

**\*\* Revised \*\***

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## **1. Meeting Commencement**

1A. Pledge of Allegiance

1B. Review and Approval of Agenda

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## **2. Petitions and Communications**

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## **3. Councilmember Reports**

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## **4. Public Comment**

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## **5. Reports**

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## **6. Consent Items**

### **6A. Proposed Resolutions Agreements for Commerce Street, Nickel Street and Industrial Lane Intersection Improvements Project**

- Resolution 2024-122 Approving a Construction Agreement with Goodland Construction, Inc. for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements
- Resolution 2024-123 Approving a Consulting Agreement with Rocksol Consulting Group, Inc. for Construction Management Service for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements Project
- Resolution 2024-127 Approving the Third Amendment to the Consulting Agreement with Felsburg Holt Ullevig, Inc. for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements Project

### **6B. Proposed Resolution for Norman Smith Service Center Remodel Construction Agreement**

- Resolution 2024-137 Approving a Construction Agreement with A.D. Miller Services, Inc., for the Norm Smith Service Center Remodel

### **6C. Proposed Resolution for DSW Retaining Wall Replacement**

- Resolution 2024-139 approving a Construction Agreement with Rock & Co. for the 595 Flatiron Boulevard DSW Retaining Wall Repair.

### **6D. Proposed Resolution for Vero Broadband Master License Agreement**

- Resolution No. 2024-135 approving a Master License Agreement by and between the City and County of Broomfield and Vero Broadband, LLC

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## **7. Action Items**

### **7A. Public Hearing of the 2025 Operating and Capital Budgets; First Reading of Water / Wastewater Enterprise Ordinances**

Public Hearing per Charter 12.6 of the 2025 Operating and Capital Budgets for City and County of Broomfield, the Arista Local Improvement District and the Broomfield Urban Renewal Authority; and first reading of ordinances establishing a stormwater enterprise and setting or increasing enterprise license and service fees

- Public Hearing on the budgets
- Ordinance No. 2253 Amending Water, Sewer, and Reclaimed Water Fees
- Ordinance No. 2255 Creating Stormwater Enterprise and Setting Stormwater Service Charges

### **7B. Public Hearing - Rezoning - GDC City and County and Police Buildings Ordinance Second Reading**

- Ordinance No. 2249 Rezoning the George DiCiero Municipal Building and Police Building, Broomfield City Center Filing No. 2, Lot 2 and a portion of Lot 1 from Planned Unit Development (PUD) to Public Facilities (PF) District

#### 7C. Residential Occupancy Ordinance First Reading

- Ordinance No. 2241 to amend the Broomfield Municipal Code, Title 17, to remove occupancy restrictions based on familial status

### 8. Mayor and Councilmember Requests for Future Action

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### 9. Adjournment

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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](mailto: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: September 27, 2024*



**A. Proposed Resolutions Agreements for Commerce Street, Nickel Street and Industrial Lane Intersection Improvements Project**

Meeting	Agenda Group
Tuesday, October 1, 2024, 6:00 PM	Consent Items Item: 6A.
Presented By	
Brian Graham, CIP Manager	
Community Goals	
<input checked="" type="checkbox"/> Mobility	

## Overview

[View Correspondence](#)

Proposed Resolution No. 2024-122, would approve an agreement between the City and County of Broomfield and Goodland Construction Inc. for the construction of the Commerce St, Nickel St. and Industrial Lane Intersection Improvements. The project will install a new traffic signal at the intersection of Nickel Street, Industrial Lane and Commerce Street. The project will improve vehicular circulation, reduce delay, enhance the existing substandard bicycle facilities, improve safety, and enhance the pedestrian ramps with necessary ADA upgrades.

Proposed Resolution No. 2024-123, would approve an agreement between the City and County of Broomfield and Rocksol Consulting Group, Inc. for construction management services and proposed Resolution No. 2024-127, would approve an amendment to the agreement between the City and County of Broomfield and Felsburg Holt & Ullevig (FHU) for construction administration services.

### **Attachments**

[Nickel and Industrial Lane Construction Memo.pdf](#)

[Resolution 2024-122 24230 Construction.pdf](#)

[Construction Agreement - Nickels - All Exhibits.pdf](#)

[Resolution 2024-123 24230 CM.pdf](#)

[Consulting Agreement - CM Nickel Industrial - Google Docs \(signed by RockSol\).pdf](#)

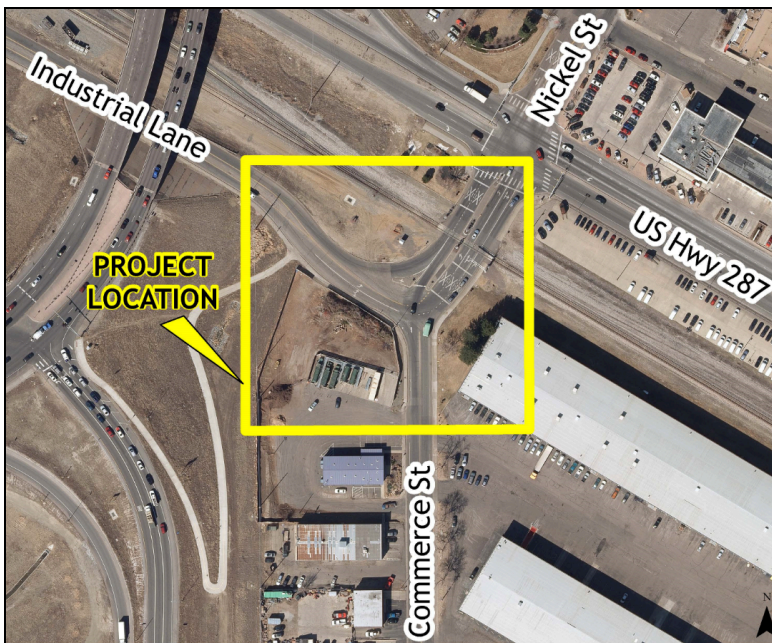
[Resolution 2024-127 24230 CA .pdf](#)

[FHU Nickel Amendment No 3 - Google Docs\\_FHU Signed 08-15-24.pdf](#)

## Summary

[View Correspondence](#)

The Commerce Street, Nickel Street and Industrial Lane Intersection Improvements project will install a new traffic signal and modify the 3-way intersection of Nickel Street, Industrial Lane and Commerce Street. The adjacent traffic signal at US Hwy 287 and Nickel St. will be upgraded to be coordinated with the new traffic signal and the BNSF railway safety devices (four-quadrant gates). The project will improve vehicular circulation, reduce delay, enhance the existing substandard bicycle facilities, improve safety, and enhance the pedestrian ramps with necessary ADA upgrades.



The project is part of the 2020-2023 Transportation Improvement Program (TIP). The TIP is prepared and adopted by the Denver Regional Council of Governments (DRCOG) and specifically identifies projects for state and federal funding. Broomfield's application was approved by the DRCOG Board on August 21, 2019 for inclusion in the 2020-2023 TIP and was awarded \$320,000 in TIP funding with a Local 20% share of \$80,000 for a total of \$400,000 for the project in Fiscal Year 2021. On March 9, 2021, Council approved the grant funding in Resolution 2021-37, an Intergovernmental Agreement (IGA) with CDOT.

The Coronavirus Response and Relief Supplemental Appropriations Act 2021 included federal funds that could be applied to approved

DRCOG TIP projects. Additional funds received for the construction phase through this Act increased Broomfield's award to \$1,295,000 in TIP funding and the Local 20% share to \$323,750 for a total of \$1,618,750 for the project in FY 2022, which includes both design and construction. Resolution No. 2022-39 approved an amendment to the IGA with CDOT to add these additional funds to the project budget.

Construction management services by a consultant are necessary for this project due to the project's complexity with multiple stakeholders, limited available working area, and potential traffic impacts. The construction manager's duties will include daily inspections including traffic control inspections, materials testing, review of contractor's documentation, review of pay applications, coordination with the BNSF, and organization and submission of the required documentation to CDOT. A request for proposals to provide construction management services was advertised on May 14, 2024 and two proposals were received. Staff selected Rocksol Consulting Group, Inc. as they demonstrated the best understanding of the scope and have completed similar projects.

Construction administration services by the design consultant, Felsburg Holt & Ullevig, are necessary for this project. Construction administration includes addressing any design issues that may arise during construction and assistance with final project documentation.

The project was advertised for construction on June 17, 2024 and three bids were received. Goodland Construction, Inc. submitted the lowest bid in the amount of \$2,285,423. On July 31, 2024, staff received concurrence to award from the Colorado Department of Transportation (CDOT).

Proposed Resolution No. 2024-122, would approve an agreement between the City and County of Broomfield and Goodland Construction Inc. for the construction of the Nickel St. and Industrial Lane Intersection Improvements.

Proposed Resolution No. 2024-123, would approve an agreement between the City and County of Broomfield and Rocksol Consulting Group, Inc. for construction management services.

Proposed Resolution No. 2024-127, would approve an amendment to the agreement between the City and County of Broomfield and Felsburg Holt & Ullevig (FHU) for construction administration services.

If approved, construction is anticipated to begin in late 2024.

## 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
CIP - 2021 Transportation Project (19M0030)	
80% Share: Nickel Street and Industrial Lane - Intersection Improvements - TIP Funded Grant	\$975,000
20% Share: City & County of Broomfield Local Funds	\$243,750
Local Agency Overmatch	\$514,925
Local Agency Overmatch Budget Amendment Increase AMD 3	\$1,372,258
<b>Construction Budget Total</b>	<b>\$3,105,933</b>
Construction (Goodland Construction Inc.)	-\$2,285,423
Construction Contingency (10%)	-\$228,542
Construction Administration (FHU)	-\$52,100
Construction Administration Contingency (10%)	-\$5,210
Construction Management (Rocksol Consulting Group, Inc.)	-\$223,766
Construction Management Contingency (10%)	-\$22,377
<b>Total Use of Construction Funds</b>	<b>-\$2,817,418</b>
<b>Projected Balance</b>	<b>\$288,515</b>

## Prior Council or Other Entity Actions

Council previously approved [Resolution No. 2021-37](#), authorizing and approving an Intergovernmental Agreement Between the City and County of Broomfield and the Colorado Department of Transportation for the Industrial Lane & Nickel Street / Commerce Intersection Operational Improvements.

Council previously approved [Resolution No. 2021-146](#), approving an Agreement Between the City and County of Broomfield and Felsburg Holt Ullevig, Inc. for the Design of Nickel Street and Industrial Lane - Intersection Improvements.

Council previously approved [Resolution No. 2022-39](#), approving an amendment to the IGA with CDOT for the Industrial Ln & Nickel/Commerce St. Intersection Operational Improvements project.

Council previously authorized funds in the [2024 Revised Budget](#) for the Industrial Lane and Nickel Street / Commerce Street Improvements project.

Council previously approved [Resolution No. 2024-62](#), approving an IGA with CDOT for the maintenance of the traffic signal at US 287 and Nickel St.

## 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 Resolutions 2024-122, 2024-123 and 2024-127 be adopted.

## Alternatives

Decide not to continue with the project.

# RESOLUTION NO. 2024-122

A Resolution Approving a Construction Agreement with Goodland Construction, Inc. for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements

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 Goodland Construction Inc., for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements in an amount not to exceed \$2,285,423 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 on the date of approval by the City Council.

Approved on October 1, 2024.

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

**CONSTRUCTION AGREEMENT FOR COMMERCE STREET, NICKEL STREET  
AND INDUSTRIAL LANE INTERSECTION IMPROVEMENTS**

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 Goodland Construction, 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 Commerce Street, Nickel Street and Industrial Lane Intersection Improvement and completed a competitive selection process by Invitation to Bid #24-IFB-CD-004 issued on or about June 17, 2024 (“ITB”).
  - 2.2. The Contractor’s response to the above referenced ITB was determined to be the lowest, 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 as defined below. The Contractor acknowledges and agrees that portions of the work will be taking place near an active railroad and as such the Contractor shall be required to comply with and sign an agreement with BNSF Railway in substantially the form attached hereto which is Exhibit C of the attached **Exhibit D.**
    - 3.1.1. *Key Personnel.* The Contractor’s key personnel shall include Project Manager - Stacy Silvas. 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 Nickel St, Commerce St, Industrial Land Improvement Plans by Felsburg Holt & Ullevig, dated June 14, 2024 and Specifications (the “Scope of Work”);
  - 3.2.3. The Contractor’s Bid dated July 10, 2024, attached hereto as Exhibit A; and
  - 3.2.4. The ITB including any addendum; and
  - 3.2.5. Any change orders and contract amendments, as applicable; and
  - 3.2.6. Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2022), as amended; and
  - 3.2.7. Project Special Provisions for Project No. #19M0030/24230; and
  - 3.2.8. The Insurance Requirements attached hereto as Exhibit B; and
  - 3.2.9. Federal Uniform Grant Guidance Required Contract Clauses attached hereto as Exhibit C; and
  - 3.2.10. The Construction & Management Agreement with BNSF Railway, attached hereto as Exhibit D; and
  - 3.2.11. Exhibit I - FHWA Form 1273; and
  - 3.2.12. Exhibit J - Additional Federal Requirements; and
  - 3.2.13. Exhibit K - FFATA Supplement Federal Provisions; and
  - 3.2.14. Exhibit M - OMB Uniform Guidance,

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 Contract.
  - 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 seventy-five (175) 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 \$2,285,423.00 (the "Contract Price") based upon the unit prices set forth on Contractor's Bid attached hereto as Exhibit A 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. FEDERALLY FUNDED SERVICES. The City has received federal funding for this Work from the Colorado Department of Transportation through the Federal Highway Administration (“FHWA”) pursuant to an Intergovernmental Agreement with the State of Colorado dated January 6, 2021 which is incorporated by this reference. For any Work subject to funding by the Federal Government, the Contractor agrees to comply with all applicable Federal contracting requirements in Exhibits C, I, J, K and M and any other federal or state contracting terms which may be applicable to the Work.
11. 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 **Joliette Woodson** as the authorized representative of the City under this Agreement. Email address is [jwoodson@broomfield.org](mailto:jwoodson@broomfield.org).
- 5.2 The Contractor designates **Stacy Silvas** as the authorized representative of the Contractor under this Agreement. Email address is [stacy@goodlandconstruction.com](mailto:stacy@goodlandconstruction.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](mailto: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.
12. TIME EXTENSIONS AND COMPENSATION FOR DELAY.

- 12.1. 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.
- 12.2. Time Extensions. Evaluation of all time extension requests shall be based upon the latest updated project schedule submitted to the City by the Contractor.
- 12.3. Definitions. The following words shall have the meaning set forth below:
  - 12.3.1. "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.
  - 12.3.2. "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.
  - 12.3.3. "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.
  - 12.3.4. "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.
- 12.4. 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.
- 12.5. 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.

- 12.6. 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.
- 12.7. 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.
13. 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.

14. **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 \$4,500 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.
15. **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. 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.
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 and the Colorado Department of Transportation, 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 or the Colorado Department of Transportation 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, the Colorado Department of Transportation, 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 B. Current proof of such insurance is attached at Exhibit B, incorporated by this reference and should list both the City and the Colorado Department of Transportation as additional insureds. However, proof of insurance attached as Exhibit B 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. The Contractor acknowledges and agrees that BNSF Railway requires additional insurance coverage above the limits set forth in Exhibit B, and the Contractor will be required to meet such limits for that portion of the work. The Construction & Management Agreement attached as Exhibit D has additional information about the insurance required by BNSF Railway.
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. 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, except for the Colorado Department of Transportation. The parties acknowledge and agree that the Colorado Department of Transportation, although not a party to this Agreement, is a third party beneficiary to this Agreement.
21. 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.

22. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. 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.
31. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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 and the Colorado Department of Transportation 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.

39. 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.
40. 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.
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 \_\_\_\_\_, 2024.

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:

Goodland Construction, Inc.

By: 

Name: Matt Worland, President

Address: 760 Nile St., Golden CO 80401



**EXHIBIT A**  
**CONTRACTOR'S**  
**BID**

BID FORM					
Construction for Commerce Street, Nickel Street and Industrial Lane Intersection Improvements - 24-IFB-CD-004					
Round ALL unit prices to the nearest penny					
All bids shall be submitted on this bid form provided. The quantities appearing in the bid form are estimates prepared for the comparison of					
BASE BID					
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
201-00000	CLEARING AND GRUBBING	LS	1	\$ 5,150.00	\$ 5,150.00
202-00019	REMOVAL OF INLET	EACH	3	\$ 4,935.00	\$ 14,805.00
202-00033	REMOVAL OF PIPE	EACH	1	\$ 2,265.00	\$ 2,265.00
202-00195	REMOVAL OF MEDIAN COVER	SY	63	\$ 29.00	\$ 1,827.00
202-00200	REMOVAL OF SIDEWALK	SY	237	\$ 29.00	\$ 6,873.00
202-00203	REMOVAL OF CURB AND GUTTER	LF	818	\$ 9.50	\$ 7,771.00
202-00206	REMOVAL OF CONCRETE CURB RAMP	SY	17	\$ 31.00	\$ 527.00
202-00210	REMOVAL OF CONCRETE PAVEMENT	SY	33	\$ 39.00	\$ 1,287.00
202-00220	REMOVAL OF ASPHALT MAT	SY	2021	\$ 25.00	\$ 50,525.00
202-00480	REMOVAL OF PORTIONS OF PRESENT STRUCTURE (SPECIAL)	SY	11	\$ 57.00	\$ 627.00
202-00700	REMOVAL OF LIGHT STANDARD	EACH	1	\$ 831.00	\$ 831.00
202-00810	REMOVAL OF GROUND SIGN	EACH	11	\$ 220.00	\$ 2,420.00
202-00821	REMOVAL OF SIGN PANEL	EACH	2	\$ 88.00	\$ 176.00
202-00848	REMOVAL OF TRAFFIC SIGNAL CONTROLLER AND CABINET	EACH	1	\$ 1,385.00	\$ 1,385.00
202-01000	REMOVAL OF FENCE	LF	241	\$ 18.00	\$ 4,338.00
202-04002	CLEAN CULVERT	EACH	3	\$ 1,445.00	\$ 4,335.00
202-04005	CLEAN VALVE BOX	EACH	2	\$ 825.00	\$ 1,650.00
203-00010	UNCLASSIFIED EXCAVATION (COMPLETE IN PLACE)	CY	1659	\$ 56.00	\$ 92,904.00
203-01500	BLADING	HOUR	8	\$ 211.00	\$ 1,688.00
203-01550	DOZING	HOUR	8	\$ 256.00	\$ 2,048.00
203-01597	POTHOLING	HOUR	64	\$ 274.00	\$ 17,536.00
207-00700	TOPSOIL (ONSITE)	CY	161	\$ 24.00	\$ 3,864.00
207-00704	SUBGRADE SOIL PREPARATION	SY	968	\$ 12.00	\$ 11,616.00
208-00002	EROSION LOG TYPE 1 (12 INCH)	LF	735	\$ 10.60	\$ 7,791.00
208-00035	AGGREGATE BAG	LF	210	\$ 36.00	\$ 7,560.00
208-00046	PRE-FABRICATED CONCRETE WASHOUT STRUCTURE (TYPE 1)	EACH	2	\$ 4,862.00	\$ 9,724.00
208-00053	STORM DRAIN INLET PROTECTION (TYPE I)(84 INCH)	EACH	7	\$ 904.00	\$ 6,328.00
208-00075	PRE-FABRICATED VEHICLE TRACKING PAD	EACH	4	\$ 3,375.00	\$ 13,500.00
208-00103	REMOVAL AND DISPOSAL OF SEDIMENT (LABOR)	HOUR	16	\$ 97.00	\$ 1,552.00
208-00105	REMOVAL AND DISPOSAL OF SEDIMENT (EQUIPMENT)	HOUR	16	\$ 188.00	\$ 3,008.00
208-00106	SWEEPING (SEDIMENT REMOVAL)	HOUR	16	\$ 313.00	\$ 5,008.00
208-00107	REMOVAL OF TRASH	HOUR	16	\$ 97.00	\$ 1,552.00
208-00207	EROSION CONTROL MANAGEMENT (ECM)	DAY	120	\$ 229.00	\$ 27,480.00
210-00052	RELOCATE FIRE HYDRANT	EACH	1	\$ 15,250.00	\$ 15,250.00
210-00810	RESET GROUND SIGN	EACH	3	\$ 230.00	\$ 690.00
210-00861	RESET WIRING	LS	1	\$ 3,137.00	\$ 3,137.00
210-04010	ADJUST MANHOLE	EACH	2	\$ 1,180.00	\$ 2,360.00
210-04015	MODIFY MANHOLE	EACH	1	\$ 3,500.00	\$ 3,500.00
210-04050	ADJUST VALVE BOX	EACH	4	\$ 895.00	\$ 3,580.00
212-00050	SOD	SF	930	\$ 3.50	\$ 3,255.00
212-00700	ORGANIC FERTILIZER	POUNDS	60	\$ 86.00	\$ 5,160.00
212-00701	COMPOST (MECHANICALLY APPLIED)	CY	13	\$ 125.00	\$ 1,625.00
212-00703	HUMATE	POUNDS	31	\$ 29.00	\$ 899.00
212-00704	MYCORRHIZAE	POUNDS	2	\$ 285.00	\$ 570.00
212-00706	SEEDING (NATIVE) DRILL	ACRE	0.15	\$ 10,800.00	\$ 1,620.00
212-00708	SEEDING (NATIVE) BROADCAST	ACRE	0.05	\$ 16,000.00	\$ 800.00
213-00003	MULCHING (WEED FREE)	ACRE	0.2	\$ 3,410.00	\$ 682.00
213-00012	SPRAY-ON MULCH BLANKET	ACRE	0.05	\$ 7,400.00	\$ 370.00
213-00061	MULCH TACKIFIER	LB	40	\$ 40.00	\$ 1,600.00
213-00150	BONDED FIBER MATRIX	ACRE	0.05	\$ 12,500.00	\$ 625.00
214-00006	LANDSCAPING	SF	1100	\$ 4.60	\$ 5,060.00
214-00009	IRRIGATION	SF	1100	\$ 3.50	\$ 3,850.00
217-00020	HERBICIDE TREATMENT	HOUR	8	\$ 160.00	\$ 1,280.00

240-00000	WILDLIFE BIOLOGIST	hour	8	\$ 171.00	\$ 1,368.00
240-00010	REMOVAL OF NESTS	EACH	5	\$ 171.00	\$ 855.00
240-00020	NETTING	SY	20	\$ 160.00	\$ 3,200.00
304-06007	AGGREGATE BASE COURSE (CLASS 6)	CY	1157	\$ 90.00	\$ 104,130.00
403-00721	HOT MIX ASPHALT (PATCHING)(ASPHALT)	TON	7	\$ 725.00	\$ 5,075.00
403-33741	HOT MIX ASPHALT (GRADING S)(75)(PG 64-22)	TON	650	\$ 153.00	\$ 99,450.00
403-34751	HOT MIX ASPHALT (GRADING SX)(75)(PG 64-28)	TON	286	\$ 194.00	\$ 55,484.00
411-10255	EMULSIFIED ASPHALT (SLOW-SETTING)	GAL	709	\$ 11.00	\$ 7,799.00
503-00018	DRILLED SHAFT (18 INCH)	LF	22	\$ 263.00	\$ 5,786.00
503-00036	DRILLED SHAFT (36 INCH)	LF	76	\$ 1,030.00	\$ 78,280.00
603-01155	REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	LF	10	\$ 330.00	\$ 3,300.00
603-01245	REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	LF	50	\$ 213.00	\$ 10,650.00
604-00305	INLET TYPE C (5 FOOT)	EACH	1	\$ 9,515.00	\$ 9,515.00
604-19105	INLET TYPE R L 5 (5 FOOT)	EACH	1	\$ 11,630.00	\$ 11,630.00
604-19205	INLET TYPE R L 10 (5 FOOT)	EACH	1	\$ 16,755.00	\$ 16,755.00
604-30010	MANHOLE SLAB BASE (10 FOOT)	EACH	1	\$ 11,870.00	\$ 11,870.00
605-82050	EDGE DRAIN	LF	521	\$ 106.00	\$ 55,226.00
607-11525	FENCE (PLASTIC)	LF	300	\$ 8.70	\$ 2,610.00
607-52910	CORNER AND LINE BRACE POST (CHAIN LINK)	EACH	4	\$ 940.00	\$ 3,760.00
607-53196	FENCE CHAIN LINK (96 INCH)	LF	205	\$ 60.00	\$ 12,300.00
608-00006	CONCRETE SIDEWALK (6 INCH)	SY	506	\$ 101.00	\$ 51,106.00
608-00010	CONCRETE CURB RAMP	SY	113	\$ 203.00	\$ 22,939.00
608-00028	CONCRETE BIKEWAY (8 INCH)	SY	59	\$ 150.00	\$ 8,850.00
609-21010	CURB AND GUTTER TYPE 2 (SECTION I-B)	LF	354	\$ 43.00	\$ 15,222.00
609-21020	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	615	\$ 47.00	\$ 28,905.00
610-00040	MEDIAN COVER MATERIAL (BITUMINOUS)	TON	45	\$ 261.00	\$ 11,745.00
613-00206	2 INCH ELECTRICAL CONDUIT (BORED)	LF	1920	\$ 44.00	\$ 84,480.00
613-00306	3 INCH ELECTRICAL CONDUIT (BORED)	LF	890	\$ 50.00	\$ 44,500.00
613-01200	2 INCH ELECTRICAL CONDUIT (PLASTIC)	LF	520	\$ 51.00	\$ 26,520.00
613-01300	3 INCH ELECTRICAL CONDUIT (PLASTIC)	LF	280	\$ 67.00	\$ 18,760.00
613-07031	PULL BOX (24"x30"x24")	EACH	3	\$ 2,866.00	\$ 8,598.00
613-07042	PULL BOX (30"x48"x30")	EACH	3	\$ 3,306.00	\$ 9,918.00
613-07043	PULL BOX (30"x60"x30")	EACH	2	\$ 3,900.00	\$ 7,800.00
613-07199	PULL BOX (INSTALL ONLY)	EACH	3	\$ 1,200.00	\$ 3,600.00
613-10000	WIRING	LS	1	\$ 28,500.00	\$ 28,500.00
613-80130	SERVICE METER CABINET	EACH	1	\$ 11,275.00	\$ 11,275.00
614-00011	SIGN PANEL (CLASS I)	SF	130	\$ 30.00	\$ 3,900.00
614-00012	SIGN PANEL (CLASS II)	SF	27	\$ 80.00	\$ 2,160.00
614-00216	STEEL SIGN POST (2x2 INCH TUBING)	LF	114	\$ 29.00	\$ 3,306.00
614-01585	STEEL SIGN SUPPORT (2-1/2 INCH RND SCH 80)(POST)	LF	24	\$ 57.00	\$ 1,368.00
614-01588	STEEL SIGN SUPPORT (2-1/2 INCH RND SCH 80)(SLIP BASE)	EACH	2	\$ 637.00	\$ 1,274.00
614-10130	ILLUMINATED SIGN	EACH	3	\$ 6,060.00	\$ 18,180.00
614-10160	SIGNAL HEAD BACKPLATES	EACH	5	\$ 112.00	\$ 560.00
614-70150	PEDESTRIAN SIGNAL FACE (16) (COUNTDOWN)	EACH	4	\$ 892.00	\$ 3,568.00
614-70336	TRAFFIC SIGNAL FACE (12-12-12)	EACH	10	\$ 1,075.00	\$ 10,750.00
614-72855	TRAFFIC SIGNAL CONTROLLER CABINET	EACH	1	\$ 37,277.00	\$ 37,277.00
614-72860	PEDESTRIAN PUSH BUTTON	EACH	8	\$ 1,420.00	\$ 11,360.00
614-72863	PEDESTRIAN PUSH BUTTON POST ASSEMBLY	EACH	3	\$ 3,355.00	\$ 10,065.00
614-72866	FIRE PREEMPTION UNIT AND TIMER	EACH	2	\$ 5,185.00	\$ 10,370.00
614-72886	INTERSECTION DETECTION SYSTEM (CAMERA)	EACH	7	\$ 10,300.00	\$ 72,100.00
614-75867	RAILROAD PREEMPTION UNIT	EACH	1	\$ 4,135.00	\$ 4,135.00
614-80003	RECTANGULAR RAPID FLASHING BEACON	EACH	2	\$ 8,517.00	\$ 17,034.00
614-81130	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-30 FOOT MAST ARM)	EACH	1	\$ 25,385.00	\$ 25,385.00
614-81140	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-40 FOOT MAST ARM)	EACH	2	\$ 29,225.00	\$ 58,450.00

614-81155	TRAFFIC SIGNAL-LIGHT POLE STEEL (1-55 FOOT MAST ARM)	EACH	1	\$ 32,395.00	\$ 32,395.00
614-84000	TRAFFIC SIGNAL PEDESTAL POLE STEEL	EACH	2	\$ 4,138.00	\$ 8,276.00
614-86748	CONTROLLER (TYPE 2070)	EACH	1	\$ 6,237.00	\$ 6,237.00
614-86800	UNINTERRUPTED POWER SUPPLY	EACH	1	\$ 11,735.00	\$ 11,735.00
614-87350	TEST FIBER OPTIC CABLE	LS	1	\$ 750.00	\$ 750.00
614-87410	FIBER OPTIC CABLE (SINGLE MODE)(12 STRANDS)	LF	500	\$ 8.00	\$ 4,000.00
614-87488	FIBER OPTIC CABLE (SINGLE MODE)(288 STRANDS)	LF	3850	\$ 11.40	\$ 43,890.00
620-00020	SANITARY FACILITY	EACH	1	\$ 5,685.00	\$ 5,685.00
625-00000	CONSTRUCTION SURVEYING	LS	1	\$ 22,730.00	\$ 22,730.00
626-00000	MOBILIZATION	LS	1	\$ 120,000.00	\$ 120,000.00
626-01114	PUBLIC INFORMATION MANAGEMENT (TIER IV)	DAY	35	\$ 171.00	\$ 5,985.00
627-00008	MODIFIED EPOXY PAVEMENT MARKING	GAL	21	\$ 455.00	\$ 9,555.00
627-30405	PREFORMED THERMOPLASTIC PAVEMENT MARKING (WORD-SYMBOL)	SF	947	\$ 20.00	\$ 18,940.00
627-30410	PREFORMED THERMOPLASTIC PAVEMENT MARKING (XWALK-STOPLINE)	SF	240	\$ 26.00	\$ 6,240.00
630-00000	FLAGGING	HOURL	1440	\$ 40.00	\$ 57,600.00
630-00003	UNIFORMED TRAFFIC CONTROL	HOURL	8	\$ 160.00	\$ 1,280.00
630-00006	UNIFORMED TRAFFIC CONTROL (VEHICLE)	HOURL	8	\$ 35.00	\$ 280.00
630-00007	TRAFFIC CONTROL INSPECTION	DAY	70	\$ 228.00	\$ 15,960.00
630-00012	TRAFFIC CONTROL MANAGEMENT	DAY	175	\$ 842.00	\$ 147,350.00
630-80335	BARRICADE (TYPE 2 M-A) (TEMPORARY)	EACH	14	\$ 171.00	\$ 2,394.00
630-80341	CONSTRUCTION TRAFFIC SIGN (PANEL SIZE A)	EACH	36	\$ 69.00	\$ 2,484.00
630-80342	CONSTRUCTION TRAFFIC SIGN (PANEL SIZE B)	EACH	30	\$ 80.00	\$ 2,400.00
630-80344	CONSTRUCTION TRAFFIC SIGN (SPECIAL)	EACH	8	\$ 205.00	\$ 1,640.00
630-80350	VERTICAL PANEL	EACH	20	\$ 40.00	\$ 800.00
630-80355	PORTABLE MESSAGE SIGN PANEL	EACH	3	\$ 8,600.00	\$ 25,800.00
630-80360	DRUM CHANNELIZING DEVICE	EACH	50	\$ 85.00	\$ 4,250.00
630-80380	TRAFFIC CONE	EACH	75	\$ 12.00	\$ 900.00
700-70010	F/A MINOR CONTRACT REVISIONS	FA	1	\$ 50,000.00	\$ 50,000.00
700-70023	F/A ON-THE-JOB TRAINEE	FA	1	\$ 16,000.00	\$ 16,000.00
700-70016	FUEL COST ADJUSTMENT	FA	1	\$ 16,000.00	\$ 16,000.00
700-70061	ADJUST UTILITIES	FA	1	\$ 25,000.00	\$ 25,000.00
700-70082	FURNISH & INSTALL ELECTRIC SERVICE	FA	1	\$ 20,000.00	\$ 20,000.00
700-70310	LANDSCAPING	FA	1	\$ 5,000.00	\$ 5,000.00
700-70315	IRRIGATION	FA	1	\$ 5,000.00	\$ 5,000.00
700-70380	EROSION CONTROL	FA	1	\$ 5,000.00	\$ 5,000.00
700-70587	HAZARDOUS WASTE DISPOSAL	FA	1	\$ 5,000.00	\$ 5,000.00
700-90072	RAILROAD FLAGGING	FA	1	\$ 30,000.00	\$ 30,000.00
<b>BASE BID COST</b>					<b>\$ 2,285,423.00</b>



**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

**CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS for CCOB & CDOT Contracts**

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, 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. No insurance will be waived for CDOT contracts.

**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 for CCOB & CDOT Contracts				
	COVERAGES AND LIMITS OF INSURANCE	Required		
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"><li>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.</li></ul>	Minimum Limits: <ul style="list-style-type: none"><li>\$1,000,000 Each Occurrence</li><li>\$2,000,000 General Aggregate (Per project aggregate for construction contracts)</li><li>\$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)</li><li>\$50,000 any 1 fire</li></ul>		
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"><li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li></ul>	Minimum Limit: <ul style="list-style-type: none"><li>\$1,000,000 each accident combined single limit.</li><li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li></ul>		
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"><li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li></ul> <p><b>Note:</b> 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.</p>	Employer's Liability with Minimum Limits: <ul style="list-style-type: none"><li>\$100,000 Each Accident</li><li>\$100,000 Each Employee by Disease</li><li>\$500,000 Disease Aggregate</li></ul>		
4.	<b>Professional Liability</b> <ul style="list-style-type: none"><li>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"><li>Limited Contractual Liability</li><li>If coverage is Claims Made, a retroactive date prior to the inception of the work</li><li>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</li></ul></li></ul>	Minimum Limit: <ul style="list-style-type: none"><li>\$1,000,000 Per Claim /Aggregate</li></ul>		
5.	<b>Umbrella or Excess Liability Coverage</b> <ul style="list-style-type: none"><li>Policy shall provide liability coverage over the specified Workers Compensation/Employers Liability, Commercial General Liability and Auto Liability.</li></ul>	Minimum Limit: <ul style="list-style-type: none"><li>Limits of at least: \$1,000,000 per occurrence</li></ul>		
<p><b>Additional Insured - The following shall be named an Additional Insured:</b> The State of Colorado - Colorado Department of Transportation and 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, Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations), and Umbrella or Excess Liability insurance policies. A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.</p> <p><b>Certificate Holders are:</b></p> <table><tr><td>City and County of Broomfield One DesCombes Drive Broomfield, CO 80020-2495 <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a></td><td>Colorado Department of Transportation, CDOT Region 1 2829 W. Howard Place Denver, CO 80204 Attn: Maria Hajiaghaee <a href="mailto:Maria.hajiaghaee@state.co.us">Maria.hajiaghaee@state.co.us</a></td></tr></table>			City and County of Broomfield One DesCombes Drive Broomfield, CO 80020-2495 <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a>	Colorado Department of Transportation, CDOT Region 1 2829 W. Howard Place Denver, CO 80204 Attn: Maria Hajiaghaee <a href="mailto:Maria.hajiaghaee@state.co.us">Maria.hajiaghaee@state.co.us</a>
City and County of Broomfield One DesCombes Drive Broomfield, CO 80020-2495 <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a>	Colorado Department of Transportation, CDOT Region 1 2829 W. Howard Place Denver, CO 80204 Attn: Maria Hajiaghaee <a href="mailto:Maria.hajiaghaee@state.co.us">Maria.hajiaghaee@state.co.us</a>			

No deviations below the standards given above will be approved by the City and County of Broomfield's Risk Management office for CDOT contracts.

**EXHIBIT C**  
**FEDERAL UNIFORM GRANT GUIDANCE REQUIRED CONTRACT CLAUSES**

The Parties to the Agreement to which this Exhibit is attached hereby acknowledge that the Agreement is subject to the provisions of 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In accordance with 2 C.F.R. 200.327 the following provisions are hereby added and incorporated into the Agreement; to the extent that the terms of the Agreement and this exhibit conflict, the terms of this exhibit shall control. During the performance of this Agreement, the Contractor agrees as follows:

**A. SUPPLEMENTAL DEFAULT AND REMEDY PROVISIONS.** (Applicable to all contracts and subcontracts in excess of \$150,000, the simplified acquisition threshold. See 2 CFR Part 200, Appendix II(A)) In addition to the contractual, administrative and legal provisions within the Agreement to which this Exhibit is attached and incorporated into, the following Default and Remedy provisions apply.

1. Contractor's failure to perform or observe any term, covenant or condition of this document or failure to fulfill in a timely and proper manner its obligations under this Agreement shall constitute an event of default under this Agreement. Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:
  - (a) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.
  - (b) Contractor (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (v) takes action for the purpose of any of the foregoing.
  - (c) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.
2. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such

Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

3. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect.

**B. TERMINATION FOR CONVENIENCE OF CITY.** (Applicable to all contracts and subcontracts in excess \$10,000. see 2 CFR Part 200, Appendix II(B))

1. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective

2. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the City. Such actions shall include, without limitation:

- (a) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (b) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (c) Terminating all existing orders and subcontracts.
- (d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (f) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (g) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

3. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (a) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice. Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may

- acquire an interest.
- (b) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
  - (c) The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the City or otherwise disposed of as directed by the City.
4. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection 3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 3.
5. In arriving at the amount due to Contractor under this Section, City may deduct:
- (a) All payments previously made by City for work or other services covered by Contractor's final invoice;
  - (b) Any claim which City may have against Contractor in connection with this Agreement;
  - (c) Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 4; and
  - (d) In instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
6. City's payment obligation under this Section shall survive termination of this Agreement.

**C. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE.** (Applicable to all federally assisted construction contracts as defined in 41 CFR Part 60-1.3 by grantees and their contractors and subcontractors, in excess of \$10,000; see 2 CFR Part 200, Appendix II(C)).

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to

employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The

contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**D. DAVIS-BACON ACT COMPLIANCE.** (Applicable to prime construction contracts exceeding \$2,000; see 2 CFR Part 200, Appendix II(D))

1. The Contractor shall comply with 40 U.S.C. 3141-3148 as supplemented by 29 C.F.R. Part 5.
2. All laborers and mechanics employed by the Contractor on construction work pursuant to this Agreement, and subject to the provisions of the federal acts and regulations listed herein, shall be paid wages at rates not less than the prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. In addition, the Contractor must pay wages not less than once a week.
3. The parties acknowledge that the City must report all suspected or reported violations to the Federal awarding agency.
4. The Contractor shall also comply and ensure subcontractor compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). As such Contractor and any subcontractors thereof are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The City must report all suspected or reported violations to the Federal awarding agency.

**E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE.** (Applicable to agreement is in excess of \$100,000 and involving the employment of mechanics or laborers; see 2 CFR Part 200, Appendix II(E)).

The Contractor shall comply with the following:

1. *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
2. *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C.

2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

3. *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute

4. *Payrolls and basic records.*

(a) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(b) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (a) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

5. *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (1) through (5) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (1) through (5) of this clause.

6. *Work Conditions.* Contractor shall comply with 40 U.S.C. 3704 as it is applicable to construction work. No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. **INVENTIONS MADE UNDER THE AGREEMENT.** (Applicable to federally funded contracts for the performance of experimental, developmental, or research work; see 2 CFR Part 200, Appendix II(F) )

If the Federal award providing funding for this Agreement meets the definition of “funding Agreement” under 37 CFR § 401.2 (a) and this Agreement is between the City and a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that Funding

Agreement, the City and Contractor shall comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**G. CLEAN AIR AND CLEAN WATER ACTS COMPLIANCE.** (Applicable to all contracts and subcontracts in excess \$150,000; see 2 CFR Part 200, Appendix II(G))

**1. Clean Air Act.**

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act at 42 U.S.C. § 7401 et. seq.
- (b) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, the Federal reporting agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

**2. Federal Water Pollution Control Act.**

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq.
- (b) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State of Colorado, the Federal reporting agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

**H. DEBARMENT AND SUSPENSION.** (Applicable to all contracts and subcontracts; see 2 CFR Part 200, Appendix II(H)) Contractor acknowledges that a contract utilizing Federal funding may not be awarded to parties listed on the governmentwide exclusions in the System for Award Management (SAM). 2 CFR Part 200, Appendix II(H).

In addition, Contractor affirms that neither it nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal Government and do not appear in the SAM Exclusions, which is a list maintained by the General Services Administration.

**I. BYRD ANTI-LOBBYING AMENDMENT COMPLIANCE.** (Applicable to awards or contracts of \$100,000; see 2 CFR Part 200, Appendix II(I)) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification set forth in CERTIFICATION REGARDING LOBBYING, 44 C.F.R. Part 18, Appendix A. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining a Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

J. **PROCUREMENT OF RECOVERED MATERIALS.** (To the extent applicable by law; See 2 CFR Part 200, Appendix II(J)) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

Contractor also agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

K. **PROHIBITED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** (To the extent applicable by law; See 2 CFR Part 200, Appendix II(K)) Contractor and subcontractor, if applicable are prohibited from expending funds arising from this contract to:

- (a) Procure or obtain;
  - (b) Extend or renew a contract to procure or obtain; or
  - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company of ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications, equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced by an entity that the Secretary of Defense in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

See Public Law 115-232, section 889 for additional information. See also 2 CFR 200.471.

**L. DOMESTIC PREFERENCE.** (To the extent applicable by law; See 2 CFR Part 200, Appendix II(L)) As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**N. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

- 1. If subcontracts are to be let, Contractor must take the following affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor surplus firms are used when possible:
  - (a) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.
  - (b) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
  - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
  - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
  - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**M. ADDITIONAL REQUIREMENTS OF FUNDING SOURCE AGENCY.** Finally, the Parties additionally agree that Federal Funding source agency rules and regulations may require the incorporation and additional legal or regulatory references or contract provisions and nothing

herein by this Exhibit is intended to revise, negate or conflict with any such necessary provision, rather the intent is to summarize and memorialize all applicable provisions, to the extent possible.

EXHIBIT D  
[BNSF Construction & Management Agreement](#)

[See attached.]



Contract Number: BF-20274204

**GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT**

**BNSF File No.: BF-20274204**  
**Mile Post 14.44**  
**Line Segment 476**  
**U.S. DOT Number 089385S**  
**Front Range Subdivision**

This Agreement ("**Agreement**"), is executed to be effective as of 3/13/2024 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**") and the **CITY AND COUNTY OF BROOMFIELD**, a political subdivision of the State of Colorado ("**Agency**"), and collectively referred to as "parties" and individually as "party".

**RECITALS**

WHEREAS, BNSF owns and operates a line of railroad in and through the City and County of Broomfield, State of Colorado;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project at Nickel Street to construct modifications to the existing Nickel Street at-grade crossing, located at BNSF Line Segment **476** and Milepost **14.44**, and designated by D.O.T. No. 089385S, by adding a detached sidewalk adjacent to the existing crossing, and adding an interconnected activation equipment to an adjacent existing intersection within the existing roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein;

WHEREAS, the Agency desires to preempt the highway traffic control signals with the existing grade crossing warning devices shown on Exhibit A;

WHEREAS, BNSF agrees to allow the Agency to preempt the new highway traffic control signals with the existing grade crossing warning devices indicated on Exhibit A; WHEREAS, the parties agree that the BNSF will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars, or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment");

WHEREAS, the Agency also desires BNSF to install an additional crossing surface adjacent to the existing crossing at Nickel Street to include a new concrete and rubber crossing surface for a detached sidewalk;



Contract Number: BF-20274204

WHEREAS, the Agency is paying for the modification to existing railroad signal equipment for the new traffic signal interconnection, acquisition and installation of crossing signal equipment and the additional crossing surface for the detached sidewalk at Nickel Street, with State and Federal funds pursuant to 23 U.S.C. § 130;

WHEREAS, the BNSF agrees to purchase and install, at Agency's sole expense, the signal modifications to existing railroad crossing and the new crossing surface for the detached sidewalk, described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **ARTICLE I – SCOPE OF WORK**

- 1) The term "**Project**" as used herein includes any and all work related to the construction of a new adjacent, detached sidewalk/trail crossing at the Nickel Street crossing by Agency and installation of modifications to existing railroad signal activation equipment at U.S. D.O.T No. 089385S (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

#### **ARTICLE II – RAILROAD OBLIGATIONS**

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

- 1) BNSF reserves the rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:
  - A. Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;



Contract Number: BF-20274204

- B. Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- C. Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

In the event Agency is evicted by anyone owning or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

- 2) BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, upon written notice to the City, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- A. Procurement of materials, equipment and supplies necessary for the railroad work;
- B. Preliminary engineering, design, and contract preparation;
- C. Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- D. Furnishing engineering and inspection as required in connection with the construction of the Project;
- E. Installation of one 16-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the new detached sidewalk;



Contract Number: BF-20274204

- F. Modification to existing Crossing Signal Equipment and existing Crossing Signal Control House for new traffic signal interconnection as shown on Exhibit A;
  - G. Provide an interface box, with contact terminals, mounted on side of existing Crossing Signal Control House
  - H. Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.
- 3) BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
  - 4) Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
  - 5) BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
  - 6) During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which



Contract Number: BF-20274204

are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

### **ARTICLE III – AGENCY OBLIGATIONS**

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

- 1) Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
- 2) Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3) Agency must acquire all rights of way necessary for the construction of the Project.
- 4) Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<https://www.bnsf.com/bnsf-resources/pdf/about-bnsf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
- 5) Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:
  - A. Design and Reconstruction/Construction of Nickel Street;
  - B. Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
  - C. Installation of advance warning signs in accordance with the MUTCD;



Contract Number: BF-20274204

- D. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
  - E. Provide suitable drainage, both temporary and permanent;
  - F. Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the existing Crossing, during the installation of the new traffic signal and new interconnect to existing Crossing Signal Equipment.
  - G. Provide and place twenty-four (24) inch wide section of asphalt between the concrete sidewalk and the new concrete crossing surface.
  - H. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
  - I. Provide BNSF in writing with the total time required from start of preempt cycle of highway traffic control signals until arrival of the train at the highway-rail crossing.
  - J. Connect the highway traffic control signals to the contact terminals in the interface box including all necessary cable and conduit.
  - K. Install the new highway traffic control signals.
- 6) The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.
- 7) The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.
- 8) The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.



Contract Number: BF-20274204

- 9) For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "[www.bnsfcontractor.com](http://www.bnsfcontractor.com)"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.
- 10) Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.
- 11) Agency must include the following provisions in any contract with its contractor(s) ("Contractor") performing work on said Project:
  - A. The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
  - B. Failure to contact BNSF for utility locates within BNSF right-of-way to have them marked or identified will be sufficient cause for BNSF's engineering representative BNSF Engineering Contact at 303-480-6586 to stop construction at no cost to the Agency or BNSF until these items are completed.
  - C. The Contractor will be responsible coordination with utilities for the rearrangement of any facilities or Lines determined to interfere with the construction. The



Contract Number: BF-20274204

Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

D. In addition to the liability terms contained elsewhere in this Agreement, the Contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

13) Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14) Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- A. All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- B. Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;



Contract Number: BF-20274204

- C. No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
  - D. If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
  - E. To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- 15) Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.
- 16) **TO THE FULLEST EXTENT PERMITTED BY COLORADO LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR**



Contract Number: BF-20274204

INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE EXISTING EASEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE EXISTING EASEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

#### **ARTICLE IV – JOINT OBLIGATIONS**

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

- 1) All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
- 2) The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
- 3) Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that



Contract Number: BF-20274204

BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

- 4) BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of this Agreement, BNSF may terminate this Agreement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Joliette Woodson  
jwoodson@broomfield.org  
303.464.5868  
One DesCombes Drive  
Broomfield, CO 80020

- 5) Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper



Contract Number: BF-20274204

supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Joliette Woodson for appropriate corrective action.

- 6) Pursuant to this section and Article II, Section 6 herein, Agency must reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes),
- 7) All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.
- 8) The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number and D.O.T. Crossing No. and must state the time that construction activities will begin.
- 9) In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:
  - A. Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Nickel Street .
  - B. Agency will maintain the elevation of the Nickel Street approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
  - C. Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees, to the extent permitted by law to hold harmless and indemnify BNSF for any claims, damages or losses, in whole



Contract Number: BF-20274204

or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD

- D. Agency will do nothing and permit nothing to be done in the maintenance of the Nickel Street roadway, which will interfere with or endanger facilities of BNSF.
- E. It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- F. BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition.
- G. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- H. If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- I. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
  - i) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
  - ii) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to



Contract Number: BF-20274204

replace or repair such Crossing Signal Equipment and/or Crossing Signal House.

- J. If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be paid by the Agency.
  - K. BNSF will operate and maintain, at its expense, the necessary relays and other materials required to preempt the highway traffic control signals with the grade crossing warning devices.
  - L. BNSF will operate and maintain, at its expense, the railroad crossing warning devices up to the contact terminals in the interface box.
  - M. Agency will own, operate and maintain, at its expense, the highway traffic control signals up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- 10) Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction, inspection, or maintenance work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.
- 11) Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Colorado and the Federal Highway Administration, for a period of three (3) years from the date of the final BNSF invoice under this Agreement.
- 12) The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- 13) In the event construction of the Project does not commence within 12 months of the Effective Date, this Agreement will become null and void.



Contract Number: BF-20274204

- 14) Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
- 15) To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under Colorado law. If any provision of this Agreement is prohibited by, or held to be invalid under, Colorado law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
- 16) This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.
- 17) Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF:

BNSF's Manager Public Projects

Rafer Nichols

---

rafer.nichols@bnsf.com

---

Agency:

Joliette Woodson

jwoodson@broomfield.org

303.464.5868

One DesCombes Drive

Broomfield, CO 80020

- 18) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. The Agency's obligations under this Agreement are subject to annual appropriation by the City Council of the Agency, provided that, Agency represents and warrants that the Agency's obligation for the current cost of construction of the Project as provided herein has either already been



Contract Number: BF-20274204

approved for expenditure as part of the current or pending appropriation(s) or is funded by third party sources, including grants, and not subject to appropriation. Any failure of a City Council annually to appropriate adequate monies to finance the City's continuing obligations in subsequent fiscal years under this Agreement shall terminate this Agreement, and the Agency and BNSF's obligations thereunder at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to BNSF of any failure to appropriate such adequate monies.


SIGNATURE PAGE FOLLOWS



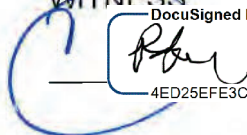
Contract Number: BF-20274204

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By:  \_\_\_\_\_  
DocuSigned by:  
3CDF5D5643A34A2...  
Printed Name: Cheryl Townlian  
Title: Assistant Director of Public Projects

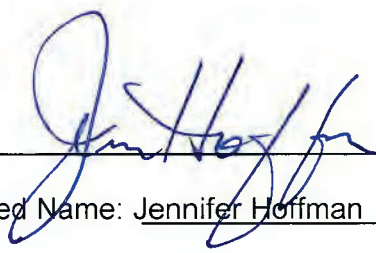
WITNESS:

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DocuSigned by:  
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**AGENCY**  
**City and County of Broomfield**

WITNESS:



By:  \_\_\_\_\_  
Printed Name: Jennifer Hoffman  
Title: City and County Manager











Contract Number: BF-20274204

**Exhibit A**

[illegible]

PROJECT\* 88281

PRELIMINARY-Times Subject to Change			
Minimum Warning Time	20 seconds		
Buffer Time	10 seconds		
Equipment Response Time	4 seconds		
Clearance Time	0 seconds		
Advance Preemption	20 seconds		
Total Warning Time	50 seconds		
DRAWING SYMBOLS			
			
RAILROAD BUNGALOW	BIDIRECTIONAL CROSSING CONTROL	GATE MECHANISM	FLASHER
			
BELL	CROSSING CONTROL CONNECTION	AC POWER METER	NARROW BAND SHUNT

SCOPE OF WORK
INSTALL: ADVANCE PREEMPTION
CONTROL DEVICES: CONSTANT WARNING & ADVANCE PREEMPTION
SALVAGE: NONE

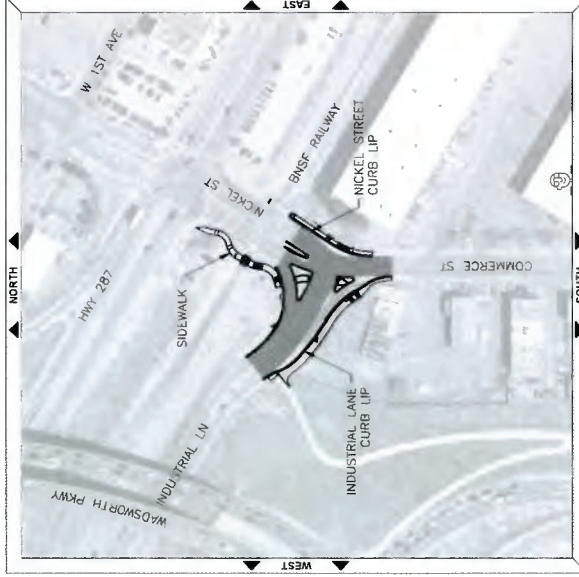
GENERAL INFORMATION	
LOCATION	BROOMFIELD, CO
STREET	NICKEL STREET
LINE SEGMENT	Ø476
MILEPOST	14.44
DOT#	Ø89 385 S
DIVISION	POWDER RIVER
SUBDIVISION	FRONT RANGE
OFFICE	LENEXA, KS
SCALE	NOT TO SCALE
DATE	10/06/2023
FILE	88281-STATESKETCH--DGN
DRAW	AMW

**RED = IN**      **YELLOW = OUT**



**PROJECT NO. TAP M145-014**  
**PLAN AND PROFILE OF PROPOSED**  
**INDUSTRIAL/NICKEL/COMMERCE**  
**INTERSECTION IMPROVEMENTS**  
**BROOMFIELD COUNTY, COLORADO**  
**CONSTRUCTION PROJECT CODE NO. 24230**

**SCALE OF ORIGINAL DRAWINGS**  
ON PLAN 1" = 20' HORIZONTAL  
ON PROFILE 1" = 4' VERTICAL



**100% RAILROAD SUBMITTAL**  
**MARCH 31, 2023**

DOT#089385S - NICKEL STREET CROSSING  
BNSF RAILWAY  
POWER RIVER DIVISION  
FRONT RANGE SUBDIVISION  
MP 14.449

Sheet Revisions			As Constructed		INDUSTRIAL/NICKEL/COMMERCE INTERSECTION IMPROVEMENTS TITLE SHEET		PARTIAL SET	
Rev	Date	Comments	Initials	No Revisions:	Revised:	Void:	Project No./Code	Sheet Number
001							TAP M145-014	24230
002							Designated	Sheet Numbers
003							Detailer	Sheet Numbers
004							Subsets	Title Sheets
005								T - 1 of 1
006								1

Print Date: 3/28/2023 4:32:43 PM  
File Name: RR-A121122-011101.dwg  
Horizontal Scale: NTS  
Vertical Scale: NTS  
Horizontal Scale: NTS  
Vertical Scale: NTS  
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Vertical Scale: NTS  
Horizontal Scale: NTS  
Vertical Scale: NTS

**FELSBERG**  
**HOLT &**  
**ULLEVIG**

4400 South Fiddler's Green Circle, Suite 1500  
Greenwood Village, CO 80111  
Phone: 303.721.1440  
www.FHUG.com

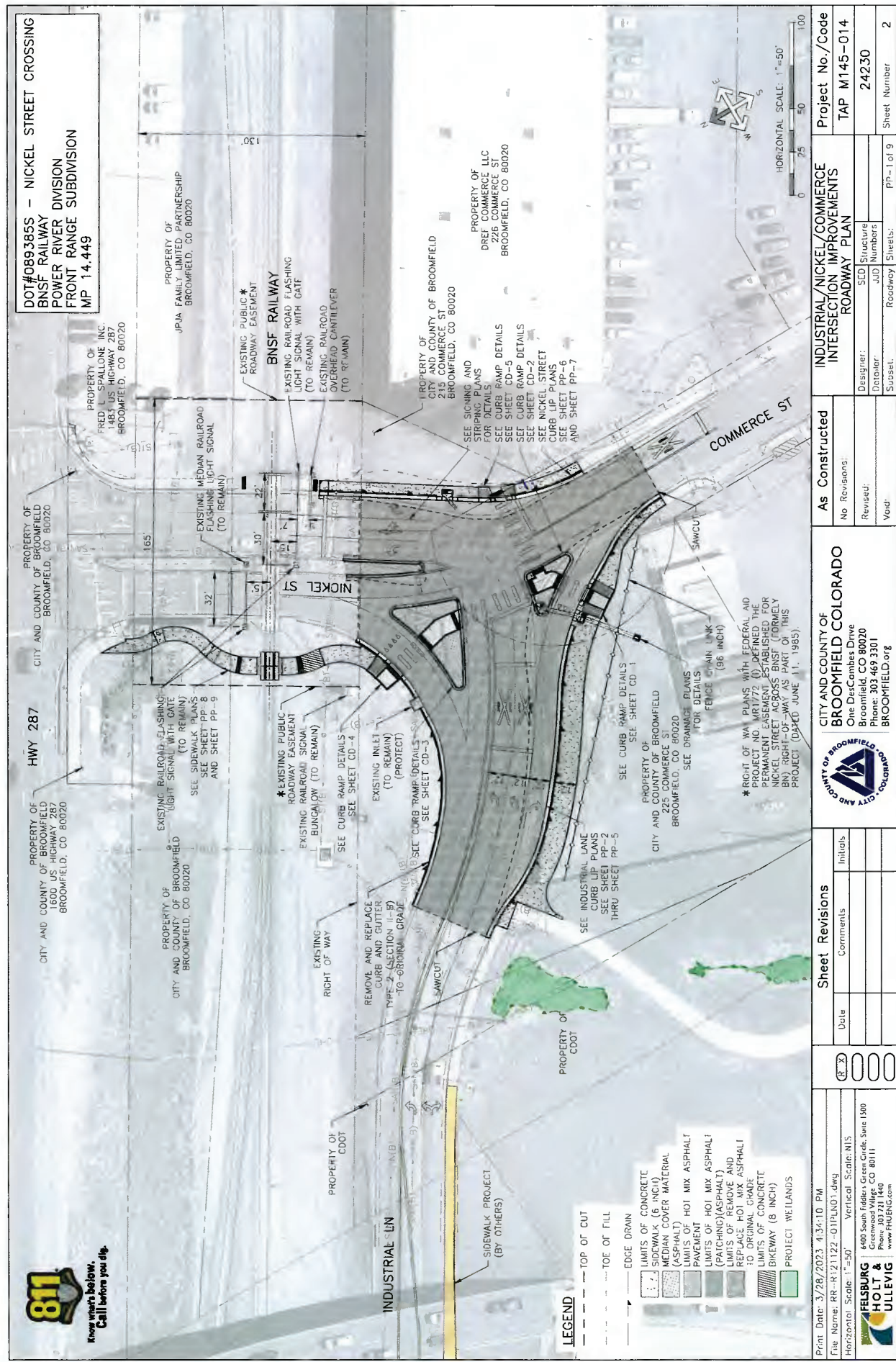
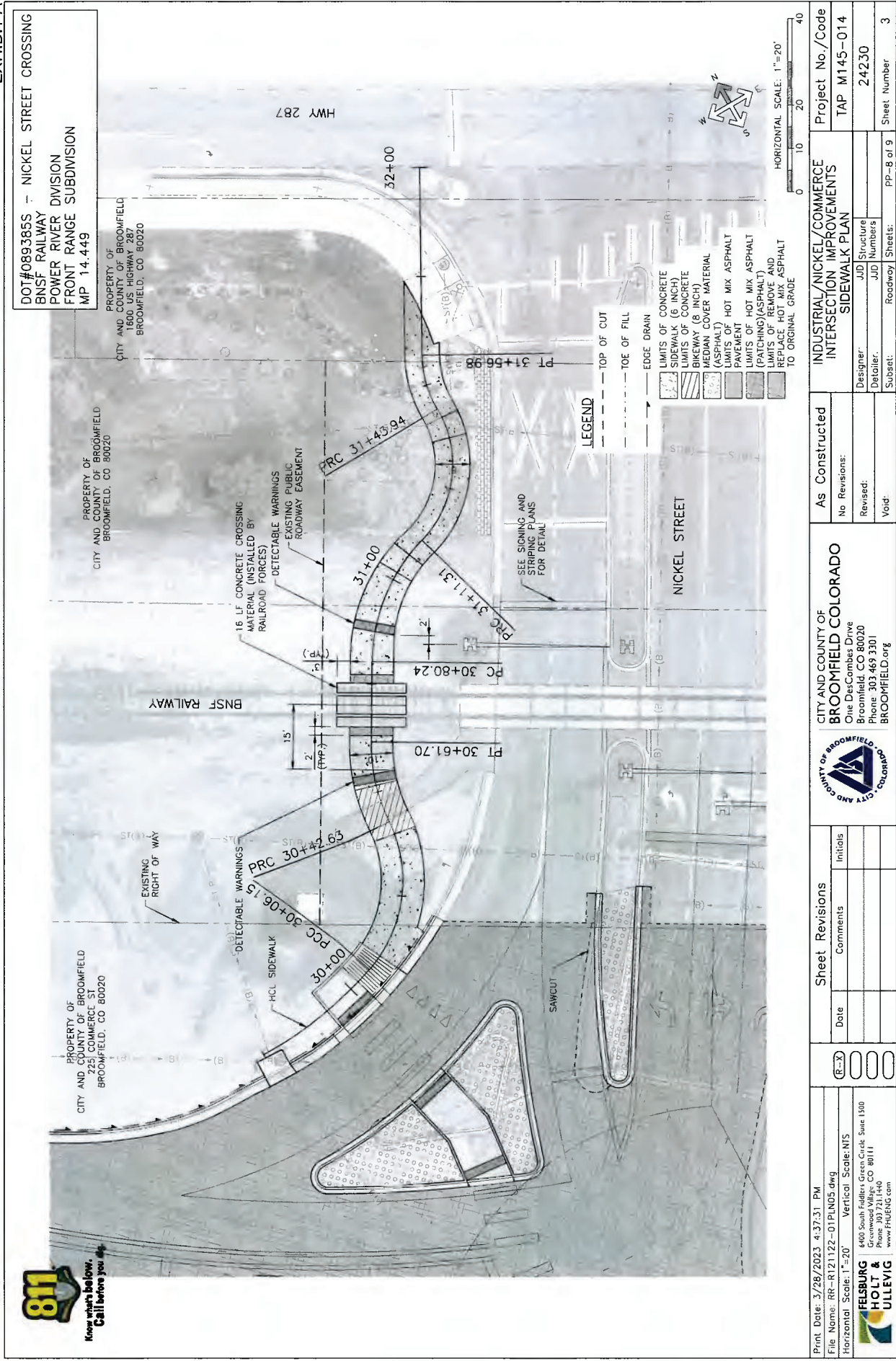


EXHIBIT A





Contract Number: BF-20274204

**Reserved Exhibit B**



Contract Number: BF-20274204

## EXHIBIT "C"

### CONTRACTOR REQUIREMENTS

#### 1. General

1. The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction **Nickel Street Intersection INTERSECTION IMPROVEMENTS CITY AND COUNTY OF BROOMFIELD**
2. The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
3. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
4. The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost



Contract Number: BF-20274204

profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Joliette Woodson  
jwoodson@broomfield.org  
303.464.5868  
One DesCombes Drive  
Broomfield, CO 80020

5. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
6. The Contractor must notify **City and County of Broomfield at 303-464-5868** and Railway's Manager Public Projects, telephone number **303-480-6586** at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF-20274204.
7. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and



Contract Number: BF-20274204

calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

8. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## 2. **Contractor Safety Orientation**

1. **No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.BNSFContractor.com](http://www.BNSFContractor.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

## 3. **Railway Requirements**

1. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
2. The Contractor must notify the Railway's Division Engineer and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
3. The Contractor must abide by the following temporary clearances during construction:



Contract Number: BF-20274204

1. 15'-0" Horizontally from centerline of nearest track
2. 21'-6" Vertically above top of rail
3. 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
4. 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
5. 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
6. 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

1. Upon completion of construction, the following clearances shall be maintained:

7. 25' Horizontally from centerline of nearest track
8. 23' 6" Vertically above top of rail

1. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **City and County of Broomfield** and must not be undertaken until approved in writing by the Railway, and until the **City and County of Broomfield** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
2. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
3. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the **City and County of Broomfield** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
4. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
5. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource**



Contract Number: BF-20274204

**Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

6. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.
- 
1. **Contractor Roadway Worker on Track Safety Program and Safety Action Plan**
    1. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.BNSFContractor.com](http://www.BNSFContractor.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
    1. Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
    1. The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at [www.erailsafe.com](http://www.erailsafe.com), in addition to any other applicable regulatory requirements.



Contract Number: BF-20274204

2. Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
3. Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.
4. Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1. **Railway Flagger Services**

1. The Contractor must give Railway's **Roadmaster (telephone 719-960-7156)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
2. Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  1. When, upon inspection by Railway's Representative, other conditions warrant.



Contract Number: BF-20274204

2. When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  3. When work in any way interferes with the safe operation of trains at timetable speeds.
  4. When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  5. Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
3. Flagging services will be performed by qualified Railway flaggers.
1. Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
  2. Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
  3. The cost of flagger services provided by the Railway will be borne by **City and County of Broomfield**. The estimated cost for one (1) flagger is approximately between \$1600.00-\$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
  4. The average train traffic on this route is 2 freight trains per 24-hour period at a timetable speed 30 MPH and 0 passenger trains at a timetable speed of N/A MPH.



Contract Number: BF-20274204

**1. Contractor General Safety Requirements**

1. Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
2. Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
3. Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
4. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
5. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
6. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.



Contract Number: BF-20274204

7. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
8. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.BNSFContractor.com](http://www.BNSFContractor.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
9. **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
10. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
11. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
12. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to



Contract Number: BF-20274204

observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

## 1. **Excavation**

1. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (\_\_\_\_\_)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
2. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
3. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
4. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

## 2. **Hazardous Waste, Substances and Material Reporting:**

1. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this



Contract Number: BF-20274204

Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

3. **Personal Injury Reporting**

1. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



Contract Number: BF-20274204

### NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)      ☐ Non-employee (N)  
*(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- ☐ Contractor/safety      ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)      ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595      or by Phone 1-800-697-6736      or email to: [Accident-Reporting.Center@BNSF.com](mailto:Accident-Reporting.Center@BNSF.com)

Officer Providing Information:

\_\_\_\_\_  
 (Name)                                      (Employee No.)                                      (Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**



Contract Number: BF-20274204

## NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email [Safety.IncidentReporting@BNSF.com](mailto:Safety.IncidentReporting@BNSF.com).

Accident City/State: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

County: \_\_\_\_\_ Temperature: \_\_\_\_\_ Weather: \_\_\_\_\_  
(if non-BNSF location)

Name (Last/First/MI): \_\_\_\_\_

Age: \_\_\_\_\_ Gender (if available): \_\_\_\_\_

Company: \_\_\_\_\_

eRailsafe Badge Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

BNSF Contractor Badge Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Injury: \_\_\_\_\_ Body Part: \_\_\_\_\_  
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

\_\_\_\_\_

Work activity in progress at time of accident: \_\_\_\_\_

Tools, machinery, or hazardous materials involved in accident: \_\_\_\_\_

\_\_\_\_\_

### Treatment:

1. First Aid Only
2. Required Medical Treatment
3. Other Medical Treatment: \_\_\_\_\_

Dr. Name: \_\_\_\_\_ Date: \_\_\_\_\_

Dr. Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Hospital Name: \_\_\_\_\_

Hospital Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Diagnosis: \_\_\_\_\_

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).



Contract Number: BF-20274204

**EXHIBIT C1**  
**EXHIBIT "C-1"**

**Agreement Between**

**BNSF RAILWAY COMPANY**

**and the**

**CONTRACTOR**

**Railway File:** **BF-20274204**

**Agency Project:**  
**Nickel Street Intersection**  
**INTERSECTION IMPROVEMENTS**  
**CITY AND COUNTY OF BROOMFIELD**

**City and County of Broomfield**, a/an (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated [REDACTED], 20[REDACTED], with **City and County of Broomfield** for the performance of certain work in connection with the following project: **270235** Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **City and County of Broomfield** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

**1) RELEASE OF LIABILITY AND INDEMNITY**



Contract Number: BF-20274204

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

- A. It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Contractor's employees against Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.**
- B. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**
- C. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.**



Contract Number: BF-20274204

- D. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**
- E. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

## **2) TERM**

- A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

## **3) INSURANCE**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

### **A. Commercial General Liability "CGL" Insurance**

- i) The policy will provide a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- (1) Bodily Injury and Property Damage
  - (2) Personal Injury and Advertising Injury
  - (3) Fire legal liability
  - (4) Products and completed operations
- ii) This policy shall also contain the following endorsements or language, which



Contract Number: BF-20274204

shall be indicated on the certificate of insurance:

- (1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.
- (2) Waiver of subrogation in favor of and acceptable to RAILWAY; and
- (3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and
- (4) Separation of insureds; and
- (5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

- iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.
- iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

**B. Business Automobile Insurance**

- i) The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - (1) Bodily injury and property damage
  - (2) Any and all vehicles owned, used or hired
- ii) The policy will include the following endorsements or language, which will be



Contract Number: BF-20274204

indicated on or attached to the certificate of insurance:

- (1) Waiver of subrogation in favor of and acceptable to RAILWAY;
- (2) Additional insured endorsement in favor of and acceptable to RAILWAY;
- (3) Separation of insureds;
- (4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

**C. Workers Compensation and Employers Liability Insurance**

- i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
  - (1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - (2) Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
  - (1) Waiver of subrogation in favor of and acceptable to Railway.

**D. Railroad Protective Liability insurance**

- i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
  - (1) Endorsed to include the Pollution Exclusion Amendment
  - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
  - (3) Endorsed to remove any exclusion for punitive damages.



Contract Number: BF-20274204

- (4) No other endorsements restricting coverage may be added.
- (5) The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement.
- (6) Definition of "Physical Damage to Property" shall be endorsed to read:  
"means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

**E. Other Requirements:**

- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- ii) Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.
- iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- iv) Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- v) Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative



Contract Number: BF-20274204

evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: [BNSF@certfocus.com](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://www.certfocus.com)

- vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.
- vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.
- ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.
- x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and



Contract Number: BF-20274204

conditions as Contractor is required to release, defend and indemnify Railway herein.

- xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.
- xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.
- xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.
- xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.
- xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **4) SALES AND OTHER TAXES**

- A. In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the



Contract Number: BF-20274204

performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

- B. Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.
- C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

## **5) EXHIBIT "C" CONTRACTOR REQUIREMENTS**

- A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any



Contract Number: BF-20274204

damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

## **6) TRAIN DELAY**

- A.** Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.
- B.** For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
- C.** Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.
- D.** The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.



Contract Number: BF-20274204

- E. Contractor and its subcontractors must give Railway's representative ( ) ( ) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.
- F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



Contract Number: BF-20274204

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

**BNSF RAILWAY COMPANY**

**CONTRACTOR**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: Manager Public Projects

Title: \_\_\_\_\_

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

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

Accepted and effective this \_\_\_\_\_ day of 20\_\_.

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_



Contract Number: BF-20274204

**EXHIBIT D**

## EXHIBIT D

AUTHORITY FOR EXPENDITURE

LOCATION : SSS BROOMFIELD	LINE SEGMENT : 476	AFE NUMBER :
PLANITEM NUMBER : 949000000	MILEPOST : 14.45	RFA NUMBER : 5950623
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : PR	CPAR NUMBER : C0000009
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : FRONT RANGE	BUDGET YEAR : 2023
JOINT FACILITY : CITY OF BROOMFIELD	TRACK TYPE : S	BUDGET CLASS : 6
% BILLABLE (-/-) : 100.0	TAX STATE : CO	REPORTING OFFICE : 111
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 29125

## PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - PRS DIV FRONT RANGE SUB LS 476 MP 14.450 - NICKEL ST. INTERCONNECT MODIFICATIONS AND TRAIL 089385S BROOMFIELD 14.44  
476 MODIFICATIONS TO STRIPING AND ROAD LAYOUT ON WEST SIDE CROSSING BF10018351 BF-20274204 CM. 100% BILLABLE TO CITY  
BROOMFIELD.

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
949000000	476	14.45	14.45	S	SSS	SSS BROOMFIELD	PUBLIC IMPROVEMENT PROJECT	2023

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	28,100	28,100
MATERIAL COSTS	0	0	0	0	17,892	17,892
OTHER COSTS	0	0	0	0	29,067	29,067
TOTALS	0	0	0	0	75,059	75,059

SYSTEM MAINTENANCE AND PLANNING

ESTIMATE REF. NUMBER: 5950623

COSTING DATE: 08/16/2023

PRINTED ON: 10/09/2023

ESTIMATED BY: MORGAN

PRINTED BY: MORGAN

## EXHIBIT D

\*\*\*\*\* MAINTAIN PROPRIETARY CONFIDENTIALITY \*\*\*\*\*

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CITY OF BROOMFIELD

LOCATION SSS BROOMFIELD

DETAILS OF ESTIMATE

PLAN ITEM : 949000000

VERSION : 1

## PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - PRS DIV FRONT RANGE SUB LS 476 MP 14.450 - NICKEL ST. INTERCONNECT MODIFICATIONS AND TRAIL  
089385S BROOMFIELD 14.44 476 MODIFICATIONS TO STRIPING AND ROAD LAYOUT ON WEST SIDE CROSSING  
BF10018351 BF-20274204 CM.  
100% BILLABLE TO CITY BROOMFIELD

REQUESTED BY ALLAN BREDEN 8/3/23

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
*****			
LABOR			
*****			
FLAGGING - PUBLIC CROSSING - CAP	36.0 MH	1,404	
PLACE FIELD WELDS - CAP	64.0 MH	2,445	
REPLACE PUBLIC CROSSING - TOTAL REHAB	16.0 MH	577	
REPLACE TRACK PANELS - CAP	10.0 MH	361	
SURFACE TRACK - REPLACEMENT - CAP	48.0 MH	1,784	
UNLOAD BALLAST - REPLACEMENT - CAP	2.4 MH	87	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	8.0 MH	289	
UNLOAD TRACK PANELS - REPLACEMENT	5.0 MH	181	
PAYROLL ASSOCIATED COSTS		4,620	
DA OVERHEADS		8,008	
EQUIPMENT EXPENSES		7,002	
INSURANCE EXPENSES		1,342	
TOTAL LABOR COST		28,100	28,100
*****			
MATERIAL			
*****			
BALLAST NT, SYSTEM AVERAGE COST	40.0 NT **	555	
PANEL, TRACK: 40FT: 136LB: SC: 10FT: PANDROL	1.0 EA **	8,405	
RAIL, TRANS: 136N: 132W: 40 FT: UNVRSL	2.0 EA	2,460	
SPIKE, TBR SCREW 3/4"X13", F/ROAD XING	36.0 EA **	79	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	6.0 KT **	459	
XING CONC 136LB 10FT TIES TANGENT	16.0 FT **	3,012	
XING CONC RAMP 136LB COMPLETE SET	1.0 ST **	349	
MATERIAL HANDLING		762	
ONLINE TRANSPORTATION		620	
USE TAX		1,010	
OFFLINE TRANSPORTATION		181	
TOTAL MATERIAL COST		17,892	17,892
*****			
OTHER			
*****			
ASPHALT BY CONTRACTOR	1.0 LS	6,000	
EQUIPMENT RENTAL F/ TRACK PANELS	0.3 DAY	450	
TRAFFIC CONTROL	2.0 EA	10,000	
TOTAL OTHER ITEMS COST		16,450	16,450
PROJECT SUBTOTAL			62,442
CONTINGENCIES			11,873
BILL PREPARATION FEE			744
GROSS PROJECT COST			75,059
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			75,059

\*\*\*\*\* MAINTAIN PROPRIETARY CONFIDENTIALITY \*\*\*\*\*

BNSF RAILWAY COMPANY  
FHPM ESTIMATE FOR  
CITY OF BROOMFIELD

LOCATION	SSS BROOMFIELD TO BROOMFIELD	DETAILS OF ESTIMATE	PLAN ITEM : 000363309	VERSION : I
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## PURPOSE, JUSTIFICATION AND DESCRIPTION

NICKEL STREET - BROOMFIELD, CO: INSTALL ADVANCE PREEMPTION: POWDER RIVER DIV; FRONT RANGE SUBDIV; LS 0476; MP 14.44;  
DOT# 089385S; SEQ# 88281.

MONTHLY POWER UTILITY COST CENTER : 61882.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 180 DAYS. THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

\*\*\*\*\* SIGNAL WORK ONLY \*\*\*\*\*

THE CITY OF BROOMFIELD, CO IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

PRIMARY FUNDING SOURCE IS FHWA

\*\* BUY AMERICA(N) APPLIES \*\*

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$
*****				
LABOR				
*****				
SIGNAL FIELD - REPLACE	340.0	MH	16,906	
PAYROLL ASSOCIATED COSTS			11,049	
DA OVERHEADS			24,970	
EQUIPMENT EXPENSES			6,005	
INSURANCE EXPENSES			3,350	
TOTAL LABOR COST			62,280	62,280
*****				
MATERIAL				
*****				
ADVANCE PREEMPTION PACKAGE	1.0	LS N	10,433	
FIELD MATERIAL	1.0	LS N	4,000	
SHUNT, NBS	3.0	EA N	3,013	
USE TAX			1,153	
OFFLINE TRANSPORTATION			218	
TOTAL MATERIAL COST			18,817	18,817
*****				
OTHER				
*****				
CONTRACT ENGINEERING	1.0	LS N	10,000	
CONTRACT FLAGGING/ SIGNS/ CONES	1.0	LS N	5,000	
TRAFFIC ENGINEERING SUPPORT	1.0	LS N	30,000	
TOTAL OTHER ITEMS COST			45,000	45,000
PROJECT SUBTOTAL				126,097
CONTINGENCIES				11,675
BILL PREPARATION FEE				1,378
GROSS PROJECT COST				139,150
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				139,150

# Exhibit I

FHWA-1273 – Revised October 23, 2023

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

#### **8. Reasonable Accommodation for Applicants /**

**Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

#### **9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:**

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

### 3. Records and certified payrolls (29 CFR 5.5)

*a. Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

*(2) Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

*(3) Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

*(4) Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

*b. Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

*(2) Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

*(3) Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

*(4) Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and  
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\*\*\*\*\*

## **3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\* \* \* \* \*

#### **4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\* \* \* \* \*

#### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

#### **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## **EXHIBIT J**

### **ADDITIONAL FEDERAL REQUIREMENTS**

Federal laws and regulations that may be applicable to the Work include:

#### **Executive Order 11246**

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

#### **Copeland "Anti-Kickback" Act**

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

#### **Davis-Bacon Act**

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

#### **Contract Work Hours and Safety Standards Act**

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

#### **Clear Air Act**

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

#### **Energy Policy and Conservation Act**

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### **OMB Circulars**

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

#### **Hatch Act**

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

#### **Nondiscrimination**

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land or other aid. The Local Agency shall also include the following in all contract advertisements:

*The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.*

**ADA**

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

**Drug-Free Workplace Act**

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

**Age Discrimination Act of 1975**

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

**23 C.F.R. Part 172**

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

**23 C.F.R Part 633**

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

**23 C.F.R. Part 635**

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

**Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973**

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

**Nondiscrimination Provisions:**

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

**i. Compliance with Regulations**

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

**ii. Nondiscrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

**iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

**iv. Information and Reports**

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

**v. Sanctions for Noncompliance**

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

**Incorporation of Provisions §22**

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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**SAMPLE**

**The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination**

**Assurances for Local Agencies**

**DOT Order No. 1050.2A**

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

**General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

**Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

\_\_\_\_\_  
*(Name of Recipient)*

by \_\_\_\_\_  
*(Signature of Authorized Official)*

DATED \_\_\_\_\_

## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. \*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## **APPENDIX D**

### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. \*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

## **EXHIBIT K**

### **FFATA SUPPLEMENTAL FEDERAL PROVISIONS**

**State of Colorado**  
**Supplemental Provisions for**  
**Federally Funded Contracts, Grants, and Purchase Orders**  
**Subject to**  
**The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended**  
**Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

**1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

**1.1. “Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

**1.2. “Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

**1.3. “Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

**1.4. “Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

**1.5. “Entity”** means all of the following as defined at 2 CFR part 25, subpart C;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
  - 1.15.1. Salary and bonus;
  - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
  - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
  - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
  - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
  - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
  - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
  - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
  - 4.2. In the preceding fiscal year, Contractor received:
    - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
    - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
  - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

**7.1 To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in SAM.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## **8. Exemptions.**

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

**Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

## **EXHIBIT K**

### **FFATA SUPPLEMENTAL FEDERAL PROVISIONS**

**State of Colorado**  
**Supplemental Provisions for**  
**Federally Funded Contracts, Grants, and Purchase Orders**  
**Subject to**  
**The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended**  
**Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

**1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

**1.1. “Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

**1.2. “Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

**1.3. “Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

**1.4. “Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

**1.5. “Entity”** means all of the following as defined at 2 CFR part 25, subpart C;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
  - 1.15.1. Salary and bonus;
  - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
  - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
  - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
  - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
  - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
  - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
  - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
  - 4.2. In the preceding fiscal year, Contractor received:
    - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
    - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
  - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

**7.1 To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in SAM.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## **8. Exemptions.**

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

**Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

**EXHIBIT M - OMB Uniform Guidance for Federal  
Awards Subject to  
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit  
Requirements for Federal Awards (“Uniform Guidance”),  
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 9. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
- 9.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
  - 9.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
  - 9.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
  - 9.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
  - 9.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
  - 9.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
  - 9.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
  - 9.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
  - 9.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
  - 9.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
  - 9.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 10. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions

automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

## **11. Procurement Standards.**

- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
  - 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
  - 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
  - 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.
- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

- 6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

- 4.2 Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-

3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 4.3 **Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
  - 4.4 **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  - 4.5 **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
  - 4.6 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
7. **Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
  - 1.8. **Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30

days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

9. **Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

#### 10. **Performance Measurement**

The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

RESOLUTION NO. 2024-123

A Resolution Approving a Consulting Agreement with Rocksol Consulting Group, Inc. for Construction Management Service for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements 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 Rocksol Consulting Group, Inc., for construction management services for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements in an amount not to exceed \$223,765.28 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 on the date of approval by the City Council.

Approved on October 1, 2024.

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 AND BETWEEN  
THE CITY AND COUNTY OF BROOMFIELD AND ROCKSOL CONSULTING GROUP, INC.  
FOR CONSTRUCTION MANAGEMENT SERVICES FOR COMMERCE STREET, NICKEL STREET AND  
INDUSTRIAL LANE INTERSECTION IMPROVEMENTS

1. PARTIES. The parties to this Consulting Agreement (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and Rocksol Consulting Group, Inc. (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, seeking construction management services for Commerce Street, Nickel Street and Industrial Lane Intersection Improvement Project (the “Project”), completed a competitive selection process by Request for Proposals #24-RFP-CD-003 (“RFP”).
  - 2.2. The City has received federal funding to offset some of the costs of this Project; however, no federal funds will be used to pay for the services provided under this Agreement, the funds will be spent on the actual construction of the Project.
  - 2.3. 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, advise, and represent the City as the City requires 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 attached hereto and incorporated by this reference and elsewhere in this Agreement.
    - 3.1.3. *Extra Services*. Upon the express, written approval 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. *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.

- 3.1.5. *Completion Date.* The Consultant shall complete the services of this Agreement within approximately 175 days following the date of the Authorization to Proceed, or such time as the construction work for the Project is complete and all documentation has been filed and completed with the Colorado Department of Transportation for the Project.

3.2. Obligations of the City.

- 3.2.1. *General.* The City shall direct the work and 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. If due to Acts of God, public emergency, 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 approved in writing, the amount paid by the City to the Consultant under this Agreement will not exceed two hundred twenty three thousand seven hundred sixty five

dollars and 28 cents (\$223,765.28), including reimbursables. 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.

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.

### 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 at least five (5) days in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach.

3.5.2. *Without Cause.* In addition to the foregoing, this Agreement may be terminated by the City, in whole or in part, for its convenience and without cause of any nature by written notice to the Consultant. In the event of termination, the Consultant shall incur no additional expenses and shall perform no further services 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 Consultant 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.

3.5.3. *Upon Termination.* 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 drawings, electronic data, computer programs, computer input and output, plans, photographic images, analyses, tests, maps, surveys, and written materials of any kind 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.

3.5.4. *Dispute Resolution.* A Party seeking to terminate for cause must notify the other Party of its intent and provide written notice specifying the facts supporting any alleged material breach. Within fourteen (14) days after receipt of such notice, the Parties shall meet to resolve the matters described in the written notice. If either Party believes that mediation would assist in resolving the matters described in the written notice, the Parties shall participate in mediation with a mutually acceptable mediator, to be conducted no later than sixty (60) days after receipt of the written notice of intent to terminate for cause. Mediation shall take place in Broomfield, Colorado and the Parties agree to split the costs of mediation.

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 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.

3.8. Permits and Licenses. The Consultant shall procure all permits and licenses, pay all charges, fees and taxes and give all notices necessary and incidental to the due and lawful prosecution of its services.

3.9. Patented Devices, Materials, and Processes. The Consultant shall hold and save harmless the City from any and all claims for infringement, by reason of the use 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 infringement, at any time during the prosecution or after completion of the work.

#### 4. INSURANCE 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, defend and hold harmless the City and the Colorado Department of Transportation and its agents and employees from and against all claims, 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 subconsultant 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 subconsultant 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 subconsultant under Workers' Compensation Act of Colorado or other employee benefit legislation.
- 4.2. Insurance.
  - 4.2.1. *Purchase and Maintain Insurance.* In order to assure the City that the Consultant is always capable of fulfilling specified indemnification obligations, Consultant shall purchase and maintain insurance, from an insurer with an AM Best FSR rating of A- or higher, of the kind, in the amounts, and subject to the conditions shown in the Insurance Requirements attached as Exhibit B.
  - 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, subconsultant, 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. The insuring company will provide thirty-day written notice prior to any alteration or cancellation of the above-referenced insurance.

- 4.2.3. *Valuable Papers.* Furthermore, the Consultant shall carry valuable papers insurance in an amount sufficient to assure 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.

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 Joliette Woodson as the authorized representative of the City under this Agreement. Email address is [jwoodson@broomfield.org](mailto:jwoodson@broomfield.org).
- 5.2. Consultant designates Stephany Westhusin, P.E. as the authorized representative of the Consultant under this Agreement. Email address is [westhusin@rocksol.com](mailto:westhusin@rocksol.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](mailto: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. 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, except for the Colorado Department of Transportation.
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. 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.
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. 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. 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 \_\_\_\_\_, 2024.

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


\_\_\_\_\_  
City and County Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City and County Attorney

**CONSULTANT:**

**Rocksol Consulting Group, Inc.**

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

**Name:** Saeid Saeb

**Address:** 12076 Grant Street, Thornton, CO 80241

## EXHIBIT A SCOPE OF WORK

1. Scope of Work. The Consultant shall provide professional services in construction management, including facilitating the work of the City's construction contractor ("Construction Contractor") and communication with the design engineers ("Engineers") for intersection widening, pavement reconstruction, concrete work, and traffic signal installation at the intersection of Nickel Street, Commerce Street and Industrial Lane (the "Project") as more particularly described herein. The design and construction of this Project is administered as a CDOT Local Agency Project and the Consultant shall comply with all CDOT Local Agency Project requirements and the Consultant shall complete all required paperwork.
  - 1.1. The Consultant will serve as the City's representative and will be responsible for coordination with the Construction Contractor, BNSF, Colorado Department of Transportation ("CDOT"), affected utilities and affected businesses for this Project.
  - 1.2. The Consultant is expected to work independently and be knowledgeable in preparing and collecting documentation to assist the City with CDOT reimbursement requirements, other required documentation submittals, including but not limited to BNSF Railway requests, and any audits. The City will not expect the Consultant to process and submit invoices to CDOT for reimbursement.
    - 1.2.1. The Consultant will be responsible for completing and submitting all required CDOT forms, to ensure compliance with all of the documentation requirements as specified by CDOT.
    - 1.2.2. The Consultant shall provide materials testing services per any CDOT requirements.
    - 1.2.3. The Consultant shall also help coordinate the work with the BNSF Railway as more particularly described in the Construction & Management Agreement by and between the City and BNSF Railway attached hereto as Exhibit D.
  - 1.3. The work hours are Monday through Friday from 8:30 AM to 4:30 PM. Saturday work is allowed with an approved Saturday Work Request.
2. Meetings and Communication. The Consultant shall conduct a pre-construction meeting, weekly progress meetings, prepare agenda and minutes and reports, and the following items:

- 2.1. Provide bi-weekly progress reports to the City on the status of the Project, indicating major work activities, provide an status update for any requests for information (RFIs), submittals, change orders and any other information that may be required by CDOT, BNSF or the City.
  - 2.2. Coordinate as needed with City staff, the Construction Contractor, subcontractors, regulatory agencies, utility companies, CDOT, BNSF, and other identified project stakeholders.
  - 2.3. Advise the City of all complaints and inquiries from property owners, citizens, officials, or others. Assist in the investigation and answering of such complaints and inquiries. Maintain a log showing the disposition of each complaint and inquiry.
3. Maintaining Documentation. The Consultant shall maintain Project documentation and files per state, federal and requirement as listed in the [CDOT Local Agency Desk Reference](#).
  - 3.1. The Consultant shall document issues, findings, changes, and help develop solutions.
  - 3.2. The Consultant will complete verification and documentation of the Construction Contractor fulfillment of the required construction including Disadvantaged Business Goals (DBE), On the Job Training Goals (OJT) and Davis-Bacon Act documentation.
4. Oversight and Monitoring. The Consultant shall provide oversight, monitoring and ensure the following is completed:
  - 4.1. Ensure the Construction Contractor complies with all local, state, and federal laws, ordinances, rules, regulations, regulatory or resource agency permits, orders as provided by the contract, plan documents, and any method of handling traffic plans.
  - 4.2. Review and approve the Construction Contractor's safety program per federal and state requirements.
  - 4.3. Collect documentation as required, coordinate and assist the City with reviewing submittals, shop drawings and CDOT invoicing as needed.
  - 4.4. Review Construction Contractor payment requests for accuracy and recommend either approval or propose changes.

- 4.5. Evaluate the merit of any potential claims, or requests for equitable adjustment submitted by the Construction Contractor.
- 4.6. Review and coordinate with the Engineer to respond to all RFIs.
- 4.7. Review the Contractor's as-built redlined drawings. These will be provided to the Engineer at the end of the project for the development of as-built plans.
5. Testing/Inspections Oversight.
  - 5.1. Provide the necessary personnel and equipment to facilitate the performance of testing and inspection services, including any testing as requested by CDOT or the City.
  - 5.2. Monitor inspection documentation and testing results, as well as enforce corrections.
6. Labor Compliance.
  - 6.1. Perform labor compliance in accordance with [CDOT Local Agency Desk Reference](#), including compliance with Davis-Bacon Act and other federal requirements as applicable.
7. Completion and Closeout. At the completion of the construction, the Consultant shall ensure the following:
  - 7.1. Coordinate a final walk-through with the City and all affected stakeholders, prepare a punch list, certify completion of the Project, and recommend acceptance.
    - 7.1.1. Prepare all final reports, including report of completion for acceptance of the Project.
  - 7.2. Coordinate and provide Engineer's approved As-Builts to incorporate into record drawings.
  - 7.3. Finalize construction contract bid items, claims, change orders and punch list items. Reconcile all accounting.
  - 7.4. Finalize and deliver all construction files to the City. All files shall be digitized and provided both in electronic and hardcopy format.
  - 7.5. Complete documentation as required by CDOT and the CDOT Local Agency Desk Reference ("LADR"). Work with the City to ensure all documents are properly collected and submitted.

7.6. Assist with any audit of the Project.

8. Material Testing

- 8.1. Perform all material testing in conformance with all CDOT requirements and those of the LADR.
- 8.2. Review and approve mix designs in accordance with CDOT guidelines, the Project Plans, and the Project Specifications.
- 8.3. Provide all testing and ensure compliance for any incorporated materials as required by the latest version of CDOT's Field Material Manual ("FMM"), included as [CDOT Field Materials Manual](#).
- 8.4. Provide the City with a schedule of materials to be tested and estimate the dates when these services will be necessary. Take samples and perform field and source-controlled tests of construction materials for quality assurance in accordance with the FMM.

9. Construction Inspection. The Consultant must provide an experienced construction inspector who is currently CDOT certified to perform required quality assurance tests ("Construction Inspector"). The Construction Inspector's tasks will include:

- 9.1. Complete and maintain accurate daily records including photographs, any required forms to describe work accomplished, weather conditions, number and type of personnel, quantities of materials, quantities of bid item work completed, construction equipment at the site, deliveries of construction materials, material shortages, tests, labor disputes, general observations, any unusual occurrences, and any delays including reason and length of time.
- 9.2. Inspect the Construction Contractor's quality and quantity of work completed in accordance with the Project plans and specifications and plans.
- 9.3. Ensure that materials delivered onsite and incorporated into the work are acceptable and of good quality.
- 9.4. Obtain Certificates of Compliance or complete field releases of material, where appropriate.
- 9.5. Monitor Construction Contractor's operations including safety and traffic control.
- 9.6. In coordination with the City, resolve conflicts between the Project Plans, Project Specifications, and actual site conditions. Recommend engineering

- changes in the design of the Project plans and specifications which are then referred to the City for approval and change order if necessary.
- 9.7. Assist in tracking approved changes for as-built records.
  - 9.8. Attend all Project meetings such as preconstruction, field, and progress meetings.
  - 9.9. Provide complete and documented measurements and calculations to administer progress payments, change orders, extra work, and any other necessary documentation.
    - 9.9.1. Prepare monthly quantity estimates for use in progress payments.
  - 9.10. Verify concrete and asphalt mix designs and collect weight tickets.
  - 9.11. Each working day, meet with the Construction Contractor to review proposed work plans, including specific details that may affect progress.
  - 9.12. Maintain copies of all permits needed to construct the Project and enforce special requirements of each.
  - 9.13. Perform Stormwater Management Plan compliance inspections and related duties with the Construction Contractor. Document and take appropriate action to correct any best management practices deficiencies.
  - 9.14. Conduct federally required contractor employee interviews.
  - 9.15. Document and ensure that the required posters and wage rates are displayed at the job site.

## Nickel and Industrial CM Fee Proposal Summary

### City and County of Broomfield

Sub-total	\$ 222,090.28
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**Total Cost      \$ 223,765.28**

## EXHIBIT C INSURANCE REQUIREMENTS

### **CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS for CCOB & CDOT Contracts**

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, 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. No insurance will be waived for CDOT contracts.

**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 for CCOB & CDOT Contracts										
	COVERAGES AND LIMITS OF INSURANCE	Required								
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"><li>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.</li></ul>	Minimum Limits: <ul style="list-style-type: none"><li>\$1,000,000 Each Occurrence</li><li>\$2,000,000 General Aggregate (Per project aggregate for construction contracts)</li><li>\$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)</li><li>\$50,000 any 1 fire</li></ul>								
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"><li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li></ul>	Minimum Limit: <ul style="list-style-type: none"><li>\$1,000,000 each accident combined single limit.</li><li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li></ul>								
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"><li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li></ul> <p><b>Note:</b> 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.</p>	Employer's Liability with Minimum Limits: <ul style="list-style-type: none"><li>\$100,000 Each Accident</li><li>\$100,000 Each Employee by Disease</li><li>\$500,000 Disease Aggregate</li></ul>								
4.	<b>Professional Liability</b> <ul style="list-style-type: none"><li>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"><li>Limited Contractual Liability</li><li>If coverage is Claims Made, a retroactive date prior to the inception of the work</li><li>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</li></ul></li></ul>	Minimum Limit: <ul style="list-style-type: none"><li>\$1,000,000 Per Claim /Aggregate</li></ul>								
5.	<b>Umbrella or Excess Liability Coverage</b> <ul style="list-style-type: none"><li>Policy shall provide liability coverage over the specified Workers Compensation/Employers Liability, Commercial General Liability and Auto Liability.</li></ul>	Minimum Limit: <ul style="list-style-type: none"><li>Limits of at least: \$1,000,000 per occurrence</li></ul>								
<p><b>Additional Insured - The following shall be named an Additional Insured:</b> The State of Colorado - Colorado Department of Transportation and 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, Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations), and Umbrella or Excess Liability insurance policies. A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.</p> <p><b>Certificate Holders are:</b></p> <table><tr><td>City and County of Broomfield</td><td>Colorado Department of Transportation, CDOT Region 1</td></tr><tr><td>One DesCombes Drive</td><td>2829 W. Howard Place</td></tr><tr><td>Broomfield, CO 80020-2495</td><td>Denver, CO 80204</td></tr><tr><td><a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a></td><td>Attn: Maria Hajiaghadee <a href="mailto:Maria.hajiaghadee@state.co.us">Maria.hajiaghadee@state.co.us</a></td></tr></table>			City and County of Broomfield	Colorado Department of Transportation, CDOT Region 1	One DesCombes Drive	2829 W. Howard Place	Broomfield, CO 80020-2495	Denver, CO 80204	<a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a>	Attn: Maria Hajiaghadee <a href="mailto:Maria.hajiaghadee@state.co.us">Maria.hajiaghadee@state.co.us</a>
City and County of Broomfield	Colorado Department of Transportation, CDOT Region 1									
One DesCombes Drive	2829 W. Howard Place									
Broomfield, CO 80020-2495	Denver, CO 80204									
<a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a>	Attn: Maria Hajiaghadee <a href="mailto:Maria.hajiaghadee@state.co.us">Maria.hajiaghadee@state.co.us</a>									

No deviations below the standards given above will be approved by the City and County of Broomfield's Risk Management office for CDOT contracts.

**EXHIBIT D**

**CONSTRUCTION & MANAGEMENT AGREEMENT WITH BNSF**

**RESOLUTION NO. 2024-127**

A Resolution Approving the Third Amendment to the Consulting Agreement with Felsburg Holt Ullevig, Inc. for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements Project

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

**Section 1.**

The third amendment to the consulting agreement by and between the City and County of Broomfield and Felsburg Holt Ullevig, Inc., for the Commerce Street, Nickel Street and Industrial Lane Intersection Improvements project in an amount not to exceed \$52,100.00 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 amendment, 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 on the date of approval by the City Council.

Approved on October 1, 2024.

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

THIRD AMENDMENT TO CONSULTING AGREEMENT BY AND BETWEEN  
THE CITY AND COUNTY OF BROOMFIELD AND FELSBURG HOLT ULLEVIG, INC.  
FOR PROFESSIONAL SERVICES RELATED TO NICKEL STREET AND INDUSTRIAL  
LANE - INTERSECTION IMPROVEMENTS PROJECT

1. PARTIES. The parties to this Third Amendment are The City and County of Broomfield, a Colorado municipal corporation and county, (the "City") and Felsburg Holt Ullevig, Inc., a Colorado Corporation (the "Consultant"), collectively, the "Parties", individually, the "Party".

2. RECITALS. The recitals to this Third Amendment are incorporated herein by this reference as though fully set forth in the body of this Third Amendment.

2.1 The Parties entered into a Consulting Agreement dated September 14, 2021 (Agreement), in which the Consultant agreed to provide consulting services for the Nickel Street and Industrial Lane - Intersection Improvements Project.

2.2 The parties to this Third Amendment desire to amend paragraph 3.1(b) Basic Services, and paragraph 3.4(a) Billing, of the Agreement relating to the scope of work, project schedule, and fee. Exhibit A-1 is the increase in the scope of services with a not-to-exceed fee and scope of services.

2.3 The parties to this Third Amendment desire to amend paragraph 3.1(d) Contract Term of the Agreement relating to the project schedule.

3. THE AMENDMENT. 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 Paragraph 3.1(b), Basic Services, of the Agreement is hereby amended to add the following: The Consultant shall perform duties in Exhibit A, and the additional duties and responsibilities as described in Exhibit A-1 (attached hereto and made part hereof).

3.2 Paragraph 3.4(a), Aggregate Limit, of the Agreement is hereby amended to read as follows: Pricing for additional services shall be as noted on Exhibit B, attached hereto and incorporated by this reference. Unless extra services are approved in writing, the amount paid by the City to the Consultant under this Agreement shall not exceed \$444,100.00 (\$392,000 original agreement, Second Amendment), including reimbursables. The Consultant will complete the Work for the amount shown.

3.3 Paragraph 3.1(d), Contract Term, of the Agreement is hereby replaced with the following: This Agreement shall commence upon execution by both Parties and remain in effect through December 31, 2025. Any extension or

amendment to the contract shall be completed in writing and shall be a prerogative of the City and not a right of the Contractor and is subject to annual budget and appropriation determinations by the City.

4. AGREEMENT IN FULL FORCE AND EFFECT. Except as amended herein, all other terms, conditions, and provisions of the Agreement shall remain in full force and effect and are hereby ratified and reaffirmed by the Parties in their entirety.

IN WITNESS WHEREOF, 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

APPROVED AS TO FORM:

\_\_\_\_\_  
City and County Attorney

Felsburg Holt Ullevig, Inc.,  
a Colorado corporation

A handwritten signature in blue ink, reading "Thomas W. Anzia", is written over a horizontal line.

By: Thomas W. Anzia, PE

Title: Principal

## Exhibit A-1

Construction Administration Services for Industrial Ln/Nickel St/Commerce St Intersection Improvements  
TAP M145-014, SA#24230  
Contract Amendment

11-Jul-24

TASK / DELIVERABLE	Stephanie Anzia, PE Project Manager (Associate)	Scott Dankenbring Lead Roadway Design (Lead Designer)	Chad Twiss, CFM Lead Drainage Design (Senior Engineer)	Larry Lang Lead Traffic Engineer (Senior Engineer)	FHU Totals		Other	TOTALS	Subconsultants / Descriptions
					Professional Service Hours	Professional Service Fee	FHU's Other Direct Costs	Professional Service Fee and Other Direct Costs	
	\$290	\$225	\$235	\$235					
<b>Task 1: Design Support During Construction</b>									
1.1 - Assist in Response to Contractor question (RFIs)	24	24	24	24	96	\$ 23,640		\$ 23,640	
1.2 - Prepare revisions to documents for issue, as requested by City	8	8	8	8	32	\$ 7,880		\$ 7,880	
1.3 - Attend up to five (5) construction progress meetings during construction	12	4	4	4	24	\$ 6,260	\$ 180	\$ 6,440	Mileage/Field Prints
1.4 - Prepare As-Built drawings, if requested by City	8	12	12	12	44	\$ 10,660		\$ 10,660	
<b>Task 2: Post Construction Support</b>									
2.1 - Draft PUC compliance document for City filing	4				4	\$ 1,160		\$ 1,160	
2.2 - Assist with Broomfield or CDOT closeout paperwork, as requested	8				8	\$ 2,320		\$ 2,320	
<b>TOTALS</b>	64	48	48	48	208	\$ 51,920	\$ 180	\$ 52,100	

Fees calculated using FHU's 2024 Hourly Rates.  
Actual time and material for services completed shall be billed monthly.


Thomas W. Anzia, PE, Principal





**B. Proposed Resolution for Norman Smith Service Center Remodel Construction Agreement**

Meeting	Agenda Group
Tuesday, October 1, 2024, 6:00 PM	Consent Items Item: 6B.
Presented By	
Brian Graham, CIP Manager	
Community Goals	

## Overview

[View Correspondence](#)

Proposed Resolution No. 2024-137 seeks to authorize an agreement with A.D. Miller Services, Inc. for the bid amount to carry out improvements to the Norman Smith Service Center. If approved, construction is anticipated to begin in November 2024, with the project slated for completion in the second quarter of 2025.

### **Attachments**

[NSSC Remodel Construction Memo.pdf](#)

[Resolution 2024-137.pdf](#)

[Norm Smith Remodel - Construction Agreement ADMiller.pdf](#)

## Summary

### [View Correspondence](#)

The renovation of Broomfield's Norman Smith Service Center (NSSC), located at 3001 W. 124th Avenue, will address essential deferred maintenance while adapting and modernizing the facility to better serve Facilities, Parks, and Fleet Services staff following the relocation of Utilities, Streets, and the majority of Fleet Maintenance staff to the new Municipal Shops building in 2020.

SEH, the architect for the project, has emphasized sustainability, efficiency, and compliance with current building codes in their design. The project includes replacement of the roof, upgrades to the electrical and fire alarm systems, and updates to the heating, ventilation, and air conditioning (HVAC) to comply with current building codes, improve energy efficiency and indoor air quality, and generally extend the life of the building.

The work also includes updated interior finishes (painting, flooring, and ceilings), access improvements to comply with current ADA requirements, and new modular furniture that will accommodate future growth and improve space utilization within the facility.

The Invitation for Bid (IFB) was issued in June 2024. Four bids were received. A.D. Miller Services, Inc. submitted the lowest responsive bid at \$2,283,570.34.

Proposed Resolution No. 2024-137 authorizes an agreement with A.D. Miller Services, Inc. for the bid amount to complete the Norman Smith Service Center Remodel. If approved, construction is anticipated to begin in November 2024, with the project slated for completion in the second 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
CIP Fund 20 Project #20P0003 (20-70010-55200) Norman Smith Service Center Remodel	\$4,134,890
Construction (A.D. Miller Services, Inc.)	-\$2,283,570
10% Construction Contingency	-\$228,357
Furniture Budget	-\$543,259
Design and Construction Administration (SEH)	-\$251,132
Information Technology Improvements	-\$30,000
Project Contingency	-\$250,000

Sources and Uses of Funds	Amount
Total Use of Funds	<b>-\$3,586,318</b>
Projected Balance	<b>\$548,572</b>

## Prior Council or Other Entity Actions

Council previously authorized funds in the [2024 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 2024-137 be adopted.**

## Alternatives

Decide not to proceed with the project.

**RESOLUTION NO. 2024-137**

A Resolution Approving a Construction Agreement with A.D. Miller Services, Inc., for the Norman Smith Service Center Remodel

**Section 1.**

The construction agreement by and between the City and County of Broomfield and A.D. Miller Services, Inc., for the Norman Smith Service Center Remodel in an amount not to exceed \$2,283,570.34 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 a 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 the aggregate amount not to exceed ten percent of the contract value.

**Section 4.**

This resolution is effective on the date of approval by the City Council.

Approved on October 1, 2024.

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 A.D. MILLER SERVICES, INC. FOR NORMAN SMITH SERVICE CENTER REMODEL

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 A.D. Miller Services, 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 Norm Smith Service Center Renovation completed a competitive selection process by ITB issued on July 3, 2024.
  - 2.2. The Contractor’s response to the above referenced ITB 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.
  - 3.2. 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 submitted August 9, 2024, and
    - 3.2.4. The Invitation to Bid and Addendums 1 through 3; and
    - 3.2.5. The Signed and Sealed Construction Plans Issued for Construction; and
    - 3.2.6. The General Conditions attached hereto as Exhibit C; and
    - 3.2.7. Any change orders and contract amendments, as applicable; and
    - 3.2.8. Project Manual dated June 28, 2024; and
    - 3.2.9. The Insurance Requirements attached hereto as Exhibit B,

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 Contract.

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 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 monthly 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. PRICE AND PAYMENT. The City shall pay the Contractor for performance of the Work an amount not to exceed \$2,283,570.34 (the "Contract Price") based upon the unit prices set forth on Contractor's Cost Proposal attached hereto as Exhibit A and in accordance with the following schedule:

- 6.1. 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.

- 6.2. 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.
- 6.3. 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.
- 6.4. 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.

7. FINAL INSPECTION AND FINAL PAYMENT.

7.1. 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.

7.2. 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.

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

8.1. 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.

- 8.2. 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.
  - 8.3. 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.
9. 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 Ed Thompson as the authorized representative of the City under this Agreement. Email address is [ethompson@broomfield.org](mailto:ethompson@broomfield.org)
  - 5.2 The Contractor designates Adam Miller as the authorized representative of the Contractor under this Agreement. Email address is [Adammiller@admillerc.com](mailto:Adammiller@admillerc.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](mailto: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.

10. TIME EXTENSIONS AND COMPENSATION FOR DELAY.

- 10.1. 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.
- 10.2. Time Extensions. Evaluation of all time extension requests shall be based upon the latest updated project schedule submitted to the City by the Contractor.
- 10.3. Definitions. The following words shall have the meaning set forth below:
  - 10.3.1. "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.
  - 10.3.2. "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.
  - 10.3.3. "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.
  - 10.3.4. "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.
- 10.4. 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.
- 10.5. 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.

- 10.6. 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.
- 10.7. 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.
11. 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.

12. **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.
13. **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.
14. **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.
15. **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.

16. 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.
17. 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 B. Current proof of such insurance is attached at Exhibit B, incorporated by this reference. However, proof of insurance attached as Exhibit B 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.
18. 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.
19. WARRANTY.
- 19.1. 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.

- 19.2. 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.
20. 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. 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.

22. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. 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.
31. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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.

39. 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.
40. 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.
41. 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.
42. 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 \_\_\_\_\_, 2024.

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:

A.D. MILLER SERVICES, INC.


By:   
Name: Adam Miller  
Address: 7006 S Alton Way  
Building E, Suite 100  
Centennial, CO 80112

EXHIBIT A  
SCOPE OF WORK

Description	Cost (\$)
General Requirements & General Conditions	\$142,752.02
Insurance / Bonds	\$58,938.62
Selective Demolition	\$30,013.50
Rough Carpentry	\$1,605.00
Plastic-Laminate-Clad Architectural Cabinets	\$85,378.51
EPDM Single Ply Roofing	\$275,353.80
Joint Sealants	\$9,095.00
Flush Wood Doors	\$41,360.85
Glazing	\$11,497.15
Non-structural Metal Framing	\$75,338.70
Acoustical Panel Ceilings	\$47,524.05
Resinous Flooring	\$162,443.12
Interior Painting	\$35,545.40
Fire Protection Cabinets	\$852.79
Appliances	\$6,571.94
Common Work Results for Fire Suppression	\$16,585.00
Common Work Results for Plumbing	\$34,882.00
Common Work Results for HVAC	\$983,057.15
Identification for Electrical Systems	\$154,914.60
Addressable Fire-Alarm Systems	\$59,861.15
Contingency (used at City's Discretion)	\$50,000.00
<b>Total Project Cost</b>	<b>\$2,283,570.34</b>

EXHIBIT B  
INSURANCE REQUIREMENTS

**CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including  
GL/Auto/WC**

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, 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.

**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:**

<b>Insurance Requirements - GL/Auto/WC</b>		
	<b>COVERAGES AND LIMITS OF INSURANCE</b>	<b>Required</b>
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"> <li>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.</li> </ul> <p><b>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.</b></p>	<b>Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Each Occurrence</li> <li>\$2,000,000 General Aggregate (Per project aggregate for construction contracts)</li> <li>\$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)</li> </ul>
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 each accident combined single limit.</li> <li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li> </ul>
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"> <li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li> </ul> <p><b>Employer's Liability with:</b></p> <p><b>Note: 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.</b></p>	<b>Employer's Liability with Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$100,000 Each Accident</li> <li>\$100,000 Each Employee by Disease</li> <li>\$500,000 Disease Aggregate</li> </ul>
<p><b>Additional Insured - The following shall be named an Additional Insured:</b> 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.</p> <p><b>Certificate Holder is:</b>  City and County of Broomfield  One DesCombes Drive  Broomfield, CO 80020-2495  <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a></p>		

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](mailto:RiskManagement@broomfield.org)

EXHIBIT C  
GENERAL CONDITIONS

TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS	GC-1
PART 1 - DEFINITIONS	GC-2
PART 2 - PRELIMINARY MATTERS	GC-5
PART 3 - INTENT AND REUSE OF CONTRACT DOCUMENTS	GC-6
PART 4 - PHYSICAL CONDITIONS	GC-7
PART 5 - BONDS AND INSURANCE REQUIREMENTS	GC-7
PART 6 - SCOPE OF WORK	GC-10
PART 7 - PROSECUTION OF THE WORK	GC-12
PART 8 - CONTROL OF MATERIAL	GC-17
PART 9 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC	GC-19
PART 10 - PROSECUTION AND PROGRESS	GC-23
PART 11 - MEASUREMENT AND PAYMENT	GC-29
PART 12 - WARRANTY AND GUARANTEE; ACCESS TO WORK; CONTINUATION OF WORK; AND PARTIAL UTILIZATION	GC-37
PART 13 - WORK BY OTHERS	GC-40
PART 14 - MISCELLANEOUS	GC-41

## GENERAL CONDITIONS

### PART 1 - DEFINITIONS

1.01 If used in these General Conditions or in the other Contract Documents, the following terms or abbreviations shall have the meanings indicated which are applicable to both the singular and plural thereof:

1.02 Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Contract Documents.

1.03 Agreement: The written Agreement between City and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.04 Application for Payment: The form accepted by the Project Manager which is to be used by Contractor in requesting progress payments (if any) or final payments and which is to include such supporting documentation as is required by the Contract Documents.

1.05 Bid: The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.06 Bidder: Any individual, firm, or corporation submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.

1.07 Bonds: Bid Bonds, Performance Bonds, Payment Bonds, and other instruments of security.

1.08 Change Order: A written order to Contractor signed by Contractor, Project Manager, and City authorizing an addition, deletion or revision to the Work or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Agreement.

1.09 City: The City and County of Broomfield, Colorado.

1.10 Completion: The work, or a portion thereof, has progressed where, in the opinion of the Project Manager it is sufficiently complete, in accordance with the Contract Documents, so that the work can be used for the purposes for which it was intended.

1.11 Consultant: The person (or his designee) or firm designated as such in the Agreement. Consultant may be an engineer, architect, surveyor, or other professional hired by the City.

1.12 Contract or Contract Documents: The written Agreement executed between the City and the successful Bidder covering the performance of the Work and the furnishing of labor

and materials, by which the Contractor is bound to perform the Work and furnish the labor and materials, and by which the City is obligated to compensate him therefore at the mutually established and accepted rate or price. The Contract Documents shall include all the documents identified in the Agreement, together with all Modifications issued after the execution of the Agreement.

1.13 Contract Price: The money payable by City to Contractor under the terms of the Contract Documents as stated in the Agreement.

1.14 Contract Time: The number of days (computed as provided in Section 14.02) or the date stated in the Agreement for the completion of the Work.

1.15 Contractor: The individual, partnership, firm, or corporation with whom City has entered into the Agreement, acting directly or through lawful agents or employees, primarily liable for acceptable performance of the Work and also for the payment of all legal debts pertaining to the Work.

1.16 Day: A calendar day of 24 hours measured from midnight to the next midnight.

1.17 Defective: An adjective which, when modifying the word Work, refers to work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Project Manager's recommendation for final payment.

1.18 Drawings: The drawings which indicate the character and scope of the Work to be performed and which have been prepared or approved by Consultant and are referred to in the Contract Documents.

1.19 Effective Date of the Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.20 Equipment: All machinery, together with the necessary parts supplied for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

1.21 Intention of Terms: Whenever the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import are used it shall be understood that the direction, requirement, permission, order, designation or prescription of the Project Manager is intended; and similarly, the words "approved", "acceptable", "satisfactory" or words of like import shall mean approved by, acceptable to, satisfactory to the Project Manager, subject in each case to the final determination of the City. Any reference to a paragraph or

subparagraph within a section shall include the general provisions of the section or sections and paragraph pertinent thereto.

1.22 Modification: (a) a written amendment to the Contract Documents signed by both parties; (b) a Change Order; or (c) a Supplemental Agreement. A Modification may only be issued after the effective date of the Agreement.

1.23 Notice of Intent to Award: The written notice by City to the apparent successful Bidder setting forth conditions precedent to the signing and delivery of the Agreement and required insurance by the City.

1.24 Notice of Award: The written notice by City to the Contractor setting forth the surety requirements.

1.25 Notice to Proceed: A written notice given by City to Contractor fixing the date on which the Contract Time will commence and on which Contractor shall start to perform his obligations under the Contract Documents.

1.26 Owner: City and County of Broomfield, Colorado.

1.27 Payment Bond: The approved form of security /furnished by the Contractor and his surety as a guarantee that he will pay in full all bills and accounts for materials and labor used in the Work, as provided by state statute.

1.28 Performance Bond: The approved form of security furnished by the Contractor and his surety as a guarantee of good faith and ability on the part of the Contractor to execute the Work in accordance with the Contract Documents.

1.29 Plans: The official plans, working drawings, or supplemental drawings or exact reproductions thereof, approved by the Consultant which show the location, character, dimension, and details of the Work to be done and which are to be considered as part of the Contract Documents.

1.30 Project Manager: The employee of the City who has been assigned to oversee the Project and to serve as a liaison between the City and the Consultant and/or between the City and the Contractor.

1.31 Project: The total construction; of which the Work to be provided under the Contract Documents may be the whole or a part.

1.32 Shop Drawings: All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by Contractor, Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard

schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by Contractor to illustrate material or equipment for some portion of the Work.

1.33 Special Conditions: The specific clauses setting forth conditions or requirements peculiar to the Work which are part of the Specifications.

1.34 Specifications: The directions, provisions, and requirements contained herein, including any drawings, Plans, Special Conditions, or Specifications provided by or referred to by the City, pertaining to the method and manner of performing the Work, or to the quantities or the qualities of materials to be furnished under the Agreement.

1.35 Subcontractor: An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

1.36 Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the written opinion of the Project Manager, it is sufficiently complete in accordance with the Contract Documents so that the Work (or specified part thereof) can be utilized or partially utilized for the purposes for which it was intended; or if there be no such written opinion, when final payment is due in accordance with Section 11.19. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

1.37 Superintendent: Executive representative for the Contractor who shall be present at the Work site at all times, authorized to receive and fulfill instructions from the Project Manager and capable of superintending the Work efficiently.

1.38 Supplemental Agreement: An Agreement executed by the Contractor and the City with the consent of the Contractor's Surety, covering work not included in the Specifications and as specified in Section 6.05.

1.39 Surety: The corporate body or individuals who are bound by the Performance Bond and the Payment Bond, with and for the Contractor, and which engage to be responsible for the entire and satisfactory fulfillment of the Agreement and for the payment of all debts incurred in fulfilling the Agreement.

1.40 Work: The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all duties and obligations imposed by the Contract Documents and the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents.

## PART 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds: Within fifteen (15) days of the date of the Notice of Award, Contractor shall deliver the Performance Bond and Payment Bond.

2.02 Approval of Agreement: No Agreement is binding upon the City until it has been executed by the City and delivered to the Contractor.

2.03 Copies of Documents: City shall furnish to Contractor electronic copies of the Contract Documents.

2.04 Notice to Proceed (Commencement of Contract Time): The Contract Time will commence to run in accordance with the Notice to Proceed.

2.05 Starting the Project: Contractor shall start to perform Work in accordance with the Notice to Proceed, but no work shall be done at the site prior to the Notice to Proceed.

2.06 Before Starting Construction: Before undertaking any part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to City and Project Manager any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to City or Project Manager for failure to report any conflict, error or discrepancy in the Contract Documents, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

2.07 Initial Schedule: Within fifteen (15) days of the date of the Notice of Award (unless otherwise specified in the Special Conditions), Contractor shall submit to the Project Manager for review and acceptance an initial schedule indicating the starting and completion dates of the various stages of the Work, a preliminary schedule of Shop Drawing submissions, and an initial schedule of values of the Work.

2.08 Proof of Insurance: When Contractor executes the Agreement, Contractor shall deliver to the City certificates (and other evidence requested by City) of insurance which Contractor is required to purchase and maintain in accordance with these Contract Documents.

2.09 Preconstruction Conference: Before Contractor starts Work at the site, a conference will be held for review and acceptance of the schedules referred to in Section 2.07 to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish such working understandings among the parties as to the Work as are consistent with the Contract Documents.

## PART 3 - INTENT AND REUSE OF CONTRACT DOCUMENTS

3.01 General Intent: It is the intent of the Contract Documents is to describe a complete project which may be utilized for its intended purpose as may be more fully described in the Special Conditions. The Contract Documents comprise the entire Agreement between City and Contractor concerning the Work. They may be altered only by a Modification.

3.02 The Contract Documents are Complementary: What is called for by one is as binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, he shall report it to Project Manager and City, in writing, at once and before proceeding with the Work affected thereby; however, Contractor shall not be liable to City or Project Manager for failure to report any conflict, error or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or should reasonably have known thereof.

3.03 Specifications and Drawings: It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications and Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or, on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of City, Project Manager, Contractor, or Consultant, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by Project Manager as provided for in Section 7.06.

3.04 Reuse of Documents: Neither Contractor or Subcontractor, manufacturer, fabricator, supplier, or distributor shall have or acquire any title to or rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Consultant; and they shall not reuse any of them on extensions of the Project or on any other Project without written consent of the City and Consultant and specific written verification or adoption by Consultant.

## PART 4 - PHYSICAL CONDITIONS

4.01 Investigations and Reports: The Special Conditions, if any, identify those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon in preparation of the Drawings and Specifications. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.

4.02 Unforeseen Physical Conditions: Contractor shall promptly notify Project Manager, in writing, of any substance or latent physical conditions at the site or in any existing structure differing materially from those indicated or referred to in the Contract Documents. The Project Manager will promptly review those conditions and advise if further investigation or tests are necessary. Promptly thereafter, Project Manager shall obtain the necessary additional investigations and tests and furnish copies to the Consultant and Contractor. If Project Manager and Consultant find that the results show subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by the Contractor after personal investigation and testing, a Change Order shall be issued incorporating the necessary revisions.

## PART 5 - BONDS AND INSURANCE REQUIREMENTS

5.01 General: The Contractor shall not commence work under this Agreement until the Contractor has obtained all insurance required by the Contract Documents and such insurance has been approved by the City, nor shall the Contractor allow any Subcontractor to commence work on this Project until all similar insurance required of the Subcontractor has been obtained and approved. During the life of this Agreement, the Contractor must maintain the insurance coverages required by the Agreement. The City must be named as an additional insured. Limits of liability must be at least those set forth in the Instructions to Bidders - Insurance Requirements. However, the insurance requirements contained in the Contract Documents shall not be deemed to limit or define the obligations of the Contractor as provided elsewhere in these General Conditions. The Contractor shall be responsible for payment of all deductibles under such policies.

5.02 Indemnification: The Contractor expressly agrees to indemnify and hold harmless the City as required under the Agreement.

5.03 Adjustment and Settlement of Insurance Claims: City as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to City's exercise of this power. If such objection be made, City as trustee shall only make settlement with the insurers in accordance with such agreement as the parties in interest may reach.

5.04 Performance and Payment and Other Bonds: Contractor shall furnish a Performance Bond and a Payment Bond, each in an amount at least equal to the Contract Price as security

for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect through any warranty or guarantee periods. Contractor shall also furnish such other Bonds as are required by the Special Conditions (if any). All Bonds shall be in the forms prescribed by the Contract Documents and be executed by such Sureties as are licensed to conduct business in the State of Colorado. All Bonds signed by an agent must be accompanied by a certified copy of the Authority to Act. If the Surety on any Bond furnished by the Contractor is declared bankrupt, or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of this Section, Contractor shall within 5 days thereafter substitute another Bond and Surety, both of which shall be acceptable to City.

**5.05 Notice of Changes in Work:** If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be the Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to City.

## **PART 6 - SCOPE OF WORK**

**6.01 Intent of Specifications:** The intent of the Specifications is to prescribe a complete Work or improvement which the Contractor undertakes to do in full compliance with the Contract Documents, together with any authorized alterations, Special Conditions and Modifications. The Contractor shall perform all items of work covered and stipulated in the Contract Documents, together with any authorized alterations, all in accordance with the lines, grades, cross-sections and dimensions shown in the Specifications. The Contractor shall furnish, unless otherwise provided in the Specifications, all materials, equipment, implements, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

Should any additional construction or conditions be anticipated, Specifications for such work may be prepared and attached to the Agreement and shall be considered as part of the Specifications. Should any Specifications, including the Special Conditions, conflict with the General Conditions, the Specifications will govern.

**6.02 Changes and Increased or Decreased Quantities of Work:** The City reserves the right to make such changes, from time to time, in the Specifications, the character, or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner, provided such alterations do not change the total cost of the Project, based on the originally estimated quantities and the unit prices bid or the lump sum bid, by more than 25%; and provided further that such alteration does not change the total cost of any major item, based on the originally estimated quantities and the

units prices bid or schedule of values items, by more than 25%. (A major item shall be construed to be any item, the total cost of which is equal to or greater than 10% of the total contract amount, computed on the basis of the Bid Quantity and the contract unit prices or schedule of values amount.) Should it become necessary for the best interest of the City to make changes in excess of that herein specified, the same shall be covered by a Supplemental Agreement. The Contractor shall not start work on any alteration requiring a Supplemental Agreement until the Agreement setting forth the adjusted prices shall be executed by the City and the Contractor. In case a satisfactory adjustment in price cannot be reached for any item requiring a Supplemental Agreement, the City reserves the right to terminate the Agreement as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work as altered or decreased. Project Manager may authorize minor changes in the Work not involving an adjustment of the Contract Price or Contract Time, which are consistent with the overall intent of the Contract Documents. Said minor changes shall be binding on City and Contractor, and shall be performed promptly by Contractor.

**6.03 Deleted Items:** The Project Manager may, in writing, order deleted from the Work any item other than major items found unnecessary to the project and such deletion shall not be a waiver of any condition of the Agreement nor invalidate any of the provisions thereof. Major items may be deleted by supplemental agreements. The Contractor will be paid for all work done toward the completion of the item prior to such deletion as provided in Section 11.06.

**6.04 Extra Work:** When work is necessary to the proper completion of the Project for which no quantities or prices were given in the Bid or Agreement, the same shall be called extra work and shall be performed by the Contractor when so authorized in writing by the Project Manager. Extra work shall be performed by the Contractor in accordance with the Contract Documents in a proper and workmanlike manner and as may be authorized by the Project Manager. Prices for extra work shall be itemized and covered by a Change Order or Supplemental Agreement submitted by the Contractor and approved by the Project Manager prior to the actual starting of such work. Should the parties be unable to agree on unit prices or a lump sum for the extra work, or if this method is impractical, the Project Manager may instruct the Contractor to proceed with the work on the basis of the Cost of the Work as hereinafter provided in Section 11.08. Claims for extra work not authorized in writing by the Project Manager prior to the work being done will be rejected.

**6.05 Maintenance of Traffic:** Unless the Contract Documents specifically provides for the closing to traffic of any local road or highway while construction is in progress, all roads and highways shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, or intersections with roads and highways. The Contractor shall bear all expenses in maintaining traffic over the section of road or highway affected by the Work to be done under this Agreement, and of

constructing and maintaining such approaches, crossings, intersections and any accessory features without direct compensation, except as otherwise provided.

**6.06 Removal and Disposal of Structures and Obstructions:** All structures or obstructions found on the site and shown in the Specifications or Drawings which are not to remain in place or which are not to be used in new construction shall be removed to the satisfaction of the Project Manager. Unless specified in the Contract Documents, this work will not be paid for separately but will be included in the price bid for that portion of the Work requiring the removal of the structure or obstruction. All material found on the site or removed from it shall remain the property of the City unless otherwise indicated.

**6.07 Use of Materials Found on the Work:** The Contractor, with the consent of the Project Manager, may use in the proposed construction any stone, sand, or gravel found on the site. The Contractor will not be paid for such excavation unless specifically stated in the Contract Documents, and Contractor shall replace with other suitable material, without compensation, all of that portion of the material so removed and used. If it was intended by the Project Manager and indicated in the specifications that any or all of the materials so excavated and used were to have been wasted, then the Contractor will not be required to replace it. The Contractor shall not excavate any material from the site which is not within the excavation as indicated by the slope and grade lines, without prior consent by the Project Manager.

**6.08 Final Cleaning Up:** Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on property adjacent, will not be considered as having been disposed of satisfactorily.

## **PART 7 - PROSECUTION OF THE WORK**

### **7.01 Authority and Duties of Project Manager**

7.01.01\_The Project Manager shall decide any and all questions which may arise as to the quality and acceptability of the materials furnished, the work performed, the manner of performance and the rate of progress of the Work. He shall decide all questions which may arise as to the interpretation of the Specifications, all questions as to acceptable fulfillment of the Agreement all disputes and mutual rights by the Contractors, if there be more than one Contractor on the Work, and all questions as to compensation. The decision of the Project Manager shall be final and he shall have executive authority to make effective such decisions and to compel the Contractor to carry out all orders promptly.

7.01.02 Project Manager shall be authorized to inspect work done and material furnished. Such inspection may extend to any part of the Work and to the preparation, fabrication, or manufacture of materials to be used. The Project Manager is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. He shall have the authority to reject materials or suspend the work not conforming to the Contract Documents until any questions at issue can be referred to and decided between the Consultant and the City. If the Contractor refuses to suspend operations on verbal order, the Project Manager shall issue a written order giving the reason for shutting down the Work. After placing the order in the hands of the person in charge, the Project Manager shall immediately leave the job. Work done during the absence of the Project Manager will not be accepted nor paid for. The Project Manager shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice which the Project Manager may give the Contractor shall in no way be construed as releasing the Contractor from fulfilling all of the terms of the Contract.

7.02 Plans and Shop Drawings: The approved Plans will show details of all structures; lines and grades of roadways and utility systems, typical cross-sections of roadways; character of foundation; location and designation of all structures; and the general arrangement of circuits and outlets, location of switches, panel boards and other work. Drawings and specifications are complementary each to the other, and what is called for by one shall be as binding as if called for by both. Data presented on these drawings are as accurate as planning can determine, but accuracy is not guaranteed and field verifications of all dimensions, locations, levels, and other data to suit field conditions is directed. The Contractor shall review all structural and mechanical plans and adjust all work to conform to all conditions shown therein. Discrepancies between different plans, or between plans and specifications, or regulations and codes governing the installation shall be brought to the attention of the Project Manager in writing as soon as said discrepancies are noticed. In the event such discrepancies exist and the Project Manager is not so notified, the Project Manager shall reserve the right to exercise sole authority in making final decisions, after consultation with Consultant as needed, in resolution of such a conflict. It is mutually agreed that all authorized alterations affecting the requirements and information given on the approved Plans shall be in writing and approved by the Project Manager. When, at any time, reference is made to "the Plans", the interpretation shall be the Plans as affected by all authorized alterations then in effect. Plans will be supplemented by such shop drawings, to be prepared by Contractor as are necessary to adequately control the Work.

7.02.01 After checking and verifying all field measurements and approving Shop Drawings, Contractor shall submit to Project Manager for review, in accordance with the accepted schedule of Shop Drawing submissions (see Section 2.09), electronic copies (unless otherwise specified in the Specifications) of all Shop Drawings, which shall have been checked by and stamped with the approval of the Contractor. The data shown on the Shop Drawings

will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Project Manager to review the information as required.

7.02.02 At the time of each submission, Contractor shall, in writing, call Project Manager's attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.

7.02.03 Project Manager will review with reasonable promptness Shop Drawings and samples, but Project Manager's review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make any corrections required by Project Manager and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for Project Manager's review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to Project Manager that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or Sample with the requirements of the Work and the Contract Documents.

7.02.04 Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed by Project Manager.

7.02.05 Project Manager's review of Shop Drawings or samples shall not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Project Manager's attention to such deviation at the time of submission and Project Manager has given written concurrence and approval to the specific deviation, nor shall any occurrence or approval by Project Manager relieve Contractor from responsibility for errors or omissions in the Shop Drawings.

7.02.06 The cost of furnishing all Shop Drawings shall be borne by the Contractor.

7.03 Operating Manuals and Parts Lists: The Contractor shall submit complete electronic copies of operating manuals and parts lists to the Project Manager for all items of mechanical and electrical equipment incorporated into the Work unless specified otherwise in the Specifications.

7.04 As-Built Drawings: A complete set of drawings shall be maintained at the site, with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings, not used for construction

purposes, which shall be kept up-to-date as the job progresses and shall be made available for inspection by the City and Consultant at all times. Upon completion of the Agreement, this set of drawings shall be delivered to the Project Manager.

**7.05 Conformity with Plans and Allowable Deviations:** Finished surfaces in all cases shall conform with lines, grades, cross-sections and dimensions shown on the Plans and Specifications and any approved changes or deviations. Any deviation from the Specifications and approved drawings, as may be required by the demands of construction, will in all cases be determined by the Project Manager and authorized in writing.

**7.06 Coordination of Plans and Specifications:** The Specifications and all supplementary plans and documents are essential parts of the Agreement, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative to describe and provide for a complete Work. The Contractor shall not take advantage of any apparent error or omission in the Specifications. In the event the Contractor discovers any apparent conflict, error or discrepancy, he shall immediately call upon the Project Manager for his interpretation and decision, and such decision shall be final. Any apparent error or discrepancy must be resolved before Contractor proceeds with the Work affected thereby.

7.06.01 In resolving such conflicts, errors and discrepancies, the following documents shall be given preference in the following order: (1) Specifications; (2) General Conditions.

7.06.02 With reference to the drawings the order of precedence is as follows:

- (1) Figures govern over scaled dimensions;
- (2) Detail drawings govern over general drawings;
- (3) Change order drawings govern over contract drawings;
- (4) Contract drawings govern over standard drawings; and
- (5) Contract drawings govern over shop drawings.

**7.07 Cooperation of Contractor:** Contractor shall have available on the Work site at all times one copy of the Plans and Specifications, exclusive of the set designated for as-built Drawings in Section 7.04. The Contractor shall give to the Work the constant attention necessary to facilitate the progress thereof, and he shall cooperate with the Project Manager and with other contractors in every way possible. The Project Manager shall designate the sequence of construction in case of controversy between contractors. The Contractor shall have a competent Superintendent on the Work at all times who is fully authorized as his agent on the Work; such Superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions from the Project Manager, or his authorized representative. The Superintendent shall have full authority to execute the Work specified in the Contract Documents without delay and to promptly supply materials, tools, equipment and labor as may be required to perform such work. Such Superintendent shall be furnished irrespective of the amount of work sub-let. Said

Superintendent shall have authority to act on behalf of Contractor. All communications given to the Superintendent shall be as binding as if given to the Contractor.

**7.08 Tests and Inspections:** Contractor shall give Project Manager timely notice of readiness of the Work for all required inspections, tests or approvals.

7.08.01 If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Project Manager the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with Project Manager's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for review prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by City (unless otherwise specified). In the event any tests do not pass initially, and therefore must be performed again, all such extra tests shall be paid for by Contractor.

7.08.02 All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any other public body having jurisdiction shall be performed by organizations acceptable to City and Contractor (or by Consultant if so specified).

7.08.03 If any Work that is to be inspected, tested or approved is covered without concurrence of Project Manager, it must, if requested by Project Manager, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover such Work and Project Manager has not acted with reasonable promptness in response to such notice.

7.08.04 Neither observations by Project Manager nor inspections, tests or approvals by others shall relieve Contractor of his obligations to perform the Work in accordance with the Contract Documents.

**7.09 Uncovering Work:** If the Consultant or Project Manager requests it, the Contractor shall, at any time before acceptance of the Work, remove or uncover such portions of the finished Work that was not inspected by the Project Manager, or that the Consultant believes has not met the standards set forth in the Contract Documents. After examination, the Contractor shall restore said portions of the Work to the standard required by the Specifications. Should the work thus exposed, examined, or tested prove acceptable, the uncovering or removing and the replacing of the coverage or making good of the parts removed, shall be paid for as Extra Work; but should the work so exposed, examined, or tested prove unacceptable, the uncovering or removing and the replacing of the covering or

making good of the parts removed, shall be at the Contractor's expense. In any event, any work done or material used without suitable observation or inspection by the Project Manager or his authorized representative may be ordered uncovered, removed and replaced at the Contractor's expense. Any work outside the normal 5 day, 40 hour week will require that the Consultant be on the job. All inspection so required shall be done at the Contractor's expense and the cost thereof may be deducted from any funds due Contractor. The Contractor shall notify the Project Manager at least 24 hours in advance of the starting of any overtime work.

**7.10 Removal of Defective and Unauthorized Work:** All work which has been rejected or condemned shall be repaired, or if it cannot be satisfactorily repaired, be removed and replaced at the Contractor's expense. Work done without lines and grades having been given, Work done beyond the lines and grades shown on the Plans, or as given, except as herein provided, Work done without proper inspection, or any extra or unclassified Work done without written authority and prior agreement in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Project Manager, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense. Upon the failure of the Contractor to repair satisfactorily or to remove and replace rejected, unauthorized or condemned work immediately after receiving formal notice from the Project Manager, the City may recover for such defective Work on the Contractor's bond(s) or by action in a court having proper jurisdiction over such matters, or may employ labor and equipment and satisfactorily repair or remove and replace such work and charge the cost of the same to the Contractor, which cost may be deducted from any money due him. In exercising its rights under this paragraph, City shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, City may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, Project Manager, Consultant and their agents and employees such access to the site as may be necessary to enable City to exercise its rights under this paragraph. All direct and indirect costs of City in exercising such rights shall be charged against Contractor in an amount verified by Project Manager and agreed to by City, and a Change Order will be issued incorporating the necessary revisions to the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by City of its rights hereunder.

**7.11 Disputed Claims for Extra Work:** In case the Contractor deems extra compensation is due him for work or materials not clearly covered in the Agreement, or not ordered by the Project Manager as an extra, the Contractor shall notify the Project Manager in writing of his

intention to make claim for such extra compensation before he begins the work on which he bases the claim and shall afford the Project Manager every facility for keeping strict account of the actual cost of the work. Failure on the part of the Contractor to give such notification or to afford the Project Manager proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Project Manager shall not in any way be construed to prove the validity of the claim. When the work has been completed, the Contractor shall, within 15 days, file his claim for extra compensation with the Project Manager, who will present it to the City for consideration with his recommendations. Further written supporting data will be submitted to the Project Manager within 45 days of completion of the aforementioned work unless Project Manager allows an additional period of time to ascertain more accurate data. Project Manager shall render a decision to Contractor within a reasonable period of time.

7.12 Rejecting Defective Work: Project Manager will have authority to reject Work which is defective, and will also have authority to require special inspection or testing of the Work as provided in this PART 7 whether or not the work is fabricated, installed or completed.

## PART 8 - CONTROL OF MATERIAL

8.01 Source of Supply and Quality of Materials: The source of supply of each of the materials required shall be reviewed and accepted by the Project Manager before delivery is started. Representative preliminary samples of the character and quality specified may be submitted by the Contractor or producer for examination and testing. The results obtained from testing such samples may be used for preliminary review but will not be used as a final acceptance of the materials. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after testing, it is found that sources of supply which have been reviewed and accepted do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish acceptable materials from other sources acceptable to the Project Manager.

8.02 Acceptance of Materials: Samples of all materials for testing, upon which is to be based acceptance or rejection, shall be taken by the Project Manager or his authorized representative at the discretion of the Project Manager. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed. The Contractor shall provide such facilities as the Project Manager or his authorized representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the Work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials conforming to the requirements of the Specifications and which have been accepted by the Project Manager shall be used in the Work. Any material which, after acceptance, has

for any reason become unfit for use shall not be incorporated into the Work. Additionally, Contractor and Project Manager shall be subject to the procedures and responsibilities set forth in Section 7.02.02 through 7.02.06 as they pertain to samples.

**8.03 Cited Specifications, Samples and Tests:** Except as otherwise provided, sampling and testing of all materials, and the laboratory methods and testing equipment required under the Specifications, shall be in accordance with the most current standards set forth in the Specifications. The testing of all samples shall be done at the expense of the Contractor (unless otherwise specified in the Contract Documents) at an independent laboratory accepted by the Project Manager. The Contractor shall furnish the required samples without charge. All samples shall have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended. The Contractor shall give sufficient notification to the Project Manager of the placing of orders for materials to permit testing,

**8.04 Storage:** Materials shall be stored so as to insure the preservation of their quality and fitness for the Work. When considered necessary by the Project Manager, they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover or otherwise protected. Stored materials shall be located so as to facilitate prompt inspection.

**8.05 Substitution of Materials and Equipment:** Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers or distributors may be accepted by Project Manager if sufficient information is submitted by Contractor to allow Project Manager to determine that the material or equipment proposed is equivalent to that named. The procedure for review by Project Manager will be as set forth in Sections 8.05.01 and 8.05.02 below as supplemented in the Specifications.

**8.05.01** Requests for review of substitute items of material and equipment will not be accepted by Project Manager from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Project Manager for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the

application and available maintenance, repair, and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including cost of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by Project Manager in evaluating the proposed substitute. Project Manager may require Contractor to furnish at Contractor's expense additional data about the proposed substitute. Project Manager will be the sole judge of acceptability, and no substitute will be ordered or installed without Project Manager's prior written acceptance. City may require Contractor to furnish, at Contractor's expense, a special performance guarantee or other surety with respect to any substitute.

8.05.02 Project Manager will record time required by Project Manager and Project Manager's consultants in evaluating substitutions proposed by Contractor and in making changes in the Contract Documents or Specifications occasioned thereby. Whether or not Project Manager accepts a proposed substitute, Contractor shall reimburse the City for the charges of Project Manager and Project Manager's consultants for evaluating any proposed substitute.

8.05.03 In case of a difference in price, the City shall receive benefit of the difference for any substitutions, and the contract amount shall be altered by Change Order to credit the City with any savings so obtained with allowance for a Contractor's fee per Section 11.10.

8.06 Defective Materials: All materials not conforming to the requirements of the Specifications shall be considered defective. Whether in place or not, such material shall be removed immediately from the site of the Work, unless otherwise permitted by the Project Manager. No rejected material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure of the Contractor to comply promptly with any order of the Project Manager made under the provisions of this Part, the Project Manager shall have the authority to remove defective materials and to deduct the cost of removal and replacement with specified materials from any moneys due or to become due the Contractor.

## PART 9 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

9.01 Laws to be Observed: The Contractor is assumed to be familiar with all federal, state and local laws, codes, ordinances, and regulations which, in any manner, affect those engaged or employed in the Work or the material or equipment used in or upon the site, or in any way affect the conduct of the Work. No pleas of misunderstanding or ignorance on the part of the Contractor will, in any way, serve to modify the provisions of the Agreement. However, if Contractor observes that the Specifications or Drawings are at variance with any relevant federal, state and local laws, codes, ordinances, or regulations, Contractor shall give

Project Manager prompt written notice thereof and any necessary charges shall be adjusted by an appropriate modification. The Contractor, at all times, shall observe and comply with all federal, state and local laws, codes, ordinances, and regulations in any manner affecting the conduct of the Work, and the Contractor and his Surety shall indemnify and save harmless the City and all its officers, agents and servants against any claim or liability arising from or based on the violation of any such law, codes, ordinances, regulations, orders, or decrees, whether by himself or his employees.

9.02 Permits and Licenses: Unless otherwise provided in the Special Conditions, the Contractor shall procure all permits and licenses, pay all charges and fees including, but not limited to, all inspection charges of agencies having appropriate jurisdiction, and give all notices necessary and incidental to the due and lawful prosecution of the Work. City shall assist Contractor, when necessary, in obtaining such permits and licenses. A copy of all permits and licenses procured by Contractor shall be promptly supplied to Project Manager.

9.03 Taxes: The City is eligible for sales, consumer, and use tax exemption. The Contractor shall apply to the State Revenue Department for an exemption certificate in order to exempt Contractor from paying sales, consumer, or use tax but shall be responsible for the filing of City use tax forms. The Agreement is intended to be awarded under appropriate exemption procedures. Sales, consumer, and use tax shall not be included in the Bid price.

9.04 Patented Devices, Materials and Processes: If the Contractor is required or desires to use any design, device, invention, product, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or patent owner and shall pay all license fees and royalties and assume all costs incidental to said use in performance of the Work or incorporation in the Work. The Contractor and the Surety shall indemnify and save harmless the City and Consultant from any and all claims for infringement by reason of the use of any such patented design, device, invention, product, material, or process or any trademark or copyright in connection with the work agreed to be performed under this Contract, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any such infringement at any time during the prosecution, or after the completion of the Work.

9.05 Sanitary Provisions: The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other authorities having jurisdiction thereover.

9.06 Safety and Protection: The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss as specified in Subsections 9.06.01 through 9.06.03, as follows:

9.06.01 All employees on the Work Site and other persons who may be affected thereby;

9.06.02 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and

9.06.03 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

9.06.04 Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Subsections 9.06.02 or 9.06.03 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City or Consultant or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and final payment has been made.

9.06.05 The Contractor shall not close any road to the public except by express permission of the City. When any road under construction is being used by the traveling public, special attention shall be paid to keeping both the subgrade and surface in such condition that the public can travel the same in comfort and safety. The Contractor shall cooperate with the Project Manager in the regulation of traffic. If the Contractor constructs temporary bridges or temporary stream crossings, his responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

9.06.06 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's Superintendent unless otherwise designated in writing by Contractor to City.

9.07 Emergencies: In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Consultant or City, is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

9.08 Barricades, Signs and Hazard Markings: The Contractor shall provide, erect, and maintain all necessary barricades, signs, danger signals and lights for the protection of the Work and the safety of the public. Contractor shall comply with the provisions of any and all applicable traffic safety manuals which may be published or adopted by a governmental entity having jurisdiction over the Project area. All barricades, signs, and obstructions erected by the Contractor shall be illuminated at night and all devices for this purpose shall be kept burning from sunset to sunrise. The Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Project Manager may order the damaged portion immediately removed and replaced by the Contractor without cost to the City if, in Project Manager's opinion, such action is justified. The Contractor's responsibility for the maintenance of barricades, signs and lights shall not cease until the Project shall have been accepted.

9.09 Use of Explosives: When the use of explosives is necessary for the prosecution of the Work, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed, the number and size of the charges shall be reduced. The Contractor shall notify the proper representatives of any public service corporation, any company, or any individual, at least one business day in advance of any blasting which may damage their property on, along, or adjacent to the site. All explosives shall be stored in a secure manner and all storage places shall be marked clearly "DANGEROUS EXPLOSIVES", and shall be in care of competent watchmen at all times.

9.10 Protection and Restoration of Property: The Contractor shall not enter upon private property for any purpose without first obtaining permission, and he shall be responsible for the preservation of all public and private property, including but not limited to trees, fences, monuments and underground structures, on and adjacent to the site and shall use every precaution necessary to prevent damage or injury thereto. Contractor shall protect carefully, from disturbance or damage, all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. Contractor shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect or misconduct in Contractor's or any Subcontractors' manner or method of executing said Work, or due to his or any Subcontractor's non-execution of said Work, or at any time due to defective work or materials, and said responsibility shall not be released until the Work shall have been completed and accepted. The Contractor's attention is directed to the importance of protecting all public utilities encountered on all projects. These may include telephone, telegraph, cable television, and power lines, water lines, sewer lines, gas lines, railroad tracks or other structures, and other overhead and underground utilities. Before any excavation is begun in the vicinity of utilities, each utility company concerned must be notified in advance of such excavation, and such excavation shall not be made until an authorized representative of the utility company concerned is on the site and has designated the location of their facilities. When or where

any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the nonexecution thereof on the part of the Contractor or Subcontractor, Contractor shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring, as may be directed, or he shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property or to have started action to make good such damage or injury, the Project Manager or City may, upon 48 hours notice, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof may be deducted from any money due or which may become due the Contractor under the Contract. The cost of damages due to Contractor's operation or cost of protecting utilities where required to permit construction under this Agreement shall be included in the original Contract Price for the Project.

9.11 Responsibility for Damage Claims: To the fullest extent permitted by law, the Contractor and Surety shall indemnify and save harmless the City and all its officers, agents and employees from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the Work, or through the use of unacceptable materials in the construction of the Project, or on account of any act or omission by the said Contractor, Subcontractor, their agents and employees, or on account of the use, misuse, storage or handling of explosives, or on account of any claims or amounts recovered for any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the Worker's Compensation laws, or any other law, by-law, ordinance, order or decree, and so much of the money due the said Contractor under and by virtue of his contract, as shall be considered necessary by the City, may be retained or, in case no money is due, his Surety shall be held until such suit or suits, action or actions, claim or claims, for injuries or damages as aforesaid, shall have been settled and satisfactory evidence to that effect furnished to the City.

9.12 Contractor's Responsibility for Work: Until the final acceptance of the Work by the Project Manager as evidenced in writing, the Contractor shall have the charge and care thereof and shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any other cause, and the Contractor at his own expense shall rebuild, repair, restore and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and acceptance. In case of suspension of Work from any cause whatever, the Contractor shall be responsible for all materials and shall properly store them, if necessary, and shall provide suitable drainage, barricades and warning signs where necessary. The Contractor shall make good or replace at his own expense and as required, any material which may be broken, lost through fire, theft, or otherwise damaged, or in any way made useless for the purpose and use intended by these Contract Documents prior to final acceptance of the Work even though such breakage, damage, loss or uselessness may result from causes beyond the control of the Contractor.

9.13 No Waiver of Legal Rights: Inspection by the Consultant or Project Manager, or by any of their duly authorized representatives; any order, measurement, or certificate by the Consultant; any order by the City for the payment of money, any payment for or acceptance of any work or any extension of time; or any possession taken by the City shall not operate as a waiver of any provisions of the Contract, or any power therein provided, or any waiver of any other or subsequent breach. The City reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust the same to meet the requirements of these Documents. The City reserves the right to claim and recover by process of law, sums to correct any error or make good any deficiencies in the Work resulting from error, dishonesty, or collusion, including attorneys' fees.

9.14 Limitation on Consultant and City's Responsibility: Neither Consultant nor City will be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and neither Consultant nor City will be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.14.01 Neither Consultant nor City will be responsible for the acts or omissions of Contractor or of any Subcontractors, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

9.14.02 Neither Consultant nor City's authority to act under the Contract Documents nor any decision made by Consultant or City in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of City or Consultant to Contractor, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.

9.15 Rights-of-Way: The City will furnish all lands and rights-of-way required for completion of this Contract. In acquiring lands and rights-of-way the City will proceed as expeditiously as possible, but in the event all rights-of-way or easements are not acquired prior to beginning of construction the Contractor shall begin work on such lands and rights-of-way that have been acquired. In the event of litigation or other delays in acquiring lands or rights-of-way, the time allowed herein for completion will be extended to compensate for the time actually lost by such delay.

9.16 Use of Premises: Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

## PART 10 - PROSECUTION AND PROGRESS

10.01 Supervision: Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but Contractor shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contractor Documents. Contractor shall be responsible to see that the finished Work complies with the Contract Documents.

10.02 Subcontractors: Contractor shall only employ Subcontractors in accordance with the provisions set forth below:

10.02.01 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute against whom City or Consultant may have reasonable objection. A Subcontractor or other person or organization identified in writing to City and Consultant by Contractor prior to the Notice of Award and not objected to in writing by City and Consultant prior to the Notice of Award will be deemed acceptable to City and Consultant. Acceptance of any Subcontractor, other person or organization by City or Consultant shall not constitute a waiver of any right of City or Consultant to reject defective Work. If City or Consultant, after due investigation, has reasonable objection to any Subcontractor, or other person or organization proposed by Contractor after the Notice of Award, Contractor shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. Contractor shall not be required to employ any Subcontractor, or other person or organization against whom Contractor has reasonable objection.

10.02.02 Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable, all to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between City or Consultant and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of City or Consultant to pay or to see to the payment of any monies due any Subcontractor or other persons or organization, except as may otherwise be required by law. City or Consultant may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

10.02.03 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

10.02.04 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City and Consultant. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under policies issued pursuant to Part 5.

10.03 Prosecution of Work: The Contractor shall notify the Project Manager at least forty-eight (48) hours in advance of the time he intends to begin Work on the site. The Contractor shall operate at such points as the City, through the Project Manager, may direct. The Contractor shall conduct the Work in such a manner and with sufficient materials, equipment, and labor as is necessary to insure its completion within the time limit set forth in the Contract Documents. Should the prosecution of work, for any reason, be discontinued by the Contractor, he shall notify the Project Manager at least forty-eight (48) hours in advance of resuming operations.

10.04 Limitations of Operations: The Contractor shall, at all times, conduct the Work in such manner as will insure the least practicable interference with traffic and existing utility systems. No section of any road shall be closed to the public, nor any utility system put out of service except after permission has been granted by the Project Manager. Each item of work shall be prosecuted to completion without delay and in no instance will the Contractor be permitted to transfer his forces from uncompleted work to new work without prior written notification of the Contractor to the Project Manager. The Contractor shall not open up work to the prejudice of work already started.

10.05 Schedules: When requested by Project Manager, Contractor shall submit a final schedule of shop drawing submissions and where applicable a schedule of values of the Work. These schedules shall be satisfactory in form and substance to Project Manager. The schedule of values shall include quantities and unit prices aggregating to the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of a schedule of values by Project Manager, it shall be incorporated into a form of application for payment acceptable to Project Manager. The Contractor shall also forward to the Project Manager on a monthly basis, a progress schedule, a summary report of the progress of the various parts of the Work under the Contract in the mills or shops and in the field, stating the existing status, rate of progress, estimated time of completion and cause of delay, if any.

10.06 Character of Workers and Equipment: The Contractor shall employ such Superintendents, foremen, and workers as are careful and competent, and the Project

Manager may demand the dismissal of any person or persons employed by the Contractor in, about, or upon the Work who shall misconduct himself or be incompetent or negligent in the proper performance of his or their duties, or who neglects or refuses to comply with the Contract Documents and such person or persons shall not be employed again thereon without the written consent of the Project Manager. Should the Contractor continue to employ, or again employ, such person or persons, the Project Manager may withhold all payments which are or may become due, or the Project Manager may suspend the Work until such orders are complied with. No preference or discrimination among citizens of the United States shall be made, except as may be required by special labor provisions, including Sections 8-17-101 and 8-17-102, C.R.S. The Contractor shall furnish such equipment as is considered necessary for the prosecution of the Work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the Work shall be subject to the approval of the Project Manager and shall be maintained in a satisfactory working condition. Equipment used on any portion of the Work shall be such that no injury to the Work, roadways, adjacent property, or other objects will result from its use. The Contract may be terminated if the Contractor fails to provide adequate equipment for the Work. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

**10.07 Temporary Suspension of Work:** The Project Manager shall have the authority to suspend the Work wholly or in part because of unfavorable weather or other essential conditions, or because of the failure on the part of the Contractor to properly prosecute the Work in accordance with the Contract, to carry out orders or to remove defective material or work. The Contractor shall not suspend the Work without written authority and prior to resuming work shall give the Project Manager adequate notice to afford an opportunity to re-establish observation and inspection of work being performed.

**10.08 Determination and Extension of Contract Time for Completion:** The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the Work contracted, within the number of calendar days stipulated in the Agreement. Time will be assessed against the Contractor beginning with the actual date of the Notice to Proceed. In adjusting the Contract Time for the completion of the Project, all strikes, lockouts, unusual delays in transportation, or any condition over which the Contractor has no control, such as fires, floods, abnormal weather conditions, or acts of God, and also any suspensions ordered by the Project Manager for causes not the fault of the Contractor, shall be excluded from the computation of the Contract Time for completion of the Work. If the satisfactory execution and completion of the Agreement shall require work or materials in greater amounts or quantities than those set forth in the Agreement, then the Contract Time shall automatically be increased as negotiated between Contractor and Project Manager and accepted by City as set forth in a Change Order. No allowances will be made for delays or suspensions of the prosecution of the Work due to the fault of the Contractor. In order to secure an extension of time for delays beyond his control, the Contractor shall within ten (10) days from the

beginning of any such delay notify the Project Manager in writing of the causes of delay, whereupon the Project Manager shall ascertain the facts and the extent of the delay and extend the time for completing the Work in an amount equal to time lost due to said delay when, in his judgment, the findings of fact justify such an extension, and his finding of fact thereon shall be final and conclusive. The Contract Time may only be changed by Change Order or Supplemental Agreement.

**10.09 Failure to Complete Work on Time:** In case the Contractor shall fail to fully perform and complete the Work in conformity to the provisions and conditions of the Agreement within the specified time limit for such performance and completion or within such further time as, in accordance with the provisions of this Agreement, shall be fixed or allowed for such performance and completion, the Contractor shall and will pay to the City for each and every day of the additional time in excess of the Contract Time and any granted extensions thereof, the sum set forth in the Agreement as liquidated damages and not as a penalty. The parties agree that City will suffer loss and damage; however, due to the uncertainty and difficulty of measuring actual damages for every day the Work remains uncompleted and unfinished, the parties agree that said sum is a reasonable forecast of compensatory damages. The City shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due the contractor, or by an action at law against the Contractor or his Surety, or by either or both of these methods. If the completion of the Work is delayed beyond the time herein set, in addition to any other penalty or damage, all costs of engineering and inspection on behalf of the City which are incurred after the Contract Time has elapsed may be charged to the Contractor and be deducted from any payment, or collected by an action of law against the Contractor or his Surety, or by either or both of these methods.

**10.10 Adjustment for Suspended Work:** In the event the Contractor is ordered by the Project Manager, in writing, to suspend work for some unforeseen cause not provided for in the Specifications, and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the date set out in written order for work to cease until the date of the order for work to resume. Claims for such compensation shall be filed with the Project Manager within ten (10) days after the date of the order to resume work or such claims will not be considered. The Contractor shall submit with his claims substantiating papers covering the entire amount shown on the claim. After receiving relevant information, the City shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final. No provision of this Part shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure of surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the Specifications.

**10.11 Termination of Contract:** The Contract may be terminated by the City for the following reasons:

- (a) Failure of the Contractor to start the Work on the date given in the Notice to Proceed;
- (b) Substantial evidence that the progress being made by the Contractor is insufficient to complete the Work within the specified time;
- (c) Deliberate failure on the part of the Contractor to observe any requirement of the Contract Documents;
- (d) Failure of the Contractor to promptly make good any defects in materials or work or any defects of any other nature, the correction of which has been directed in writing by the Project Manager;
- (e) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the City in the construction of work under the Agreement;
- (f) If the Contractor is adjudged a bankrupt or insolvent;
- (g) If the Contractor shall allow any final judgment to stand against him unsatisfied for a period of ten (10) days;
- (h) If the Contractor makes an assignment for the benefit of creditors;
- (i) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- (j) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- (k) If Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
- (l) If Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment;
- (m) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- (n) If Contractor disregards the authority of Project Manager or Consultant; or
- (o) If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.

10.11.01 Before the Agreement is terminated, the Contractor and his Surety will first be notified in writing by the Project Manager of the conditions which make termination of the Agreement imminent. Seven (7) days after this is given, if a satisfactory effort has not been made by the Contractor or his Surety to correct the conditions, the City may declare the Contract terminated and notify the Contractor and his Surety accordingly. Upon receipt of notice from the City that the Agreement has been terminated, the Contractor shall immediately discontinue all operations. The City may then proceed with the Work in any lawful manner that they may elect until it is finally completed. City may exclude Contractor from the site and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which City has

paid Contractor but which are stored elsewhere, and finish the Work as City may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished.

10.11.02 If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to City. Such costs incurred by City shall be verified by Consultant and incorporated in a Change Order, but in finishing the Work, City shall not be required to obtain the lowest figure for the Work performed.

10.11.03 Where Contractor's services have been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.

10.11.04 Upon seven (7) days written notice to Contractor, City may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In such case, Contractor shall be paid for all work executed and any expense sustained plus reasonable termination expenses.

10.12 Cooperation with Other Contractors: In connection with the improvements under this Agreement, the right is reserved to award any work not included in the Contract to another Contractor for performance during the progress of this Agreement, or to perform such work with the City's forces, and the Contractor for this Contract shall cooperate and so conduct his operations as to minimize the interference therewith, as directed by the Project Manager.

10.13 Termination of Contractor's Responsibility: This Agreement will be considered complete when all work has been finished, the final inspection made and the work accepted by the Project Manager and all claims for payment of labor, materials, or services of any kind used in connection with the Work have been settled for by the Contractor or his Surety. The Contractor will then be released from further obligation except that the Performance Bond executed for performance of this Contract shall be in full effect for the full Warranty Period following completion and acceptance of the Work and final payment. Neither the final payment nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence or workmanship within the Warranty Period. Corrections during said period shall be made in accordance with the provisions of Section 12.05.

## PART 11 - MEASUREMENT AND PAYMENT

11.01 Detail Estimate: When requested by Project Manager, Contractor shall furnish a detailed estimate and breakdown of the Bid for any lump sum item involving more than one item of construction. This breakdown, when approved by the Project Manager, may be used as the basis for making partial payments to the Contractor.

11.02 Measurement of Quantities: The determination of quantities of work acceptably completed under the terms of this Agreement, will be made by the Project Manager and based on measurements taken by his assistants. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured as shown on the Plans. When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Project Manager. The Project Manager may require all vehicles to have uniform capacity.

11.03 Scope of Payment: The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the Work and for performing all work contemplated and embraced under this Agreement; also for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the Project Manager, and for all risks of every description connected with the prosecution of the Work, for all expenses incurred in consequence of the suspension or discontinuance of the Work as herein specified, and for any infringement of patent, trademark, or copyright; and for completing the Work according to the Plans, Specifications, and Contract Documents. Neither the payment of any estimate or progress payment, nor the payment of any retained percentage shall relieve the Contractor of any obligations to make good any defective work or material. No moneys, payable under this Agreement, or any part thereof, shall become due and payable if the City so elects, until the Contractor shall satisfy the City that he has fully settled or paid for all materials and equipment used in or upon the Work and labor done in connection therewith, and the City, if it so elects, may pay any or all such bills, wholly or in part, and deduct the amount or amounts so paid from any moneys due Contractor. In the event the Surety on any contract, Performance Bond or Payment Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the state revoked, the City may, at its election, withhold payment any moneys due Contractor until the Contractor shall give a good and sufficient bond in lieu of the bond so executed by such Surety.

11.04 Change Orders:

11.04.01 Regardless of the basis of bids, the Contract Price shall not be exceeded without a Change Order approved in writing by the City. If the Contract Price is based on unit prices, Contractor shall notify City immediately upon determining inaccuracies in bid tab quantities.

11.04.02 Changes in the Work, Contract Price, Contract Time, or progress schedule shall be made only by a Change Order in writing specifying what changes are to be made. The Contractor shall not make changes in the Work, Contract Price, and/or Contract Time without written authorization from an authorized representative of the City.

11.04.03 The Contractor shall, before commencing work pursuant to a Change Order, submit to the City a proposal for adjusting the Contract Price to accomplish the change as described in the Change Order. If the Contractor's proposal is accepted in writing by the City, the Contractor shall proceed with the work, and the Contract Price shall be adjusted in accordance with the proposal. In the event the total cost increase due to unforeseen circumstances cannot be reasonably estimated prior to completion of the extra work, Contractor shall submit a proposal outlining the means by which the total cost increase shall be determined to City for written approval.

11.04.04 Except as hereinafter provided, Contractor shall not commence any work covered by a Change Order until City and Contractor have first agreed upon the adjustment, if any, of the Contract Price and/or Contract Time as herein provided.

11.04.05 Additional work performed by the Contractor without written authorization from the City will not entitle the Contractor to an increase in the Contract Price or Contract Time.

11.04.06 Notwithstanding any provisions contained herein to the contrary, the Contractor, in an emergency immediately affecting the safety of persons or property, without special authorization from the City, may act at its discretion to prevent injury or damage and the Contractor shall so act if instructed to do so by the City. Any compensation claimed by the Contractor for actions necessitated by the emergency shall be determined in the manner provided for herein, except that the failure of the Contractor to obtain a written order prior to the performance of such emergency work shall not affect its right, if any, to extra compensation.

11.04.07 The Contractor should be familiar with the City & County of Broomfield Ordinances as set forth in the Broomfield Municipal Code. The following contract deduction schedule will be implemented for violation of the City Code.

First violation	Written warning
Second violation	\$1000 deduction from contract price
Third violation	\$2500 deduction from contract price
Fourth violation	\$5000 deduction from contract price

If another violation occurs, the Contractor's Agreement may be terminated and may be cause to reject future bids from the Contractor.

The Contractor is advised to pay particular attention to the following sections of the City Code.

- The work hours for construction are Monday - Friday 7 am to 7 pm unless expressly changed in the project specifications. The Contractor shall not fuel, transport equipment, or start equipment outside of these hours.
- The Contractor shall stay within the project work limits.
- Contractor shall pay particular attention to section 9.06 and 9.10 of the General Conditions to this Agreement.

City shall be entitled to process a deductive change order for any such penalties.

**11.05 Payment for Increased or Decreased Quantities:** When alterations in the Plans or quantities of work, not requiring supplemental agreements, are ordered and performed, the Contractor shall accept payment in full at the unit prices for the actual quantities of work done. No allowance will be made for anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as stipulated in such agreements.

**11.06 Payment for Deleted Items:** As provided in Section 6.03 the Project Manager shall have the right to cancel or alter the portions of the Agreement relating to the construction of any item or items therein by the payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation, alteration, or suspension of the Work by order of the Project Manager. The Contractor shall accept payment in full at unit prices or per the schedule of values for any work actually performed prior to the date of cancellation, alteration, or suspension of the work by order of the Project Manager. No allowance will be made for anticipated profits in reimbursements to the Contractor for deleted items of work. Acceptable materials ordered by the Contractor or delivered on the Work site prior to the date of cancellation, alteration, or suspension of the Work by order of the Project Manager will be paid for at the actual cost to the Contractor and shall thereupon become the property of the City. The Contractor shall immediately submit certified statements covering all money expended in preparation for any deleted item, and he shall be reimbursed for any money expended in preparation for any work on any deleted item when such preparation has no value to the remaining items of this Agreement, or for a proportionate amount based on the total Contract Price over which such preparation would ordinarily be distributed when other items are included in such preparation.

**11.07 Extra Work:** Extra work shall be covered by a Supplemental Agreement or Change Order to be signed by both parties before such work is commenced. Extra work will be paid for either at a unit price or lump sum basis agreed upon, or on the basis of the Cost of the Work as set forth in Sections 11.08 and 11.09 plus a contractor's fee for overhead and profit as set forth in Section 11.10. The Contractor shall make no claim for work done on cost of work basis unless performed on written order and in accordance therewith. Work performed prior to a written order by the Project Manager will not be paid for.

11.08 Cost of the Work: The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Section 11.09.

11.08.01 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health, and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include Superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by City.

11.08.02 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturer's field services required in connection therewith. All cash discounts shall accrue to Contractor unless City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall accrue to City, and Contractor shall make provisions so that they may be obtained.

11.08.03 Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to City who will then determine, with the advice of Consultant, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.08.04 Costs of special consultants employed for services specifically related to the Work.

11.08.05 Supplemental Costs including the following:

- (a) The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- (b) Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and

hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of the Contractor.

- (c) Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by the City with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removing thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, or machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- (d) Sales, use or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority; however, as set forth in Section 9.03, it is intended that no such taxes be applicable.
- (e) Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.
- (f) Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by Contractor in connection with the execution of the Work, provided they have resulted from causes other than the negligence of Contractor, or any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of City. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services a fee proportionate to that stated in Section 11.10.02.
- (g) The cost of utilities, fuel and sanitary facilities at the site.
- (h) Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- (i) Cost of premiums for additional bonds and insurance required because of changes in the Work.

**11.09 Exclusions to Cost of the Work:** The term "Cost of the Work" shall not include any of the following:

11.09.01 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Section 11.08.01, all of which are to be considered administrative costs covered by the Contractor's fee.

11.09.02 Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

11.09.03 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.09.04 Cost of premiums for all bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for additional bonds and insurance required because of changes in the Work).

11.09.05 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.09.06 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.08.

11.10 Contractor's Fee: The Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

11.10.01 A mutually acceptable fixed fee; or if none can be agreed upon,

11.10.02 A fee based on the following percentages of the various portions of the Cost of the Work:

- (a) For costs incurred under Sections 11.08.01 and 11.08.02, the Contractor's fee shall be 10%.
- (b) For costs incurred under Section 11.08.03, the Contractor's fee shall be 5%; and if a subcontract is on the basis of Cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be 10%.
- (c) No fee shall be payable on the basis of costs itemized under Sections 11.08.04, 11.08.05, and 11.09.

11.11 Credit: The amount of credit to be allowed by Contractor to City for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

11.12 Substantiation of Cost of the Work: Whenever the cost of any work is to be determined pursuant to Sections 11.08 and 11.09, Contractor will submit in a form acceptable to Project Manager an itemized cost breakdown together with supporting data.

**11.13 Application for Progress Payment:** By the 5th day of each month, Contractor shall submit to Project Manager for review and approval an application for payment filled out and signed by Contractor covering the Work completed through the last day of the prior month and accompanied by such supporting documentation as is required by these Contract Documents and also as Project Manager may reasonably require. Materials on hand but not complete in place shall not be included for payment. Each subsequent application for payment shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full of all of Contractor's obligations reflected in prior applications for payment. The Contractor shall be paid ninety-five (95) percent of the calculated value of completed work with respect to progress payments as provided by Article 91, Title 24, C.R.S.

**11.14 Contractor's Warranty of Title:** Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the project or not, will pass to City at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter referred to as "liens").

**11.15 Review of Applications for Progress Payment:** Project Manager will, within ten (10) days after receipt of each application for payment, either indicate in writing a recommendation of payment and present the application to City, or return the application to Contractor indicating in writing Project Manager's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the application. City shall, within thirty (30) days of Project Manager's recommendation, pay Contractor the amount recommended.

11.15.01 Project Manager's recommendation of any payment requested in an application for payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the application for payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation), and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment, Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose Contractor has used the monies paid or to be paid to Contractor on account of the Contract Price, or that title to any work, materials or equipment has passed to City free and clear of any claims.

11.15.02 Project Manager's recommendation of final payment will constitute an additional representation by Project Manager to City that the conditions precedent to Contractor's being entitled to final payment as set forth in paragraph 11.20 have been fulfilled.

11.16 Project Manager's Refusal to Recommend Payment: Project Manager may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representation to City. Project Manager may also refuse to recommend any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in Project Manager's opinion to protect the City from loss because:

11.16.01 the Work is defective, or completed work has been damaged requiring correction or replacement.

11.16.02 written claims have been made against City or statement of claims have been filed in connection with the Work.

11.16.03 the Contract Price has been reduced because of Modifications.

11.16.04 City has been required to correct defective work or complete the Work in accordance with paragraph 8.06.

11.16.05 the Contractor's prosecution of the Work in accordance with the Contract Documents has been unsatisfactory, or

11.16.06 Contractor has failed to make payment to Subcontractors, or for labor, material or equipment.

11.17 Progress Payments: The progress payment will be approximate only, and all partial or monthly progress payment shall be subject to correction in the payment following discovery of an error in any previous payment. Should any defective work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the work completed previous to the final acceptance and payment, there will be deducted from the first payment made after the discovery of such work an amount equal in value to the defective or questioned work, and this work will not be included in a subsequent payment until the defects have been remedied or the causes for doubt removed.

11.18 Final Inspection: Upon written notice from the Contractor that the Work is complete, Project Manager will make a final inspection with Consultant, as required, and Contractor. Project Manager will notify Contractor in writing of all particulars in which this inspection

reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

**11.19 Final Application for Payment:** After Contractor has completed all such corrections to the satisfaction of Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after Project Manager has indicated that the Work is acceptable, Contractor may make application for final payment. The final application for payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as Project Manager may reasonably require, together with complete and legally effective releases or waivers (satisfactory to City) of all claims arising out of or filed in connection with the Work. In lieu thereof and as approved by the City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the City or City's property might in any way be responsible, have been paid or otherwise satisfied; and consent to the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to the City to indemnify the City against any claim.

**11.20 Final Payment and Acceptance:** If, on the basis of Project Manager's observation of the Work during construction and final inspection, and Project Manager's review of the final application for payment and accompanying documentation, all as required by the Contract Documents, Project Manager is satisfied that the Work has been completed and Contractor has fulfilled all of his obligations under the Contract Documents, Project Manager will, within ten (10) days after receipt of the final application for payment, indicate in writing his recommendation of payment and present the application to the City for payment. Thereupon Project Manager will give written notice to the City and Contractor that the Work is acceptable subject to continuing obligations under the Contract Documents. Otherwise, Project Manager will return the application to Contractor, indicating in writing the reason for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the application.

All prior progress payments shall be subject to correction in the final payment.

If the application and accompanying documentation are appropriate as to form and substance, and acceptable to City, City shall cause publication to commence of the notice of final settlement in accordance with the City's statutory requirements and City shall make final settlement in accordance with section 38-26-107 CRS.

In the event no claims are made against Contractor in response to said publication, City shall pay Contractor the amount of final payment recommended by the Project Manager. In the

event claim(s) are made against Contractor, City shall withhold the amount of any asserted claim(s) against Contractor until said claims have been resolved; however, City shall pay Contractor the balance of the final payment.

The acceptance by the Contractor of the final payment shall operate as and shall be a release to the City from all claims or liability arising from the prosecution of the Work under the Contract.

11.21 Contractor's Continuing Obligation: Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any payment by Project Manager, nor any payment by City to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by City, nor any act of acceptance by City nor any failure to do so, nor the issuance of a notice of acceptability by Project Manager pursuant to Section 11.20, nor any correction of defective Work by City shall constitute an acceptance of the Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

11.22 Change in Contract Price: The Contract Price may only be changed by Change Order or Supplemental Agreement.

## PART 12 - WARRANTY AND GUARANTEE; ACCESS TO WORK; CONTINUATION OF WORK; AND PARTIAL UTILIZATION

12.01 Warranty and Guarantee: Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in the Specifications.

12.02 Access to Work: Project Manager and Project Manager's representatives, other representatives of the City, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

12.03 Continuing the Work: Contractor shall carry on the Work and maintain the progress schedule during all disputes or disagreements with the City. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and the City may otherwise agree in writing.

12.04 Partial Utilization: Use by the City of completed portions of the Work may be accomplished prior to completion of all the Work subject to the following:

12.04.01 City at any time may request Contractor in writing to permit City to use any part of the Work which City believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If Contractor agrees, Contractor will certify to City that said part of the Work is substantially complete. Within a reasonable time thereafter, Project Manager, Contractor and City shall make an inspection of that part of the Work to determine its status of completion.

Prior to City's use, Project Manager will deliver to City and Contractor a written recommendation as to the division of responsibilities pending final payment between City and Contractor with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work which is binding upon City and Contractor as to that part of the Work, unless City and Contractor shall have otherwise agreed in writing, or shall have objected to the Project Manager in writing within fifteen (15) days of receiving Project Manager's recommendations.

City shall have the right to exclude Contractor from any part of the Work which City uses, but City shall allow Contractor reasonable access to complete or correct items.

12.04.02 In lieu of the provisions of Section 12.04.01, City may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately useable; provided that prior to any such takeover, City and Contractor have agreed as to the division of responsibilities between City and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

12.04.03 No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to acknowledgment from the insurers providing the property insurance on the Work that notice of such occupancy has been received and that said insurers, in writing, have effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapsed on account of any such partial use or occupancy.

12.05 Warranty Period: The Warranty Period may be as prescribed by law, by the terms of any applicable special guarantee required by the Contract Documents, by any specific provision of the Contract Documents, or per the City's Standards and Specifications. The Warranty Period shall commence after the date of final payment as set forth in Section 11.20.

If any Work is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions, either correct such defective Work, or, if it has been rejected by City, remove it from the site and replace it with non-defective Work.

If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. Contractor shall also pay for any damage done to other work, other property or persons which occurred as a result of the defective Work within Warranty Period.

**12.06 Acceptance of Defective Work:** If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. In such case, if acceptance occurs prior to Project Manager's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to City.

## **PART 13 - WORK BY OTHERS**

**13.01** City may perform additional Work related to the project by itself, or have additional work performed by utility service companies, or let other direct contracts therefor which shall contain General Conditions similar to these. Contractor shall afford the utility service companies and the other contractors who are parties to such direct contracts (or City, if City is performing the additional Work with City's employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate Contractor's Work with that of others.

**13.02** If any part of Contractor's Work depends for proper execution or results upon the work of any such other Contractor or utility service company (or City), Contractor shall inspect and promptly report to Project Manager, in writing, any patent or apparent defects or deficiencies in such work that render it unsuitable for proper execution and results. Contractor's failure so to report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's Work, except for latent or nonapparent defects and deficiencies in the other work.

**13.03** Contractor shall do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Project Manager and the others whose work will be affected.

**13.04** If the performance of additional work by other contractors or utility service companies or City was not noted in the Contract Documents, written notice thereof shall be given to Contractor prior to starting any such additional work.

## PART 14 - MISCELLANEOUS

14.01 Giving Notice: Whenever any provisions of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by depositing it in the United States mail, postage prepaid, to the last business address known to the giver of the notice.

14.02 Computation of Time: When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

14.03 Notice of Injury or Damage: Should City or Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage, and in accordance with any statutory requirements.

14.04 General: The duties and obligations imposed by the General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor and all of the rights and remedies available to City and Consultant thereunder, shall be in addition to, and shall not be construed in any way as to limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Section shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of the Agreement.

14.05 Titles and Headings: The titles and headings used in the Contract Documents are for guidance and convenience and are not intended to control over the specific language contained in the body of the Sections in the event a conflict, error, or discrepancy occurs. Further, titles and headings shall not limit the scope of a part or section.

14.06 GPS Monuments: The Contractor is responsible for protecting all Broomfield GPS Monuments in the work area. If a monument is damaged or destroyed, the Contractor will be required to pay for the Broomfield County Surveyor to replace the monument.



**C. Proposed Resolution for DSW Retaining Wall Replacement**

Meeting	Agenda Group
Tuesday, October 1, 2024, 6:00 PM	Consent Items Item: 6C.
Presented By	
Brian Graham, CIP Manager	
Community Goals	

## Overview

[View Correspondence](#)

Request for City Council to approve a construction agreement, in the amount of \$693,930, between City and County of Broomfield and Rock & Co., Inc. for the repair of a retaining wall just north of 595 Flatiron Boulevard. This work is necessary to prevent a major failure of the lower retaining wall holding the former DSW retail building.

**Attachments**

[CC Memo\\_Construction Agreement with Rock and Co.pdf](#)

[Resolution 2024-139.pdf](#)

[595 DSW Wall Agreement.Contractorsign.pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

This project will repair an existing retaining wall in a detention pond parcel just north of 595 Flatiron Boulevard. The repair is specifically for the lower of two terrace walls which is on City and County of Broomfield property, just south of the intersection of West Flatiron Crossing Drive and Interlocken Boulevard. Staff originally identified this wall failure in 2021 and has continued to monitor the wall.



The lower wall and the upper wall are stabilizing a very steep grade. The lower wall is on CCOB property and a section of the wall is failing. This portion of the wall is sagging and showing other signs of distress such as improper drainage. The integrity of this retaining wall is crucial in supporting the above property, 595 Flatiron Boulevard, formerly the DSW retail store. This proposed work will make the necessary repairs in order to prevent a major failure of the lower retaining wall.

Construction of the retaining wall repairs includes preparing construction access from the West Flatiron Crossing Drive side. A portion of the street landscaping will be impacted but restored once the retaining wall work is complete. There will be significant material import and use of heavy equipment to install concrete and steel piles necessary for repairs.



Ground Engineering was contracted for design and engineering in November 2023 and completed construction documents in February 2024. An invitation to bid (IFB) for construction was issued on June 20, 2024. A mandatory pre-bid site meeting was well attended and two proposals were submitted by the July 31, 2024, deadline, from Rock and Co. (Rock) and Timber Wolf Excavation (TWX). Rock submitted the lowest responsive bid. City staff was able to negotiate an even lower contract amount after clarifying construction and access details, in consultation with the design engineer.

Proposed Resolution No. 2024-139 authorizes a construction agreement with Rock and Co. for \$693,930 to repair the failing retaining wall.

If the agreement is approved on October 1, 2024, construction is anticipated to begin by the end of October. This time of year is favorable weather conditions with lower water levels in the pond which are ideal for the repair work. The wall repair work is expected to be completed in the first quarter of 2025; landscaping restoration will be completed later in the spring.

## Financial Considerations

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

Sources and Uses of Funds	Amount
CIP Fund 20 23S0038 (20-70081-55200) 595 Flatiron Boulevard DSW Retaining Wall Repair	\$259,945
Additional Project Savings	\$585,000
<b>Total Project Budget</b>	<b>\$844,945</b>
Design (Ground Engineering)	-\$9,850
Construction (Rock and Co.)	-693,930
Construction Contingency (10%)	-\$69,393
Geotechnical Observation and Materials Testing (Ground Engineering)	-\$17,370
<b>Total Use of Funds</b>	<b>-\$790,543</b>
<b>Projected Balance</b>	<b>\$54,402</b>

## Prior Council or Other Entity Actions

Council previously authorized funds in the [2024 Revised Budget](#) for the 595 Flatiron Boulevard DSW Retaining Wall Repair project.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to approve the agreement, the appropriate motion is...

**That Resolution 2024-139 be adopted.**

## Alternatives

Delaying the repair of the wall poses a risk of greater wall failure which would result in both a higher risk to the adjacent DSW building foundation and higher future repair costs.

# RESOLUTION NO. 2024-139

A resolution approving a Construction Agreement with Rock & Co. for the  
595 Flatiron Boulevard DSW Retaining Wall Repair

**Section 1.**

The Construction Agreement by and between the City and County of Broomfield and Rock & Co., for the 595 Flatiron Boulevard DSW Retaining Wall Repair in an amount not to exceed \$693,930 is 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 a 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 the aggregate amount not to exceed ten percent of the contract value.

**Section 4.**

This resolution is effective on the date of approval by the City Council.

Approved on October 1, 2024

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

CONSTRUCTION AGREEMENT FOR  
595 FLATIRON BOULEVARD DSW RETAINING WALL REPAIR PROJECT (23S0038)

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 Rock & Co., 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 595 Flatiron Boulevard DSW Wall Repair project completed a competitive selection process by invitation to bid (ITB) issued on June 20, 2024.
  - 2.2. The Contractor's response to the above referenced ITB 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 a Construction 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; and
    - 3.2.2. The Scope of Work attached hereto as Exhibit A;
    - 3.2.3. The Contractor's Cost Proposal dated July 31, 2024, attached hereto as Exhibit B; and
    - 3.2.4. The ITB; and
    - 3.2.5. The Construction Plans for Project No. 23S0038; and
    - 3.2.6. The General Conditions attached within the ITB; and
    - 3.2.7. Any change orders and contract amendments, as applicable; and
    - 3.2.8. Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2022), as amended; and

- 3.2.9. Project Special Provisions for Project No. 23S0038; and
- 3.2.10. The Insurance Requirements attached hereto as Exhibit C, and a current Certificate of Insurance attached hereto as Exhibit D 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 Contract.
- 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 ninety (90) 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 \$693,930 (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 Elizabeth Racca-Johnson, Project Manager Associate as the authorized representative of the City under this Agreement. Email address is [elizabeth.johnson@broomfield.org](mailto:elizabeth.johnson@broomfield.org).

5.2 The Contractor designates Scott Davis, President as the authorized representative of the Contractor under this Agreement. Email address is [scott@rockandco.com](mailto:scott@rockandco.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](mailto: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 \$500.00 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. The obligations contained in this Agreement that are not fully performed as of termination shall survive termination and shall continue to bind the Parties until fully performed.
42. 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 \_\_\_\_\_, 2024.

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:

Rock & Co., Inc.

By: 

Name: Scott Davis, President

Address: PO Box 568

Brighton, CO 80601

EXHIBIT A  
SCOPE OF WORK

**595 Flatiron Boulevard DSW Retaining Wall Repair**

The City and County of Broomfield (Broomfield) is soliciting bids to repair an existing retaining wall adjacent to the old DSW retail building just north of 595 Flatiron Boulevard. The Work includes, but is not limited to, repair of the lower retaining wall, temporary construction access, slope stabilization, grading, material import and export, concrete and reinforcements, surveying, including all labor and material necessary to complete the Work. All work shall be performed in a manner consistent with the 595 Flatiron Boulevard DSW Retaining Wall Repair plans, [Broomfield Standards and Specifications, 2022 Edition](#), and all other applicable provisions associated with this project.

**The Scope of Work includes but is not limited to the following:**

1. Temporary construction access
2. Pond Water control
3. Clearing and Grubbing, including material export.
4. Soil Import and stabilization
5. Site Restoration of wetland, landscape and irrigation.
6. Traffic Control. A condition of required permits is an approved Traffic Control Plan consistent with the MUTCD. A Traffic Control Plan shall be submitted for approval at least 10 business days prior to the start of construction. It is anticipated that flaggers and traffic control devices may need to be utilized to aid construction vehicle equipment entering and exiting the project site as well as delineate work from the pedestrian traffic along the sidewalk. Contractor shall maintain a minimum of five feet wide of sidewalk for pedestrian use along the east side of Flatiron Crossing Drive. Two lanes of traffic shall also be maintained along Aspen Street. Bike lanes may be closed as part of an approved traffic plan.

**Project General Notes.**

1. **Standards & Specifications.** Work shall be performed in accordance with applicable sections of the [2022 Broomfield Standards and Specifications](#), and project specifications.
2. **Licenses.** The awarded Contractor must have or obtain a [contractor's license](#) (Class C, \$50) with the City and County of Broomfield Building Department in order to obtain required permits.
3. **Permitting.** A City and County of Broomfield Public/Private Improvement (PPIP) will be required for the work. The CCOB Project Manager will facilitate the permit application process. There will be no permit fees. See [Engineering Forms and Permits](#) for more information. A Grading Permit as well as a Building Permit is required for this project. Contractor to coordinate with CCOB Project Manager to facilitate this permit.
4. **Work Hours.** Work hours are Monday through Friday, 7 a.m. to 7 p.m. Saturday work may be allowed 9 a.m. to 6 p.m. with a pre-approved Weekend/Holiday Work Request form.

5. **Bonding.** A Bid Bond is required (for contracts in excess of \$50,000). The awarded contractor will be required to provide a Performance Bond and a Labor and Material Payment Bond for contracts in excess of \$50,000.
6. **Retainage.** Retainage is required to be withheld for contracts in excess of \$150,000.
7. **Other Expectations.**
  - a. The site shall be maintained in a clean and tidy condition without miscellaneous debris, etc. left onsite. Stockpiled materials and equipment shall be neatly organized and in locations coordinated with Broomfield's CIP Project Manager.
  - b. The Contractor shall be responsible for working with the CIP Project Manager to minimize impacts to the public.
  - c. Once the Contractor has started work, continual onsite progress shall be made until the work is complete.
  - d. Contractor shall implement Best Management Practices (BMP) for stormwater control at all times.

EXHIBIT B  
CONTRACTOR'S COST PROPOSAL

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

EXHIBIT D  
CERTIFICATE OF INSURANCE



**D. Proposed Resolution for Vero Broadband Master License Agreement**

Meeting	Agenda Group
Tuesday, October 1, 2024, 6:00 PM	Consent Items Item: 6D.
Presented By	
Katie Allen	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience <input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#) (link to project page OR remove if not applicable)

Vero Broadband, LLC, (Vero) is requesting a Master License Agreement to install fiber-to-home infrastructure within Broomfield rights-of-way.

Federal law and state law provide some guidance on the City's ability to regulate the services Vero desires to provide. In accordance with Section 253 of the Telecommunications Act of 1996, federal law requires that no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of *any* entity to provide any interstate or intrastate telecommunications services. Moreover, Colorado state law, C.R.S. § 38-5.5-101 et seq, mirrors federal law and requires that access to rights-of-way and oversight of that access must be competitively neutral (i.e. the City can't favor or disfavor any particular provider) with respect to the City's regulations of companies in this area. The City still does retain the ability to use our police power to enforce our rules on the use of the right-of-way which are established in Chapter 14-10 of the Broomfield Municipal Code that has been in effect since 2000.

Further, City regulations under Section 14-10-060 (A) of the Broomfield Municipal Code require approval of the City Council to use and occupy Broomfield right-of-way. Chapter 14-10 of the Broomfield Municipal Code regulates the use of public rights-of-way by requiring private users who construct, excavate, and work in Broomfield's rights-of-way to obtain Broomfield's permission to do so. Chapter 14-10 provides for a permit application, insurance and indemnification by users, standards for repair and restoration, and fees and charges.

**Attachments**

[Vero License Agreement Council Memo.pdf](#)

[Resolution 2024-135 Vero License Agreement.pdf](#)

[Vero Master License Agreement for Fiber in the ROW - 2024 - 7.19.2024 - signed.pdf](#)

## Summary

### [View Correspondence](#)

Vero Broadband, LLC, (Vero) is requesting a Master License Agreement to install fiber-to-home infrastructure within Broomfield rights-of-way.

Federal law and state law provide some guidance on the City's ability to regulate the services Vero desires to provide. In accordance with Section 253 of the Telecommunications Act of 1996, federal law requires that no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of *any* entity to provide any interstate or intrastate telecommunications services. Moreover, Colorado state law, C.R.S. § 38-5.5-101 et seq, mirrors federal law and requires that access to rights-of-way and oversight of that access must be competitively neutral (i.e. the City can't favor or disfavor any particular provider) with respect to the City's regulations of companies in this area. The City still does retain the ability to use our police power to enforce our rules on the use of the right-of-way which are established in Chapter 14-10 of the Broomfield Municipal Code that has been in effect since 2000.

Further, City regulations under Section 14-10-060 (A) of the Broomfield Municipal Code require approval of the City Council to use and occupy Broomfield right-of-way. Chapter 14-10 of the Broomfield Municipal Code regulates the use of public rights-of-way by requiring private users who construct, excavate, and work in Broomfield's rights-of-way to obtain Broomfield's permission to do so. Chapter 14-10 provides for a permit application, insurance and indemnification by users, standards for repair and restoration, and fees and charges.

Broomfield has previously approved telecommunications infrastructure to be installed within the public rights-of-way. These previous installations were approved by Council through a revocable permit and the installations have included fiber backbone infrastructure and connections to specific facilities.

Recently, Broomfield has been approached by multiple new internet service providers who are interested in constructing fiber-to-home infrastructure to provide broadband services to residents and, in some cases, businesses within Broomfield. Fiber internet is typically faster than cable internet and would provide additional internet provider options for Broomfield residents and businesses within Broomfield. Under C.R.S. § 38-5.5-101 et seq telecommunications providers have the right to occupy and utilize the public rights-of-way and municipalities must provide equal access to rights-of-way for telecommunication providers.

The revocable permit form of agreement that was previously used and approved is not ideal for what is being proposed with fiber-to-home. In order to facilitate the orderly installation of fiber-to-home infrastructure, staff has created a standard Master License Agreement template for any entity desiring to construct such fiber facilities in Broomfield. Broomfield worked with Ken Fellman with Wilson Williams Fellman Dittman in Louisville because he has extensive experience in this field and has negotiated these types of agreements with other municipalities. Staff customized the agreement from Mr. Fellman to better fit Broomfield's exact needs. All of the master license agreements will be substantially similar and all providers will have equal access to the right-of-way, but staff will have the ability to limit or regulate facilities in areas where existing utilities already exist or where there is no more room for additional utilities in a corridor. In those instances, staff will assist providers with finding alternate (less crowded) routes to provide the services. The master license agreement may be terminated by the City if the provider materially breaches the agreement.

Vero currently intends to construct infrastructure within Broomfield near Zuni Street and 154th Place, the majority of the work that Vero is completing relates to work within Adams County, at this time Vero does not have plans for infrastructure in other locations. This Master License Agreement approves phased installation throughout the City, so Vero could decide to install in other locations under this agreement. The exact location and phasing of the improvements will be defined by future Site License Agreements, which incorporates all of the terms of the Master License Agreement and will include a map of the locations for the fiber facilities, that will be reviewed and approved by the City and County Engineer. Vero will be applying to Broomfield for permits to construct specific phases/areas. The Master License Agreement allows for additional fiber optic installations to be approved by the City and County Engineer should Vero decide to expand elsewhere in the City.

The majority of the work will be performed using directional boring to avoid open trenching to protect Broomfield streets. A \$500 application fee will be submitted to Broomfield as required by Chapter 14-10. Applications will be submitted for Public/Private Improvement Permits for the work. An insurance certificate will be provided.

## Financial Considerations

Vero Broadband, LLC, (Vero) is required to pay Broomfield a \$500 application fee and applicable permit fees.

## Prior Council or Other Entity Actions

This is the third Master License Agreement for a company to install fiber-to-home infrastructure. The following Master License Agreements for installing fiber-to-home infrastructure were previously authorized by City Council:

On August 13, 2024 Council approved Resolution No. [2024-63](#) for a Master License Agreement for HyperFiber of Colorado, LLC (HyperFiber)

On August 13, 2024 Council approved Resolution No. [2024-99](#) for a Master License Agreement for BIF IV Intrepid OPCO, LLC (Intrepid)

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to approve the Master License Agreement, the appropriate motion is...

**That Resolution 2024-135 be adopted.**

## Alternatives

Do not approve the agreement.

# RESOLUTION NO. 2024-135

A resolution approving a Master License Agreement by and between the City and County of Broomfield and Vero Broadband, LLC

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

**Section 1.**

The Master License Agreement by and between the City and County of Broomfield and Vero Broadband, LLC to use rights-of-way for fiber optic services is hereby approved.

**Section 2.**

The Mayor or Mayor Pro Tem is authorized to sign and the City and County Clerk is authorized to attest the Master License Agreement, in form approved by the City and County Attorney.

**Section 3.**

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

Approved on October 1, 2024.

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

**MASTER LICENSE AGREEMENT FOR FIBER OPTIC NETWORK BY AND BETWEEN THE CITY AND  
COUNTY OF AND VERO BROADBAND, LLC**

This Master License Agreement (this “Agreement”), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), is entered into by and between the City and County of Broomfield, a Colorado home rule municipality and county (the “City”), and Vero Broadband, LLC, a Colorado limited liability company (the “Company”), each a “Party”, and collectively, the “Parties”.

**RECITALS**

A. The City holds good and valid title to the Public Rights-of-Way (“ROW”), as defined in Section 1.7 below, throughout the City and desires to protect and preserve the ROW. The City further maintains police power authority to regulate access to and use of the ROW in a manner that protects the public health, safety, and welfare, consistent with Applicable Law.

B. The Company is in the business of providing Services to its customers through fiber-based telecommunications and broadband networks, including the Network (as defined in Section 1.6 below) to be installed in the City, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”) and pursuant to this Agreement.

C. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Equipment, as defined in Section 1.4 below, in the Public Rights-of-Way in the locations detailed in Supplemental Sites Licenses, a sample of which is attached hereto as Exhibit A.

D. The City desires to grant to the Company a non-exclusive license (“License”) for the above-stated purpose, upon the terms and conditions contained below, and in accordance with Applicable Law.

**AGREEMENT**

In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City hereby grants to the Company, with respect to such interest as the City may have in the ROW, the authorization to install, construct, operate, maintain, repair, inspect, remove and replace the Equipment in, under, or along the ROW, subject to the following conditions:

1. **Definitions.** The following definitions shall apply generally to the provisions of this Agreement:
  - 1.1. **“Applicable Law”** means any statute, ordinance, judicial decision, order (including, without limitation, FCC orders), executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.
  - 1.2. **“Claims”** means (1) losses, liabilities, costs and expenses of any sort, including reasonable attorneys’ fees; (2) fines and penalties; (3) environmental costs, including, but not limited to, investigation,

removal, remedial, and restoration costs, and consultant and other reasonable fees and expenses; and (4) any and all other reasonably related costs or expenses.

- 1.3. **“Equipment”** means electronics equipment, transmission equipment, shelters, conduit, coaxial cables, mounts, generators, containment structures, hangers, pull boxes, conduit, pedestals, brackets, fiber optic cable and other accessories and component equipment related to the operation of the Company’s Network.
  - 1.4. **“Hazardous Substance”** means any substance or material defined or designated, or other similar term by any Applicable Law presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include without limitation any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.
  - 1.5. **“Network”** or collectively **“Networks”** means one or more of the neutral-host, broadband communication or telecommunication systems operated by the Company to serve its customers in the City.
  - 1.6. **“Public Rights-of-Way,” “Public ROW” or “ROW”** means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include City parkland, trails, state or federal rights-of-way, or any property owned by any person or entity other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any such person or entity.
  - 1.7. **“Services”** means the telecommunications or broadband services provided through the Network by the Company to its customers. Services also includes the lease of the Network, or any portion thereof, to another person or entity, or the provision of capacity or bandwidth on the Network to another person or entity, provided that the Company at all times retains exclusive control over the Network and remains responsible for locating, servicing, repairing, relocating, or removing its Network pursuant to the terms of this Agreement.
  - 1.8. **“Standards”** means the current version of the Broomfield Standards and Specifications.
2. **Term.** This Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years from the date it has been executed by both Parties, unless it is earlier terminated by either Party in accordance with the provisions herein. Provided, however, that if the Company’s Network is not operational and providing Services to customers within the City within two (2) years of the Effective Date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon ninety (90) days written notice. This Agreement will be automatically extended for an additional term of ten (10) years from the expiration date of the current term, unless either

Party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations) at least three (3) years before the expiration of this Agreement. Notwithstanding the expiration of this Agreement, and so as long as the Parties are negotiating in good faith, and until such time as either a new agreement has been reached or the City has determined not to renew this Agreement, the Company shall have the right to continue to occupy and use the ROW pursuant to the terms of this Agreement.

3. **Scope of Agreement.** All rights expressly granted to the Company under this Agreement, which shall be exercised at the Company's sole cost and expense, shall be subject to Applicable Law. All rights expressly granted to the Company under this Agreement shall be subject to the City's lawful exercise of its police powers and the prior and continuing right of the City under Applicable Law to use any parts of the Public ROW, exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the Public ROW. Except with respect to the License granted herein, nothing in this Agreement shall be deemed to grant convey, create, or vest in the Company a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to, and conform with, Applicable Law. Nothing in this Agreement shall be deemed to grant a franchise, nor permit the City to collect a franchise fee. This Agreement does not grant any authority to utilize the Public ROW to construct a cable system, provide cable or other video programming services, construct a wireless communications facility, deploy wireless communications facilities in the ROW, or provide wireless communications services. The Company acknowledges that the City has made no warranties or representations regarding the fitness or suitability of any ROW for the installation or operation of the Equipment and the Company shall accept the Property AS IS. Any performance of work or costs incurred by the Company contemplated under this Agreement is at the Company's sole risk. The Company understands there is risk involved in placing the Equipment within the Public ROW and hereby releases the City, and its agents and employees, from any liability for any damage to the Equipment that may be caused by the City's construction or maintenance operations, or any other reason, and from any liability for any injury or damage incurred by the Company in its use of the Equipment within the Public ROW.
- 3.1. **City Use.** The Company acknowledges and agrees that the City currently uses and intends to continue to use the ROW for road purposes, and the rights granted to the Company for use of the ROW are subject to the rights of the City to use the property for a public road, sidewalk, shoulder, snow or material storage, drainage, water, wastewater, network, and other utilities or such other purposes as permitted by law which the City expressly reserves. In the event the City desires use of the ROW where the Equipment exists for future improvement projects, the City shall be under no obligation to pay to the Company any damages for removal or relocation of the Equipment and the Company shall relocate or remove such Equipment in accordance with the terms of this Agreement as more particularly set forth below.

4. **Construction.** The Company intends to install its Network at the locations to be approved by the City and submitted as a request for Supplemental Site License. The Company shall be required to obtain a Supplemental Site License and any permits required from the City for the installation of the Equipment (currently referred to as a Public/Private Improvement Permit (PPIP)) for each Equipment location or to perform any excavation or other work in the Public ROW in connection with its Network deployment. The Company shall use the form attached as Exhibit A prior to beginning construction in conjunction with the City's standard application for work within the ROW for the initial construction. The City will authorize the Company to commence construction with the grant of a Supplemental Site License and the provision of all necessary permits for the work within the ROW. The City's granting or approval applicable to such licenses and permits shall not be unreasonably, withheld, conditioned, or delayed. Supplemental Site Licenses shall be approved administratively by staff and signed by the City Engineer. The intent of the Parties is that the Supplement Site License will show a larger area of where the Equipment is anticipated to be installed generally, with the individual permits for ROW construction providing more detail as to the exact location and manner of construction. Pursuant to the Standards, any person performing work that requires a permit shall obtain a Contractor's License as set forth in Broomfield Municipal Code Chapter 15.32. If the Company's construction requires any deviation in any manner from the approved plans, the Company shall notify and obtain prior written approval from the City for any changes in advance of any construction or alteration. The Company shall pay for and repair, at its sole expense, any damage to existing facilities located on the Public ROW, whether owned by the City or others, that occurs as a result of the Company's construction or alteration of the Equipment.
- 4.1. **Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment meets any of the criteria for a permit per the Standards, the Company shall apply for the appropriate permits and pay any standard and customary permit fees. The City shall respond to the Company's requests for permits in the ordinary course of its business and shall otherwise cooperate with the Company in facilitating the deployment of the Network in the Public ROW in a reasonable and timely manner, provided that, the City may withhold a permit if the Company has outstanding permits that are not diligently being completed in the sole and absolute discretion of the City, or the City does not have adequate staffing to manage the permit requests currently in process with the City. As a condition of obtaining any permit that involves digging or other excavation in the Public ROW, the Company shall comply with all documents and processes set forth in the Standards and at a minimum, as part of its permit application submittal materials, identify on its fiber plan and profile set the following information:
  - 4.1.1. All pothole and boring locations, the boring and installation method for its Equipment, number and size of conduits, cover depth of conduit, dimension clearance from the proposed conduit and existing utilities.
  - 4.1.2. The horizontal and vertical locations of any other existing

underground utility or other facilities in the Public ROW in the proximity of the proposed work area, in accordance with state laws for subsurface utility engineering and any additional City requirements, and what work will be self-performed and what work, if any, will be performed by subcontractors.

- 4.1.3. For each permit request, the Company shall provide construction drawings for review by the City, that identifies all existing and proposed utilities, identifies the location of all Equipment to be installed (including the equipment shelters, cables, conduit, pull boxes, pedestals, fiber runs, point of demarcation, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment), ROW limits, existing or proposed easements, existing trees, fences, and other above ground improvements, traffic control signs and equipment, any other existing improvements, where the installation will occur (back of sidewalk, in the paved surface of the roadway), a profile with potholed locations of existing utility crossings (including fiber, water, sanitary sewer, and stormwater lines), a plan for conducting emergency repairs and all anticipated, expected restoration work. Where applicable, the design documents shall include specifications on design and ADA compliance.
- 4.1.4. If revisions to the construction drawings are required by the City, the Company shall provide revised drawings for review until final approval. The Company shall then include the final construction drawings with the appropriate permit application. The Company shall be allowed to seek permits year-round and all permits will expire as defined by the Standards. All work associated with a permit must be completed, including all restoration of pavement, sidewalks, landscaping, and other items, before a permit can be closed.
- 4.1.5. Plans shall show the Company's drawings of Equipment as compiled in accordance with the City's current practices and procedures as they are in effect from time to time, as well as any information required by Applicable Law.
- 4.1.6. "As-Built" drawings and design files with respect to the Equipment will be provided to the City as provided in the Record Drawings Section of Standards.
- 4.2. **Obtaining Required Permits Using Shallow/Micro Trenching.** The City currently does not have separate standards and specifications for the installation of Equipment using shallow, or micro, trenching techniques. As a result, in addition to the applicable requirements set forth Section 4.1, the following standards shall apply for all shallow, or micro, trenching work within the City.
  - 4.2.1. NOT APPLICABLE
- 4.3. **Location of Equipment.** Potholes, analysis of as-built drawings, or

investigation of existing utility infrastructure must be performed so any conflicts with existing utilities (including fiber, water, sanitary sewer, and stormwater lines) are to be shown in the profile view of the drawings to be approved by the City. Prior to construction on each permit, the Company and its contractors must physically identify the locations of existing underground utilities within the path of construction via potholing. Potholes must be filled according to the current Standards. GIS data on the utilities and pipe material, if it can be visually identified, shall be updated on the engineering plans and as-built drawings. In relation to other utilities, all Equipment shall be placed according to the Standards. All Equipment shall be placed underground or, if approved by the City, via attachment to existing utility poles in compliance with the pole owner process for attachment. Any Equipment proposed to be located above ground must be screened in the manner approved by the City and the approval of the entity responsible for the maintenance of the property on which the Equipment is located.

- 4.4. **Obtaining Required Permits for Maintenance and Repair Work.** The Company, at its sole cost and expense, shall maintain the Equipment and every part thereof in good condition and repair, and perform any necessary maintenance functions. Any damage to the Equipment shall be repaired in a timely manner, but in no event later than 30 calendar days after a written request for such repairs from the City. The same process as described in Section 4.1 and 4.2, as applicable, shall be followed for work within the Public ROW relating to the repair or maintenance of the Network after installation; provided, that, a new Supplemental Site License will not be required after the initial installation of the Equipment, but any other necessary permits and performance guarantees for the performance of the work shall be secured as provided herein or in the Standards.
- 4.5. **Fees.** The Company shall apply for the appropriate permits and pay any standard and customary permit fees. In the event that the staffing levels are not sufficient to process Supplement Site Licensee and/or related permits for work in the ROW, whether due to City staffing levels or the number of permits being requested within the City, the City may notify the Company of its ability to add additional staffing capacity through the use of third party contractors. In such an event, the City shall notify the Company of the option to use third party contractors, and in such event the Company desires to pay the additional cost of third party consultants for the Supplement Site License and permit review and inspection work, the Company shall agree to pay the City any costs that the City incurs for such third party review, plus a 5% administrative review fee, less the applicable fees collected pursuant to the City's permit fee schedule had the work been performed by City staff. In such event, the Company shall reimburse the City for all costs and expenses associated with the third party review activities. The City shall provide invoicing to the Company documenting such costs which shall be due and payable within 21 calendar days of receipt to the City. The City will in turn use such funds to pay the third party consultants upon receipt. The purpose of this provision is to allow the City to

recover its actual costs for plan review, engineering and surveying review, and for construction observation, inspection and materials testing. If the Company elects not to pay for the additional costs, the City shall review the Supplement Site License and necessary permits in the ordinary course of business and shall not charge any additional fees, but the Company acknowledges that time for review may be extended in such an event which is not unreasonable.

- 4.6. **Public Infrastructure Security.** In accordance with the Standard's performance guarantee requirements, the Company shall provide financial security, in the form of letter of credit (in a form approved by the City) or cash deposit, for the cost to repair or reconstruct all public infrastructure anticipated to be required with any Supplemental Site License or ROW permit and the cost of any third-party contractors (as described in Section 4.5 above) engaged by the City in conjunction with the services provided herein. Rather than complete a new performance guarantee for each permit issued, the City and the Company may mutually agree upon an amount of a performance guarantee sufficient to cover the costs of the work anticipated to occur within the City for one calendar year. The Company shall provide such security in the approved form and amount prior to issuance of any required construction permit. When all required repairs or reconstruction of public infrastructure have been completed in accordance with City Standards, the City shall release the performance guarantee back to the Company in accordance with the Standards.

- 4.6.1. **Warranty.** The Company, or its contractor, shall warranty any work in the ROW for possible replacement or repairs for a period of two (2) years after completion of the work under a ROW permit. The performance guarantee shall remain in place even upon the completion of the work if additional permits are issued or anticipated to be issued. Only when no additional permits are outstanding and no additional work is contemplated by the Parties shall the performance guarantee be reduced as set forth in the Standards.

- 4.7. **Utility Notification Center.** The Company shall contact the Utility Notification Center of Colorado, <https://www.colorado811.org/>, for location of any underground utilities, and locate the Equipment as required. The Company shall use commercially reasonable efforts to coordinate with the City and any affected utilities to undertake locations in accordance with the policies of each entity.

- 4.8. **Damages to Other Utilities.** To the extent that Company or any of its contractors cause damage to other utility facilities (including network, water, sanitary sewer, and stormwater lines), if there is damage caused to any major facility, at the discretion of the City, all construction within the City shall cease in order to allow the affected utilities to have the damage repaired. Any contractor of the Company that causes damage to another utility's facilities may be forbidden by the City from doing any further work under this Agreement. Should a stop work order be issued as a result of any damage caused by the Company or any of its contractors, such stop work order may not be lifted until such time as

all damaged parties have been fully compensated for their actual damages incurred. See also Damages and Restoration below.

- 4.9. **Public Engagement.** Prior to beginning any work to install, maintain or repair its Network in the Public ROW, the Company shall first notify residents of the work (via door hangers) a minimum of 48 hours in advance of performing the work and the language on the door hangers must be approved by the City all as set forth in the Interruption of Services Section of the Standards.
- 4.10. **General Warranty.** The Company warrants that all Equipment installed by it shall be in accordance with: (a) generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with the City municipal code and any regulations promulgated thereunder (“City Regulations”); (b) the plans and specifications provided by the Company to the City and approved by the City (the “Plans”); and (c) the same standards that the Company applies to construction of its own facilities (collectively referred to as the “Construction Standards”). The Company further warrants that the Equipment shall be free from obstructions and otherwise fully comply with the Construction Standards.
- 4.11. **Non-Liability.** The Company acknowledges that the City’s review and approval of the Plans for the Equipment is done in furtherance of the general public health, safety, and welfare and that no specific relationship with, or duty of care to the Company or third parties is assumed by such review approval.
5. **Relocation of Equipment.** The Company understands and acknowledges that City may require the Company to relocate one or more of its Equipment installations horizontally or vertically. The Company shall at City’s direction relocate such Equipment, at the Company’s sole cost and expense, not later than ninety (90) days (except in the case of an emergency) after receiving written notice that the City determines that the relocation is needed. In any such case, the City shall use its best efforts (but shall not be required to incur financial costs) to afford the Company a reasonably equivalent alternate location. If the Company shall fail to relocate any Equipment as requested by the City within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the City has notified the Company that it, or another public agency or special district intends to commence its work, or, in the case of emergencies, immediately, the City or its agent, public agency or special district completing the work, shall be entitled to relocate the Equipment at the Company’s sole cost and expense, without further notice to the Company and may invoice the Company for such expenses which shall be paid promptly by the Company.
6. **Modification of Supplement Site License Prior to Installation.** In the event that (i) any of the Supplemental Site License applications has been rejected; (ii) any governmental approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority; or (iii) the Company determines the Equipment Location is no longer technically compatible or financially feasible for its use, the Company shall have the right to terminate all or part of a Supplemental Site License prior to installation of

any Equipment. Notice of the Company's exercise of its right to terminate shall be given to the City in writing as set forth in this Agreement, and shall be effective upon the dates set forth in the notice. All standard and customary permit fees paid to said termination date shall be retained by the City. Upon such termination, all or part of the Supplemental Site License, as applicable, shall be of no further force or effect except to the extent of the obligations set forth in this Agreement. The Parties may mutually agree to modify any Supplemental Site License Agreements as needed to reflect any modifications.

**7. Termination; Default; Removal and Abandonment of Equipment.**

**7.1. Termination; Default.** At any time, the Company may elect to terminate this entire Agreement or may elect to discontinue the use of only portions of the Equipment. The City shall have the right to terminate all or a portion of this Agreement for failure of the Company in the performance of any covenant or condition in this Agreement within 30 days after receipt from the City of written notice of such breach; provided, however, if the nature of the remedy reasonably requires more than 30 days to cure, the Company shall not be in default if the Company commences such remedy within such 30-day period and thereafter diligently pursues such remedy to completion.

**7.2. Notification of Discontinue Use.** If at any time the Company intends to terminate this Agreement or discontinue use of any or all Equipment, it shall notify the City in writing of the intent to discontinue use. Such notice (the "Discontinuance Notice") shall describe the Equipment for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than sixty (60) days from the date such notice is submitted to the City and the Company's intended method of removal and restoration. The methods of removal or restoration shall include the following options (as more specifically described below):

7.2.1. Removal of the Equipment from the ROW; or

7.2.2. Abandonment of the Equipment in Place.

**7.3. City's Election Upon Receipt of Discontinuance Notice.** Upon receipt of a Discontinuance Notice, the City shall have sixty calendar days (the "City's Election Period") to notify the Company of its election with respect to the discontinued Equipment (the "City's Election"). The City may elect to allow the Company to: i) require removal of the Equipment from the ROW, in its sole discretion as more particularly described below, ii) convey the Equipment to the City as described below, or iii) abandon the Equipment in place. If no election is made by the City, the Company may abandon the Equipment in place and the Equipment shall remain under the ownership of the Company. In any event, upon termination or discontinuance of use, the Company shall be required to remove at its sole cost and expense any above ground structures with foundations from the ROW upon termination of this Agreement, regardless of the election made by the City hereunder. For purposes of clarity, above ground structures with foundations does not include the removal of pull boxes or other equipment that is flush with ground level. The City shall be reimbursed by the Company for all removal costs

and expenses including administration costs to remove the above ground structures with foundations, if the Company fails to remove the same.

- 7.4. **Removal of Equipment by the Company.** The Company may not remove, destroy, or permanently disable any such Equipment until the Company has obtained the necessary permits from the City for the removal of the Equipment from the Public ROW. If the City elects for the Equipment to be removed, the Company shall obtain a permit for such removal within 60 days of the receipt of the City's Election. Once the necessary permits have been issued by the City (including receipt by the City of any performance guarantee), the Company shall remove and dispose of such Equipment and restore any property damaged by such removal, and shall complete such removal, disposal, and restoration in accordance with the terms and within the time set forth in the permit, unless additional time is requested from and approved by the City. If Company fails to complete this removal and restoration work in accordance with the approved permit, then the City, upon written notice to the Company, shall have the right at the City's sole election, but not the obligation, to perform the removal or restoration work and charge the Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. The Company shall pay to the City actual costs and expenses incurred by the City in performing the work to the extent not covered by the performance guarantee received with the permit. If the City does not remove such items at the City's cost after the Company's failure to so remove, any items of the Company's property remaining on or about the Public ROW may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner permitted by Applicable Law.

- 7.4.1. If Company does not take any action to remove its Equipment pursuant to Section 7.4 or fails to affirmatively abandon or remove its Equipment within six (6) month of the City's Election notice, then the City may, in its sole discretion, notify the Company that the Company will be deemed to have remised, released, quitclaimed, and sold to the City all title and ownership in any Equipment remaining in the Public ROW, and the permanent abandonment in place and transfer of ownership of that Equipment shall automatically vest in the City without necessity of an additional agreement or instruments of conveyance.

- 7.5. **Conveyance of Equipment to the City.** At the discretion of the City, and upon written notice of the City's Election during the City's Election Period described above, the Company may abandon the Equipment in place, and shall further convey full title and ownership of such abandoned Equipment to City in a form acceptable to City. If the City agrees to accept ownership, the Company shall execute and deliver to the City bills of sale in a format acceptable to the City, and such other documents as the City deems necessary to effectuate such transfer of ownership to the City within thirty (30) days of the City's written notice of its intent to accept the transfer. The consideration for the conveyance is the City's permission to abandon the Equipment in place.

The Company shall be responsible for all obligations as owner of the Equipment, or other liabilities associated therewith, until the conveyance is completed. Once the conveyance is completed, the City shall be the owner and responsible for the Equipment.

- 7.6. **Abandonment of Equipment in Place.** At the discretion and upon written notice of City Election, the Company may abandon the Equipment in place, but the Company still retains the responsibility for all obligations as owner of the Equipment, or other liabilities associated therewith. The Company acknowledges and agrees that any Equipment that is abandoned in place may, at a later date, be removed by the City, another public agency or special district, if such party is doing work within the ROW that requires removal of the Equipment, all without further notice to the Company.
- 7.7. **Survival.** The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.
8. **Damage and Restoration.** Unless otherwise provided by Applicable Law, whenever the installation, removal, or relocation of any Equipment is required or permitted under this Agreement, and such installation, removal, or relocation shall cause the Public ROW or any City or other public or private property to be damaged, or whenever the Company, in connection with any of its operations, causes damage to the ROW or any other public or private property, the Company, at its sole cost and expense, shall repair or cause to be repaired, the damage and return the ROW or other property in which the Equipment is located and all affected property to a safe and satisfactory condition. Any repairs or restoration, including emergency work, shall be completed as set forth in the Standards.
9. **Other Utilities, Other Service Providers.**
  - 9.1. The Company agrees and understands that if the City has permitted or allowed natural gas gathering, storage, transmission, distribution, or related facilities within the ROW, the Company has been fully advised by the City that such natural gas facilities may now transport and may continue to transport natural gas at significant pressures. The Company shall advise all employees, agents, contractors, and other persons who enter upon the Public ROW the existence and nature of such natural gas facilities and the potential danger and risk involved.
  - 9.2. The Company agrees and understands that any natural gas facilities, if located within the ROW, may be subject to cathodic protection by rectifier and related anode beds, and that City shall not be liable for stray current or interfering signals induced in the Equipment as a result of the operating of the cathodic protection system.
  - 9.3. The Company agrees and understands that if the City has permitted and allowed to be constructed electric transmission, distribution, or related facilities within the ROW, the Company has been fully advised by the City that such electric facilities may now transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. The Company shall advise all of

its employees, agents, contractors, and other persons who enter upon the Public ROW of the existence and nature of such electric facilities and the potential danger and risk involved.

10. **Hazardous Substances.** The Company agrees that the Company, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport or dispose of any Hazardous Substance on, under, about or within the area of the ROW or adjacent property in violation of any Applicable Law. Except to the extent of the negligence or intentional misconduct of the City, the Company shall pay, indemnify, defend, and hold the City harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by the Company pursuant to this Agreement. The Company shall ensure that any on-site or off-site storage, treatment, transportation, disposal, or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that the Company is only using a small portion of the ROW and that the Company shall not be responsible for any environmental condition or issue except to the extent resulting from the Company's, its agents' or contractors' specific activities and responsibilities under this Agreement.
11. **Indemnification.** The Company shall indemnify, defend, and hold the City, its employees, officers, elected officials, agents, and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage, or liability (or any Claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the Network and any Equipment, or the Company's breach of any provision of this Agreement. The Company's indemnification obligations extend to any Claims asserted by and any person or entity, including, but not limited to, employees of Company or its contractors, subcontractors, or their employees; and any Claims arising from, or alleged to be arising in any way from, the acts or omissions of Company, its sublessees, invitees, agents, or employees.
  - 11.1. The City shall give the Company timely written notice of the making of any Claim or of the commencement of any action, suit, or other proceeding in connection with any Claim. In the event such Claim arises, the City shall tender the defense thereof to the Company and the Company shall reasonably consult and reasonably cooperate with the City and County Attorney's Office while conducting its defense. The City and the Indemnified Party shall cooperate fully therein with the Company's legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.
  - 11.2. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by the Company to represent the City, the Company shall pay for all reasonable expenses incurred by the City as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the City shall select its own counsel and any other experts or consultants, subject to the Company's prior approval, which shall not be unreasonably withheld. The City's expenses hereunder shall include all

reasonable out-of-pocket expenses, such as consultants' fees.

12. **Insurance.** To assure the City that the Company is always capable of fulfilling specified indemnification obligations, the Company, and its contractors and subcontractors, 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 B. The insurance requirements set forth in Exhibit B may be updated without an amendment to this Agreement with each renewal, automatic or otherwise, of this Agreement. However, proof of insurance attached as Exhibit B shall not be deemed to limit or define obligations of the Company as provided elsewhere in this Agreement, and the Company should rely on its expertise to obtain additional insurance coverage needed for the City and the Company in its performance hereunder.
13. **Governmental Immunity.** The City and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Master License Agreement or any Supplemental Site License, immunities, limitations, coverages, or protections of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as a result of entering into this Agreement.
14. **Notices.** 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. Either Party may change its representative at any time by notice to the other Party. The Parties each designate an authorized representative as follows:
  - 14.1. **City Representative.** The City designates the City Engineer as the authorized representative of the City under this Agreement. Email address is [engineeringpermits@broomfield.org](mailto:engineeringpermits@broomfield.org).
  - 14.2. **Company Representative.** The Company designates Matthew Brouker as the authorized representative of the Contractor under this Agreement. Email address is [mbrouker@verobroadband.com](mailto:mbrouker@verobroadband.com).

If the Company 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](mailto:citycountyattorney@broomfield.org).
  - 14.3. **Emergency Contact.** The Company shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring the City to take immediate action. The Company's 24/7 call center number is: (303) 916-6687, Matthew Brouker or [mbrouker@verobroadband.com](mailto:mbrouker@verobroadband.com).
15. **Miscellaneous Provisions.** The provisions that follow shall apply generally to the obligations of the parties under this Agreement.
  - 15.1. **Documentation.** A Company representative shall have one copy of the applicable rights of way permit issued for work authorized under any Supplemental Site License in the Public ROW and available during construction or maintenance of any Equipment.

- 15.2. **Non-Exclusive Use.** The Parties understand and agree that the City permits other persons and entities to install utility facilities in the ROW. In permitting such work to be done by others, the City shall not be liable to the Company for any damage caused by those persons or entities.
- 15.3. **Compliance with Laws.** The Company 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 under this Agreement, 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.
- 15.4. **Severability of Provisions.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 15.5. **No Waiver.** A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Both the City and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the City nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement, except when done so in writing by a Party's authorized representative.
- 15.6. **Federal and State Authorizations.** The Company has obtained all government licenses, permits and authorizations from the Federal Communications Commission which are required in order to provide the Services.
- 15.7. **Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado. Venue for any proceeding arising out of this Agreement shall be in the District Court, Broomfield County, Colorado.
- 15.8. **Force Majeure.** With respect to any provisions of this Agreement, the violation or noncompliance of any term of this Agreement which could result in the imposition of a financial penalty, damages, forfeiture or other sanction upon a party, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, pandemics, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such party's reasonable control, and which was not caused and could not have been avoided by a party which used

its best efforts in its operations to avoid such results. If a Party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, it shall provide documentation as reasonably required by the other Party to substantiate its claim. If that Party has not yet cured the deficiency, it shall also provide the other Party with its proposed plan for remediation, including the timing for such cure.

- 15.9. **Limitation of Liability.** Except for indemnification pursuant to Section 11, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
- 15.10. **Representations and Warranties.** Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.
- 15.11. **No Third-Party Beneficiaries.** This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.
- 15.12. **Public Disclosure.** The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, §24-72-202(6), C.R.S., and accordingly may be disclosed to the public.
- 15.13. **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 other than being provided the Services of the Company as any other customer of the Company.
- 15.14. **Co-Builds and Use of Conduit by the City.** Should the City desire to place its own facilities for City purposes in trenches or bores opened by the Company, the Company shall cooperate with the City in any construction by the permittee that involves trenching or boring in accordance with Broomfield Municipal Code §14-10-120 (F) and (G).
- 15.15. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
- 15.16. **Amendment.** This Agreement may not be amended except pursuant to a written instrument signed by both Parties. The City and County Manager has the authority to enter into amendments to this Agreement, in addition to the areas herein specifically delegated to the City Engineer by this Agreement.
- 15.17. **Entire Agreement.** This Agreement contains the entire understanding

between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. Any prior oral or written agreements or licenses between the Parties concerning use of the Public ROW is superseded by this Agreement.

- 15.18. **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.

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

This Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 2024.

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

\_\_\_\_\_  
Mayor  
One DesCombes Drive  
Broomfield, CO 80020

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City and County Attorney

COMPANY

VERO BROADBAND, LLC,  
a Colorado limited liability company

By: Sunita Krishna  
Sunita Krishna, CEO  
Address: PO Box 1110, Boulder, CO 80306

## EXHIBIT A

THE COMPANY SHALL PROVIDE THE FOLLOWING SUPPLEMENTAL SITE LICENSE SIGNED INCLUDING A MAP OF THE AREA TO BE CONSIDERED FOR INSTALLATION OF EQUIPMENT AS MORE PARTICULARLY DESCRIBED IN THE MASTER LICENSE AGREEMENT. IN ADDITION TO THIS DOCUMENT, THE COMPANY SHALL SUBMIT THE THEN CURRENT FORM OF ROW PERMIT APPLICATION (CURRENTLY REFERRED TO AS A PUBLIC/PRIVATE IMPROVEMENT PERMIT).

### FORM OF SUPPLEMENTAL SITE LICENSE

THIS SUPPLEMENTAL SITE LICENSE is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“Effective Date”) between the City and County of Bromfield, Colorado, a Colorado home rule municipality and county (the “City”) and \_\_\_\_\_ (“Company”) (collectively, the “Parties”).

1. Supplemental Site License. The City grants to the Company a non-exclusive, revocable Supplemental Site License to locate, construct, operate, control and maintain the Equipment, as contemplated and defined in that certain Master License Agreement For Fiber Optic Network in connection with the operation of the Company’s Network, between the City and the Company dated \_\_\_\_\_, 20\_\_\_, within the Public ROW (as defined in the Master License Agreement) segment shown in Exhibit 1, attached hereto and incorporated herein by this reference (“Equipment Location”). **[DRAFTING NOTE: EACH TIME A SUPPLEMENTAL LICENSE IS GRANTED THE NUMBER FOR THE NEXT EXHIBIT SHALL BE INCREASED BY 1 DIGIT (i.e. Exhibit 1, Exhibit 2, Exhibit 3 etc.), SO EACH SUPPLEMENTAL SITE LICENSE CAN BE MORE EASILY TRACKED]**
2. Term of Supplemental Site License. The term of this Supplemental Site License shall be as set forth in Section 3 of the Master License Agreement.
3. Equipment Location Acknowledgement. The Company and the City acknowledge and agree that the general placement of the Equipment in the locations identified on Exhibit 1 are feasible and the City believes there is room within the ROW indicated for the Equipment; however, the individual permits issued for the installation of the Equipment shall list the detail as required and detailed in the Master License Agreement.
4. Incorporation of Master License Agreement. All of the terms and conditions of the Master License Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master License Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Master License Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the Master License Agreement unless otherwise indicated herein.
5. Approvals. It is understood and agreed the Company’s ability to install its Equipment in the ROW is contingent upon its obtaining all of the appropriate certificates, permits and other approvals that may be required under Applicable Law.
6. Notice and Communications. All notices, requests, and demands to or upon any Party to this Supplemental Site License shall be in writing addressed to the person

designated in the Master License Agreement.

7. Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action related to this Agreement shall lie in the District Court, Broomfield County, Colorado.

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

---

City Engineer  
One DesCombes Drive  
Broomfield, CO 80020

APPROVED AS TO FORM:

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City and County Attorney's Office

VERO BROADBAND, LLC,  
a Colorado limited liability company

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Name: Sunita Krishna  
Title: CEO

#### **EXHIBIT 1**

#### **Supplemental Site License Location Map**

[To be attached with Supplemental Site License Application]

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

#### **CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including Pollution 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, Pollution 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.

**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 Pollution Liability		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"> <li>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.</li> </ul> <p><b>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.</b></p>	<b>Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$5,000,000 Each Occurrence</li> <li>\$5,000,000 General Aggregate (Per project aggregate for construction contracts)</li> <li>\$5,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)</li> <li>Limits can be satisfied by any combination of primary and/or umbrella &amp; excess liability insurance policies.</li> </ul>
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 each accident combined single limit.</li> <li>\$2,000,000 General Aggregate</li> <li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li> </ul>
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"> <li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li> </ul> <p><b>Note: 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.</b></p>	<b>Employer's Liability with Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$100,000 Each Accident</li> <li>\$100,000 Each Employee by Disease</li> <li>\$500,000 Disease Aggregate</li> </ul>
4.	<b>Environmental Liability Insurance</b> <ul style="list-style-type: none"> <li>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/vendors operations and completed operations.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Per Claim/Aggregate</li> </ul>
5.	<b>Excess or Umbrella Coverage</b> <ul style="list-style-type: none"> <li>Excess or Umbrella Liability insurance on an occurrence basis covering in excess of commercial general liability insurance, which has coverage as such policy.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$2,000,000 Each Occurrence/Aggregate</li> </ul>
<p><b>Additional Insured - The following shall be named an Additional Insured:</b> 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, Pollution 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.</p> <p><b>Certificate Holder is:</b>  City and County of Broomfield  One DesCombes Drive  Broomfield, CO 80020-2495  <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a></p>		

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](mailto:RiskManagement@broomfield.org)



## City of Broomfield

### City Council Special Meeting

#### Public Hearing of the 2025 Operating and Capital Budgets; First Reading of Water / Wastewater Enterprise Ordinances

Public Hearing per Charter 12.6 of the 2025 Operating and Capital Budgets for City and County of Broomfield, the Arista Local Improvement District and the Broomfield Urban Renewal Authority; and first reading of ordinances establishing a stormwater enterprise and setting or increasing enterprise license and service fees

Meeting	Agenda Group	
Tuesday, October 1, 2024, 6:00 PM	Action Items	Item: 7A.
Presented By		
Graham Clark, Deputy Director of Finance		
Community Goals		
<input checked="" type="checkbox"/> Financial Sustainability and Resilience		

#### Overview

[View Correspondence](#)

The purpose of this public hearing is to provide all interested parties an opportunity to provide comments regarding the 2025 Proposed Budgets, including Capital Improvement Programs, prior to Council's and BURA's consideration for adoption of the budgets for the City and County of Broomfield, Arista Local Improvement District, and Broomfield Urban Renewal Authority. Additionally, Council will consider, on first reading, Ordinance 2253 - Amending Title 13 of the Broomfield Municipal Code to change water, wastewater and reclaimed wastewater fees and service charges, and Ordinance 2255 - Establishing a stormwater utility enterprise and setting monthly stormwater service charges.

#### Attachments

[2024.10.01 Memo\\_ Public Hearing of 2025 Budgets for CCOB, ALID, BURA and Utility Rates.pdf](#)  
[Ordinance No. 2253 Amending Water, Sewer, and Reclaimed Water Fees .pdf](#)  
[Ordinance No. 2255 Creating Stormwater Enterprise and Setting Stormwater Service Charges.pdf](#)

# Summary

[View Correspondence](#)

## 2025 Budget Public Hearing

The purpose of the public hearing is to provide all interested parties an opportunity to provide comments regarding the [2025 Proposed Budgets](#), including [Capital Improvement Programs](#), before Council consideration for the adoption of the budgets for the City and County of Broomfield, Arista Local Improvement District, and the Broomfield Urban Renewal Authority.

The proposed budgets and related documents were available for public review and comment on [Broomfield.org/Finance](https://broomfield.org/Finance) on September 5, 2024.

The Proposed Resolutions to approve the 2025 Budgets for each entity are scheduled for consideration by the City Council at the October 22, 2024 Council meeting.

## Enterprise Ordinances

City Council held study sessions on [July 16, 2024](#), and [September 17, 2024](#), to review staff's recommendations regarding utility enterprise rate increases. Given the significant impact on the community, staff also initiated several additional in-person outreach, engagement, and educational opportunities; a community forum was held on July 25, 2024, and two utility workshops were held on August 22, 2024, and September 5, 2024. Additionally, a [website](#) was developed and rolled out to serve as a central repository for all information/documents/studies/data and communications.

The memorandum prepared for the July 16, 2024, study session included the specific recommendation, background information, an overview of the enterprise funds, information regarding existing and future infrastructure needs in Broomfield, and the next steps.

The September 17, 2024, study session included time for Broomfield's consultant, AECOM, to provide an overview [presentation](#) regarding their asset management report findings. Staff also provided an opportunity for the City Council to consider a revised proposal regarding how to fund the recommended rate increase. The revised proposal utilized approximately \$2.25M of general fund revenue annually to support the water utility revenue, thereby reducing the 2025 base charge for residential users by \$5 for five years.

The council discussed the revised proposal and directed staff to proceed with the originally recommended utility rate increase from July 16, 2024, and not to utilize general fund revenue to support the water utility fund.

To ensure the Enterprise funds' financial sustainability and resiliency, staff recommends the Council's consideration and approval of fee increases for water, sewer, reuse, and stormwater services (as outlined below) as part of the 2025 Proposed Budget. Staff anticipates that continued adjustment in future years should be expected due to the annual application of the utility long-range model and ongoing changes related to infrastructure support.

## Financial Considerations

### 2025 Budget

The [2025 Proposed Budget](#) document outlines the financial considerations related to this agenda item. Specifically, it provides the 2025 budget information for the City and County of Broomfield, Broomfield Urban Renewal Authority, and the Arista Local Improvement District.

### Enterprise Ordinances

Ordinances 2253 and 2255 outline the financial considerations related to this agenda item.

## Prior Council or Other Entity Actions

### 2025 Budget

[August 20, 2024](#): Staff provided information and insights to inform the Council on Broomfield's economic and financial outlook, influencing the 2024 revised budget and the 2025 operating and capital proposed budgets.

[August 22, 2024](#): Staff provided an overview of how Broomfield intends to fulfill the community goal of financial sustainability and resilience at the Broomfield 101: Economic and Fiscal Update Community Forum.

[September 4, 2024](#): The City Council received the 2025 Proposed Budget and supporting documentation.

[September 5, 2024](#): The 2024 Proposed Budget and supporting documents were made available for public view and comments on the City's website.

[September 12](#) and [September 19](#), 2024: Study Sessions to discuss the 2025 Proposed Operating & Capital Budgets with department representatives.

### Enterprise Ordinances

[July 16, 2024](#): Staff provided an overview to City Council in a Broomfields Enterprise Funds study session and initial recommendation on utility rate adjustments.

[July 25, 2024](#): Staff hosted a Public Forum related to the current status of the Enterprise operations and recommended utility rate increases.

[August 21, 2024](#): Staff hosted a utility workshop at the Broomfield Community Center. During the event, the staff answered questions and hosted a Q&A session.

[September 5, 2024](#): Staff hosted a second utility workshop at the George Dicero Municipal Building. During the event, the staff answered questions and hosted a Q&A session.

[September 17, 2024](#): Staff provided additional information on the Enterprise operations, including a presentation from Broomfields subject matter expert consultant AECOM.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

### Budget

No action is required at this time. The purpose of this item is to hold the public hearing as required by the Charter.

## Enterprise Ordinances

If the Council desires to approve the changes to the Broomfield Municipal Code, it is recommended...

- That Ordinance No. 2253 be adopted on the first reading and ordered published in full.
- That Ordinance No. 2255 be adopted on the first reading and ordered published in full.
- That a public hearing on the ordinances be held at 6:00 pm on October 22, 2024 as allowed by City Council Procedures and Rules of Order.
- That a second and final reading of the ordinances be scheduled on October 22, 2024 following the public hearing.

**Effective Date:** If approved, changes to the Broomfield Municipal Code related to water, sewer, water reclamation, and stormwater charges and fees as set forth in these ordinances would be effective January 1, 2025.

## Alternatives

Approve or modify the 2025 Proposed Budget. Non-material modifications would be amended for the October 22, 2024 final approval. Larger, material changes would be approved as proposed and later amended in an amendment early in 2025.

## Background - Budget

Broomfield has grown and evolved significantly over the past twenty years from an emerging suburban community into a large, thriving urban-suburban community. Since the consolidation of our community in 2001, Broomfield has provided effective and efficient city and county programs and services. Today, Broomfield is home to over 76,000 residents, living in more than 35,000 housing units and thousands of businesses. While much of Broomfield's 34 square miles is built out, there is a continued focus on developing and evolving while maintaining long-term financial sustainability and resilience.

## Planning for a Financially Sustainable and Resilient Future

The 2025 budget is the culmination of four years of effort as our community shifted from a reactionary stance necessitated by the pandemic to focusing on stabilization, assessment, and planning for the future. The decisions made over the past three years, during and after COVID, were guided by conservative revenue projections, reasonable cost assumptions (expenses), deploying strategic development decisions, effectively managing staffing patterns, and using data-driven decision-making models to keep operational costs in check.

The 2025 proposed budget reflects the organization's continued focus on balancing current needs and obligations while preparing to meet the organization's and community's future needs by prioritizing expenditures into Mandates, Obligations, and Critical needs. Broomfield's economic fundamentals continue to provide sustained economic and employment opportunities while ensuring a sound fiscal base for CCOB budgets.

As our community matures, it requires a shift in how and what Broomfield prioritizes in expenditures, focusing on reinforcing the foundational components of our infrastructure by prioritizing, repairing, and replacing critical infrastructure and utilizing a disciplined decision-making approach for future approvals. Our future economic and fiscal success will depend on making decisions within the changed dynamic of a mature community, focusing on and balancing redevelopment and catalytic opportunities, economic foundations, financial principles, and budget and program choices.

Broomfield's economic and financial position remains strong, as reflected by the financial, IT, and professional service industries, representing 31.0% of the employment in Broomfield, compared to 20.0% of the employment in the metro area. These firms and jobs contribute significantly to higher average wage levels for employees and residents. Broomfield's higher concentration of these businesses and jobs, exceeding the metro growth (at a higher rate than most other metro areas), strengthens Broomfield's economic foundation.

Business development outreach and retention have emphasized this sector in the past year while supporting value manufacturing and retail/dining. Commercial space has grown by about 1.5M square feet since 2022, or about 6%. In 2023/24, over a million square feet of highly sought-after flex and workspaces, including Connect 25 and new buildings on the Baseline Innovation Campus, were completed or started. The Simms Technology Park is currently under construction, with spaces anticipated to be available in 2025/26.

The former Sandoz and Mile High Labs building has been purchased by SKB, which specializes in adaptively redeveloping older commercial spaces into innovation and technology spaces. This site/building opportunity will catalyze reuse and reinvestment in Broomfield's core manufacturing and commercial areas along the industrial lane.

Finally, Broomfield's long-standing economic driver, Flatiron Crossings, has begun phase one of three, which includes redevelopment south of the main mall building, a 2.5-acre central outdoor amenity plaza, and 49,628 square feet of new restaurant, retail, and entertainment uses.

The upcoming budget continues to be guided by conservative revenue projections, reasonable cost growth assumptions, strategic development decisions, effective management of staffing and patterns, and data-driven decision-making models to keep operational costs in check while moderating risk impacts in uncertain times. Two primary local revenue sources, property tax and sales/use tax, exceeded expectations during this period. However, both are expected to have minimal growth in upcoming budget years.

In the year ahead, honoring our commitments means investing in what we have previously committed to while prioritizing additional spending as we make decisions in an increasingly volatile environment. This proposed spending plan recognizes that our community looks to their local government as innovators and leaders on these issues. It supports this influential work by refocusing and committing to the identified Community Goals, with the fundamental goal of Fiscal Sustainability remaining paramount to a healthy and robust future.

## Emphasis on Prioritizing Needs

As Broomfield continues to sustain its economic and financial success, our strategic approach includes a prudent and pragmatic fiscal approach to anticipate and withstand future economic or financial disruptions in the short and long term.

The proposed 2025 budget prioritizes expenditures in the following categories: meeting mandates and fulfilling legal obligations.

**Mandates:** Regulatory requirements issued by the federal or state level that result in the need to fund, often unfunded initially.

**Obligations:** Contractual requirement or agreement.

**Critical Need:** Essential to the effective operations of the organization. Failure to fund would result in a threat to public health, the environment, or community safety or would create a more significant liability or risk to the organization.

**Other:** Requests or needs that do not fit into one of the different categories but are needed by departments or the organization to meet the needs of residents or the community related to quality of life. (*I.e. Replacement of Ash Trees, Parks & Recreation operations, programs/projects, iworqs AI road rating software upgrade*)

Any funding request not categorized by a mandate, critical need, or obligation but necessary to provide current/ongoing programs and services would be defined as an ‘other’ for funding consideration. The ‘Other’ category generally includes projects in parks and recreation, which, though very necessary, are considered amenities as we emphasize higher prioritized funding.

Based on the disciplined approach above, a multi-functional staff team designed an equitable, repeatable framework that is in alignment with community goals and prioritization funding categories listed above. Through this process all departmental financial requests are reviewed, rated, discussed, and recommended to the City Manager’s Office for consideration. This framework builds a culture of cost management while integrating an equity component to ensure all of Broomfield is considered.

Given the challenges and uncertainty in the economy and marketplace, the 2025 Proposed Budget relies on conservative fiscal policies and projections supporting balanced annual spending. The 2025 Proposed Budget was built using a combination of council direction with existing planning documents, including, but not limited to, the Comprehensive Plan, the Long Range Financial Plan, and financial/economic modeling, to synthesize the work over the past several years of taking a comprehensive methodological approach to Broomfield’s future.

## 2025 Areas of Focus & Key Highlights

- Continue to focus on the bond rating evaluation: General Obligation (GO): Broomfield has not acquired any additional GO debt since 2017. Broomfield remains committed to maintaining and increasing our existing Aa3 bond rating, which means the organization has a “superior ability to repay short-term debt obligations.” The 2017 CCOB’s General Obligation bond is on Moody’s watch list for a possible upgrade soon. This high rating is essential as having debt less than 5% of your revenues is considered appropriately leveraged and reflects the government’s ability to repay debt.
- Seek opportunities to increase grant funding as part of efforts to diversify revenue sources. In 2023/2024, CCOB received 69 grants between new grant applications and recurring grants that carry over from year to year. Twenty-five grant applications were submitted in 2024, and 11 have been awarded, totaling approximately \$4.0M. 2025 brings an increased effort to pursue grant funding.
- Annual Pavement Resurfacing: The 2025 proposed budget includes \$8.2M for pavement management maintenance, a 114% increase from 2019.
- Police/Courts Facility (Design), with construction anticipated to begin in 2026.
- Achieve & Maintain a goal of 20% reserves beginning in 2025.
- Development of the former Event Center site: A request for proposals (RFP) for the site’s redevelopment is scheduled to be released early in the fall of 2024, as the contract for demolition will be considered by the City Council in the coming month. This redevelopment of the soon-to-be vacant site is expected to be a revenue generator consisting of a mixed-use, high-density development—a shopping, entertainment, working, and living draw to the community.
- Selection of the City and County Enterprise Resource Planning (ERP) Software that will modernize our existing 30+ year manual/spreadsheet system.
- Update the 2016 Comprehensive Plan starting in 2025, providing the Council, community, and our organization an opportunity to play a critical role in shaping the vision for the next decade and beyond.
- Developing the first strategic plan to guide the organization’s work plan for 2-3 years.

- Issuance of three bonds: one General Obligation bond for the PD/Courts and two in the Enterprise Funds for the Water Tanks & Wastewater Expansion - Phase I.

This list alone requires us to be especially prudent in the upcoming year and the next few years. This means we are making choices in a constrained environment and must be strategic. In 2025, we need to examine all our work critically and continue the approaches we started in 2021 to budget for Fiscal Sustainability. As we gain better insights into programmatic outcomes, we must be willing to make courageous decisions to stop programs or services that are not meeting our expectations or are no longer necessary.

## Budget Process and Philosophy

Last year, for the 2024 budget, staff embarked on a process improvement initiative ensuring an intentional, transparent, and understandable annual budget process, which included a future-focused, fiscally sustainable approach. The budget is a planning tool that must remain flexible and responsive to organizational and community needs. Staff worked on a comprehensive, clear, and transparent approach to bringing forward budget amendments for the Council's review and consideration and for transparency for Broomfield residents. In year two, with the 2025 budget, staff worked to refine the process, streamline where appropriate, yet expand the transparency through communication and inclusion.

A significant step was consolidating the number of budget amendments from previous years to allow for the ability to track the cumulative impact of all budget decisions. Each budget amendment is now designed to address specific topic areas outlined below.

**Budget Amendment 1 (Q1):** reflects the carryover of capital and grant projects from the prior fiscal year and any additions to operational budgets (i.e., increased cost for Spring Cleanup).

**Budget Amendment 2 (In conjunction with adopting the following fiscal year's budget; Q4):** reflects the current state of actual revenues and expenditures, including any supplemental requests, and sets the foundation for the following year's budget. This amendment also includes the prior year's audited financials (actual beginning fund balances), which helps inform the ability to fund future year financial shifts.

**Budget Amendment 3 (Q4):** if needed, addresses grants, which often require financial adjustments based on project or program status of implementation and execution due to the timing of the grant award.

As a result of the March 3, 2023 Council Focus Session, the 2023, 2024, and 2025 Community Goals were solidified with an emphasis on Goal #1: Financial Sustainability and Resilience. Current and future budgeting processes are designed to ensure operational and capital success, focusing on creating a culture of accountability and intentionality while basing the budget on revenue and expenses. This helps to drive forward a sustainable, disciplined structure of reallocating funds and not continuing to increase expenditures arbitrarily.

## 2025 Budget Highlights

### Revenue Projections

Broomfield expects minimal growth in our major revenues, including property and sales taxes. These two revenue streams account for approximately 64% of Broomfield's revenue base and are only expected to increase by 3% collectively from 2024 revised to 2025 proposed budget.

Of our two major revenue streams, property tax is becoming more volatile and more difficult to project due to uncertainty surrounding property tax legislation and its impact. The 2025 budget only projects a 1% increase in property tax revenue, primarily due to new properties coming onto the tax roll.

Across all revenue streams<sup>1</sup>, 2025 projected revenues are expected to decrease by 2% from \$335 million to \$328 million per Table 1C of the proposed budget. This decrease is primarily driven by reductions in building permit and use tax revenues. Decreases in intergovernmental revenues, specifically the lack of federal revenues related to the American Rescue Plan Act funds in 2025.

The 2025 proposed budget was built with the revised Utility Rates for water and sewer and the creation of a Stormwater Utility. Any adjustments or direction related to utility rates impacting budget revenues and expenditures will be implemented in the first budget amendment 2025.

## Expenditure Projections

Broomfield continues to monitor the ongoing uncertainties surrounding the economic environment and is prepared to react as needed. The budget process is an example of staff working collaboratively to mitigate the impacts of these uncertainties.

Operational expenditures are expected to increase by 5.7% (Table 3B) from the 2024 revised budget to the 2025 proposed budget.

Total expenditures, which include the operating, capital, additions to reserves, and debt service obligations across all funds, is an estimated \$579 million, excluding inter-fund transfers. This represents a decrease of 12% in expenditures from the 2024 revised budget to the 2025 proposed budget.

## Personnel

Over the last three years, Broomfield has implemented a market-driven, competitive compensation philosophy to lead the market. This was based on the legal requirements to comply with new federal equal pay mandates and aligned with the City Council's direction on employee compensation. In year four, Broomfield is working to maintain the progress. Human Resources completes market evaluations every other year to ensure positions within CCOB are paid competitively against the Denver Metro market. This data is used to project salaries and personnel costs for the proposed budget. Ongoing personnel costs and adding new positions to meet the community's needs are the primary drivers of the 5.7% operational budget increase referenced in the expenditures section.

Expenditures: 2025 Personnel Changes*			
Department	FTE Change	Personnel Costs**	Notes
Community Development	2.30	\$ 346,948	Administrative Support III (0.3), Senior Transportation Planner (1.0), CIP Project Manager (1.0)
Economic Vitality & Development	1.70	\$ 140,661	Administrative Support III (-0.3), Administrative Support II (1.0), Administrative Support II-LTA (1.0)
Finance	1.00	\$ 144,509	Sales Tax Administrator (1.0)
Information Technology	2.20	\$ 301,320	Administrative Support III (0.2), IT Security Analyst (1.0), Customer

<sup>1</sup>From Table 1C (Includes Total Taxes, Licenses & Permits, Intergovernmental, Charges for services, Contributions & Project Participation, Fines & Forfeitures and Interest Earnings & Misc Revenue)

			Success Specialist III (1.0)
Library & Cultural Affairs	4.10	\$ 342,052	Administrative Support IV (0.2), Librarian I (0.3), Patron Services Associate (2.6), Volunteer & Program Coordinator (1.0)
Open Space & Trails	1.20	\$ 114,441	Administrative Analyst (0.2), Open Space & Trails Technician (1.0)
Parks, Recreation, & Senior Services	0.50	-	Parks Technician II (0.5)
Police	5.80	\$ 494,640	Animal Services Officer (1.0), Civilian Traffic Investigator (1.0), Code Compliance Officer (1.0), Court Security Officer (1.0), Civilian Report Specialist (1.0), Concealed Handgun Permit Technician (0.8)
Public Works	7.00	\$ 778,933	Diesel & Generator Technician (1.0), Master Pipe Fitter (1.0), Building Maintenance Technician (1.0), Low Voltage Telecommunication Apprentice-LTA (1.0), Streets Foreman (1.0), Instrumentation & Controls Technician (1.0), Pond Water Quality Coordinator (1.0)
<b>Total</b>	<b>25.80</b>	<b>\$ 2,663,504</b>	
*Includes internal transfers.			
**Personnel Costs are based on 2024 Actual for filled positions and Mid-Point for vacant positions and est. taxes and benefits			

## Non-Personnel

Non-personnel-related expenses include the supplies, equipment, and contractual service costs necessary to provide the programs and services in Broomfield. Some examples include:

- Fuel
- Vehicle Maintenance Supplies (i.e. air & oil filters, tires, etc)
- Electronic Equipment (i.e. telephones, computers, headsets, etc)
- Training and Development of staff
- Professional Services (i.e. outside auditors, specialized legal services)
- Insurance expenses
- Utilities
- Software (Annual License Fees such as Google)

As part of the budget process, the budget staff meets with departments to discuss non-personnel requests and the drivers of individual items. Items like fuel are a basic necessity for the organization to accomplish its work and are subject to market conditions; thus, Broomfield has very little control over this type of expenditure. For other non-personnel items, the organization manages costs by finding alternatives or adjusting work procedures to eliminate or minimize expenses wherever possible.

Below is a list of some highlights of the 2025 operating budget.

2025 Operating Budget Highlights		
Department or Category	Description	Amount
City and County Clerk	New Motor Vehicle Kiosk	\$ 25,000
Economic Vitality	Expansion of Enhance Broomfield	100,000
Human Resources	Cornerstone Integrated Applicant Tracking System (ATS)	55,000

Information Technology	Digital Accessibility Tools & Consulting Services, GIS Easement Data Conversion, broomfield.org to broomfield.gov Conversation, Google Assured Controls	250,000
Public Works - General Government	Air-Compressor Professional Services, iWorQ AI Road Rating Software Upgrade	91,500
<b>Total</b>		<b>\$ 521,500</b>

## 2025 Capital Improvement Plan Considerations

Using a conservative approach and understanding the constraints of Broomfield’s finances, staff will continue to evaluate and prioritize projects based on mission essentials and those that affect the health and safety of the community. To proactively prevent unintended consequences with any changes in the funding of CIP, staff will continue to seek guidance from the Council.

The [2025 Five Year Capital Improvement Project](#) (CIP) Plan was developed in a parallel process at the same time as Broomfield’s operating budgets. This process included an extensive year-long collaboration across all departments to ensure that all projects and community requests were considered. CIP requests are rated and prioritized using the same “buckets” described earlier in the document. Ensuring that our limited resources are focused on mandates, obligations, and critical infrastructure projects reinforces our financial sustainability and resilience goal. Finally, staff has worked to shift the focus of funding from new capital projects towards preventative maintenance, repair, and rehabilitation to ensure that Broomfield is focusing efforts on adequately addressing its existing infrastructure.

The 2025 budget for Capital Projects includes \$54.6 million in expenditures for the General Governmental Funds and \$47.7 million in expenditures for the Utility Funds.

## 2025 Broomfield Urban Renewal Authority Budget

The Broomfield Urban Renewal Authority (BURA) was organized to finance various improvement projects within the Authority’s boundaries. Incremental tax revenues, including sales, use, and property, are the primary funding sources for BURA.

2025 BURA revenues are budgeted at \$70,511,588, representing a slight decrease compared to the 2024 revised BURA budget. BURA expenditures in 2025 are budgeted at \$54,215,747. BURA also pays the City and County of Broomfield to cover administration costs and professional services related to the development of urban renewal areas. The 2025 budget includes \$5,485,838 for administrative and professional services expenditures.

## 2025 Arista Local Improvement District Budget

The Arista Local Improvement District (ALID) was established to facilitate the construction of transportation facilities in the Arista Development. The ALID is supported by a 0.2% sales tax collected on all taxable sales within its boundaries, and the revenue generated by the tax has been pledged to support Arista Metro District’s(AMD) debt service on bonds sold to construct the parking structure.

The only allowable use of the revenue is to support the funding of public transportation services or improvements, the 2025 budget for the ALID exists solely to authorize payments to AMD, as noted. The 2025 proposed ALID budget includes \$45,000 in sales tax revenue and \$45,000 in expenditures related to the AMD debt service for the construction of the parking structure.

# Background - Enterprise/Utility Fee

Subsequent to working with the Royal Bank of Canada (RBC) to solidify the 20+ year effort of the Windy Gap firming project in 2020, beginning in 2021, with the support of the Council, staff began an intentional journey to identify outstanding commitments related to existing developer agreements, financial obligations, and other long-standing commitments. Staff also began to shift a decades-long operational philosophy primarily focused on new infrastructure to a more balanced approach, shifting focus to prioritize years' worth of deferred maintenance of Broomfield's most critical infrastructure assets. The long-standing philosophy relied heavily on growth and development to pay for new and existing infrastructure, which has proven unsustainable.

The cumulative effect of historical focus on new infrastructure and deferred maintenance, years-long stagnation of Broomfield's utility rates not keeping pace with service costs, increasing regulations, unfunded mandates, and unprecedented inflation has led Broomfield to a critical crossroads.

To ensure the short and long-term solvency of Broomfield's existing Enterprise (Utility) funds and to meet the community's current and future service demands, changes are not only recommended to Broomfield's utility rates but vital to secure Broomfield's future financial and operational sustainability. These increased fees are critical to the reliability of our system, our ability to meet water demands, and the health and safety of our water system. Additionally, as part of the proposed budget, we have included a Stormwater Enterprise Fund to account for operational costs associated with these activities.

The 2025 Proposed Budget includes adjusting the water and sewer utility rates as presented at the July 16, 2024 study session, reclaimed water license fees, and implementing a stormwater fee. The First Reading to Amend Broomfield Municipal Code Sections 13-12-010 and 13-02-020 to Change Monthly Water Service Charges and Sewer Service Charges and initiate a Monthly Stormwater Service Fee is being considered in coordination with the adoption of the 2025 Budget.

Subsequently, staff has hosted a number of study sessions and workshops to provide detailed information and a forum for residents' questions about the proposed fee increases. All information related to the Utility fees can be accessed on the [City's website](#).

To determine the original recommended utility rate increase as proposed in the July 16, 2024, study session, staff relied on multiple studies, plans, and sources of information. Staff has included links to the key documents on the [Utility Enterprise Funds website](#).

Some of the most frequently referenced documents are listed below for ease of reference:

- [Willdan Rate Study Report](#) from August 2022
- [Wastewater Master Plan](#) from October 2023
- AECOM Asset Management Report
  - [AECOM Asset Management Kickoff](#)
  - [AECOM Executive Summary](#)
  - [AECOM CCOB Assessment Summary](#)
  - [AECOM CCOB State of Good Repair-2024 Water, Stormwater, and Wastewater Analysis](#)
- Memorandums from the following meetings have additional linked resources:
  - [July 19, 2022](#), study session of the Utility Rate Study Review

- [October 25, 2022](#), final and second reading changes to the monthly water and sewer service
- [September 19, 2023](#), study session regarding Annual Utility Rate Review, Yield, and Recommendations
- [October 24, 2023](#), final and second reading approving changes to the monthly water and sewer charges and license fees
- The [presentation](#) prepared for the public forum on enterprise funds includes additional information on unfunded mandates, the impact of inflation on infrastructure costs, and the recommended rates.

Additional information shared at utility workshops: [Water Affordability](#), [Maintaining Broomfield Water Utilities](#), [Critical Crossroads](#), [Prior Utility Fee and Rate Increases](#)

Unfortunately, Broomfield and many other communities along the Front Range are finding themselves in the middle of a perfect storm. On June 13, 2024, The Colorado Sun published an article titled [“Has your water bill gone up?”](#) that provides insights to the financial challenges local water utilities have in adapting to increasingly stringent environmental regulations and infrastructure repairs or aging pipelines, pumps and facilities.

## Proposed Recommendations: Water, Sewer, and Stormwater Rates

Below is an overview of each enterprise fund, including proposed increases related to each fund and a proposal for adding a dedicated funding mechanism for a stormwater enterprise fund.

### Estimated Impact Per Average Single Family Home

Single Family Residential - Average Monthly Bill					
	Rates		Average Bill *		Monthly Difference
	Existing 2024	2025 Proposed	Existing 2024	2025 Proposed	\$
Water Flat Rate	\$16.93	\$36.91	\$16.94	\$36.91	\$19.97
Water Usage	tiers	no change	\$27.23	\$27.23	\$0.00
<b>Water Service*</b>			<b>\$44.17</b>	<b>\$64.14</b>	<b>\$19.97</b>
Sewer Cost/1,000 gallons	\$4.46	\$5.44	\$26.76	\$32.64	\$5.88
Fed Mandate Charge	\$0.52	\$0.52	\$3.12	\$3.12	\$0.00
SW - Compliance Fee	\$6.00	\$9.00	\$6.00	\$9.00	\$3.00
<b>Sewer Service*</b>			<b>\$35.88</b>	<b>\$44.76</b>	<b>\$8.88</b>
<b>Stormwater Service</b>	\$0.00	\$11.00	<b>\$0.00</b>	<b>\$11.00</b>	<b>\$11.00</b>
<b>Total Bill</b>			<b>\$80.05</b>	<b>\$119.90</b>	<b>\$39.85</b>
* based on 9,000 gallons for water and 6,000 gallons for sewer.					
9,000 gallon/month based on 4 year historical average of 107,000 gallons per year for single family 0.75 inch					

### 4-Year Outlook - Single Family Home

Projected Average Monthly Bill				
	2025	2026	2027	2028
Anticipated Bill	\$119.90	\$138.05	\$148.11	\$158.22

The projected average monthly bill for 2025 has increased from prior year projections to ensure adequate funding for ongoing operating costs, necessary capital projects, and repair and replacement.

### Estimated Impact for Apartments

Apartment - Average Monthly Bill					
	Rates		Average Bill *		Difference
	Existing 2024	2025 Proposed	Existing 2024	2025 Proposed	\$
Water Base Fee	\$16.93	\$36.91	\$16.94	\$36.91	\$19.97
Water Usage	\$2.55	\$2.55	\$7.65	\$7.65	\$0.00
<b>Water Service*</b>			<b>\$24.59</b>	<b>\$44.56</b>	<b>\$19.97</b>
Sewer Cost/1,000 gallons	\$4.46	\$5.44	\$17.84	\$21.76	\$3.92
Fed Mandate Charge	\$0.52	\$0.52	\$2.08	\$2.08	\$0.00
Env Compliance Fee	\$6.00	\$9.00	\$6.00	\$9.00	\$3.00
<b>Sewer Service*</b>			<b>\$25.92</b>	<b>\$32.84</b>	<b>\$6.92</b>
<b>Stormwater Service</b>	<b>\$0.00</b>	<b>\$6.60</b>	<b>\$0.00</b>	<b>\$6.60</b>	<b>\$6.60</b>
<b>Total Bill</b>			<b>\$50.51</b>	<b>\$84.00</b>	<b>\$33.49</b>
* based on 3,250 gallons for water and 4,000 gallons for sewer.					
3,250 gallon/month based on 2 year historical average of 39,000 gallons per year for residential multi-unit homes					

## Proposed Recommendations: Water, Sewer, and Reuse License Fees

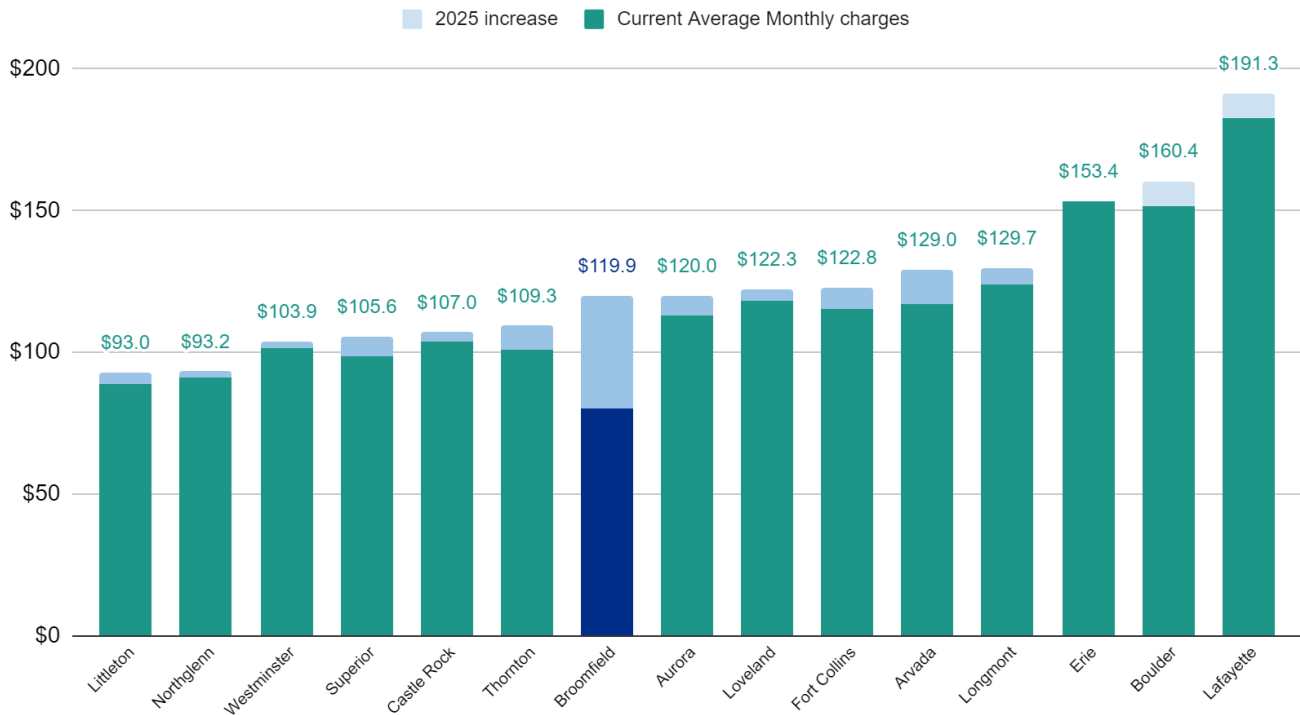
The proposal is to increase license fees for each fund in line with CPI or roughly 4%.

- Increase the water license fee from \$36,400 to \$37,850
- Increase the sewer license fee from \$14,320 to \$14,900
- Increase the reuse license fee from \$13,240 to \$13,780

## Front Range - Average Monthly Bill Comparison

The graph below includes Broomfield's total average monthly utility bill for water, sewer, and stormwater compared to our neighboring municipalities. The comparison reflects where Broomfield is currently and how it would compare if the Council approves proposed utility rates. The average monthly bill is normalized across all municipalities based on 9,000 gallons of water usage and 6,000 gallons of Average Winter Consumption (AWC) for sewer charges.

## Front Range - Total Average Monthly Bill



The degree to which neighboring municipalities increase their utility rates depends highly on how well they have managed their Enterprise funds over the past decade, the growth versus expense challenges the municipality faces, and other factors unique to each entity.

## Fee Structure

Historically, a larger share of the revenues for the water fund have come from license fees and usage rates. These sources of revenue can vary considerably from year to year based on development activity and weather, respectively. The monthly base rate for residential and commercial customers provides a more stable revenue stream to ensure that necessary water projects, maintenance, and operations are supported. That is why the primary proposal is to increase the base rate.

## Fund Balance Projections

Below is an overview of the currently projected fund balances for the Water and Sewer funds from 2024 through 2029. These projections include the proposed rate increases.

## Water Fund

(\$M)	2024 Revised	2025 Original	2026 Plan	2027 Plan	2028 Plan	2029 Plan
Beginning Water Fund Balance	\$56.9	\$20.8	\$19.4	\$11.5	\$6.8	\$11.8
Charges for Services	\$22.9	\$32.2	\$37.5	\$40.7	\$43.8	\$44.7
License Fees	\$15.0	\$11.5	\$18.0	\$18.9	\$19.7	\$17.5
Miscellaneous Revenue	\$2.0	\$2.0	\$2.0	\$2.0	\$2.0	\$2.0
<b>Total Revenue</b>	<b>\$39.9</b>	<b>\$45.7</b>	<b>\$57.5</b>	<b>\$61.5</b>	<b>\$65.4</b>	<b>\$64.2</b>
O&M Expenses	\$23.2	\$23.2	\$24.4	\$25.7	\$26.5	\$27.3
Debt Payments	\$8.7	\$8.7	\$8.7	\$14.2	\$14.2	\$14.2
CIP	\$44.0	\$15.2	\$32.4	\$26.3	\$19.7	\$67.3
<b>Total Expenses</b>	<b>\$75.9</b>	<b>\$47.1</b>	<b>\$65.4</b>	<b>\$66.2</b>	<b>\$60.4</b>	<b>\$108.8</b>
Ending Water Fund Balance	\$20.8	\$19.4	\$11.5	\$6.8	\$11.8	(\$32.7)

## Sewer Fund

(\$M)	2024 Revised	2025 Original	2026 Plan	2027 Plan	2028 Plan	2029 Plan
Beginning Sewer Fund Balance	\$84.0	\$77.6	\$61.3	\$31.3	\$35.7	\$39.0
Charges for Services	\$14.0	\$18.0	\$22.0	\$24.8	\$27.8	\$30.1
License Fees	\$11.9	\$9.4	\$14.0	\$14.5	\$14.3	\$14.0
Miscellaneous Revenue	\$2.7	\$2.2	\$3.7	\$2.2	\$2.2	\$2.2
<b>Total Revenue</b>	<b>\$28.6</b>	<b>\$29.6</b>	<b>\$39.6</b>	<b>\$41.5</b>	<b>\$44.3</b>	<b>\$46.3</b>
O&M Expenses	\$11.9	\$11.8	\$12.1	\$12.4	\$13.0	\$13.4
Debt Payments	\$2.4	\$2.5	\$2.5	\$11.6	\$11.6	\$11.6
CIP	\$20.8	\$31.6	\$55.1	\$13.1	\$16.4	\$70.1
<b>Total Expenses</b>	<b>\$35.1</b>	<b>\$45.9</b>	<b>\$69.7</b>	<b>\$37.1</b>	<b>\$41.0</b>	<b>\$95.2</b>
Ending Sewer Fund Balance	\$77.6	\$61.3	\$31.3	\$35.7	\$39.0	(\$9.8)

## Utility Rate Assistance

The Council and the staff are aware that any rate increase could adversely affect a portion of Broomfield's population. As part of the utility rate analysis, a support fund will be established to assist those with financial hardship. The program will be administered by Broomfield's Housing Division, which also administers the partial property tax refund program. Operating these two programs together will streamline the process for many residents who may qualify for both programs.

This program will set aside a portion of the base rate. The maximum amount would be \$250 annually for income-qualified households. This would be tracked on a calendar year basis. The program will be communicated to the general public once it has been solidified and before the rate increase is implemented in early 2025.

## Next Steps

### 2025 Proposed Budget

Staff is seeking Council and public comments regarding the proposed 2025 Operating and Capital Budgets for the City and County of Broomfield, Arista Local Improvement District, and Broomfield Urban Renewal Authority. The proposed 2025 budgets for all entities will be presented to the City Council on October 22, 2024, for consideration and final adoption.

### 2025 Enterprise Funds

If the City Council adopts Ordinance Nos. 2253 and 2254 on first reading, then a public hearing and second reading of the ordinances will be scheduled for October 22, 2024, to be held concurrently considering the 2025 proposed budget. Pending approval of Ordinances 2253 and 2254, the rates will be effective beginning January 1, 2025, with the first bills due in February 2025 (billed in arrears).

**Bold type** indicates new material to be added to the Broomfield Municipal Code  
~~Strikethrough type~~ indicates deletions from the Broomfield Municipal Code

## ORDINANCE NO. 2253

An ordinance amending Title 13 of the Broomfield Municipal Code to change water, wastewater, and reclaimed wastewater fees and service charges

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

### Section 1. Water License

Section 13-02-020 of the Broomfield Municipal Code is hereby amended to read as follows:

13-02-020 Water license fee.

Water licenses may be purchased from the city at a fee of ~~\$36,400~~ **\$37,850** per three-quarter-inch equivalent tap. Tap fees and meter fees are separate and additional.

### Section 2. Sewer License

Section 13-08-020 of the Broomfield Municipal Code is hereby amended to read as follows:

13-08-020 Sewer license fee.

Sewer licenses may be purchased from the city at a fee of ~~\$14,320.00~~ **\$14,900** per equivalent sewer tap.

### Section 3. Water Service Charges

Section 13-12-010 of the Broomfield Municipal Code is hereby amended to read as follows:

13-12-010 Monthly water service charges.

(A) Residential water service charges. Residential customers shall be charged a flat monthly charge and for the monthly volume of water used from the city water system as set forth below:

(1) Flat monthly charge (no gallonage included):

Customer Type	Flat Monthly Charge
Single-Family ¾ inch	<del>\$ 16.93</del> <b>\$ 36.91</b>
Single-Family 1 inch	<del>\$ 28.24</del> <b>\$ 36.91</b>
Multi-Family (per dwelling unit)	<del>\$ 16.93</del> <b>\$ 36.91</b>

(2) Charge for all water use:

Monthly Volume of Water Used	Charge (per 1,000 gallons)
1,000-5,999 gallons: defined as the first 5,999 gallons of water used in one month	\$ 2.39
6,000 - 9,999	\$ 3.82
>9,999 gallons	\$ 5.41
Multi-Family - All Use	\$ 2.55

(B) Nonresidential water service charges. All nonresidential customers shall be charged a flat monthly charge and for the monthly volume of water used from the city water system. A standby fire protection charge will also be imposed. The nonresidential water service charges are as set forth below:

(1) Flat monthly charge (no gallonage included):

Connection Size	Flat Monthly Charge
¾"	<del>\$ 16.93</del> <b>\$ 36.91</b>
1"	<del>\$ 28.24</del> <b>\$ 61.50</b>
1½"	<del>\$ 56.42</del> <b>\$ 123.00</b>
2"	<del>\$ 90.27</del>

	<b>\$ 196.79</b>
3"	<del>\$169.26</del> <b>\$ 369.00</b>
4"	<del>\$ 282.11</del> <b>\$ 615.02</b>
6"	<del>\$ 564.21</del> <b>\$1,230.02</b>
8"	<del>\$ 902.74</del> <b>\$1,968.04</b>
10"	<b>\$2,829.07</b>

(2) Charge for all water use: \$3.22 per 1,000 gallons. Nonresidential accounts shall include schools, churches, public or institutional buildings, parks, and irrigation accounts.

(3) Standby fire protection charges:

Connection Size	Monthly Charge
2"	<del>\$ 16.37</del> <b>\$ 35.69</b>
3"	<del>\$ 30.70</del> <b>\$ 66.93</b>
4"	<del>\$ 51.17</del> <b>\$ 111.56</b>
6"	<del>\$ 102.33</del> <b>\$ 223.10</b>
8"	<del>\$ 163.73</del> <b>\$ 356.96</b>
10"	<del>\$ 235.36</del> <b>\$ 513.13</b>

(D) Rates effective until changed. All monthly water service charges and nonresidential water service charges established by this Section 13-12-010 shall be in accordance with the schedule set forth herein and shall remain in effect until said charges are amended or changed by the city council.

## Section 4. Sewer Service Charges

Section 13-12-020 of the Broomfield Municipal Code is hereby amended to read as follows:

13-12-020 Monthly sewer service charges.

(A) Residential sewer service charges.

- (1) All residential accounts shall be charged a gallonage charge based on average winter water consumption. The monthly charge is ~~\$4.46~~ **\$5.44** per 1,000 gallons, or ~~\$17.84~~ **\$21.76** per dwelling unit, whichever is greater.
- (2) Any new occupant of a residential unit served by a separate connection and any new residential unit shall be charged a ~~\$26.76~~ **\$32.64** monthly sewer charge until average winter water consumption is established.
- (3) Any new multi-unit account shall be charged a monthly sewer charge of ~~\$26.76~~ **\$32.64** per dwelling unit until average winter water consumption is established.
- (4) Average winter water consumption shall be the average water consumption for the monthly bills reflecting usage between November 1 and the following March 31, depending on the billing cycle. The average winter water consumption for each account shall be calculated once annually and shall be the basis for determining charges for the following twelve months.

(B) Nonresidential sewer service charge.

- (1) Each nonresidential account shall be assigned by the director of public works to the most appropriate category listed in Table 13-12A, attached hereto and incorporated herein by reference. Values for concentration of BOD, COD, and TSS, as those terms are defined in chapter 13-28 of this code, will be as set forth in Table 13-12A, unless values are determined by the director of public works based on actual sampling of the effluent. Any sample taken for such purposes shall be a composite sample, as defined in chapter 13-28, B.M.C. Analysis shall be done in accordance with the procedures described in the latest edition of "Standard Methods for the Examination of Water and Wastewater," as published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. Such individual sampling and analysis will be offered by the department of public works on request of the user, at such user's expense and if requested, the sample will be split and half of the sample will be given to such user for analysis by an independent laboratory. If analysis ordered by the department of

public works and that obtained by user are significantly different, the director of public works may accept the user's analysis, or may order a new sample and analysis done at city expense. Each nonresidential customer must provide suitable access for sampling purposes.

- (2) The monthly charge for each nonresidential account shall consist of the following elements:
  - a. A gallonage charge based on year-round non irrigation water consumption. The charge is ~~\$4.46~~ **\$5.44** per 1,000 gallons, or ~~\$17.84~~ **\$21.76** per equivalent sewer tap, whichever is greater.
  - b. A surcharge for excess BOD, COD, and TSS, as determined by whichever of the following formulae produces the higher surcharge:  
  
$$S = Q (0.00833ARA + 0.00833 CRC) \text{ or where:}$$
$$S = Q (0.00833BRB + 0.00833 CRC)$$

S = Amount of surcharge (cannot be less than zero)  
Q = 100% of year-round non irrigation water consumption for the account, expressed in thousands of gallons per month (until year-round non irrigation water consumption is established, Q = 100% of total water consumption).  
A = Average BOD strength of wastewater expressed in mg/l minus 200 mg/l  
B = Average COD strength of wastewater expressed in mg/l minus 300 mg/l  
C = Average TSS strength of wastewater expressed in mg/l minus 200 mg/l  
RA = \$0.27 per pound of excess BOD  
RB = \$0.27 per pound of excess COD  
RC = \$0.19 per pound of excess TSS
- (3) Any new nonresidential account shall be charged a monthly gallonage charge of ~~\$26.76~~ **\$32.64** for each equivalent sewer tap until year-round non irrigation water consumption is established. In addition, any surcharges under subparagraph (2)b. above shall apply.
- (4) Year-round non irrigation water consumption shall be based on the average water consumption for the monthly bills reflecting usage between November 1 and the following March 31, depending on the billing cycle, calculated once annually and used as the basis for determining charges for the following twelve months. As an alternative, it may be based on the consumption shown on a metering system indicating non irrigation use only.
- (5) Equivalent sewer tap shall be as defined in chapter 13-08, B.M.C.

- (C) Annual notification. Each user will be notified, at least annually, in conjunction with a regular bill of the rate and that portion of the user charges which are attributable to wastewater treatment services.
- (D) All residential and nonresidential accounts shall be charged an unfunded mandate charge based on average winter water consumption of \$0.52 per 1,000 gallons.
- (E) All residential and nonresidential accounts shall be charged a monthly environmental compliance fee based on ~~\$6.00~~ **\$9.00** per equivalent sewer tap.
- (F) Rates Effective Until Changed. All sewer charges established by this Section 13-12-020 shall be in accordance with the schedule set forth herein and shall remain in effect until said charges are amended or changed by the city council.

[TABLE 13-12A](#)

[Table not included in the ordinance. Please see link for full table for reference.  
There are no changes proposed to the table]

## Section 5.

Section 13-32-060 of the Broomfield Municipal Code is hereby amended to read as follows:

13-32-060 - Connection fee.

For all reclaimed wastewater contracts following adoption of this chapter, the connection fee for reclaimed wastewater service shall be ~~\$13,240.00~~ **\$13,780**.

## Section 6.

This ordinance shall be published following final passage and shall be effective beginning on January 1, 2025.

Introduced and approved after first reading on October 1, 2024, and ordered published in full.

Introduced a second time and approved on October 22, 2024, and ordered published.

The City and County of Broomfield, Colorado

Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

# ORDINANCE NO. 2255

An ordinance amending Title 3 and Title 13 of the Broomfield Municipal Code to establish a stormwater utility enterprise, set monthly stormwater service charges, and establish a 10% state and local revenue cap as required by TABOR for all enterprises

## Recitals

Whereas, the City and County of Broomfield is a home rule city and constitutionally created county under Article XX of the Colorado State Constitution ("City and County"); and

Whereas, Chapter XVII of the Home Rule Charter of the City (the "Charter") gives City and County all powers with regard to the Broomfield's utilities; and

Whereas, the City and County is permitted to establish a stormwater enterprise pursuant to Colo. Rev. Stat. 37-45.1-101, *et. seq*; and

Whereas, Article X, Section 20 of the Colorado Constitution defines an enterprise to mean a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined; and

Whereas, the City and County currently has a water enterprise, sewer enterprise, and reclaimed water enterprise that are subject to the same requirements; and

Whereas, the City and County desires to create a stormwater enterprise; and

Whereas, the general health, welfare and safety of the people of Broomfield is protected and safeguarded by the accommodation of stormwater drainage and control; and

Whereas, it is necessary for the City and County to plan for and provide facilities to drain and control stormwater properly within Broomfield so that the pollution of underground and surface waters is reduced and the natural environment is enhanced; and

Whereas, the provision of stormwater drainage and control through a stormwater enterprise, a financially self-sufficient activity supported by the fees it collects, best serves the public interests identified in this ordinance; and

Whereas, like Broomfield's water, sewer, and reclaimed water enterprises, the stormwater enterprise must not receive more than 10% of its annual revenue from state and local grants; and

Whereas, the City Council has determined that it is necessary and advisable to establish a stormwater enterprise, establish the service fees, and authorize any necessary documentation in connection therewith; and

Whereas, City Council expressly does not intend any provision of this ordinance to be interpreted to relieve any person or entity of any obligation to provide or fund studies, updates or drainage facilities under any other provision of the City Code, or under any annexation agreement, contract or other obligation whatsoever, nor shall this article be interpreted to waive or affect any obligation of any person or entity to comply with any ordinance, resolution, rule, regulation, policy or tariff as it may relate to utilities, zoning, planning, subdivision or other requirement under the City Code.

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

## **Section 1.**

The recitals above are hereby ratified, confirmed and incorporated herein by reference.

## **Section 2.**

Title 3, Revenue and Finance, of the Broomfield Municipal Code is amended by adding a new Chapter 3-36 to read as follows:

### **Chapter 3-36 - Stormwater Enterprise**

#### **3-36-010 Stormwater activity enterprise created.**

There is hereby created a stormwater activity enterprise denominated the City of Broomfield Colorado Stormwater Enterprise (“Stormwater Enterprise”). The City Council shall be the governing body of the Stormwater Enterprise.

#### **3-36-020 Issue bonds, notes, other obligations.**

The Stormwater Enterprise is authorized to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits or facility or from any other available funds of the Stormwater Enterprise.

#### **3-36-030 Stormwater activities.**

The Stormwater Enterprise is authorized to conduct any stormwater activity under Colo. Rev. Stat. 37-45.1-101 *et seq*, as it may be amended, and any other applicable law.

### **3-36-040 Government-owned business .**

The Stormwater Enterprise shall be a government-owned business. The Stormwater Enterprise shall not receive any annual revenue more than ten percent (10%) of its annual revenues in grants from all Colorado State and local governments combined.

### **3-36-050 Finance, revenues, and fund.**

The Stormwater Enterprise shall finance various stormwater activities. The revenues from the stormwater activities shall be deposited by the Enterprise into a fund designated as the City and County of Broomfield Colorado Stormwater Activity Enterprise Fund.

### **3-36-060 No taxation.**

The Stormwater Enterprise shall not levy a tax which is subject to section 20(4) of Article X of the Colorado Constitution or any other general taxes.

## **Section 3.**

Title 13, Public Services, of the Broomfield Municipal Code is amended by adding a new Chapter 13-38 to read as follows:

### **13-38-010 Monthly stormwater service charges.**

#### **(A) Residential stormwater service charges**

##### **(1) Flat monthly charge shall be charged as set forth below:**

<b>Customer Type</b>	<b>Flat Monthly Charge</b>
<b>Single-Family Home</b>	<b>\$ 11.00</b>
<b>Multi-Family: Townhome / Duplex</b>	<b>\$ 8.80</b>
<b>Multi-Family: Apartment</b>	<b>\$ 6.60</b>

#### **(B) Nonresidential stormwater service charges. All nonresidential customers shall be charged monthly based on the amount of impervious square feet on the customer's property. The monthly charge will be equal to \$2.50 per 1,000 impervious square feet.**

- (C) Rates effective until changed. All monthly stormwater service charges and nonresidential stormwater service charges established by this chapter 13-38 shall be in accordance with the rates and schedule set forth herein and shall remain in effect until said charges are amended or changed by the city council.

#### **Section 4.**

Sections 3-30-040, 3-32-040, and 3-36-040 are hereby repealed and reenacted to read as follows:

The enterprise shall be a government-owned business. The enterprise shall not receive more than ten percent (10%) of its annual revenue in grants from all Colorado state and local governments combined

#### **Section 5.**

Should any one or more sections or provisions of this ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions are severable.

#### **Section 6.**

This ordinance shall be published following final passage and shall be effective beginning on January 1, 2025.

Introduced and approved after first reading on October 1, 2024, and ordered published in full.

Introduced a second time and approved on October 22, 2024, and ordered published.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

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City and County Attorney



**B. Public Hearing - Rezoning - GDC City and County and Police Buildings Ordinance Second Reading**

Meeting	Agenda Group
Tuesday, October 1, 2024, 6:00 PM	Action Items Item: 7B.
Presented By	
Lynn Merwin	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#) and visit [BroomfieldVoice.com](https://broomfieldvoice.com)

The City and County of Broomfield has submitted an application for a rezoning of Broomfield City Center Filing No. 2, Lot 2, and a portion of Lot 1 from Planned Unit Development (PUD) to the Public Facilities (PF) District. Proposed Ordinance No. 2249 if adopted on second reading would approve the rezoning request.

### **Attachments**

[GDC and Police Building Rezoning - 2nd Reading Memo.pdf](#)

[Ordinance No. 2249 GDC & Police Buildings Rezoning.pdf](#)

# Summary

[View Correspondence](#) and [BroomfieldVoice.com](#)

## Introduction

The City and County of Broomfield has submitted an application for a rezoning of Broomfield City Center Filing No. 2, Lot 2, and a portion of Lot 1 from Planned Unit Development (PUD) to the Public Facilities (PF) District.

Lot 1 is currently developed and includes the George Di Ciero City and County Building, the Broomfield Community Center (BCC) and the Bay Aquatics Park (the Bay). Lot 2 includes the Broomfield Combined Police and Courts Building.

Broomfield is proposing to rezone the approximately 12.5 acre property, located generally west of Spader Way and north of DesCombes Drive - the location of the George Di Ciero City and County Building and the Combined Police and Courts Building. The portion of the property located east of Spader Way is not a part of this rezoning request.

The PF district is a new zone district that was established by City Council on December 5, 2023 to provide greater transparency regarding the uses and development standards for properties developed as or planned for public facilities and open lands. Rezoning these parcels to PF will provide greater clarity regarding existing and any future related land uses.

The rezoning of the property will not cause any nonconforming uses for the existing buildings and will not impact the daily operations of the municipal center.

On [August 27, 2024](#), staff presented proposed Ordinance 2249 for first reading, and council approved the rezoning on first reading and scheduled a public hearing and second reading.

Proposed Ordinance No. 2249 if adopted on second reading would approve the rezoning request.

## Financial Considerations

The rezoning of this property will not result in any financial impacts to the City and County of Broomfield.

## Prior Council or Other Entity Actions

City Council approved a rezoning of the portion of Broomfield City Center Filing No. 2, Lot 1, the location of the Broomfield Community Center (BCC) and the Bay Aquatics Park (the Bay), on [June 4, 2024](#).

On [August 27, 2024](#), staff presented proposed Ordinance 2249 for first reading, and council approved the rezoning on first reading and scheduled a public hearing and second reading.

## Board and Commissions Prior Actions and Recommendations

On July 22, 2024, the Land Use Review Commission held a public hearing on the proposed rezoning request. The Commission voted 6 to 0 to recommend approval of the proposal without conditions.

## Proposed Actions / Recommendations

It is recommended that:

- Ordinance No. 2249 be adopted on second reading and be published by title

## Alternatives

Do not adopt Ordinance No. 2249 on first reading and do not schedule the public hearing.

## Project Website

<https://www.broomfieldvoice.com/gdcbuildingrezoning>

## Public Comment

[Correspondence Folder](#)

## Key Issues Identified By Staff

Staff has not identified any key issues with this application.

## Links to Application Materials

[Rezoning Request Letter](#)

## Supplemental Documents

Not Applicable

## How to Submit Public Comments on this Proposal

Email directly to [planning@broomfield.org](mailto:planning@broomfield.org)

## Property Owner and Applicant

The property owner and applicant is the City and County of Broomfield

## Staff Memorandum from the First Reading

The staff memorandum from the first reading of Ordinance No. 2249 on [August 27, 2024](#) includes a detailed discussion of the proposed rezoning. There have been no changes to the ordinance since the first reading.

## Stakeholder and Public Outreach

A neighborhood meeting for the proposed development was held on May 22, 2024. The meeting was held in person at the Broomfield Community Center. One resident attended the meeting and asked questions about the proposed rezoning. A summary of this meeting can be found [here](#).

There will also be an opportunity at the public hearing for the second reading of the proposed ordinance for additional public comments to be provided for City Council's consideration.

## Staff Review Of Key Issues

Staff has not identified any key issues as part of this application.

### APPLICABLE MUNICIPAL CODE PROVISIONS

A public hearing will be required concurrent with the second reading of the ordinance. At the conclusion of the public hearing, the City Council reviews the application based on the following provisions of the BMC.

#### REZONING

##### **17-48-020 - Procedure for rezoning.**

- A. The owner of any property may apply to the land use review commission for rezoning of his or her property. The applicant shall pay an application fee of \$650.00 for rezoning ten acres or more of land and \$250.00 for rezoning less than ten acres of land.
- B. The city manager is authorized to apply to the land use review commission for rezoning of any property within the city.
  1. The city manager shall notify the owner or owners of any property subject to the application for rezoning that a hearing on the rezoning application will be held before the land use review commission and before the city council.
  2. The city manager's notification to the owner or owners shall set forth the reasons for the rezoning application.
  3. Notification to the owner or owners by the city manager shall be by personal service or by certified mail not less than thirty days prior to the public hearing before the land use review commission.
- C. The land use review commission shall hold a public hearing on the application. Notice shall be given in accordance with the provisions of chapter 17-52, B.M.C. Following the hearing, the land use review commission shall make recommendations to the city council concerning the application.
- D. The city council shall hold a public hearing on the application. Notice shall be given in accordance with the provisions of chapter 17-52. Following the hearing, the city council shall either deny the application or shall approve it by ordinance. An ordinance may impose conditions on rezoning.
- E. Prior to any official submittal of a rezoning, the applicant shall hold a neighborhood meeting. Notice for such neighborhood meetings shall be done consistent with Section 17-52, B.M.C. The neighborhood meeting provides the applicant and surrounding property owners an opportunity to review preliminary requests. The

meeting should solicit input and exchange information about the proposal. The applicant shall record attendance on a sign-in sheet and shall create a summary of the meeting discussion which shall be submitted with the formal application.

F. The recommendation of the land use review commission and decision of the city council for rezoning requests shall consider the applicant's proposed rezoning request based upon the following criteria:

- (1) The proposal is in (i) general conformance with applicable land use plans including but not limited to the Broomfield Comprehensive Plan and, sub area plans, or (ii) there has been substantial change in the character of the area to support the rezoning action, or (iii) the official zoning classification is in error.
- (2) The proposal is compatible with existing and allowable land uses in the surrounding area.
- (3) The proposal's effect upon the health, safety, and welfare of the residents and landowners in the surrounding areas.
- (4) The proposal is an opportunity or an appropriate site, at an appropriate location, for the particular type of land use or development proposed and will help the city achieve a balance of land use, tax base, or housing types consistent with the city's overall planning and economic development goals.

**17-48-030 Reconsideration; time limit.**

A proposed rezoning request for a similar classification or area to one already denied by the city council shall not be reconsidered by the city council within twelve months of the date of such city council action. Submission by a different applicant or minor changes in boundaries shall not be adequate reason to circumvent this requirement.

**17-48-040 - Reclassification; development; time limit.**

At the time the land use review commission and the city council consider an initial zoning request, a rezoning request, or any amendments to the zoning district map, the applicant shall be advised that the land must be developed in accordance with the designated zoning classification within two years after the date of granting same, and that in the event such development is not completed or substantially commenced within the two-year period, the city may, at its sole and exclusive option, review the zoning classification and initiate proceedings to rezone the land to the classification the land held immediately prior thereto, or to such other zoning classification as may be determined by the city council.

# **ORDINANCE NO. 2249**

An Ordinance Rezoning the George DiCiero Municipal Building and Police Building, Broomfield City Center Filing No. 2, Lot 2 and a portion of Lot 1 from Planned Unit Development (PUD) to Public Facilities (PF) District

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

## **Recitals**

Whereas, the applicant, the City and County of Broomfield through the City and County Manager, submitted an application to rezone Broomfield City Center Filing No. 2, Lot 2 and a portion of Lot 1 from Planned Unit Development (PUD) to Public Facilities (PF) District.

Whereas, a public hearing was heard by the Land Use Review Commission on July 22, 2024, at which time the Land Use Review Commission by formal resolution recommended approval of the rezoning application.

## **Section 2.**

Giving consideration to Broomfield Master Plan and the Broomfield Municipal Code, recommendations from the Land Use Review Commission, comments of public officials and agencies, and testimony and written comments of all interested parties, the City Council finds as follows:

- A. The proposal is in general conformance with the Broomfield Comprehensive Plan.
- B. The proposal is compatible with existing and allowable land uses in the surrounding area.
- C. The proposal will not result in substantial impacts to the health, safety and welfare of the residents and landowners in the surrounding area.
- D. The proposal is consistent with the city's overall planning and economic development goals.

## **Section 3.**

The real property as described in Exhibit A attached hereto is hereby rezoned from PUD to Public Facilities (PF) District.

## **Section 4.**

The City and County Clerk shall amend the zoning district map pursuant to §17-06-020 of the Broomfield Municipal Code.

## **Section 5.**

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

Introduced and approved after first reading on August 27, 2024, and ordered published in full.

Introduced a second time and approved on October 1, 2024, and further ordered published.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to Form:

KKH

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City and County Attorney

### EXHIBIT A

A portion of a parcel located in the West half of Section 36, Township 1 South, Range 69 West of the Sixth Principal Meridian, City and County of Broomfield more particularly described as that portion of the Broomfield City Center Subdivision Filing No. 2 Lot 1 parcel lying west of the Spader Way right-of-way boundary and north of DesCombes Drive, Content +/- 12.5 acres, together with all of Lot 2, Broomfield City Center Subdivision Filing No. 2, City and County of Broomfield, Colorado.



**C. Residential Occupancy Ordinance First Reading**

Meeting	Agenda Group
Tuesday, October 1, 2024, 6:00 PM	Action Items Item: 7C.
Presented By	
Lynn Merwin	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#) and visit [BroomfieldVoice.com](https://broomfieldvoice.com)

Staff is bringing forth an ordinance which proposes to amend Title 17, Zoning of the Broomfield Municipal Code, to address changes in State Law relating to the HOME (Harmonizing Occupancy Measures Equitably) Act ([HB24-1007](#)).

Compliance with the HOME Act (HB24-1007) was required by July 1, 2024. Broomfield complies with the effective date of the legislation by not taking enforcement actions after the effective date related to residential occupancy unless the enforcement action was in compliance with the limitations of the HOME Act.

Ordinance No. 2241 would amend the Municipal Code to ensure alignment with the new requirements created by the HOME Act (HB24-1007).

### **Attachments**

[Ordinance No 2241 Residential Occupancy 1st Reading Memo.pdf](#)

[Ordinance No. 2241 Related to Residential Occupancy 1st Reading.pdf](#)

## Summary

[View Correspondence](#) and visit [BroomfieldVoice.com](https://broomfieldvoice.com)

Staff is bringing forth an ordinance that proposes to amend Title 17, Zoning of the Broomfield Municipal Code, to remove occupancy restrictions based on familial status.

During the 2024 legislative session, the Colorado legislature passed the HOME (Harmonizing Occupancy Measures Equitably) Act ([HB24-1007](#)). The HOME Act is the state's effort to prohibit local governments from imposing occupancy limits based on the premise that occupancy limits increase availability of housing under the argument that the legislation is a matter of mixed statewide and local concern.

Broomfield maintains the regulation of occupancy restrictions and the availability of affordable housing are matters of local concern.

Our community is diverse and Broomfield accepts that people may desire to embrace people who want to live together in traditional and non-traditional living arrangements. In an effort to be inclusive and to increase the affordability of housing within Broomfield and to exercise local authority on occupancy, the proposed ordinance would remove the restrictions on regulating the number of persons living in a dwelling based on familial relationships.

On [July 2, 2024](#), a study session was held to provide an overview of areas in the Broomfield Municipal Code that could be revised to meet the requirements of the HOME Act (HB24-1007), and provide recommendations on changes to the Broomfield Municipal Code.

If approved, Ordinance No. 2241 would make the following changes to the Broomfield Municipal Code:

- Provide new terms of single-unit dwelling and multi-unit dwelling that can be used interchangeably with single-family dwelling and multi-family dwelling to make it clear Broomfield is not requiring familial relationships to reside in a dwelling in Broomfield.
- Specify that use of the term “family” within the zoning code does not necessarily mean familial relationship among household members.
- Clarify that a Group Living Home is a separate use with different standards than a single-unit dwelling and clarify that Group Living Homes are a permitted use where single-unit dwellings are permitted.

## Financial Considerations

The amendments proposed by this ordinance will not impact fees or other mechanisms for collecting revenue for the City and County of Broomfield.

## Prior Council Action

- [November 12, 2019](#) - City Council approved [Ordinance No. 2106](#) regarding updates to the Municipal Code in regard to Household Group Living Facilities in response to HB19-1009.
- [April 16, 2019](#) - City Council held a study session in regard to “Sober Living Homes”.
- [July 2, 2024](#) - City Council held a study session in regard to the HOME Act (HB24-1107) and the implications for Broomfield's residential occupancy regulations.

## Board and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions/Recommendations

Based on the above, it is recommended...

That Ordinance No. 2241 be adopted on first reading and ordered published in full;

That a public hearing and second reading of the Ordinance be held on November 12, 2024, at 6 pm as allowed by City Council Procedures and Rules of Order.

## Alternatives

Make no changes to the Broomfield Municipal Code. This is not recommended due to the HOME Act and state law requirement on occupancy.

Make changes to the Broomfield Municipal Code as directed by City Council.

## Project Website

[www.broomfieldvoice.com/residential-occupancy](http://www.broomfieldvoice.com/residential-occupancy)

## How to Submit Public Comments on this Proposal

Email directly to [Planning@broomfield.org](mailto:Planning@broomfield.org)

## Introduction

Since the Broomfield Municipal Code does not meet the requirements of the HOME Act (HB24-1007), staff is bringing forth Ordinance No. 2241 consistent with the new law and staff recommendations made during the July 2, 2024 Study Session. The intent is to modify the terminology used and the regulation of occupancy in residential districts in the municipal code to come into compliance with requirements created by the HOME Act.

## Background - HB24-1007

[HB 24-1007](#) purports to prohibit local governments from enacting or enforcing residential occupancy limits based on familial relationships. This relatively short bill has two main components:

1. Local governments can not limit the number of people who may live together in a single dwelling based on familial relationships.
2. Local governments can implement residential occupancy based on the following:
  - a. Demonstrated health and safety standards, such as international building code standards including those which limit occupancy based on life safety purposes, fire code regulations, or Colorado Department of Public Health and Environment Wastewater and Water Quality Standards

b. Local, state, federal, or political subdivision affordable housing program guidelines

The date for compliance with HB24-1007 was July 1, 2024. Broomfield is not taking enforcement actions to enforce the City's current occupancy restrictions based on familial status and has not since July 1, 2024 unless such action is in compliance with the limitations of HB24-1007. The Planning Division has added a prominent note explaining this on the Planning Division web page. Broomfield's current compliance approach is also addressed on the Broomfield Voice page established for this proposed code amendment. Ordinance No. 2241 would formally amend the Municipal Code to remove residential occupancy limits based on familial relationships.

## Background - Broomfield Law

The Broomfield Municipal Code currently includes the following definitions for terms utilized throughout the zoning code:

"One-family dwelling" is defined in Section 17-04-095 as:

a detached building, arranged and designed as a single dwelling unit, other than a mobile home, and used exclusively by not more than one family, household group living facility or household group, which has not less than one bathroom and minimum floor area of 850 square feet, unless otherwise specified within the appropriate zone district.

"Family" is defined in Section 17-04-130 BMC as:

(A) Family means any one of the following:

- (1) One person living alone;
- (2) Two or more persons all of whom are related by blood, marriage, or legal adoption, together with up to four children who may not be related to any or all of the other residents but who are under the care and supervision of the adult family head; or
- (3) A group including not more than two adults, together with any number of children, related by blood or legal adoption to at least one of the adults.

(B) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.

(C) A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., unless related by marriage or consanguinity. Family shall not include any group of individuals who are in a group living arrangement as a result of criminal offenses.

"Household group" is defined in Section 17-04-202 BMC to include the following:

(A) Household group means any one of the following, provided that there is at least 400 square feet of finished interior space for each resident:

- (1) A group not exceeding three persons living together as a single housekeeping unit, such group to be distinguished from a group occupying a boarding house, lodging house, club, fraternity, or hotel, except that such a household group may not include more than one individual who is required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.;
- (2) Two or more persons all of who are related by blood, marriage, or legal adoption, together with not more than one adult boarder or domestic worker.

"Household group living facility" is defined in 17-04-203 BMC to include the following:

Household Group Living Facility means any one of the following, provided that there is at least 400 square feet of finished interior space for each resident:

- (A) A group of more than three, but not more than eight developmentally disabled persons living in a state-licensed group home or community-based residential facility for the developmentally disabled;
- (B) A group of more than three, but not more than eight persons in an owner-occupied or nonprofit group home for the exclusive use of persons sixty years of age or older, together with domestic workers; or
- (C) A group of more than three, but not more than eight persons with mental illness living in a state-licensed group home for persons with mental illness, subject, however, to limitations on such homes provided by state law.
- (D) A group of more than three, but not more than eight persons who are handicapped within the meaning of the Federal Fair Housing Act (FHA).
- (E) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.
- (F) As used in this section, finished interior space includes any room with:
  - (1) Floor completely covered (except for heating, cooling, or ventilation grilles, cabinets, plumbing fixtures, and appliances), with one or more of the following materials: ceramic or vinyl tile, vinyl sheet goods, cork, rock, brick, carpeting, decorative concrete or finished wood flooring;
  - (2) Walls completely covered (except for doors, windows, cabinets, electrical outlets, plumbing fixtures, appliances, and heating and ventilation grilles) with one or more of the following materials: painted or wall-papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, cork, rock, decorative concrete or brick; and
  - (3) Ceiling completely covered (except for light fixtures, skylights, and heating, cooling, or ventilation grilles) with one or more of the following materials: painted or wall-papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, or acoustical panels.
- (G) As used in this section finished interior space does not include areas with exposed studs, joists, or plain concrete.
- (H) As used in this chapter, Recovery Residence means any premises, place, facility, or building that provides housing accommodation for individuals with a primary diagnosis of a substance use disorder that:
  - (1) is free from alcohol and non-prescribed or illicit drugs;
  - (2) promotes independent living and life skill development; and
  - (3) provides structured activities and recovery support services that are primarily intended to promote recovery from substance use disorders.

As noted above, Broomfield Municipal Code currently states that any number of individuals related by blood, marriage, or legal adoption together with up to four children can reside in a single-family dwelling, but if unrelated, then no more than three persons can live together as a single housekeeping unit. If unrelated, there are also requirements related to the square footage required per individual that are not applicable for families related by blood, marriage, or legal adoption. Since the Municipal Code's current language related to occupancy differs depending on familial relationship, this occupancy standard does not meet the intent of HB24-1007.

## Revisions to Residential Occupancy Requirements

To ensure residential occupancy is not tied to familial relationships, Ordinance No. 2241 proposes modifications to terms used throughout the zoning code, revised definitions for those key terms, and removal of occupancy limitations except as allowed under the recently passed legislation.

### **Modify Terminology**

Broomfield uses the term “family” in many contexts throughout zoning and long range planning documentation. To ensure it is clear that Broomfield is not intending the use of residential dwellings only by families that are related by blood, marriage, or legal adoption, the Ordinance would change the terms “single-family dwelling” and “multi-family dwelling” with the terms “single-unit dwelling” and “multi-unit dwelling”.

There are many documents, including long range plans and planned unit development plans, that utilize the terms single-family and multi-family dwellings. Amending every document that uses these terms would require a significant effort and would be impractical; the Ordinance is drafted in a manner to explicitly state that these existing terms are synonymous with the new terminology being created.

Should Ordinance No. 2241 be adopted, staff will ensure new documents utilize the new terms (“single-unit dwelling” and “multi-unit dwelling”), but it will be a long period of transition where previously approved documents will continue to utilize the outdated terminology.

Staff also recommends replacing the term “Household Group Living Facility” with the term “Group Living Home”. Although not a part of this initial code amendment, staff will bring forward a separate study session for discussion and direction on potential other types of group living facilities that can be added to the code, such as transitional housing, congregate care facilities, or custodial care facilities, which are sometimes included in zoning codes as permitted uses or uses by special review in particular zoning districts. Staff is recommending this discussion be held separately after the initial changes are made to the code to ensure immediate compliance with the new legislative requirements.

### **New Method for Regulating Occupancy**

The HOME Act (HB24-1007) allows communities to limit occupancy based on very specific reasons as noted in the background section for HB24-1007.

For properties served by Onsite Wastewater Treatment Systems (septic systems), occupancy would be limited to the number of individuals permitted by the Onsite Wastewater Treatment System (OWTS) Regulations. For single-unit homes, the required design flow per person is 75 gallons per day. When designing the system, the minimum design flow is based on the number of bedrooms. If the minimum design criteria were to be utilized, homes would generally be limited to two people per bedroom for the first four bedrooms with an additional person permitted per bedroom over the initial 4 bedrooms. If an occupancy concern was identified for a home served by OWTS, the design of the system would need to be reviewed as well as the number of bedrooms to determine the maximum occupancy for that particular unit.

Broomfield has adopted the 2021 Building Codes. The ordinance references compliance with the adopted Building and Fire Codes as a part of the regulations within Title 17 in regard to occupancy for dwelling units. Staff acknowledges that occupancy regulations within these particular codes are limited. It would be rare that Broomfield staff would be able to utilize these codes effectively to limit occupancy, but there may be instances if, for example, a home’s occupancy was determined to be more consistent with the occupancy of a “boarding house” for more than 16 individuals and in this instance, the building code may require compliance with different construction requirements than for a similar use with 16 or fewer people.

Ordinance No. 2241 amends the definition of dwelling unit to add a limitation that occupancy for a single dwelling unit cannot include more than one individual who is required to register as a sex offender, unless the individuals are related by marriage or consanguinity (related by blood). This requirement is included to

protect the safety of the community, to be consistent with requirements Broomfield has had in place since this language was originally included in the municipal code in 2000, and is within the limits intended by the HOME Act (HB24-1007). By removing the definition of family from the municipal code, we needed to relocate this requirement regarding sex offenders to another section. This revision does not change how Broomfield has treated or will treat sex offenders within the city. Specifically, nothing has changed as far as the prohibitions against sex offenders living a certain distance from schools and other facilities.

Unlike similar legislation in other states, HB24-1007 does not specifically address the applicability or non-applicability of the new occupancy requirements for homes utilized as group living facilities. Staff will continue to monitor how other local jurisdictions address the requirements of HB24-1007 in relation to its applicability to group living facilities and will bring back a future amendment as appropriate if there is clarification regarding how local governments are able to further provide guidance regarding occupancy of group living facilities.

## Public Engagement

A [Broomfield Voice page](#) has been created and provides information regarding the proposed amendments included in this proposed ordinance. The Broomfield Voice platform will allow for feedback on the proposed amendments to the Broomfield Municipal Code, and community engagement is encouraged. Comments received will be gathered and summarized to provide feedback as part of the public hearing process.

There will be an opportunity at the public hearing for the second reading of the proposed ordinance for additional public comments to be provided for City Council's consideration.

## Ordinance No. 2241

Proposed Ordinance No. 2241 amends Title 17, Zoning of the Broomfield Municipal Code, to remove occupancy restrictions based on familial status. If approved on first reading, proposed Ordinance No. 2241 will be published in full, and a second reading and public hearing will be scheduled for November 12, 2024.

**Bold type** indicates new material to be added to the Broomfield Municipal Code  
~~Strikethrough type~~ indicates deletions from the Broomfield Municipal Code

## ORDINANCE NO. 2241

An ordinance to amend the Broomfield Municipal Code, Title 17, to remove occupancy restrictions based on familial status

### Recitals.

Whereas, the Colorado State legislature adopted the Harmonizing Occupancy Measures Equitably Act (the “HOME Act”), also referred to as HB24-1007, during the 2024 legislative session;

Whereas, the HOME Act prohibits local governments from imposing occupancy limits based on the premise that occupancy limits and the increased availability of housing are a matter of mixed statewide and local concern;

Whereas, Council disagrees with the state’s preemption in this area, and finds and declares that occupancy limits and the availability of housing are a matter of local concern;

Whereas, Council acknowledges that the HOME Act was passed, has been in effect since July 1, 2024, and has not to date been challenged in court;

Whereas, separate from the preemptive prohibition imposed by the HOME Act, Council recognizes that our community is diverse and that Broomfield accepts that people may desire to live together in traditional and non-traditional living arrangements; and

Whereas, in an effort to be inclusive and to increase the affordability of housing within Broomfield and to exercise local authority on occupancy, Council desires to remove the restrictions on regulating the number of persons living in a dwelling based on familial relationships.

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

### Section 1.

Chapter 17-04, Definitions, of the Broomfield Municipal Code is amended as follows:

17-04-090 - Dwelling, multiple-family unit.

~~Multiple-family unit dwelling means a building occupied by two or more persons families living independently of each other in separate dwelling units with a minimum floor area of 500 square feet per unit (including balconies), but not including hotels or motels. A multiple-unit dwelling may also be known as multi-family dwelling units, multiple-family dwelling units, duplexes, triplexes, fourplexes, condominiums, apartment buildings or similar multiple dwelling unit arrangements.~~

17-04-095 - Dwelling, ~~one-family~~single-unit.

~~One-family Single-unit dwelling means a detached building, arranged and designed as a single dwelling unit structure, other than a mobile home, and used exclusively by not more than one family, household group living facility or household group, which has not less than one bathroom and a minimum floor area of 850 square feet, unless otherwise specified within the appropriate zone district. A single-unit dwelling may also be known as a one-family dwelling unit, single dwelling unit, or a single-family dwelling.~~

17-04-100 - Dwelling unit.

~~Dwelling unit means one or more rooms, including at least one single kitchen, designed for or occupied as a unit by one family for living and cooking purposes, located in a one-family or multiple-family dwelling, any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, except that any individual dwelling unit may not include more than one individual who is required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., unless related by marriage or consanguinity. A dwelling unit may be further described as either attached or detached, and single-unit or multiple-unit. This includes both buildings constructed on-site and manufactured homes. A dwelling unit does not include hotels or motels.~~  
Maximum occupancy of a dwelling unit shall not exceed any of the following:

- a. The number of individuals permitted by the Onsite Wastewater Treatment System (OWTS) Regulations, as applicable.
- b. The number of individuals that can be accommodated based on the adopted Building and Fire Codes, as applicable.

. . .

~~17-04-130 Family:~~

~~(A) Family means any one of the following:~~

- ~~(1) One person living alone;~~
- ~~(2) Two or more persons all of whom are related by blood, marriage, or legal adoption, together with up to four children who may not be~~

~~related to any or all of the other residents but who are under the care and supervision of the adult family head; or~~

~~(3) A group including not more than two adults, together with any number of children, related by blood or legal adoption to at least one of the adults.~~

~~(B) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.~~

~~(C) A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., unless related by marriage or consanguinity. Family shall not include any group of individuals who are in a group living arrangement as a result of criminal offenses.~~

~~. . .~~

#### ~~17-04-202 -- Household group.~~

~~(A) Household group means any one of the following, provided that there is at least 400 square feet of finished interior space for each resident:~~

~~(1) A group not exceeding three persons living together as a single housekeeping unit, such group to be distinguished from a group occupying a boarding house, lodging house, club, fraternity, or hotel, except that such a household group may not include more than one individual who is required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.;~~

~~(2) Two or more persons all of who are related by blood, marriage, or legal adoption, together with not more than one adult boarder or domestic worker.~~

~~(B) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.~~

~~(C) As used in this section, finished interior space includes any room with:~~

~~(1) Floor completely covered (except for heating, cooling, or ventilation grilles, cabinets, plumbing fixtures, and appliances), with one or more of the following materials: ceramic or vinyl tile, vinyl sheet goods, cork, rock, brick, carpeting, or finished wood flooring;~~

~~(2) Walls completely covered (except for doors, windows, cabinets, electrical outlets, plumbing fixtures, appliances, and heating and ventilation grilles) with one or more of the following materials: painted or wall papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, cork, rock, or brick; and~~

~~(3) Ceiling completely covered (except for light fixtures, skylights, and heating, cooling, or ventilation grilles) with one or more of the following materials: painted or wall papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, or acoustical panels.~~

~~(D) As used in this section finished interior space does not include areas with exposed studs, joists, or plain concrete.~~

~~Household-Group Living Facility~~**Home** means any one of the following, provided that there is at least 400 square feet of finished interior space for each resident: any single unit dwelling, duplex or paired home where accommodations and care (including but not limited to, supervision, guidance, counseling, medical or other services) are provided to persons. Typically people in a group living home are living with physical or mental disabilities, persons under the age of 18 years living apart from their parents or guardians, elderly, or persons in emergency or crisis situations. Group living home includes, but is not limited to, residential treatment or training home, home based residential care facilities, adult foster home, recovery residence, or similar facilities.

- ~~(A) A group of more than three, but not more than eight developmentally disabled persons living in a state-licensed group home or community-based residential facility for the developmentally disabled;~~
- ~~(B) A group of more than three, but not more than eight persons in an owner-occupied or nonprofit group home for the exclusive use of persons sixty years of age or older, together with domestic workers; or~~
- ~~(C) A group of more than three, but not more than eight persons with mental illness living in a state-licensed group home for persons with mental illness, subject, however, to limitations on such homes provided by state law.~~
- ~~(D) A group of more than three, but not more than eight persons who are handicapped within the meaning of the Federal Fair Housing Act (FHA).~~
- ~~(E) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.~~
- ~~(F) As used in this section, finished interior space includes any room with:~~
  - ~~(1) Floor completely covered (except for heating, cooling, or ventilation grilles, cabinets, plumbing fixtures, and appliances), with one or more of the following materials: ceramic or vinyl tile, vinyl sheet goods, cork, rock, brick, carpeting, decorative concrete or finished wood flooring;~~
  - ~~(2) Walls completely covered (except for doors, windows, cabinets, electrical outlets, plumbing fixtures, appliances, and heating and ventilation grilles) with one or more of the following materials: painted or wall-papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, cork, rock, decorative concrete or brick; and~~
  - ~~(3) Ceiling completely covered (except for light fixtures, skylights, and heating, cooling, or ventilation grilles) with one or more of the following materials: painted or wall-papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, or acoustical panels.~~
- ~~(G) As used in this section finished interior space does not include areas with exposed studs, joists, or plain concrete.~~
- ~~(H) As used in this chapter, Recovery Residence means any premises, place, facility, or building that provides housing accommodation for individuals with a primary diagnosis~~

~~of a substance use disorder that: (1) is free from alcohol and non-prescribed or illicit drugs; (2) promotes independent living and life skill development; and (3) provides structured activities and recovery support services that are primarily intended to promote recovery from substance use disorders.~~

## Section 2.

Chapter 17-33, Household Group Living Facilities, of the Broomfield Municipal Code is amended as follows:

### Chapter 17-33 - ~~Household~~ Group Living FacilitiesHomes

#### 17-33-010 - Definitions.

- (A) Good Neighbor Policy. A document that outlines the rules that the owner(s) of the ~~household~~ group living ~~facility~~home, licensee, certificate holder, managers and residents must follow as it pertains to interaction with the neighborhood. At a minimum the policy must include:
  - (1) Policies and procedures providing neighbors with a designated responsible person's contact information upon request;
  - (2) Policies and procedures that require the responsible person to respond to the neighbor's concerns;
  - (3) Resident and staff orientations that include how to greet and interact with neighbors and concerned parties;
  - (4) Policies that minimize negative impacts, including but not limited to:
    - (a) Smoking
    - (b) Cleanliness of the property
    - (c) Parking for residents and guests
- (B) House Rules, Policies and Procedures. A document setting forth the house rules and policies and procedures that includes consequences for violations of the rules and at a minimum states each of the following:
  - (1) The residents' rights and grievance procedures
  - (2) Prohibits the use of alcohol and illicit drugs - in a Recovery Residence
  - (3) Lists prohibited items
  - (4) Smoking prohibitions or designated areas for smoking
  - (5) Visitor policies
  - (6) Admission and discharge criteria
  - (7) Emergency preparedness procedures
- (C) Responsible person. A person who either has ownership in the ~~household~~ group living ~~facility~~home or has been given management authority by the owner of the ~~household~~ group living ~~facility~~home and has the authority and responsibility to take action to address and alleviate the concerns of the residents and concerns of the neighborhood as they relate to house residents, house rules and house impacts on the neighborhood.

17-33-020 - Generally applicable regulations.

- (A) Unless otherwise expressly stated, all ~~household-group living facilities~~homes shall be subject to the following standards:
- (1) Licensing/certification. If required by state law, the ~~household group living facility~~home is licensed or certified by the State of Colorado to operate such facility.
  - ~~(2) Registration with the city. All state licensed or state certified household group living facilities must register with the city manager or his or her designee before operating the facility in the city. The registration must include a copy of the state issued license or certification and a copy of the application provided to the state.~~
    - ~~(a) The owner of any household group living facility must notify the city manager or his or her designee of any changes to the status of a state issued license or certification in writing, within ten days of the change.~~
    - ~~(b) Facilities that are legally operating in Broomfield on the date this law goes into effect will have sixty days to register and provide documentation to the city.~~
  - (3) Dispersal policy. In order to prevent the concentration and encourage better integration into neighborhoods of ~~household-group living facilities~~homes, no two ~~household-group living facilities~~homes may be located within 750 feet of each other. The community development department shall therefore find that there is no other ~~household-group living facility~~home located within 750 feet of the proposed household group living facility.
  - (4) Threats to public safety. No ~~household group living facility~~home shall provide housing to any individual who constitutes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical danger to the property of others.
  - (5) Group living facilities are permitted in all residential, agricultural and estate zone districts, including planned unit development districts that contain a residential component, within the city.

17-33-025 - Regulations applicable to group living homes licensed or certified by the State of Colorado.

- (A) Registration with the city. All state licensed or state certified group living homes must register with the city manager or their designee before operating the facility in the city. The registration must include a copy of the state issued license or certification and a copy of the application provided to the state, as applicable, otherwise the application process set forth in B.M.C. 17-33-030 shall be completed.

- (B) The owner of any group living home must notify the city manager or their designee of any changes to the status of a state issued license or certification in writing, within ten days of the change.

17-33-030 - Regulations applicable to ~~household~~ group living facilities ~~homes~~ not licensed or certified by the State of Colorado.

- (A) It shall be unlawful for any ~~household~~ group living facility ~~home~~ that is not licensed or certified by the State of Colorado, to operate within the City and County of Broomfield without first obtaining a valid permit through the city manager or his or her designee. Denial of a license or certification by the State of Colorado shall be grounds for denial of a permit by the city.
- (B) Application for permit: Any owner or authorized agent who intends to open a ~~household~~ group living facility ~~home~~ in the city must first submit an application to the city and pay all required fees. Contents of the application shall be incorporated in and become requirements of the permit.
- (1) A written application shall be submitted on a form furnished by the city. The application shall provide:
- (a) The permanent address, the telephone number, and email address of the owner of the ~~household~~ group living facility ~~home~~. If the owner is an individual, a copy of ~~his/her~~ ~~their~~ state issued identification must be provided.
  - (b) Documentation of the legal business entity showing that it is in good standing with any Secretary of State where it is registered, including Colorado, as well as any DBA [doing business as] names.
  - (c) Evidence of written permission from the property owner of record to operate a ~~household~~ group living facility ~~home~~ on the property. If the property owner is not the same person as the applicant or ~~household~~ group living facility ~~home~~ owner, provide the name, street address, email address and telephone number of the property owner.
  - (d) The legal and physical description of the property where the residence will be located including a clearly legible floor plan of the ~~household~~ group living facility ~~home~~ that includes the total square footage of the home, the layout, location, dimensions, and square footage of each bedroom, and the number of beds in each bedroom.
  - (e) The maximum number of residents proposed to occupy the ~~household~~ group living facility ~~home~~.
  - (f) The name under which the ~~household~~ group living facility ~~home~~ will be doing business and the URL of any website or advertisement for the ~~household~~ group living facility ~~home~~.

- (g) A list of any prior ~~household~~ group living ~~facility~~home permits applied for in the city and the status of each.
  - (h) A list of any other cities where the applicant currently has active ~~household~~ group living ~~facilities~~homes and the status of any license or permit required for each residence.
  - (i) A description of the intended use of the residence.
  - (j) A certification by a third party home inspection service that electrical, mechanical, and structural components of the property are functional and free of fire and safety hazards.
  - (k) A safety inspection policy requiring semi-annual verification of: functional smoke detectors in all bedroom spaces and elsewhere as needed, functional carbon monoxide detectors, functional fire extinguishers placed in plain sight or in clearly marked locations, regular inspections of smoke detectors, carbon monoxide detectors and fire extinguishers.
  - (l) A copy of the house rules and regulations and procedures for amending them.
  - (m) A copy of the good neighbor policy and procedure for amending it.
  - (n) Proof of adequate general liability insurance showing the ~~household~~ group living ~~facility's~~ home's owner's name and the group living ~~facility's~~ home's address as a covered property under the policy.
- (C) Action on application. The city manager or ~~his or her~~their designee shall examine or cause to be examined applications for permits and amendments thereto. If the city is satisfied that the subject residence conforms to the requirements of this code and other applicable laws and ordinances, the city shall timely issue a permit.
- (D) Timing on application: an application for a permit for a ~~household~~ group living ~~facility~~home shall be deemed to have been abandoned 180 days after the date of filing, unless the applicant has pursued the application in good faith or a permit has been issued.
- (E) Fees:
- (1) The fee for a permit shall be set by the city manager or ~~his or her~~their designee to cover the city's cost of administration of this chapter.
  - (2) An applicant shall pay the permit fee when the application is filed.
  - (3) As part of the annual budget process, permit fees charged by the city shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the city in connection with the adoption, administration and enforcement of this chapter.
- (F) Any ~~household~~ group living ~~facility~~home legally operating in the city of Broomfield on the date that this law goes into effect will have sixty days from the effective date of the law to file an application for the required permit. If

the application is timely filed, the ~~household~~ group living ~~facility~~home will be permitted to continue to operate without a permit until either, a valid permit is issued by the city or a denial of the permit application is determined by the city.

17-33-040 - Permit.

- (A) Term: A permit shall be valid for a two year term or for 180 days from the issuance of the permit if the ~~household~~ group living ~~facility~~home has not begun admitting residents.
- (B) Renewal: A renewal application for a permit set to expire shall be filed, with the required fee, no later than forty-five days prior to the date of expiration. A permit does not guarantee or vest any right to a renewed permit in the permittee.
- (C) Suspension or revocation: The city manager or ~~his or her~~their designee is authorized to suspend or revoke a permit issued under the provisions of this code for any of the following reasons:
  - (1) Wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any state or federal statute, ordinance or regulation or any provision of this code.
  - (2) Wherever the ~~household~~ group living facility is non-compliant with the terms of the permit or is non-compliant with the Broomfield Municipal Code or any state or federal law.
- (D) Any suspension or revocation will be communicated to the ~~household~~ group living ~~facility~~home in writing stating the reasons for the suspension or revocation. In the case of a suspension, the city will include the issues that must be remedied before the suspension will be lifted and the time frame that those requirements must be met.
- (E) Appeal of suspension or revocation: A final decision of the city may be appealed to the board of adjustment.
- (F) Placement of permit: The permit, good neighbor policy and the house rules shall be posted in a prominent location in the entryway of the ~~household~~ group living ~~facility~~home so that it may be read at any time.

## Section 4.

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on October 1, 2024, and ordered published in full.

Introduced a second time and approved on November 12, 2024, and ordered published.

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