head shall be the director of performance and internal audit. The department shall be responsible for performing management, operational, and compliance audits and process reviews of the City and County of Broomfield departments, programs, and activities, and other responsibilities as designated by the city and county manager. The director of performance and internal audit shall report to the city and county manager.

2-60-130 Human resources~~People and innovation~~ department.

There is hereby established a human resources~~people and innovation~~ department, which shall be supervised by a director of **human resources** ~~people and innovation~~ who shall be responsible for coordinating the human resources management activities for the city and county and other activities as designated by the city and county manager. ~~Any reference to the "human resources department" shall mean "people and innovation department" and any reference to "human resources director" shall mean "director of people and innovation."~~

2-60-135 Economic vitality department.

There is hereby created an economic vitality department, which shall be supervised by the director of economic vitality. The department shall be responsible for managing the City and County of Broomfield's economic development program, including preparation and implementation of economic development plans, strategies, activities, events for Broomfield, and other responsibilities as designated by the city and county manager. The department shall coordinate with the Broomfield Urban Renewal Authority and other agencies.

2-60-140 Community development department.

There is hereby established a community development department, which shall be supervised by a director of community development who shall oversee all planning, engineering, building, capital improvements, and other responsibilities as designated by the city and county manager.

2-60-150 Public works department.

There is hereby created a public works department, which shall be supervised by a public works director who shall oversee facility maintenance, street maintenance, fleet maintenance, ~~water utility maintenance, wastewater utility maintenance, water treatment, water supply planning and development, wastewater treatment,~~ environmental services, and other responsibilities as designated by the city and county manager.

2-60-155 Water utilities department.

There is hereby established a water utilities department, which shall be supervised by a director of water utilities who shall be responsible for managing water treatment, distribution, wastewater services, stormwater, conservation efforts, and infrastructure maintenance, and other responsibilities as designated by the city and county manager.

2-60-160 Department directors.

- (A) The city and county manager shall appoint a director for each of the administrative departments. In the event of a vacant department director position, the city and county manager may appoint an acting director for an administrative department for a period of time not exceeding six months.
- (B) ~~Except for the police chief, d~~Department directors and acting department directors serve at the pleasure of the city and county manager. ~~The police chief is included in the personnel merit system pursuant to section 9.1 of the Charter.~~

Section 2.

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on April 22, 2025, and ordered published in full.

Introduced a second time and approved on May 13, 2025, and ordered published.

The City and County of Broomfield, Colorado

Mayor

Attest:

Office of the City and County Clerk

Approved as to form:

City and County Attorney *PWG*



City and County of Broomfield

City Council Regular Meeting

A. Councilmembers Henkel, Leslie and Cohen's Request for Future Action Regarding Staff Exploring an Evaluation Tool for Direct Hires by Council

Meeting	Agenda Group
Tuesday, April 22, 2025, 6:00 PM	Mayor and Councilmember Requests for Future Action Item: 8A.
Presented By	
CMO Admin Team	
Community Goals	

Overview

[View Correspondence](#)

[View Presentation](#)

Councilmembers Henkel, Leslie and Cohen's Request for Future Action Regarding Staff Exploring an Evaluation Tool for Direct Hires by Council.

Attachments

[Councilmembers Henkel, Leslie and Cohen's Request for Future Action Regarding Staff Exploring an Evaluation Tool for Direct Hires by Council - Letter to Council](#)

Dear Council Colleagues and staff,

Per [council rules and procedures](#) section 2.6E, Councilmembers Henkel, Leslie, and Cohen would like to submit a request for future action regarding staff exploring an evaluation tool for direct hires by council.

We are seeking support for direction given to staff to explore various evaluation tools that are consistent for the City and County Attorney and City and County Manager. We are also requesting an evaluation tool that is separate for the judge's role.

Additionally, we acknowledge that:

- Our direct hires are committed to any effective and transparent tools available, and are committed to working alongside council to identify an approach that reflects our values and support continuous improvement, while recognizing achievements within our city and county government.
- Regular evaluations of the local government manager by the elected body are essential to a high-performing organization. These evaluations should align with the governing body's strategic goals and focus on the direct hire's progress toward organizational outcomes, to include soft-skills and 360 evaluations. Performance criteria must be clearly communicated in advance and any evaluation forms should be customized accordingly. The process enhances communication between the manager and elected officials, helps set future goals, and should involve all board members to reach a shared understanding. While there's no single correct method, evaluations should be consistent, collaborative, and potentially guided by a consultant if needed.
- Direct hires are available for meetings with individual councilmembers to discuss any matters of urgency and importance.
- We value input from both council and staff in identifying what is best for Broomfield, our values, goals, and consistency in leadership.

Sincerely,

Councilmembers Henkel, Leslie, and Cohen