

CHERRY HILLS VILLAGE  
COLORADO

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Cherry Hills Village, CO 80113  
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Village Center  
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**City Council Agenda**  
Tuesday, June 7, 2016

6:30 p.m.

1. Call to Order
2. Roll Call of Members
3. Pledge of Allegiance
4. Audience Participation Period (limit 5 minutes per speaker)
5. Consent Agenda
  - a. Approval of Minutes – May 17, 2016
  - b. Approval of Minutes – May 24, 2016
  - c. Ratification of Agreement to Buy and Sell Real Estate
  - d. First Amendment to Development Agreement for Monroe Street Paving, Change Order #001 for Contract #2016-001, and Change Order #001 for Contract #2016-003
6. Items Removed From Consent Agenda
7. Unfinished Business
  - a. Candidate Profiles in the Village Crier
8. New Business
  - a. Council Bill 4, Series 2016; Amending Sections 2-1-10, 2-1-40 and 2-1-50 of the Municipal Code Concerning Elections (*first reading*)
  - b. Council Bill 5, Series 2016; Amending Section 16-2-40 Concerning Procedures for Text Amendments and Rezoning of Property (*first reading*)
9. Reports
  - a. Mayor
  - b. Members of City Council
  - c. Reports from Members of City Boards and Commissions
  - d. City Manager and Staff
    - (i) Public Art Commission Member Term
  - e. City Attorney
10. Adjournment

Notice: Agenda is subject to change.  
If you will need special assistance in order to attend any of the City's public meetings, please notify the City of Cherry Hills Village at 303-789-2541, 48 hours in advance.

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, May 17, 2016 at 6:30 p.m.  
At the Village Center

Mayor Laura Christman called the meeting to order at 6:32 p.m.

**ROLL CALL**

Mayor Laura Christman, Councilors Mark Griffin, Earl Hoellen, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on roll call. Also present were Interim City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, Parks, Trails & Recreation Administrator Ryan Berninzoni, Public Works Project and Right-of-Way Manager Ralph Mason, and City Clerk Laura Smith.

Absent: Mayor Pro Tem Alex Brown

**PLEDGE OF ALLEGIANCE**

The Council conducted the pledge of allegiance.

**AUDIENCE PARTICIPATION PERIOD**

Robby Robinson, 4001 S. Dahlia Street, indicated that he wanted to reiterate his concern about speeding on S. Dahlia Street, particularly between Quincy and Mansfield and perhaps all the way to Hampden. He noted that it was a dangerous situation making it difficult for residents to use their front yards or to exit driveways. He explained that he had first addressed this issue with Sergeant Wilson last July. He indicated that he and other neighbors had recently met with Mayor Christman and there had been subsequent increased patrolling of the street which had helped the speeding issue, but he acknowledged that having a full time officer on Dahlia was not practical or desirable. He stated that there was no consensus on the best solution but asked for Council and staff's help to find one.

Beth Robinson, 4001 S. Dahlia Street, thanked Mayor Christman for quickly arranging for extra police enforcement on Dahlia after their neighborhood meeting. She noted that unfortunately the neighborhood yard signs telling drivers to slow down had been stolen. She explained that Dahlia had become a highway with distinct rush hours resulting in safety concerns. She noted that the traffic calming engineering of the street about 10 years ago had ultimately been ineffective and had some downsides such as crowding for cars and pedestrians. She explained that the corner of Oxford and Dahlia was particularly tricky and dangerous. She indicated that she looked forward to working with the City to solve this issue.

Bob Steiert, 3980 S. Dahlia Street, explained that he had lived on Dahlia Street since 1987 and speeding had always been an issue. His wife had contacted then Mayor Duncan who had convinced her to join City Council. During her term on Council there had been an increased police presence on Dahlia and speeding had been less of an issue. He noted that the traffic calming measures including islands and bump outs did cause some drivers to slow down but did not affect others. He indicated that unfortunately the street needed occasional police presence to address the speeding issue.

Simon Prowse, 4000 S. Dahlia Street, thanked Mayor Christman for the fast response to the neighbors' concerns by increasing police patrols and stated that the traffic had been notably slower. He indicated concern for a long-term solution. He noted that there used to be a flashing light at Mansfield and Dahlia and suggested that might help to reduce traffic speeds.

Ilsa McCarthy, 4040 S. Dahlia Street, stated that Dahlia Street was too wide and drivers took liberties with speed. She indicated that she was an avid gardener and that she had to take extra precautions when working near the curb. She noted that Holly between Belleview and Orchard was a good example of an effective structural solution to speeding.

Jan Steiert, 3980 S. Dahlia Street, noted that speeding was worse now than it had been 15 years ago when the traffic calming engineering had been done. She indicated that the speeding was likely due to cut-through traffic from drivers avoiding I-25. She encouraged Council to do everything they could to make Dahlia Street as safe as other City streets.

Lucinda Greene, 2855 Cherryridge Road, explained that she was attending Council as a Cherry Hills Land Preserve (CHLP) Board member, and announced the CHLP Community Stewardship Grants Program. The purpose of the Community Stewardship Grants program was to engage the Cherry Hills Village community in activities which would promote protection and stewardship of natural open lands within the City limits. Typical grants might include a request for a tree planting project, habitat research, trail signage, support of identified City projects, trail clean-up, and education. She noted that if any grant projects proposed to operate on City property than the City would be approached for discussion and approval before funding was awarded.

### **CONSENT AGENDA**

Councilor VanderWerf moved, seconded by Councilor Griffin to approve the following items on the Consent Agenda:

- a. Approval of Minutes – May 3, 2016

The motion passed unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS****First Amendment to Development Agreement for Monroe Street Paving, Change Order #001 for Contract #16-001, and Change Order #001 for Contract #16-003**

Mayor Christman explained that staff had removed Item 8a because the agreement was not ready for Council's consideration.

**REPORTS****Mayor's Report**

Mayor Christman reported that she had met with the Dahlia Street neighbors and then with Chief Tovrea to schedule the extra police patrols. She asked Chief Tovrea about citations issued.

Chief Tovrea reported that the Police Department had spent approximately seven hours patrolling the Dahlia neighborhood from May 5<sup>th</sup> to May 17<sup>th</sup> during mornings and afternoons. Six tickets had been issued thus far. Five of those tickets had been issued to residents and one to a non-resident. All six tickets had been issued for not stopping at a stop sign, rather than for speeding. Most had been issued at the Oxford and Dahlia intersection.

Mayor Christman thanked the Council for a successful retreat.

**Members of City Council**

Councilor Gallagher had no report.

Councilor Griffin had no report.

Councilor VanderWerf had no report.

Councilor K. Brown reported that she had the privilege of attending the River of Words poetry and art awards ceremony. She explained that the first place winner in the 4<sup>th</sup> – 6<sup>th</sup> grade art category had said his piece was inspired by John Meade Park. She had invited the student to display his work at the Village Center. She asked Interim City

Manager/Director Goldie if the traffic study video cameras may have recorded the Dahlia Street yard signs being stolen.

Interim City Manager/Director Goldie replied the cameras had been up during the timeframe when the thefts occurred.

Councilor K. Brown reported that as the City's representative on the Centennial Airport Community Noise Roundtable (CACNR) she had received a letter from the FAA regarding the early notification to prepare an environmental assessment for the Denver Metroplex Project. She explained that a metroplex consisted of multiple airports in a certain space and the FAA defines different flight paths and altitudes for each airport that don't conflict with each other. The Denver Metroplex Project included proposed changes to the Centennial Airport flight tracks. She indicated that when the metroplex project had been implemented in a variety of other cities it had been a disaster, and the FAA is currently facing lawsuits from three cities and there are two more lawsuits pending because of the way the FAA implemented these route changes. She indicated that she was very concerned about this process. She indicated that this issue rose above the level of Council and asked City Attorney Michow to take the lead. The letter invited the Cherry Hills Village community to comment by submitting background information to the FAA regarding the study area established, to advise the FAA of any issues, concerns, policies or regulations. She explained that in the cases where the multiplex project had gone badly it was because of this environmental assessment. She noted that the FAA had not released any proposed plans for new flight tracks so it was difficult to comment on the plan, but the new flight paths might benefit the City. Centennial Airport was fighting the new Metroplex Project vigorously.

Councilor Hoellen asked what kind of input the letter was asking the City to provide.

Mayor Christman replied that the letter asked the City to tell the FAA what the City thought the environmental impact would be, without knowing what the FAA was proposing. Mayor Christman noted that the City's wildlife and schools should both be considered.

Councilor K. Brown advised that the City build the strongest case possible for the environmental impacts to the community of new flight paths.

Councilor Griffin noted that a small plane had been flying very low in the City on Sunday.

Councilor K. Brown indicated that the CACNR website contained flight log data.

Councilor Hoellen noted that a small plane flew over his home every Sunday at 5 or 6pm.

Councilor K. Brown added that the Denver Police helicopter flew over her house every night at 11pm. She indicated that she could arrange for kids to lead the Council in the pledge of allegiance this summer.

Councilor Hoellen had no report.

**Members of City Boards and Commissions**

None

**City Manager & Staff**

Interim City Manager/Director Goldie had no report.

**City Attorney**

City Attorney Michow had no report.

**EXECUTIVE SESSION AND ADJOURNMENT**

Councilor Griffin moved, seconded by Councilor Gallagher to move into Executive Session pursuant to CRS 24-6-402(4)(b) for purposes of seeking legal advice concerning the rezoning process applicable to city-owned properties and afterwards to adjourn.

The following votes were recorded:

|            |     |
|------------|-----|
| Gallagher  | yes |
| Griffin    | yes |
| VanderWerf | yes |
| K. Brown   | yes |
| Hoellen    | yes |

Vote on the Executive Session: 5 ayes. 0 nays. The motion carried.

The Executive Session began at 7:10 p.m.

Mayor Pro Tem A. Brown arrived at 7:33 p.m.

The meeting adjourned at 7:38 p.m.

\_\_\_\_\_  
Laura Christman, Mayor

\_\_\_\_\_  
Laura Smith, City Clerk

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Special Meeting  
Held on Tuesday, May 24, 2016 at 5:00 p.m.  
At the Village Center

Mayor Laura Christman called the meeting to order at 5:01 p.m.

**ROLL CALL**

Mayor Laura Christman, Councilors Earl Hoellen, Alex Brown, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on roll call. Also present were Interim City Manager and Public Works Director Jay Goldie, and City Clerk Laura Smith.

Absent: Councilor Mark Griffin

**PLEDGE OF ALLEGIANCE**

The Council conducted the pledge of allegiance.

**DISCUSSION OF PROPOSALS FOR PLANNING SERVICES ASSOCIATED WITH MUNICIPAL SERVICES BUILDING**

Interim City Manager/Director Goldie explained that staff had provided Council with two proposals from consultants for the proposed rezoning process and one proposal from a consultant for the architectural plans for the proposed rezoning. He noted that Norris Design's proposal consisted of just the outreach portion of the project but he had discussed the rezoning portion with them and they would re-write their proposal not to exceed \$10,500 to include the entire scope of work.

Councilor Hoellen asked about the process that had resulted in the two rezoning process proposals and staff's opinion.

Interim City Manager/Director Goldie replied that he had reached out to Norris Design as they had done work for the City before and had experience with the City's expanded use permit process, and Mayor Pro Tem A. Brown had reached out to Starboard. He added he had reached out to a third firm as well but they were too busy to submit a proposal. He noted that Norris Design would be ahead of the curve because of their past experience with the City.

Mayor Pro Tem A. Brown added that Norris Design had created the original conceptual design of the Village Center and had conducted the community meetings associated with that process. He noted that they were familiar with the City, the site and Council's expectations.

Councilor K. Brown asked if Norris Design had also done the consideration of different properties for sale

Interim City Manager/Director Goldie confirmed Norris Design had done the Public Works facility review of over 20 properties.

Mayor Pro Tem A. Brown indicated that Starboard had overestimated the scope of work, hours needed, and cost.

Councilor Hoellen agreed that Starboard's cost was too high but indicated that he liked the detail in their proposal.

Mayor Pro Tem A. Brown noted that Council wanted to engage a consultant to manage the process.

Councilor Gallagher asked if the proposal included preparing presentation materials for the community meetings.

Mayor Pro Tem A. Brown replied that Norris Design could provide those materials.

Councilor Hoellen indicated that Starboard specifically used the words "managing the process" in their proposal.

Mayor Pro Tem A. Brown asked if Norris Design understood the scope of work.

Interim City Manager/Director Goldie replied they did and that he had discussed the entire process with Norris Design. He noted that the presentation materials would consist of concepts and sketches. The City Engineer had created a preliminary layout and would work with whichever consultant Council chose. A different consultant would be in charge of sketching out the landscaping, ingress/egress and building facades.

Councilor VanderWerf noted that Norris Design's fee may be less because they were familiar with the City.

Mayor Pro Tem A. Brown added that their experience with the City's expanded use process was also valuable.

Councilor K. Brown agreed that she liked the Starboard proposal but it was too expensive.

Councilor Gallagher agreed that the Starboard proposal didn't justify its fees.

Interim City Manager/Director Goldie noted that Norris Design could include landscape design as well.

Mayor Pro Tem A. Brown asked why the PLAN proposal included so many hours since the City already had a basic layout for the facilities.

Mayor Christman replied that the City did not yet have a basic layout.

Interim City Manager/Director Goldie noted that the City had sketches including minimum setbacks

Mayor Pro Tem A. Brown indicated that the work product would be similar to the renderings included in PLAN's proposal and questioned how many hours they would take to produce.

Councilor Hoellen questioned how the configuration would be determined. He noted that the project design team would design the layout based on functionality, and then the landscape architect would fit in around the layout.

Interim City Manager/Director Goldie explained that the layout included considerations beyond functionality because work flow had to be compromised for sound reduction.

Mayor Christman emphasized that no decisions had been made.

Mayor Pro Tem A. Brown asked how much flexibility the City would have after the rezoning process was completed based on a certain sketch plan.

Mayor Christman noted that what was presented to the community during the rezoning process could be simple in order to allow for more flexibility.

Mayor Pro Tem A. Brown indicated that he preferred to have more detailed plans to present to the community but questioned how much could be changed if needed after the rezoning process.

Mayor Christman replied that the Municipal Code required that sketches of the improvements be presented. She supposed that the neighbors could argue that an applicant was bound within reason to the sketches presented during the process.

Mayor Pro Tem A. Brown noted that normally more detailed plans would be determined later in the development process.

Councilor Hoellen indicated that the dimensions of the facilities would not change but their location may shift and the type of landscaping could be determined but their location may shift.

Mayor Christman stated that the neighbors would not appreciate, for example, a change in the type of roofs from the ones presented to the community. She suggested that simpler sketches would prevent issues with the neighbors. She indicated that Council was pre-designing the facilities but did not have to. She noted that a sketch of

prefabricated metal buildings with facades was a more detailed design for the neighbors rather than a simple sketch.

Councilor K. Brown asked how much of the sketch would be created by an architect versus a landscape architect versus a prefabricated metal buildings company.

Councilor Gallagher noted that the two would work in sync.

Councilor K. Brown asked if there was a single company that could do everything the City needed.

Councilor Hoellen questioned how PLAN would interface with the City's functional architect and which part would come first. He suggested that if PLAN designed the building without the functionality then costs could get out of control.

Henry Dowling, PLAN owner/principle, 8 Lynn Rd, indicated that his company specialized in resort and community master planning and landscape architecture. He explained that PLAN blended architectural design, site planning, master planning, and landscape architecture. He indicated that PLAN would reorganize the City's program document, which showed the needs of the site, to include access, egress, storage, function, and site plan options and transform the prefabricated buildings into a more agrarian look. They would present multiple options before arriving at a final option. He noted that public perception could be improved by designing the facility to have a more agrarian look. He added that PLAN would create high-level illustrations and 3D renderings, showing for example how the site would look from Colorado. He anticipated six foot meandering berms, split rail fences, and significant evergreen and ornamental trees. He noted that the buildings would likely still be visible, but if they were spread out and had rural roofs it would not be obvious that there was a larger facility. He indicated that what would be conveyed to the public would be highly accurate and Council would not need to worry about changes later on in the process. He noted that PLAN's work would significantly involve the architecture

Mayor Pro Tem A. Brown asked for clarification about the architecture.

Mr. Dowling replied that they would include the functional layout of all the program elements and then add design features such as facades and gabled roofs to the prefabricated buildings to present to Council for consideration. He noted that PLAN would not produce construction documents, but rather a firm layout of the building outlines based on the functional requirements of the facility uses.

Mayor Pro Tem A. Brown asked how many hours would be needed to complete the final product.

Mr. Dowling estimated that the entire process including several presentations to Council for feedback would take approximately a month of time to complete.

Councilor Gallagher asked if the final product would indicate a cost of the facility.

Mr. Dowling suggested that a contractor be included early on in the process so that cost for the facility would be integrated and could be considered by Council throughout the project.

Councilor Hoellen agreed that a contractor would be critical to keep the cost accurate and reasonable. He added that the City wanted the facility to fit in, be aesthetically pleasing, to not change the character of the neighborhood, and incorporate landscaping appropriately.

Mayor Pro Tem A. Brown added that the public works facility yard would be walled in and open air.

Interim City Manager/Director Goldie noted that Council had directed staff to move forward with the Request for Proposal (RFP) for a contractor to work in sync with the architect and that process could begin shortly.

Councilor K. Brown suggested that staff contact companies that construct prefabricated metal buildings to see what their options were.

Councilor Hoellen agreed and noted that the City did not need an architect to create the building but only to augment it.

Councilor K. Brown suggested that the options for prefabricated metal buildings could be given to PLAN who could then present façade options.

Councilor Hoellen questioned if the companies that make prefabricated metal buildings could also add facades.

Interim City Manager/Director Goldie replied he was not sure, but while an architect was not needed to build a prefabricated building they were needed at some point for the City's purposes.

Mayor Christman agreed that she understood the City would need the prefabricated metal buildings, an engineer, and a designer. She noted that a separate architect should not be needed unless the City was asking the prefabricated building company to do something they hadn't previously done.

Interim City Manager/Director Goldie indicated he would incorporate both design and build requirements into the RFP.

Councilor Gallagher asked if the APWA had basic plans for public works facilities.

Interim City Manager/Director Goldie replied they did not.

Councilor K. Brown also recollected something about prefabricated plans.

Interim City Manager/Director Goldie noted that many companies that built prefabricated buildings also had plans.

Councilor Hoellen indicated that the first community meeting for the rezoning process would be at the end of June and the sketches and renderings presented to the neighbors could not change because of inaccurate costs. The sketches had to be able to be implemented on a cost-effective basis and the buildings had to be functional, long-lasting, and as aesthetically pleasing as possible.

Mayor Christman asked if Council preferred above ground fuel tanks or underground fuel tanks.

Interim City Manager/Director Goldie noted that above ground fuel tanks cost about \$70,000 and underground fuel tanks cost about \$140,000.

Mayor Christman noted that she preferred an underground tank for aesthetics but an above ground tank was more cost-effective and provided more flexibility to adjust to future fuel types. She noted that the tank would last 100 years.

Councilor VanderWerf noted that the facility should last 30-40 years.

Interim City Manager/Director Goldie noted that the City would not have a contractor for another month or more as the RFP process progressed.

Mayor Christman indicated that they were at risk creating a design without a contractor.

Councilor K. Brown noted that the Municipal Code stated "in good faith".

Mayor Christman indicated that the issue was the City might have to start the process again from the beginning. She noted that the Code was unclear and suggested that the Code should be amended to clarify the process.

Interim City Manager/Director Goldie noted that section of the Code may be generic.

Councilor K. Brown agreed and noted that it was a public relations risk.

Interim City Manager/Director Goldie noted that the design could be simple in order to avoid possible changes.

Councilor Hoellen indicated that the basic needs and function of the facility elements were known and would not change, but the roof line might change and the elements might move around on the lot. He suggested that at the community meetings it be made clear that the facades presented were not exactly what would be built but were similar.

Councilor Gallagher added that the landscaping might change.

Councilor Hoellen noted that the only landscape element that was non-negotiable was a secure fence.

Mr. Dowling added that the façade would create a rural context and behind would be the secure fence.

Interim City Manager/Director Goldie indicated that staff could work with PLAN on the landscaping costs.

Councilor K. Brown indicated that they were on the right track. She indicated that they should be careful in their presentation and clear that what was presented was not the final version. She suggested showing options of what the final version would be.

Councilor Hoellen agreed.

John Love, 8 Lynn Road suggested that Council could get a variance to approve berms higher than six feet.

Mayor Christman replied they may not need to as the natural grade was higher at Colorado Boulevard anyway.

Councilor K. Brown noted that a variance would go through the Board of Adjustment and Appeals rather than Council.

Mayor Pro Tem A. Brown indicated that he strove for a variance-free design.

Councilor VanderWerf agreed the fewer exceptions the better.

Councilor K. Brown agreed and noted that there was a perception that the City did not follow its own rules.

Mr. Dowling suggested that they could blur back the buildings on the image boards.

Councilor Hoellen agreed that the buildings would be mainly nondescript.

Mayor Christman added that if Council chose to install an above ground fuel tank it should be camouflaged.

Councilor Hoellen asked who would be in charge of this project during Interim City Manager/Director Goldie's vacation.

Interim City Manager/Director Goldie replied that City Manager Jim Thorsen would take over when he began June 1st.

Councilor Hoellen noted that PLAN was at a very high level and probably more sophisticated than what was needed for this project, while it was a large project for the City, and asked that PLAN consider that when finalizing their costs. He asked if this project could be capitalized and rolled into the City's COP.

Mayor Pro Tem A. Brown confirmed that the soft costs could be capitalized.

Mayor Christman asked about the timeline for the COPs.

Mayor Pro Tem A. Brown noted that they hadn't yet decided what type of COPs would be used but that 20 years was being considered. He questioned the PLAN contract provision of having an amount on deposit with the contractor. He indicated that the City generally operated by paying its bills within 30 days and he was not inclined to have an amount on deposit.

Interim City Manager/Director Goldie noted that City Attorney Michow could make that adjustment and the Mayor could sign the amended contract.

Mayor Christman agreed with the amendment.

Councilor Gallagher asked about the timeline for the process.

Interim City Manager/Director Goldie replied that by the end of June they would have sketches and a good cost estimate from staff.

Councilor Gallagher asked if having a contractor on board was critical for the cost estimate.

Interim City Manager/Director Goldie replied that having a contractor on board was critical to making sure the design was buildable for the estimated cost.

Mr. Dowling asked if Council expected that sketches and renderings would be completed by the end of June.

Councilor Hoellen replied that design sketches were a big part of what was needed for the community meeting to fulfill the rezoning process requirements.

Mayor Christman added that rough drawings were acceptable for the community meetings, but that renderings were important for the rezoning process.

Councilor Hoellen suggested that while renderings weren't technically necessary for the community meetings Council did want to have them to present to the neighbors.

Mayor Christman indicated that Norris Design could help decide what was needed for the community meetings.

Councilor Hoellen agreed that Norris Design would work with PLAN to determine what was needed for the community meetings.

Mr. Dowling suggested that Council meet with PLAN a couple times before the community meeting to work on the options and noted that completion of the entire scope of work in one month was ambitious.

Councilor Hoellen replied that they did not need the entire scope of work to be completed in one month but Council did need something to show at the community meetings that would have some resemblance to the final design.

Councilor K. Brown noted that she envisioned an overhead view of the site to present at the first community meeting showing location of buildings, ingress/egress and landscaping.

Mayor Pro Tem A. Brown added that an inventory of the facility elements should be included at the community meeting.

### **APPROVAL OF PROPOSAL AND AUTHORIZATION TO PROCEED**

Mayor Pro Tem A. Brown moved, seconded by Councilor Hoellen to authorize staff to negotiate a professional services agreement with PLAN LLC in a not to exceed amount of \$20,000 in substantially the same form as the City's standard form of professional services agreement with an effective date of June 1, 2016, and for the Mayor to execute said agreement.

The motion passed unanimously.

Mayor Pro Tem A. Brown moved, seconded by Councilor Hoellen to authorize staff to negotiate a professional services agreement with Norris Design Inc. in a not to exceed amount of \$10,500 in substantially the same form as the City's standard form of professional services agreement with an effective date of June 1, 2016, and for the Mayor to execute said agreement.

The motion passed unanimously.

### **ADJOURNMENT**

The meeting adjourned at 6:03 p.m.

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Laura Christman, Mayor

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Laura Smith, City Clerk



TO: Honorable Mayor Christman and City Council

CC: Jim Thorsen, City Manager

FROM: Linda Michow, City Attorney

DATE: June 7, 2016

SUBJECT: Ratification of Agreement to Buy and Sell Real Estate with Denver First Church of the Nazarene

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**ISSUE:**

On the June 7, 2016 City Council consent agenda is the fully executed Agreement to Buy and Sell Real Estate by and between the City and Denver First Church of the Nazarene for ratification by City Council ("Agreement").

**BACKGROUND:**

As City Council is aware, the City has been in negotiations with Denver First Church of the Nazarene for the City's potential purchase of a parcel of land consisting of approximately 2 acres for the City's use as a municipal services facility. At the April 5, 2016 City Council meeting, the City Council authorized negotiations with the Church and further authorized the Mayor to execute a purchase and sale agreement consistent with the parameters discussed in executive session occurring on the same date.

With the acceptance by Denver First Church of the purchase terms, Mayor Christman and Mr. Richard Cantwell have executed the attached Agreement as of May 6, 2016. In accordance with Section 30.2 of Exhibit 2 of the Agreement, the City received written notice on June 1, 2016 that the Church's congregation and Board have approved the sale. The City and Church are proceeding with due diligence and other matters set forth in the Agreement.

**RECOMMENDATION:**

It is recommended that City Council approve the Agreement to Buy and Sell Real Estate with Denver First Church of the Nazarene and ratify the Mayor's signature of the same as set forth on the consent agenda.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.  
(CBS4-6-15) (Mandatory 1-16)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

## CONTRACT TO BUY AND SELL REAL ESTATE

(LAND)

Property with No Residences)

Property with Residences-Residential Addendum Attached)

Date: May 5, 2016

### AGREEMENT

1. **AGREEMENT.** Buyer agrees to buy and Seller agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. **PARTIES AND PROPERTY.**

2.1. **Buyer.** Buyer, CITY OF CHERRY HILLS VILLAGE, a Colorado home rule municipality, will take title to the Property described below as  Joint Tenants  Tenants In Common  Other severalty.

2.2. **No Assignability.** This Contract Is Not assignable by Buyer unless otherwise specified in **Additional Provisions**.

2.3. **Seller.** Seller, DENVER FIRST CHURCH OF THE NAZARENE, a Colorado nonprofit corporation, is the current owner of the Property described below.

2.4. **Property.** The Property is the following legally described real estate in the County of Arapahoe, Colorado:

See Exhibit 1 attached hereto

|                         |                             |           |              |
|-------------------------|-----------------------------|-----------|--------------|
| known as No. <u>N/A</u> | <u>Cherry Hills Village</u> | <u>CO</u> | <u>80113</u> |
| Street Address          | City                        | State     | Zip          |

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. **Inclusions.** The Purchase Price includes the following items (Inclusions):

2.5.1. **Inclusions.** The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under **Exclusions**:

N/A

If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. **Personal Property – Conveyance.** Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.6. **Exclusions.** The following items are excluded (Exclusions):

N/A

2.7. **Water Rights, Well Rights, Water and Sewer Taps.**

2.7.1. **Deeded Water Rights.** The following legally described water rights:  
any water rights appurtenant to the Property

Any deeded water rights will be conveyed by a good and sufficient bargain and sale deed at Closing.

2.7.2. **Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing:

2.7.3. **Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well," used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in

51 connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is

52

53  2.7.4. **Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:

54

55 2.7.5. **Water and Sewer Taps.** The parties agree that water and sewer taps listed below for the Property are being  
56 conveyed as part of the Purchase Price as follows:

57 N/A

58 If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider, written confirmation of the  
59 amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.

60 2.7.6. **Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water),  
61 § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable  
62 legal instrument at Closing.

63 2.8. **Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:

64 N/A

65 **3. DATES AND DEADLINES.**

| Item No. | Reference | Event  | Date or Deadline   |
|----------|-----------|--|--|
| 1        | § 4.3     | Alternative Earnest Money Deadline                 | See Additional Provisions  |
|          |           | <b>Title</b>                                       |  |
| 2        | § 8.1     | Record Title Deadline                              | 45 days following MEC  |
| 3        | § 8.2     | Record Title Objection Deadline                    | 60 days following MEC  |
| 4        | § 8.3     | Off-Record Title Deadline                          | 35 days following MEC  |
| 5        | § 8.3     | Off-Record Title Objection Deadline                | 55 days following MEC  |
| 6        | § 8.4     | Title Resolution Deadline                          | 65 days following MEC  |
| 7        | § 8.6     | Right of First Refusal Deadline                    | N/A  |
|          |           | <b>Owners' Association</b>                         |  |
| 8        | § 7.3     | Association Documents Deadline                     | N/A  |
| 9        | § 7.4     | Association Documents Objection Deadline           | N/A  |
|          |           | <b>Seller's Property Disclosure</b>                |  |
| 10       | § 10.1    | Seller's Property Disclosure Deadline              | 35 days following MEC  |
|          |           | <b>Loan and Credit</b>                             |  |
| 11       | § 5.1     | Loan Application Deadline                          | N/A  |
| 12       | § 5.2     | Loan Objection Deadline                            | N/A  |
| 13       | § 5.3     | Buyer's Credit Information Deadline                | N/A  |
| 14       | § 5.3     | Disapproval of Buyer's Credit Information Deadline | N/A  |
| 15       | § 5.4     | Existing Loan Documents Deadline                   | N/A  |
| 16       | § 5.4     | Existing Loan Documents Objection Deadline         | N/A  |
| 17       | § 5.4     | Loan Transfer Approval Deadline                    | N/A  |
| 18       | § 4.7     | Seller or Private Financing Deadline               | N/A  |
|          |           | <b>Appraisal</b>                                   |  |
| 19       | § 6.2     | Appraisal Deadline                                 | N/A  |
| 20       | § 6.2     | Appraisal Objection Deadline                       | N/A  |
| 21       | § 6.2     | Appraisal Resolution Deadline                      | N/A  |
|          |           | <b>Survey</b>                                      |  |
| 22       | § 9.1     | New ILC or New Survey Deadline                     | 20 days following Seller notice to Buyer of Church approval per Sec. 30.2 or 50 days following MEC, whichever occurs first |
| 23       | § 9.3     | New ILC or New Survey Objection Deadline           | 10 days following Survey Deadline in Sec. 9.1  |
| 24       | § 9.4     | New ILC or New Survey Resolution Deadline          | 30 days following  |
|          |           | <b>Inspection and Due Diligence</b>                |  |
| 25       | § 10.3    | Inspection Objection Deadline                      | 60 days following MEC  |
| 26       | § 10.3    | Inspection Resolution Deadline                     | 70 days following MEC  |
| 27       | § 10.5    | Property Insurance Objection Deadline              | 70 days following MEC  |

| Item No.                      | Reference | Event   | Date or Deadline          |
|-------------------------------|-----------|---|---------------------------|
| 28                            | § 10.6    | Due Diligence Documents Delivery Deadline     | 30 days following MEC     |
| 29                            | § 10.6    | Due Diligence Documents Objection Deadline    | 40 days following MEC     |
| 30                            | § 10.6    | Due Diligence Documents Resolution Deadline   | 50 days following MEC     |
| 31                            | § 10.6    | Environmental Inspection Objection Deadline   | 50 days following MEC     |
| 32                            | § 10.6    | ADA Evaluation Objection Deadline             | N/A                       |
| 33                            | § 10.7    | Conditional Sale Deadline                     | N/A                       |
| 34                            | § 11.1    | Tenant Estoppel Statements Deadline           | N/A                       |
| 35                            | § 11.2    | Tenant Estoppel Statements Objection Deadline | N/A                       |
| <b>Closing and Possession</b> |           |   |                           |
| 36                            | § 12.3    | Closing Date                                  | See Additional Provisions |
| 37                            | § 17      | Possession Date                               | At Delivery of Deed       |
| 38                            | § 17      | Possession Time                               | At Delivery of Deed       |
| 39                            | § 28      | Acceptance Deadline Date                      | May 6, 2016               |
| 40                            | § 28      | Acceptance Deadline Time                      | 3:00 MDT                  |
|                               |           |   |                           |
|                               |           |   |                           |

66 **3.1. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. Any box, blank  
67 or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision, including  
68 any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted. If no box is  
69 checked in a provision that contains a selection of "None", such provision means that "None" applies.

70 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

71 **4. PURCHASE PRICE AND TERMS.**

72 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

| Item No. | Reference | Item               | Amount          | Amount                       |
|----------|-----------|--------------------|-----------------|------------------------------|
| 1        | § 4.1     | Purchase Price     | \$ 1,185,000.00 |                              |
| 2        | § 4.3     | Earnest Money      |                 | \$ 50,000                    |
| 3        | § 4.5     | New Loan           |                 | \$ N/A                       |
| 4        | § 4.6     | Assumption Balance |                 | \$ N/A                       |
| 5        | § 4.7     | Private Financing  |                 | \$ N/A                       |
| 6        | § 4.7     | Seller Financing   |                 | \$ N/A                       |
| 7        |           |                    |                 |                              |
| 8        |           |                    |                 |                              |
| 9        | § 4.4     | Cash at Closing    |                 | \$ See Additional Provisions |
| 10       |           | <b>TOTAL</b>       | \$ 1,185,000    | \$ 1,185,000                 |

73 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$N/A (Seller Concession). The Seller Concession may be  
74 used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the  
75 Closing Statement or Closing Disclosure, at Closing. Examples of allowable items to be paid for by the Seller Concession include,  
76 but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge,  
77 expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this  
78 Contract.

79 **4.3. Earnest Money.** The Earnest Money set forth in this section, in the form of a check or wired funds, will be payable  
80 to and held by Title Company (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money  
81 deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline**  
82 for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing  
83 Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits  
84 transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge  
85 and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be  
86 transferred to such fund.

87 4.3.1. **Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the  
88 time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline.**

89 4.3.2. **Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the  
90 return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in  
91 § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and  
92 return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of  
93 Seller's receipt of such form.

94 4.4. **Form of Funds; Time of Payment; Available Funds.**

95 4.4.1. **Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing  
96 and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified  
97 check, savings and loan teller's check and cashier's check (Good Funds).

98 4.4.2. **Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be  
99 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing  
100 **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract,   
101 **Does**  **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at  
102 Closing in § 4.1.

103 4.5. **New Loan.**

104 4.5.1. **Buyer to Pay Loan Costs.** Buyer, except as provided in § 4.2, if applicable, must timely pay Buyer's loan  
105 costs, loan discount points, prepaid items and loan origination fees, as required by lender.

106 4.5.2. **Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to  
107 Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).

108 4.5.3. **Loan Limitations.** Buyer may purchase the Property using any of the following types of loans:

109  **Conventional**  **Other** N/A.

110 4.6. **Assumption.** Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance  
111 set forth in § 4.1, presently payable at \$\_\_\_\_\_ per \_\_\_\_\_ including principal and interest presently at the rate of N/A% per annum,  
112 and also including escrow for the following as indicated:  **Real Estate Taxes**  **Property Insurance Premium** and  \_\_\_\_\_.

113 Buyer agrees to pay a loan transfer fee not to exceed \$N/A. At the time of assumption, the new interest rate will not exceed  
114 \_\_\_\_\_% per annum and the new payment will not exceed \$\_\_\_\_\_ per \_\_\_\_\_ principal and interest, plus escrow, if any. If the actual  
115 principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from  
116 Buyer at Closing to be increased by more than \$\_\_\_\_\_, then Buyer has the Right to Terminate under § 25.1, on or before **Closing**  
117 **Date**, based on the reduced amount of the actual principal balance.

118 Seller  **Will**  **Will Not** be released from liability on said loan. If applicable, compliance with the requirements for release  
119 from liability will be evidenced by delivery  on or before **Loan Transfer Approval Deadline**  at **Closing** of an appropriate  
120 letter of commitment from lender. Any cost payable for release of liability will be paid by \_\_\_\_\_ in an amount not to exceed \$\_\_\_\_\_.

121 4.7. **Seller or Private Financing.**

122 **WARNING:** Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers  
123 and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a licensed  
124 Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing,  
125 including whether or not a party is exempt from the law.

126 4.7.1. **Seller Financing.** If Buyer is to pay all or any portion of the Purchase Price with Seller financing,  
127  **Buyer**  **Seller** will deliver the proposed Seller financing documents to the other party on or before N/A days before **Seller or**  
128 **Private Financing Deadline.**

129 4.7.1.1. **Seller May Terminate.** If Seller is to provide Seller financing, this Contract is conditional upon  
130 Seller determining whether such financing is satisfactory to the Seller, including its payments, interest rate, terms, conditions, cost  
131 and compliance with the law. Seller has the Right to Terminate under § 25.1, on or before **Seller or Private Financing Deadline**, if  
132 such Seller financing is not satisfactory to the Seller, in Seller's sole subjective discretion.

133 4.7.2. **Buyer May Terminate.** If Buyer is to pay all or any portion of the Purchase Price with Seller or private  
134 financing, this Contract is conditional upon Buyer determining whether such financing is satisfactory to the Buyer, including its  
135 availability, payments, interest rate, terms, conditions and cost. Buyer has the Right to Terminate under § 25.1, on or before **Seller or**  
136 **Private Financing Deadline**, if such Seller or private financing is not satisfactory to Buyer, in Buyer's sole subjective discretion.

137 

|                               |
|-------------------------------|
| <b>TRANSACTION PROVISIONS</b> |
|-------------------------------|

138 **5. FINANCING CONDITIONS AND OBLIGATIONS.**

139 5.1. **Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan),  
140 or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an application verifiable by such  
141 lender, on or before **Loan Application Deadline** and exercise reasonable efforts to obtain such loan or approval.

142 **5.2. Loan Objection.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional  
143 upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its  
144 availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition is for the sole benefit of Buyer.  
145 Buyer has the Right to Terminate under § 25.1, on or before **Loan Objection Deadline**, if the New Loan is not satisfactory to Buyer,  
146 in Buyer's sole subjective discretion. **IF SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE BUYER'S**  
147 **WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE**, except as otherwise  
148 provided in this Contract (e.g., Appraisal, Title, Survey).

149 **5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional (for the sole benefit  
150 of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be at Seller's sole subjective  
151 discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's Credit Information Deadline**, at Buyer's expense, information  
152 and documents (including a current credit report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents  
153 that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information and documents received by Seller  
154 must be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction. If the Cash at  
155 Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under § 25.1, on or before Closing. If Seller  
156 disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective discretion, Seller has the Right to Terminate  
157 under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline**.

158 **5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver copies of the loan  
159 documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline**. For the sole  
160 benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer has  
161 the Right to Terminate under § 25.1, on or before **Existing Loan Documents Objection Deadline**, based on any unsatisfactory  
162 provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is  
163 required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set  
164 forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on such  
165 deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be  
166 released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

## 167 **6. APPRAISAL PROVISIONS.**

168 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on  
169 behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth  
170 certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be  
171 valued at the Appraised Value.

172 **6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective loan type set forth  
173 in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

174 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the  
175 Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal**  
176 **Objection Deadline**, notwithstanding § 8.3 or § 13:

177 **6.2.1.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

178 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the  
179 Appraisal or written notice from lender that confirms the Appraisal Value is less than the Purchase Price.

180 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal**  
181 **Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution**  
182 **Deadline** (§ 3), this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written  
183 withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

184 **6.3. Lender Property Requirements.** If the lender imposes any requirements, replacements, removals or repairs,  
185 including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond  
186 those matters already agreed to by Seller in this Contract, Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of  
187 this Contract), on or before three days following Seller's receipt of the Lender Requirements, in Seller's sole subjective discretion.  
188 Seller's Right to Terminate in this § 6.3 does not apply if, on or before any termination by Seller pursuant to this § 6.3: (1) the parties  
189 enter into a written agreement regarding the Lender Requirements; or (2) the Lender Requirements have been completed; or (3) the  
190 satisfaction of the Lender Requirements is waived in writing by Buyer.

191 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by  
192  Buyer  Seller. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company,  
193 lender's agent or all three.

## 194 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common Interest Community 195 and subject to such declaration.

196 **7.1. Common Interest Community Disclosure.** **THE PROPERTY IS LOCATED WITHIN A COMMON**  
197 **INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF**

198 THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE  
199 COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE  
200 ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL  
201 OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS  
202 OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD  
203 PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS,  
204 AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING  
205 CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A  
206 COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF  
207 PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL  
208 OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE  
209 DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE  
210 ASSOCIATION.

211 7.2. Owners' Association Documents. Owners' Association Documents (Association Documents) consist of the following:

212 7.2.1. All Owners' Association declarations, articles of incorporation, bylaws, articles of organization, operating  
213 agreements, rules and regulations, party wall agreements;

214 7.2.2. Minutes of most recent annual owners' meeting;

215 7.2.3. Minutes of any directors' or managers' meetings during the six-month period immediately preceding the date  
216 of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.2.1, 7.2.2 and 7.2.3, collectively,  
217 Governing Documents); and

218 7.2.4. The most recent financial documents which consist of: (1) annual and most recent balance sheet, (2) annual  
219 and most recent income and expenditures statement, (3) annual budget, (4) reserve study, and (5) notice of unpaid assessments, if  
220 any (collectively, Financial Documents).

221 7.3. Association Documents to Buyer.

222 7.3.1. Seller to Provide Association Documents. Seller is obligated to provide to Buyer the Association  
223 Documents, at Seller's expense, on or before Association Documents Deadline. Seller authorizes the Association to provide the  
224 Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon  
225 Buyer's receipt of the Association Documents, regardless of who provides such documents.

226 7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to  
227 Terminate under § 25.1, on or before Association Documents Objection Deadline, based on any unsatisfactory provision in any of  
228 the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after  
229 Association Documents Deadline, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to  
230 Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive  
231 the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after Closing  
232 Date, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to  
233 Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right  
234 to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

235 8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

236 8.1. Evidence of Record Title.

237  8.1.1. Seller Selects Title Insurance Company. If this box is checked, Seller will select the title insurance  
238 company to furnish the owner's title insurance policy at Seller's expense. On or before Record Title Deadline, Seller must furnish  
239 to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price,  
240 or if this box is checked,  an Abstract of Title certified to a current date. Seller will cause the title insurance policy to be issued  
241 and delivered to Buyer as soon as practicable at or after Closing.

242  8.1.2. Buyer Selects Title Insurance Company. If this box is checked, Buyer will select the title insurance  
243 company to furnish the owner's title insurance policy at Buyer's expense. On or before Record Title Deadline, Buyer must furnish to  
244 Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.  
245 If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

246 8.1.3. Owner's Extended Coverage (OEC). The Title Commitment  Will  Will Not contain Owner's  
247 Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions  
248 which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap  
249 period (period between the effective date and time of commitment to the date and time the deed is recorded), and (6) unpaid taxes,  
250 assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by   
251 Buyer  Seller  One-Half by Buyer and One-Half by Seller  Other \_\_\_\_\_.

252 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over  
253 any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below,

254 among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under  
255 § 8.4 (Right to Object to Title, Resolution).

256 **8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations, covenants,  
257 conditions and restrictions burdening the Property, and (2) copies of any other documents (or, if illegible, summaries of such  
258 documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title  
259 Documents).

260 **8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**, copies of all Title  
261 Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county  
262 where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the  
263 party or parties obligated to pay for the owner's title insurance policy.

264 **8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any  
265 portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

266 **8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the  
267 Title Documents as set forth in § 8.4 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's  
268 objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or  
269 any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title  
270 Documents are not received by Buyer, on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment  
271 that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to  
272 Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any  
273 required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents,  
274 or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection,  
275 pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.4 (Right to Object to  
276 Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence  
277 of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline  
278 specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents  
279 as satisfactory.

280 **8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing  
281 surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation,  
282 governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal  
283 and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). Buyer has the right to inspect  
284 the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement,  
285 boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition  
286 (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 and § 13), in Buyer's sole subjective discretion,  
287 must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the  
288 **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such  
289 Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record  
290 Title), any title objection by Buyer and this Contract are governed by the provisions set forth in § 8.4 (Right to Object to Title,  
291 Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified  
292 above, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

293 **8.4. Right to Object to Title, Resolution.** Buyer's right to object to any title matters includes, but is not limited to those  
294 matters set forth in §§ 8.2 (Record Title), 8.3 (Off-Record Title) and 13 (Transfer of Title), in Buyer's sole subjective discretion. If  
295 Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

296 **8.4.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice of  
297 Title Objection) on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or  
298 before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives  
299 Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and  
300 waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title  
301 Deadline or the Off-Record Title Deadline, or both, are extended to the earlier of Closing or ten days after receipt of the applicable  
302 documents by Buyer, pursuant to § 8.2 (Record Title) or § 8.3 (Off-Record Title), the Title Resolution Deadline also will be  
303 automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

304 **8.4.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on or before  
305 the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

306 **8.5. Special Taxing Districts.** **SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION**  
307 **INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE**  
308 **PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK**  
309 **FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE**  
310 **CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH**  
311 **INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE**

312 **SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY**  
313 **TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING**  
314 **FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND**  
315 **RECORDER, OR THE COUNTY ASSESSOR.**

316 Buyer has the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline**, based on any  
317 unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

318 **8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a right to approve  
319 this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the right  
320 of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate. If the  
321 right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect.  
322 Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this  
323 Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

324 **8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed  
325 carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property,  
326 including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations,  
327 unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property, and various  
328 laws and governmental regulations concerning land use, development and environmental matters.

329 **8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE**  
330 **PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF**  
331 **THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER**  
332 **RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL**  
333 **ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM**  
334 **RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL,**  
335 **GAS OR WATER.**

336 **8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO**  
337 **ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A**  
338 **MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND**  
339 **RECORDER.**

340 **8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT**  
341 **TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION**  
342 **OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING**  
343 **OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.**

344 **8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL**  
345 **INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING**  
346 **DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL**  
347 **AND GAS CONSERVATION COMMISSION.**

348 **8.7.5. Title Insurance Exclusions.** Matters set forth in this Section, and others, may be excepted, excluded from,  
349 or not covered by the owner's title insurance policy.

350 **8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such matters as there are  
351 strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and **Off-Record Title Objection Deadline**).

352 **9. NEW ILC, NEW SURVEY.**

353 **9.1. New ILC or New Survey.** If the box is checked, a  **New Improvement Location Certificate (New ILC)**  
354  **New Survey in the form of ALTA / ACSM survey unless waived in writing by Buyer** is required and the following will apply:

355 **9.1.1. Ordering of New ILC or New Survey.**  **Seller**  **Buyer** will order the New ILC or New Survey. The  
356 New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date  
357 after the date of this Contract.

358 **9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on or before  
359 Closing, by:  **Seller**  **Buyer** or:

361 **9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or the provider of  
362 the opinion of title if an Abstract of Title), and \_\_\_\_\_ will receive a New ILC or New Survey on or before **New ILC or New Survey**  
363 **Deadline.**

364 **9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by the surveyor  
365 to all those who are to receive the New ILC or New Survey.

366 **9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a New ILC or New  
367 Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New**

368 **Survey Objection Deadline.** Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to  
369 Seller incurring any cost for the same.

370 **9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the New ILC or New Survey. If the  
371 New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer  
372 may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:

373 **9.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

374 **9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that was to be  
375 shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

376 **9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by Seller, on or  
377 before **New ILC or New Survey Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on  
378 or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey**  
379 **Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such  
380 termination, i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**.

381 

|   |
|---|
| <b>DISCLOSURE, INSPECTION AND DUE DILIGENCE</b> |
|---|

382 **10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF**  
383 **WATER.**

384 **10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer  
385 the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller  
386 to Seller's actual knowledge, current as of the date of this Contract.

387 **10.2. Disclosure of Latent Defects; Present Condition.** Seller must disclose to Buyer any latent defects actually known  
388 by Seller. Seller agrees that disclosure of latent defects will be in writing. Except as otherwise provided in this Contract, Buyer  
389 acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

390 **10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections  
391 (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical  
392 condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing,  
393 HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property  
394 (including utilities and communication services), systems and components of the Property (e.g. heating and plumbing), (4) any  
395 proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the  
396 Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion,  
397 Buyer may, on or before **Inspection Objection Deadline**:

398 **10.3.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

399 **10.3.2. Inspection Objection.** Deliver to Seller a written description of any unsatisfactory physical condition that  
400 Buyer requires Seller to correct.

401 **10.3.3. Inspection Resolution.** If an **Inspection Objection** is received by Seller, on or before **Inspection Objection**  
402 **Deadline**, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**,  
403 this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the **Inspection**  
404 **Objection** before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

405 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written agreement  
406 between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at  
407 Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer  
408 must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify,  
409 protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such  
410 Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against  
411 any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and  
412 expenses. The provisions of this section survive the termination of this Contract. This § 10.4 does not apply to items performed  
413 pursuant to an **Inspection Resolution**.

414 **10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and premium for  
415 property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Objection**  
416 **Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

417 **10.6. Due Diligence.**

418 **10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver copies of the following  
419 documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents**  
420 **Delivery Deadline**:

421  **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;

422  **10.6.1.2.** Property tax bills for the last two (2) years;

423  10.6.1.3. As-built construction plans to the Property and the tenant improvements, including architectural,  
424 electrical, mechanical, and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now  
425 available;

426  10.6.1.4. A list of all Inclusions to be conveyed to Buyer;

427  10.6.1.5. Operating statements for the past \_\_\_\_\_ years;

428  10.6.1.6. A rent roll accurate and correct to the date of this Contract;

429  10.6.1.7. All current leases, including any amendments or other occupancy agreements, pertaining to the  
430 Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):  
431 N/A.

432  10.6.1.8. A schedule of any tenant improvement work Seller is obligated to complete but has not yet  
433 completed and capital improvement work either scheduled or in process on the date of this Contract;

434  10.6.1.9. All insurance policies pertaining to the Property and copies of any claims which have been made  
435 for the past two (2) years;

436  10.6.1.10. Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered  
437 earlier under § 8.3);

438  10.6.1.11. Any and all existing documentation and reports regarding Phase I and II environmental reports,  
439 letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or  
440 other toxic, hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's  
441 possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

442  10.6.1.12. Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the  
443 Property with said Act;

444  10.6.1.13. All permits, licenses and other building or use authorizations issued by any governmental authority  
445 with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

446  10.6.1.14. Other documents and information:  
447 Any other documents and reports in Seller's possession pertaining to the Property.

448 **10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object to Due Diligence  
449 Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory in Buyer's sole subjective discretion,  
450 Buyer may, on or before **Due Diligence Documents Objection Deadline**:

451 **10.6.2.1. Notice to Terminate.** Notify Seller in writing that this Contract is terminated; or

452 **10.6.2.2. Due Diligence Document Objection.** Deliver to Seller a written description of any unsatisfactory  
453 Due Diligence Documents that Buyer requires Seller to correct.

454 **10.6.2.3. Due Diligence Document Resolution.** If a Due Diligence Document Objection is received by  
455 Seller, on or before **Due Diligence Document Objection Deadline**, and if Buyer and Seller have not agreed in writing to a settlement  
456 thereof on or before **Due Diligence Document Resolution Deadline**, this Contract will terminate on **Due Diligence Document**  
457 **Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Document Objection before such  
458 termination, i.e., on or before expiration of **Due Diligence Document Resolution Deadline**.

459 **10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection**  
460 **Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over  
461 the Property, in Buyer's sole subjective discretion.

462 **10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental inspections of the  
463 Property including Phase I and Phase II Environmental Site Assessments, as applicable.  Seller  Buyer will order or provide  
464  **Phase I Environmental Site Assessment**,  **Phase II Environmental Site Assessment** (compliant with most current version  
465 of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or  \_\_\_\_\_, at the expense of   
466 Seller  Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the  
467 Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be  
468 conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of  
469 the Property, if any.

470 If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental**  
471 **Inspection Objection Deadline** will be extended by sixty (60) calendar days (Extended Environmental Inspection Objection  
472 Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the **Closing Date**  
473 will be extended a like period of time. In such event,  Seller  Buyer must pay the cost for such Phase II Environmental Site  
474 Assessment.

475 Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.5, Buyer has the  
476 Right to Terminate under § 25.1, on or before **Environmental Inspection Objection Deadline**, or if applicable, the Extended  
477 Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole  
478 subjective discretion.

479 Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline**, based on any unsatisfactory  
480 ADA Evaluation, in Buyer's sole subjective discretion.

481 10.7. **Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain property  
482 owned by Buyer and commonly known as N/A. Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of  
483 Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This  
484 § 10.7 is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**,  
485 Buyer waives any Right to Terminate under this provision.

486 10.8. **Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer  Does  Does Not  
487 acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for  
488 the Property.  There is No Well. Buyer  Does  Does Not acknowledge receipt of a copy of the current well permit.

489 **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND**  
490 **WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO**  
491 **DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

492 10.9. **Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be assigned  
493 to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease  
494 or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into  
495 any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld  
496 or delayed.

497 **11. TENANT ESTOPPEL STATEMENTS.**

498 11.1. **Tenant Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller  
499 must obtain and deliver to Buyer on or before **Tenant Estoppel Statements Deadline**, statements in a form and substance reasonably  
500 acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:

501 11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

502 11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or  
503 amendments;

504 11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

505 11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

506 11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

507 11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease demising  
508 the premises it describes.

509 11.2. **Tenant Estoppel Statements Objection.** Buyer has the Right to Terminate under § 25.1, on or before **Tenant**  
510 **Estoppel Statements Objection Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion,  
511 or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel Statements Deadline**. Buyer also has the unilateral  
512 right to waive any unsatisfactory Estoppel Statement.

513

**CLOSING PROVISIONS**

514 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

515 12.1. **Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to enable  
516 the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is  
517 obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in  
518 a timely manner, all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish  
519 any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer  
520 and Seller will sign and complete all customary or reasonably required documents at or before Closing.

521 12.2. **Closing Instructions.** Colorado Real Estate Commission's Closing Instructions  Are  Are Not executed with  
522 this Contract.

523 12.3. **Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as  
524 the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by mutual  
525 agreement of the Parties within the timeframe required by the Additional Provisions.

526 12.4. **Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality, and extent of service vary between  
527 different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

528 13. **TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by Buyer with the other  
529 terms and provisions hereof, Seller must execute and deliver a good and sufficient bargain and sale deed to Buyer, at Closing,  
530 conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title  
531 will be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of  
532 Buyer's signature hereon, whether assessed or not. Title will be conveyed subject to:

533 13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted  
534 by Buyer in accordance with Record Title,  
535 13.2. Distribution utility easements (including cable TV),  
536 13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual  
537 knowledge and which were accepted by Buyer in accordance with Off-Record Title and New ILC or New Survey,  
538 13.4. Inclusion of the Property within any special taxing district, and  
539 13.5. Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether  
540 assessed prior to or after Closing, and  
541 13.6. Other All items in Paragraph 13.1-13.5 above, inclusive, shall be reflected on an exhibit to the deed delivered  
542 at Closing.

543 14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid will be paid at or before Closing from the  
544 proceeds of this transaction or from any other source.

545 15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

546 15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required  
547 to be paid at Closing, except as otherwise provided herein.

548 15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing by  Buyer  Seller  
549  One-Half by Buyer and One-Half by Seller  Other \_\_\_\_\_.

550 15.3. Status Letter and Record Change Fees. Any fees incident to the issuance of Association's statement of assessments  
551 (Status Letter) must be paid by  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller. Any record change  
552 fee assessed by the Association including, but not limited to, ownership record transfer fees regardless of name or title of such fee  
553 (Association's Record Change Fee) must be paid by  None  Buyer  Seller  One-Half by Buyer and One-Half by  
554 Seller.

555 15.4. Local Transfer Tax.  The Local Transfer Tax of N/A% of the Purchase Price must be paid at Closing by  
556  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller.

557 15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such  
558 as community association fees, developer fees and foundation fees, must be paid at Closing by  None  Buyer  Seller  
559  One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s):  
560 N/A in the total amount of N/A% of the Purchase Price or \$\_\_\_\_\_.

561 15.6. Water Transfer Fees. The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed  
562 \$N/A for:

563  Water Stock/Certificates  Water District  
564  Augmentation Membership  Small Domestic Water Company  \_\_\_\_\_

565 and must be paid at Closing by  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller.

566 15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by  
567  None  Buyer  Seller  One-Half by Buyer and One-Half by Seller.

568 16. PRORATIONS. The following will be prorated to the Closing Date, except as otherwise provided:

569 16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the  
570 year of Closing, based on  Taxes for the Calendar Year Immediately Preceding Closing  Most Recent Mill Levy and  
571 Most Recent Assessed Valuation,  Other \_\_\_\_\_.

572 16.2. Rents. Rents based on  Rents Actually Received  Accrued. At Closing, Seller will transfer or credit to Buyer  
573 the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such  
574 transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must assume  
575 Seller's obligations under such Leases.

576 16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in  
577 advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance  
578 by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer  
579 acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special  
580 assessment assessed prior to Closing Date by the Association will be the obligation of  Buyer  Seller. Except however, any  
581 special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether  
582 assessed prior to or after Closing, will be the obligation of Seller. Seller represents that the Association Assessments are currently  
583 payable at \$N/A per \_\_\_\_\_ and that there are no unpaid regular or special assessments against the Property except the current regular  
584 assessments and N/A. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly  
585 request the Association to deliver to Buyer before Closing Date a current Status Letter.

586 16.4. Other Prorations. Water and sewer charges, propane, interest on continuing loan, and N/A.

587 16.5. Final Settlement. Unless otherwise agreed in writing, these prorations are final.

588 17. **POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the  
589 Leases as set forth in § 10.6.1.7.

590 If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable  
591 to Buyer for payment of \$750.00 per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time**  
592 until possession is delivered.

593

**GENERAL PROVISIONS**

594 18. **DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

595 18.1. **Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time  
596 (Standard or Daylight Savings as applicable).

597 18.2. **Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not specified, the  
598 first day is excluded and the last day is included (e.g., three days after MEC). If any deadline falls on a Saturday, Sunday or federal  
599 or Colorado state holiday (Holiday), such deadline  Will  Will Not be extended to the next day that is not a Saturday, Sunday  
600 or Holiday. Should neither box be checked, the deadline will not be extended.

601 19. **CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND**  
602 **WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the  
603 condition existing as of the date of this Contract, ordinary wear and tear excepted.

604 19.1. **Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss  
605 prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), and if the repair of the damage  
606 will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use  
607 Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before  
608 **Closing Date** if the Property is not repaired before **Closing Date** or if the damage exceeds such sum. Should Buyer elect to carry out  
609 this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by  
610 Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible  
611 provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance  
612 proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the  
613 option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and  
614 Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to  
615 escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding  
616 the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

617 19.2. **Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services),  
618 system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date  
619 of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion  
620 or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or  
621 replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by  
622 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before  
623 Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the  
624 option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must  
625 not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive  
626 Closing. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover  
627 the repair or replacement of such Inclusions.

628 19.3. **Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may  
629 result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation  
630 action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's  
631 sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and  
632 Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value  
633 of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

634 19.4. **Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the  
635 Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

636 19.5. **Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other casualty will be borne  
637 by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance proceeds or benefits for  
638 the growing crops.

639 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge that  
640 the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title  
641 and consultation with legal and tax or other counsel before signing this Contract.

642 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines in this Contract.  
643 This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored  
644 or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party  
645 has the following remedies:

646 **21.1. If Buyer is in Default:**

647  **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid  
648 by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty, and the Parties agree the  
649 amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat  
650 this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

651 **21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 applies unless the box in § 21.1.1 is checked. Seller may  
652 cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller, and retained by Seller. It is agreed  
653 that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair  
654 and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY  
655 for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and  
656 additional damages.

657 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received  
658 hereunder will be returned and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this  
659 Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

660 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration  
661 or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all  
662 reasonable costs and expenses, including attorney fees, legal fees and expenses.

663 **23. MEDIATION.** If a dispute arises relating to this Contract, (whether prior to or after Closing) and is not resolved, the parties  
664 must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps  
665 to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is  
666 binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator  
667 and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire  
668 dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that  
669 party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a  
670 lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This section  
671 will not alter any date in this Contract, unless otherwise agreed.

672 **24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must release the Earnest  
673 Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding  
674 the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective  
675 discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest  
676 Money into a court of competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and  
677 legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of  
678 the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one  
679 hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest  
680 Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time  
681 of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the  
682 obligation of **Mediation**. This Section will survive cancellation or termination of this Contract.

683 **25. TERMINATION.**

684 **25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the  
685 termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written  
686 notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or  
687 before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory  
688 and waives the Right to Terminate under such provision.

689 **25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will be returned  
690 and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

691 **26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and specified  
692 addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining  
693 thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms  
694 of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or  
695 obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same.  
696 Any successor to a Party receives the predecessor's benefits and obligations of this Contract.

697 **27. NOTICE, DELIVERY, AND CHOICE OF LAW.**

698 **27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing, except as provided in  
699 § 27.2, and is effective when physically received by such party, any individual named in this Contract to receive documents or  
700 notices for such party, the Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing  
701 must be received by the party, not Broker or Brokerage Firm).

702 **27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or  
703 Seller, any individual named in this Contract to receive documents or notices for such party, the Broker or Brokerage Firm of Broker  
704 working with such party (except any notice or delivery after Closing must be received by the party; not Broker or Brokerage Firm)  
705 at the electronic address of the recipient by facsimile, email or N/A.

706 **27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email address  
707 of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the  
708 documents, or (3) facsimile at the Fax No. of the recipient.

709 **27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with  
710 the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property  
711 located in Colorado.

712 **28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and  
713 Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before  
714 **Acceptance Deadline Date and Acceptance Deadline Time.** If accepted, this document will become a contract between Seller and  
715 Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such  
716 copies taken together are deemed to be a full and complete contract between the parties.

717 **29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited  
718 to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations, Title Insurance,**  
719 **Record Title and Off-Record Title, New ILC, New Survey and Property Disclosure, Inspection, Indemnity, Insurability, Due**  
720 **Diligence, Buyer Disclosure and Source of Water.**

721 **ADDITIONAL PROVISIONS AND ATTACHMENTS**

722 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate  
723 Commission.)  
724 Additional provisions are attached hereto as Exhibit 2, incorporated herein by reference.

725 **31. ATTACHMENTS.**

726 **31.1.** The following attachments are a part of this Contract:  
727 Exhibit 1 (legal description) and Exhibit 2 (additional provisions).

728 **31.2.** The following disclosure forms are attached but are not a part of this Contract:  
729  
730

731 **SIGNATURES**

732  
Buyer's Name: CITY OF CHERRY HILLS VILLAGE, a Buyer's Name: \_\_\_\_\_  
Colorado home rule municipality  
  
*Hanna Clis* May 6, 2016 \_\_\_\_\_  
Buyer's Signature Date Buyer's Signature Date  
Address: 2450 E. Quincy Avenue Address: \_\_\_\_\_

Cherry Hills Village, CO 80113

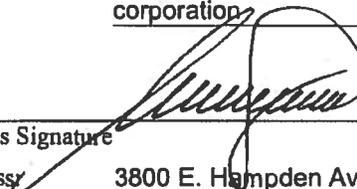
Phone No.: 303-789-2541  
Fax No.: 303-761-9386  
Email Address: lchristman@cherryhillsvillage.com

Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email Address: \_\_\_\_\_

733 [NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Seller's Name: DENVER FIRST CHURCH OF THE NAZARENE, a Colorado non-profit corporation

Seller's Name: \_\_\_\_\_

 Date 5/5/14

Seller's Signature \_\_\_\_\_ Date \_\_\_\_\_

Address: 3800 E. Hampden Ave. Englewood, CO 80113  
Phone No.: 303-761-8370  
Fax No.: 303-789-3214  
Email Address: richc@denverfirstchurch.com

Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email Address: \_\_\_\_\_

734

735 32. COUNTER; REJECTION. This offer is  Countered  Rejected.  
736 Initials only of party (Buyer or Seller) who countered or rejected offer \_\_\_\_\_

END OF CONTRACT TO BUY AND SELL REAL ESTATE

737

**33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Buyer)

Broker  Does  Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a  Buyer's Agent  Seller's Agent  Transaction-Broker in this transaction.  
 This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by  Listing Brokerage Firm  Buyer  Other \_\_\_\_\_.

Brokerage Firm's Name: Reference Additional Provisions - No Brokers  
Broker's Name: \_\_\_\_\_

Broker's Signature \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Seller)

Broker  Does  Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Seller as a  Seller's Agent  Buyer's Agent  Transaction-Broker in this transaction.  
 This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by  Seller  Buyer  Other \_\_\_\_\_.

Brokerage Firm's Name: \_\_\_\_\_  
Broker's Name: \_\_\_\_\_

\_\_\_\_\_  
Broker's Signature \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email Address: \_\_\_\_\_

738

**EXHIBIT 1**  
**Legal Description**

Property Address:

Vacant Land, Cherry Hills Village, Colorado 80113

Arapahoe County Assessor's Office Identification Number: 2077-01-1-11-003

Legal Description:

**LOTS 1-12 & 37-48 BLK 11 TOGETHER WITH VACATED ALLEY BETWEEN SAID LOTS & E 1/2 VACATED STREET ADJACENT ON W. SOUTH UNIVERSITY PARK.**

The property is located at the southwest corner of E. Jefferson Avenue and S. Colorado Boulevard.

Total acreage of parcel to be determined through ALTA/ACSM survey to be obtained by Buyer at Buyer's cost.

In accordance with § 30.3 the legal description of the Property set forth in this Contract shall be updated and amended, as necessary, prior to Closing.

**EXHIBIT 2**  
**Additional Provisions**

30.1. Title Company and Closing Instructions. The title and escrow company for this transaction is Land Title Guarantee Company (the "Title Company"). The Title Company's address is 3300 East 1<sup>st</sup> Avenue, #600, Denver, CO 80206. The Parties hereby instruct the Title Company to use this Contract, including the Additional Provisions set forth in this Exhibit 2, as closing instructions. The Parties shall each perform such other actions or deliver such other documents, including additional closing instructions, as may be reasonable and necessary to complete the sale under this Contract. Terms of this Contract shall prevail over any inconsistent additional instruction, unless the Buyer and Seller specifically waive the inconsistency in writing.

30.2 Alternative Earnest Money Deadline; Seller Right of Rescission. The Earnest Money shall be payable within two (2) business days following the date on which Seller has notified Buyer in writing that its Board of Trustees and congregation has authorized Seller to proceed with the sale of the Property to Buyer, not to exceed thirty (30) calendar days from MEC. Within said thirty (30) day period, the Seller shall be authorized to notify Buyer that Seller's Board of Trustees or congregation has specifically voted to rescind this Contract. Upon delivery of any written notice of rescission to the City, this Contract shall automatically terminate. If Seller does not take such affirmative action within said thirty (30) day period, this Contract shall be deemed fully authorized by Seller and the City shall deposit the Earnest Money with the Title Company two (2) business days following the expiration of the thirty (30) day period. Notwithstanding any provision of this Contract, if Buyer has not properly exercised a Right to Terminate this Agreement on or before 60 days following the MEC, \$25,000 of the Earnest Money shall become non-refundable to Buyer and shall be released by the Title Company to Seller. If the transaction contemplated by this Contract closes in accordance with Section 30.5 of this Contract within 300 days of the MEC, or within the Extension Period as authorized in Section 30.5, Buyer shall be credited any Earnest Money released to Seller toward the Purchase Price.

30.3 Legal Description of Property to be Updated. The Parties acknowledge and agree that the legal description of the Property set forth in Exhibit 1 will be updated and amended, as necessary, following receipt of the title commitment and review of the current vesting deed and other documents of record. In accordance with § 30.1 above, the Parties agree to cooperate to execute a written amendment or addendum to this Contract to memorialize the correct legal description of the Property not less than five days prior to Closing.

30.4 City Authorized to Proceed with Rezoning of Property following MEC. Seller acknowledges that the City intends to seek to rezone the Property to a C-1 District, consistent with the Home Rule Charter and Municipal Code of the City of Cherry Hills Village, Colorado (the "Code"), as is in place as of the MEC. Specifically, following MEC, the City Council of the City of Cherry Hills Village, Colorado will schedule the following two actions for consideration at a regular or special meeting of the City Council: (a) a City Council resolution authorizing the purchase of the Property (the "Acquisition Resolution"); and (b) a City Council ordinance rezoning the Property to a C-1 District (the "Rezoning Ordinance"). By execution of this Contract, Seller

specifically authorizes Buyer, through the staff of the City of Cherry Hills Village and consultants retained by the City to initiate applications for the Acquisition Resolution and the Rezoning Ordinance and to take all steps reasonably necessary to proceed to Council's consideration of the Acquisition Resolution and the Rezoning Ordinance. Buyer shall diligently pursue the Acquisition Resolution and the Rezoning Ordinance and shall give a minimum of one week advanced written notice to Seller of any public hearings in connection with Buyer's efforts to obtain either the Acquisition Resolution or Rezoning Ordinance. The closing of the transaction contemplated by this Contract is contingent on the Buyer obtaining the City Council's Final Approval of the Rezoning Ordinance. For purposes of this Contract, "Final Approval" shall mean City Council's approval of the Rezoning Ordinance on second and final reading.

Seller hereby acknowledges and agrees that Buyer shall have the right to seek the Acquisition Resolution and Rezoning Ordinance, at its sole cost and expense and at no cost and expense to Seller. Seller specifically covenants and agrees to not oppose the City-initiated rezoning of the Property to a C-1 District, as described in the Code, and to cooperate with Buyer's efforts to obtain the City Council's approval of the Rezoning Ordinance. Seller shall have not less than five business days but no more than 10 business days to review the rezoning application and such other documents and submittals required for the Buyer and to execute a letter of authorization for the Buyer to obtain City Council's Final Approval of the Rezoning Ordinance.

**30.5 Closing Date.** Buyer and Seller shall close the transaction contemplated by this Contract in "escrow" at the office of Title Company five business days prior to City Council's earliest scheduled vote on the second and final reading of the Rezoning Ordinance ("Escrow Deadline"), but no later than 295 days following the MEC unless otherwise extended as set forth below. On or before the Escrow Deadline, Buyer and Seller shall mutually execute all closing documents required pursuant to Section 12 of this Contract and all other necessary closing documents described herein, deposit such documents with the Title Company, and Buyer shall deposit with the Title Company the necessary cash to close the transaction ("Deposited Funds"). Seller and Buyer shall execute a mutually agreeable form of escrow agreement with the Title Company (in a form approved by the parties on or before 90 days after the MEC) which shall provide, among other things, that (a) upon Final Approval of the Rezoning Ordinance, the Title Company shall immediately proceed to close this transaction and record the Bargain and Sale Deed in the Real Property Records of the City of Cherry Hills Village, State of Colorado; (b) the closing shall be deemed to have occurred on the date of the Final Approval of the Rezoning Ordinance; and (c) in the event Final Approval of the Rezoning Ordinance does not occur prior to 300 days following MEC or 390 days following MEC if the Extension Period is exercised, the Title Company shall not close this transaction, shall return the Deposited Funds to Buyer and shall release the remaining Escrow Funds, if any, to the Buyer, destroy the signed closing documents, and the parties shall be relieved of any further obligations under the Contract.

Notwithstanding the foregoing, at any time prior to the Escrow Deadline, the City, at its option and in its sole discretion, may elect to extend the date for closing for up to 90 days ("Extension Period") so long as the closing occurs in the manner described herein and the remaining \$25,000 of the Earnest Money shall become non-refundable to Buyer for such Extension

Period and shall be released by the Title Company to Seller upon Buyer's exercise of such Extension Period.

30.6. Taxes. Taxes for all years prior to Closing, if any, shall be paid in full by Seller prior to Closing. Taxes for the year of Closing, if any, shall be prorated to the date of Closing.

30.7. Entire Agreement. This Contract: (i) integrates all terms and conditions mentioned herein, (ii) supersedes all oral negotiations and prior writings with respect to the subject matter hereof, and (iii) is intended by the Parties to be the complete and exclusive statement of the terms and conditions agreed to by the Parties. This Contract may only be amended by a written document that expressly refers to this Contract and that is signed by both Parties.

30.8. Brokers. Seller represents and warrants that there is no real estate commission payable in connection with the transaction contemplated by this Contract and Seller further represents to the Buyer that the Property is not listed for sale and will not be listed for sale with any real estate broker(s) and that no real estate listing of the Property will be given by Seller.

30.9. No Recordation. No document relating to the subject matter of this Contract, with the exception of the Deed, shall be recorded without the prior written approval of the Buyer.

30.10. Article X, Section 20/TABOR. The Parties understand and acknowledge that Buyer is subject to Article X, § 20 of the Colorado Constitution ("**TABOR**"). The Buyer represents that it has or will have budgeted and appropriated sufficient funding to meet its obligations set forth in this Contract. For any amounts not fully appropriated, the Buyer does not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of the Buyer are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Buyer's current fiscal period. Financial obligations of the Buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the Buyer and any other applicable law.

30.11. Governmental Immunity. Nothing in this Contract shall be construed as a waiver of the rights and privileges of the Buyer pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Buyer and its officers or employees.

CHERRY HILLS VILLAGE  
COLORADO

2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113  
www.cherryhillsvillage.com

Village Center  
Telephone 303-789-2541  
FAX 303-761-9386

ITEM: 5d

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MEMORANDUM

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**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** JAY GOLDIE, DEPUTY CITY MANAGER/DIRECTOR OF PUBLIC WORKS

**SUBJECT:** FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR MONROE STREET PAVING – CHANGE ORDER#001-CONTRACT #2016-001, CHANGE ORDER#001-CONTRACT #2016-003

**DATE:** JUNE 7, 2016

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On August 2, 2011 the City entered into a Development Agreement with Denver First Church of the Nazarene for the paving of Monroe Street between Hampden Avenue and Jefferson Avenue. This original agreement paved Monroe Street which at the time was gravel. Curb and gutter improvement were excluded from the original agreement until the Church decided what the ultimate use of the west parcels was finalized (Exhibit A). This work is now complete and a parking lot has been installed to accommodate the required parking for the expansion of the church facility.

Now that all of the work is complete on the expansion project the Church desires to finish the Monroe Street improvements again utilizing the funds in the escrow account designated for these enhancements. The additional work includes the installation of curb and gutter on the eastside of Monroe Street and to repair the asphalt that was disturbed during the recent expansion project. In accordance with the original agreement the City has arranged to have the work completed under its annual capital improvement program contracts. This work and the associated costs are outlined in the First Amendment to the Development Agreement (Exhibit B).

The cost for the proposed work is \$47,342.00 which is outlined in the First Amendment to the Development Agreement (Exhibit B). Staff is asking City Council to approve the expenditure of these funds plus a 10% contingency for a total maximum expenditure of \$52,076.20 for construction costs. In addition both the City and the Church will be reimbursed for reasonable attorney's fees related to the reviewing of the Amendment to the Development Agreement from the escrow fund. The current balance of the escrow fund as of March 2016 is \$68,393.59. The City is not responsible for the costs associated with this project. The funds are to be passed

through the City for the work and completely reimbursed through the Escrow. The Expenditure of Funds needs to be approved for book keeping and tracking purposes.

### **STAFF RECOMMENDATION**

Staff recommends that City Council approve the First Amendment to Development Agreement for Monroe Street Paving and the expenditure of funds in the amount of \$52,076.20 plus reasonable attorney's fees.

Staff additionally recommends that City Council approve the two Change Orders associated with this work. The first Change Order is for the contract with PLM Asphalt and Concrete, Project No. 2016-001, approved at the April 19, 2016 Council meeting (see Exhibit C for the April 19, 2016 staff memo and Exhibit D for meeting minutes) in the amount of \$9,342.00 plus a 10% contingency for a maximum expenditure of \$10,276.20 (see Exhibit E for the change order).

The second Change Order is for the contract with Thoutt Bros. Concrete Contractors, Project No. 2016-003, approved at the March 15, 2016 Council meeting (see Exhibit F for the March 15, 2016 staff memo and Exhibit G for meeting minutes) in the amount of \$38,000 plus a 10% contingency for a total maximum expenditure of \$41,800.00 (see Exhibit H for the change order).

### **RECOMMENDED MOTIONS**

"I move to approve the First Amendment to Development Agreement for Monroe Street Paving with the Denver First Church of the Nazarene in the amount of \$52,076.20 plus all reasonable attorney's fees." (Exhibit B)

"I move to approve Change Order #1 Contract #2016-001 with PLM Asphalt and Concrete Inc. in the amount of \$9,342.00 with a maximum expenditure of \$10,276.20 and authorize staff to sign the Change order." (Exhibit E)

"I move approve Change Order #1 Contract #2016-003 with Thoutt Bros. Concrete Contractors, Inc. in the amount of \$38,000.00 with a maximum expenditure of \$41,800.00 and authorize staff to sign the Change Order." (Exhibit H)

### **ATTACHMENTS**

- Exhibit A: Original Monroe Street Development Agreement
- Exhibit B: First Amendment to the Monroe Street Development Agreement
- Exhibit C: Contract for Services with PLM Asphalt and Concrete Staff Memo with Exhibits April 19, 2016
- Exhibit D: April 19, 2016 City Council Minutes
- Exhibit E: Change Order for Contract 2016-001- PLM Asphalt and Concrete

- Exhibit F: Contract for Services with Thoutt Brothers Concrete Staff Memo with Exhibits  
March 15, 2016
- Exhibit G: March 15, 2016 City Council Minutes
- Exhibit H: Change Order for Contract 2016-003 – Thoutt Brothers Concrete

**DEVELOPMENT AGREEMENT  
FOR  
MONROE STREET PAVING**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") between the Denver First Church of the Nazarene, a Colorado non-profit corporation (hereinafter referred to as the "Church"), and the City of Cherry Hills Village, Colorado, a Colorado municipal corporation (hereinafter referred to as the "City"), shall be effective upon its execution by all applicable parties.

**RECITALS AND REPRESENTATIONS:**

WHEREAS, the Church represents that it is the sole owner of the following described property located in the City of Cherry Hills Village, County of Arapahoe, State of Colorado:

Lots 1-5 inclusive, Block 1, Highline Meadows in Cherry Hills Subdivision (the "Church lots"); and

WHEREAS, the plat for the Highline Meadows in Cherry Hills Subdivision was recorded July 10, 1997 in the records of the Clerk and Recorder of Arapahoe County, Colorado, in Plat Book 139, Pages 1-3 under Reception No. A7083141 (the "Plat"); and

WHEREAS, on September 19, 2000, the parties entered into an agreement titled "Monroe Street Agreement" (attached hereto as Exhibit A), recorded in the records of Arapahoe County at Reception No. B0122035, which addresses a number of issues related to the eventual paving of Monroe Street adjacent to the Church lots; and

WHEREAS, pursuant to the Monroe Street Agreement, the City has received from the Church construction documentation dated September 2, 1999, and attached hereto as Exhibit B, illustrating the Monroe Street improvements; and

WHEREAS, while the City has not yet required the Church, pursuant to the Monroe Street Agreement, to construct all of the improvements to Monroe Street, the Church has requested that the City allow for construction of some of the Monroe Street improvements, namely paving, at this time; and

WHEREAS, the City has agreed to proceed with the paving of Monroe Street, subject to the terms and conditions contained herein; and

WHEREAS, the City and the Church mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the City of Cherry Hills Village in connection with the paving of Monroe Street, and such matters are necessary to protect, promote, and enhance the public health, safety and welfare;

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants herein contained, it is agreed as follows:

1. The City will, through its own asphalt contractor, undertake the paving of Monroe Street as set forth on Exhibit A. The paving will be completed to commercially reasonable standards, consistent with paving of other City streets.
2. The Church will have no project management obligations. Because the City will be using its own contractor, the Church will not be required to warrant the paving work, post bonds, letters of credit or obtain permits. The Church agrees to the use of the City's contractor, with the City managing the project, as this process will result in the most cost effective method to complete the project.
3. The City's asphalt contract will warrant its work for a period of two (2) years. The City will address any warranty issues related to this project directly with the contractor.
4. The Church is responsible for all reasonable costs incurred in connection with this project in an amount not to exceed forty-five thousand dollars (\$45,000.00), including but not limited to reimbursement of the City's fees in reviewing the Church's request and preparing this Agreement. Payment shall be made to the City, within thirty (30) days of the City's invoice and billing statement to the Church. The Church is solely responsible for the source of its payments funds, which may be the escrow funds referred to in the Monroe Street Agreement, or any other funds.
5. The City shall be responsible for future maintenance of Monroe Street, including the paved portion.
6. The terms, conditions and obligations of the Monroe Street Agreement remain in full force and effect, and nothing in this Agreement is intended to modify the Monroe Street Agreement, which is attached hereto as Exhibit A.
7. In the event that the Church fails to make any payments to the City when due, the Church shall additionally be responsible for interest on any past due amounts at the rate of eight percent (8%) per annum. If either party incurs any costs in connection with obtaining compliance with the obligations of this Agreement, including but not limited to obtaining compliance through litigation, the party against whom compliance was obtained shall pay any reasonable fees and costs associated with obtaining that compliance.
8. The rights and remedies of the City provided in this Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. The Church, in its future development of the property contained within the Plat, and the other improvements herein described, shall fully comply with all applicable rules, regulations, standards and laws of the City and other governmental agencies and bodies having jurisdiction.
9. This Agreement may be modified or amended from time to time by an instrument in writing signed by both parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors, and assigns.
10. A waiver by any party to this Agreement or 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.

11. The laws of the State of Colorado shall govern this Agreement. The parties agree and acknowledge that this Agreement may be enforced at law or in equity.

12. If the Church breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

13. Any notice or communication required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail or mail service such as Federal Express, United Parcel Service, etc. Such notice or communications shall be given to the parties at their addresses set forth below:

City of Cherry Hills Village:

Denver First Church of the Nazarene:

Attn: Director of Public Works  
2450 East Quincy Avenue  
Cherry Hills Village, CO 80110

Attn: Rich Cantwell  
3800 East Hampden Avenue  
Englewood, CO 80113

DATED THIS 2<sup>nd</sup> DAY OF August, 2011.

**City of Cherry Hills Village**

**Denver First Church of the Nazarene**

By: Michael J. Wozniak  
Michael J. Wozniak  
Mayor  
Date: 8/2/11

By: \_\_\_\_\_  
Shawn Siegfried  
Lead Pastor  
Date: \_\_\_\_\_

Attest:  
Laura Smith  
Laura Smith, City Clerk

Attest:  
\_\_\_\_\_  
Secretary

Approved as to form:  
Kenneth S. Fellman  
Kenneth S. Fellman  
City Attorney

Approved as to form:  
\_\_\_\_\_  
Valissa Tsoucaris, Esq.  
Hamil/Hecht LLC

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR  
MONROE STREET PAVING**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (the "Agreement" or "First Amendment") between the Denver First Church of the Nazarene, a Colorado non-profit corporation (hereinafter referred to as the "Church"), and the City of Cherry Hills Village, Colorado, a Colorado municipal corporation (hereinafter referred to as the "City"), shall be effective upon its execution by all parties.

**RECITALS AND REPRESENTATIONS:**

WHEREAS, the Church represents that it is the sole owner of the following described property located in the City of Cherry Hills Village, County of Arapahoe, State of Colorado:

Lots 1-5 inclusive, Block 1, Highline Meadows in Cherry Hills Subdivision (the "Church Property"); and

WHEREAS, the plat for the Highline Meadows in Cherry Hills Subdivision was recorded July 10, 1997 in the records of the Clerk and Recorder of Arapahoe County, Colorado, in Plat Book 139, Pages 1-3 under Reception No. A7083141 (the "Plat"); and

WHEREAS, on September 19, 2000, the Church, the City and the developer of the Plat, Vyron Properties, Inc. ("Vyron"), entered into an agreement titled "Monroe Street Agreement" recorded in the records of Arapahoe County at Reception No. B0122035; and

WHEREAS, Vyron escrowed funds in the amount of \$86,408.00 for the completion of Monroe Street improvements and the Church accepted full responsibility for the construction of the Monroe Street improvements under the terms and conditions of the Monroe Street Agreement; and

WHEREAS, pursuant to the Monroe Street Agreement, the City approved an assignment of Vyron's obligations concerning the completion of Monroe Street to the Church; and

WHEREAS, the City and Church have utilized approximately \$45,000 of the escrow funds for paving of Monroe Street pursuant to that certain Development Agreement for Monroe Street Paving by and between the City and Church, dated August 2, 2011 ("Development Agreement") and there remains approximately \$68,400 in escrow funds as of the date of this Agreement; and

WHEREAS, the City and Church have identified additional Monroe Street improvements and wish to memorialize the terms and conditions in this First Amendment to the Development Agreement under which such improvements shall be completed.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants herein contained, it is agreed as follows:

1. The City shall design, install and complete the Monroe Street improvements as set forth on Exhibit B, consisting generally of curb, gutter, curb ramps and associated improvements (the "Improvements"). The Improvements shall be constructed in the Monroe Street right-of-way, and will be completed in a commercially reasonable time frame and to commercially reasonable standards consistent with like improvements of other City Streets.

2. The Church will have no project management obligations and will not be required to warrant the Improvements, post bonds, letters of credit or obtain permits. The Church agrees to the use of the City's contractor, and authorizes the City to install Improvements, specifically curb ramps, within and on the Church's property. The City shall have sole control over the construction and completion of the Improvements. The City shall provide the Church with written notice of completion of the Improvements within five (5) business days of such event.

3. The City shall obtain a two-year warranty on the Improvements and shall address any warranty issues related to the Improvements.

4. The Church is responsible for all reasonable costs incurred in connection with completion of the Improvements in an amount not to exceed Fifty Two Thousand Seventy Six Dollars and Twenty Cents (\$52,076.20) ("Estimated Costs"), plus reimbursement of the City's reasonable attorney fees in reviewing the Church's request and preparing this Agreement. Payment shall be made to the City, within thirty (30) days of the City's invoice and billing statement to the Church. The Church is solely responsible for full payment of the Estimated Costs from the escrow funds established through the Monroe Street Agreement. The Church and City also agree that to the extent escrow funds are available after payment of the Estimated Costs and the City's reasonable attorney fees incurred reviewing the Church's request and preparing this Agreement, that the Church is authorized by the Monroe Street Agreement to seek reimbursement of its attorney fees incurred in preparing the Development Agreement, as amended, and in addressing the Church's compliance with the Monroe Street Agreement. If there are cost overruns in excess of the Estimated Costs associated with the Improvements, the City and Church agree to utilize any escrow funds available after payment of the Estimated Costs and the City's and Church's fees as set forth above ("Remaining Funds") for payment of such cost overruns. The City shall provide the Church with a final accounting of the use of the Estimated Costs, fees and any Cost overruns within sixty (60) days of the City's written notice to the Church of completion of the Improvements.

5. The City shall be and remain responsible for maintenance of Monroe Street

within the City right-of-way in the same manner and extent as other similar roads and right-of-way within the City.

6. The terms, conditions and obligations of the Monroe Street Agreement and the Development Agreement, as amended, remain in full force and effect, and nothing in this Agreement is intended to modify such agreements.

7. In the event that the Church fails to make any payments to the City when due, the Church shall additionally be responsible for interest on any past due amounts at the rate of eight percent (8%) per annum. If either party incurs any costs in connection with obtaining compliance with the obligations of this Agreement, including but not limited to obtaining compliance through litigation, the party against whom compliance was obtained shall pay any reasonable fees and costs associated with obtaining that compliance.

8. Upon the completion of the Improvements contemplated by this Agreement consistent with the terms of this Agreement, and the Church's compliance with the terms of this Agreement, the City and the Church agree that the Church has met its obligations as set forth in the Monroe Street Agreement.

9. The rights and remedies of the City and the Church provided in this Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. The Church, in its future development of the Property, shall fully comply with all applicable rules, regulations, standards and laws of the City and other governmental agencies and bodies having jurisdiction.

10. This Agreement may be modified or amended from time to time by an instrument in writing signed by both parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors, and assigns.

11. A waiver by any party to this Agreement or 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.

12. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City, and in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

13. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, or cause of action in favor of, or claim for relief for, any third party, including any agent, sub-contractor of the Church. Absolutely no third party beneficiaries are intended by this Agreement.

14. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

15. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City and the Church and bind their respective entities.

16. The laws of the State of Colorado shall govern this Agreement. The parties agree and acknowledge that this Agreement may be enforced at law or in equity.

17. Any notice or communication required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail or mail service such as Federal Express, United Parcel Service, etc. Such notice or communications shall be given to the parties at their addresses set forth below:

City of Cherry Hills Village:

Attn: Public Works Director  
2450 East Quincy Avenue  
Cherry Hills Village, CO  
80110

Denver First Church of the Nazarene:

Attn: Rich Cantwell  
3800 East Hampden Avenue  
Englewood, CO  
80113

**REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2016.

**CITY OF CHERRY HILLS VILLAGE**, a  
Colorado home rule municipal corporation

\_\_\_\_\_  
Laura Christman, Mayor

ATTEST:

\_\_\_\_\_  
Laura Smith, City Clerk

Approved as to form:

\_\_\_\_\_  
Linda Michow, City Attorney

**DENVER FIRST CHURCH OF THE NAZARENE**

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

Attest:

\_\_\_\_\_  
Secretary

Approved as to form:

\_\_\_\_\_  
Valissa Tsoucaris, Esq.

**EXHIBIT A**  
**MONROE STREET ROADWAY IMPROVEMENTS**

**III. FORM OF BID**

Bidder: PLM Asphalt & Concrete, Inc.

City of Cherry Hills Village Project No. 2016-001

This Bid is dated February 24, 2016

To: The City of Cherry Hills Village, State of Colorado.

**BASE BID**

| Item # | Description             | Estimated Quantity | Unit | Unit Cost | Cost Extended |
|--------|-------------------------|--------------------|------|-----------|---------------|
| 1      | Total Asphalt Placement | 709 Tons           | Ton  | 83.50     | 59,201.50     |
| 2      | Total Milling           | 3,355 sq yds       | sq   | 3.50      | 11,742.50     |
| 3      |                         |                    |      |           |               |
| 4      |                         |                    |      |           |               |
| 5      |                         |                    |      |           |               |
| 5      |                         |                    |      |           |               |

Total Base Bid 70,944.00

Seventy Thousand Nine Hundred Forty Four dollars and zero cents  
 (Total Base Bid Written in Words)

Bidder must also fill out Contract Section : Summary of Work below.

- 1. E. Jefferson Avenue
  - a. Milling, two (2) inch depth, estimated 3,000 square yards. Total \$10,500.00
  - b. Asphalt, two and one half (2.5) inch overlay, estimated 612 tons. Total \$5,102.00
- 2. Monroe Street
  - a. Milling four (4) inch depth, estimated 355 square yards. Total \$1,242.50
  - b. Asphalt, five (5) inch depth, estimated 97 tons. Total \$8,099.50

Total Project Cost, Items 1 & 2 Total \$70,944.00

Summary of Work Description : The Contractor is responsible for all Traffic Control throughout the duration of the project. All areas to be milled will be pre-marked with white spray paint and identified to the Contractor prior to project start. Immediately following the milling portion of the project, the City will inspect the edges and bottoms that have been milled and determine if any additional milling will be required. If full depth failure occurs, before the milling equipment leaves the project, the Contractor will need to full depth mill the failed areas up to four inches or greater, and provide compacted bottom patching at unit bid prices up to 25 tons. If more than 25 tons of bottom patching is required a Change Order will be accepted.

### III. FORM OF BID

Bidder: Thoutt Bros. Concrete Contractors, Inc.

City of Cherry Hills Village Project No. **2016-003**

This Bid is dated March 1, 2016

To: The City of Cherry Hills Village, State of Colorado.

#### **BASE BID**

| Item # | Description                              | Estimated Quantity | Unit | Unit Cost | Cost Extended |
|--------|--|--------------------|------|-----------|---------------|
| 1      | University and Quincy Intersection       | 33cy High Early    |      | 515.00    | 16,995.00     |
| 1 a    | University and Quincy Installation       | Traffic Control    |      | 5,000.00  | 5,000.00      |
| 2      | E. Jefferson Avenue                      | 60 cy              |      | 475.00    | 28,500.00     |
| 3      | S. Monroe Street                         | 80 cy              |      | 475.00    | 38,000.00     |
| 4      | Hampden, University, Belleview           | 170 cy             |      | 475.00    | 80,750.00     |
| 5      | Covington Ln, Covington Ct. & Jackson St | 60 cy              |      | 475.00    | 28,500.00     |
| 6      |  |                    |      |           |               |

Total Base Bid 197,745.00

#### **Summary of Work**

The City of Cherry Hills Village reserves the right to delete portions or quantities of this Bid / Project at any time.

The above quantities are estimates only. It is the Contractors responsibility to view the proposed construction project sites at their discretion prior to bidding. A City representative can be available Tuesday thru Friday for a Pre-Bid project tour per appointment. Appointments must be scheduled 48 hours in advance. Contact Project Manager, Ralph Mason, 303-591-4746 for appointments.

The City does not recognize Mobilization, Re-mobilization, or De-mobilization as a line item.

The City does not recognize Tear Out / Demo of concrete, asphalt, or sub-grade as a line item.

The City does not recognize Traffic Control as a line item except as expressly allowed herein.

Portions of this these Projects (Items # 1 and # 4) will require single lane closures, intersection closure, detours, and timeframe restrictions on State Highways. It will be the Contractors responsibility to secure all needed State Right of Way Permits, provide a State Certified Traffic Control Supervisor (TCS), State Certified Flaggers, all traffic control devices, and work within the guidelines and timeframes of the State Highway Permits.

On Item # 1 a. A Traffic Control Plan will be submitted with this Contract. Item # 1a, will be the only portion of this contract that will be open as a line item for traffic control bidding. A Pre-Bid project tour is strongly recommended for this phase of project bidding.



**CHERRY HILLS VILLAGE  
COLORADO**

2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113  
www.cherryhillsvillage.com

Village Center  
Telephone 303-789-2541  
FAX 303-761-9386

ITEM: 8a

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**MEMORANDUM**

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**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** JAY GOLDIE, INTERIM CITY MANAGER/DIRECTOR OF PUBLIC WORKS

**SUBJECT:** CONTRACT FOR SERVICES WITH PLM ASPHALT AND CONCRETE INC. FOR THE 2016 ASPHALT MILL AND OVERLAY PROJECT

**DATE:** APRIL 19, 2016

On March 1, 2016 the City accepted bids for the 2016 Asphalt Mill and Overlay Program. The 2016 project is relatively small including only a portion of Jefferson Avenue that has begun to fail. The failure of this portion of road can be attributed to the poor drainage and lack of crown in the road. These issues will be rectified with new curb and gutter (part of the concrete project) and proper crowning of the road when the new asphalt is installed. The bids were solicited through the Rocky Mountain Online Bid System. The following bids were received:

| <u>Company</u>           | <u>Bid Amount</u> |
|--------------------------|-------------------|
| PLM Asphalt and Concrete | \$70,944.00       |
| Aggregate Industries     | \$71,121.25       |
| Straight Line, Inc.      | \$72,356.40       |
| Martin Marietta          | 108,065.45        |
| Asphalt Specialties      | \$127,777.50      |

PLM Asphalt and Concrete Inc. was the low bid for the 2016 project and the contractor that staff is recommending to City Council for approval. The City has used PLM in the past including the 2014 and 2015 asphalt projects. PLM has produced a quality product in the past and are familiar with the City's expectations and requirements.

A portion of the 2016 Asphalt Mill and Overlay Project includes improvements on Monroe Street adjacent to the Denver First Church (Item 2 on the summary of the Bid Sheet). For the initial contract approval with PLM, the Monroe Street portion of the work will be excluded. Staff is requesting approval of the Contract for Services with PLM Asphalt and Concrete in the amount of \$61,602.00 plus a 10% contingency for a not to exceed amount of \$67,762.20.

Staff will bring forward at a later date an amendment to the Monroe Street Agreement for both asphalt and concrete work that have been excluded from the original contracts. If City Council approves an amendment to the Monroe Street Agreement, the expenditure of funds from the remaining escrow account related to this street will later be added as a change order. These additional costs on Monroe Street will be a pass through expenditure with no additional funding required by the City.

There is a total of \$650,000.00 in the 2016 combined CIP funds. On March 15, 2016 City Council approved the Contract for Services with Thoutt Brothers for \$159,745.00 for a total maximum expenditure of \$175,720.00 including a 10% contingency. If the contract with Foothills Paving and Maintenance for a maximum expenditure of \$280,083.50 is approved plus the cost for the City's portion of Clarkson Street (\$99,198.00+10% contingency = \$109,117.80) plus this recommended contract with PLM Asphalt (\$61,602.00+ 10% contingency =\$67,962.20), the total for 2016 CIP Program will be \$632,883.50.

**STAFF RECOMMENDATION**

Staff recommends that City Council approve the Contract for Services with PLM Asphalt and Concrete Inc. as amended in the amount of \$61,602.00 plus a 10% contingency for a total maximum expenditure of \$67,762.20 and authorize the expenditure of funds for this project.

**RECOMMENDED MOTION**

"I move to approve the contract for services with PLM Asphalt and Concrete Inc. in the amount of \$61,602.00 plus a 10% contingency for a total maximum expenditure of \$67,762.20 and authorize the expenditure of these funds."

**ATTACHMENTS**

- Exhibit A: Contract for Services with PLM Asphalt and Concrete Inc.
- Exhibit B: Bid Packet



# CITY OF CHERRY HILLS VILLAGE

City of Cherry Hills Village Project No. **2016-001**

## **CONSTRUCTION CONTRACT FOR THE FOLLOWING PROJECT:**

### **2016 Asphalt Mill and Overlay**

This Construction Contract (“Contract”), effective this 19<sup>th</sup> day of April, 2016, is made and entered into by and between PLM Asphalt and Concrete, Inc. (hereinafter, “Contractor”), a(n) corporation organized pursuant to the laws of the State of Colorado and having a principal office address of 3313 Moline Street Aurora, CO 80010 and the **CITY OF CHERRY HILLS VILLAGE** (hereinafter, “City” or “Owner”), a home-rule municipal corporation of the State of Colorado, having an address of 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113 (collectively, the City and Contractor are referred to herein as the “Parties”).

In consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

#### **PART 1 – WORK; TIME**

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

1.02 The Contractor agrees to undertake the performance of the Work within **One Hundred and Twenty (120)** days following the Notice of Award and agrees that the Work will be completed within **Twenty (20)** working days (**weekends, holidays, and inclement weather not included**) of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

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

#### **PART 2 – CONTRACT PRICE AND PAYMENT**

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Form of Bid (Excluding bid item #2 Monroe Street), not to exceed sixty one thousand six hundred and two dollars (\$61,602.00).

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

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

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

2.05 The Parties understand and acknowledge that the City of Cherry Hills Village is subject to Article X § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of the funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Cherry Hills Village and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

### **PART 3 – CONTRACTOR'S REPRESENTATIONS**

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

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

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

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

(d) Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with any illegal aliens to perform work under this Contract. By entering into this Contract, Contractor certifies as of the date of this Contract that has confirmed the employment eligibility of all employees who are newly hired for employment and who will perform work under the public contract for services through participation in

program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Contract, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages otherwise provided by this Contract.

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

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

#### **PART 4 - CONTRACT DOCUMENTS**

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

|   |        |
|---|--------|
| Invitation for Bids                                 | Other: |
| Instructions to Bidders                             |        |
| Bid Bond  |        |
| Bid Form  |        |
| Notice of Award                                     |        |
| Notice to Proceed                                   |        |
| Construction Contract                               |        |
| Construction Drawings                               |        |
| Specifications                                      |        |
| Performance, Payment, Maintenance and Warranty Bond |        |
| General Conditions, including table of contents     |        |
| Special Conditions                                  |        |
| Addendum  |        |
| Change Orders                                       |        |
| Insurance Certificates                              |        |
| Tax-Exempt Certificates                             |        |

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both Parties subsequent to the date of this Contract as set forth on page 1 hereof shall govern the original Contract Documents.

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

## **PART 5 - PROJECT MANAGER**

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

Name: Ralph Mason  
Address: 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113  
Telephone: 303-591-4746  
Email: rmason@cherryhillsvillage.com

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

## **PART 6 - ASSIGNMENT**

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

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

## **PART 7 - GOVERNING LAW AND VENUE**

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City of Cherry Hills Village.

7.02 This Construction Contract shall be deemed entered into in Arapahoe County, State of Colorado, as the City is located in said county. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Arapahoe County.

## **PART 8 - LIQUIDATED DAMAGES**

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the applicable amount set forth in the General Conditions for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance, Payment, Maintenance and Warranty Bond shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

#### **PART 9 - MODIFICATIONS**

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

#### **PART 10 - CONTINGENCY**

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

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

No officer or employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Contract.

**INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO THE PUBLIC WORKS DEPARTMENT, CITY OF CHERRY HILLS VILLAGE, ATTENTION: RALPH MASON, PROJECT MANAGER**



|   |  |                     |
|---|--|---------------------|
|  <p>CITY OF<br/>CHERRY HILLS VILLAGE</p> | <b>ADDENDUM OF ORIGINAL<br/>BID</b>                |                     |
| City Project No.:<br>2016-001   | Project Name:<br>2016 Asphalt Mill and Overlay CIP |                     |
| To (Contractor):<br>PLM Asphalt and Concrete Inc.   |  |                     |
| Description of Original Bid:<br>2016 Asphalt Mill and Overlay CIP 2016-001 Base Bid                                       |  | Date:<br>04-19-2016 |

**The City of Cherry Hills Village has amended the Base Bid for the 2016 Asphalt Mill and Overlay Project with approval from City Council as outlined below:**

**Bid Item #2 Monroe Street will be removed from the original contract price \$9,342.00**

Contractor agrees to furnish all Materials and labor and to perform all Work required to complete the above described changes in accordance with the requirements for similar Work covered by the Contract, except as otherwise stipulated herein, for the following considerations:

| <i>CHANGE TO CONTRACT SUM</i> | AMOUNT /    |
|-------------------------------|-------------|
| Original BID SUM              | \$70,944.00 |
| Amount Removed                | \$9,342.00  |
| CONTRACT SUM                  | \$63,602.00 |
|                               |             |
|                               |             |
|                               |             |
|                               |             |

BY: \_\_\_\_\_

CITY OF CHERRY HILLS VILLAGE:

DATE: \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

|  |  |                     |
|--|--|---------------------|
| <br>CITY OF<br>CHERRY HILLS VILLAGE | <b>ADDENDUM OF ORIGINAL<br/> BID</b>               |                     |
| City Project No.:<br>2016-001  | Project Name:<br>2016 Asphalt Mill and Overlay CIP |                     |
| To (Contractor):<br>PLM Asphalt and Concrete Inc.  |  |                     |
| Description of Original Bid:<br>2016 Asphalt Mill and Overlay CIP 2016-001 Base Bid                                  |  | Date:<br>04-19-2016 |

**The City of Cherry Hills Village has amended the Base Bid for the 2016 Asphalt Mill and Overlay Project with approval from City Council as outlined below:**

**Bid Item Summary #2a and b. Monroe Street will be removed from the original contract price \$9,342.00**

Contractor agrees to furnish all Materials and labor and to perform all Work required to complete the above described changes in accordance with the requirements for similar Work covered by the Contract, except as otherwise stipulated herein, for the following considerations:

| <i>CHANGE TO CONTRACT SUM</i> | AMOUNT /    |
|-------------------------------|-------------|
| Original BID SUM              | \$70,944.00 |
| Amount Removed                | \$9,342.00  |
| CONTRACT SUM                  | \$61,602.00 |
|                               |             |
|                               |             |
|                               |             |
|                               |             |
|                               |             |

BY: \_\_\_\_\_

CITY OF CHERRY HILLS VILLAGE:

DATE: \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

**III. FORM OF BID**

Bidder: PLM Asphalt & Concrete, Inc.

City of Cherry Hills Village Project No. **2016-001**

This Bid is dated February 24, 2016

To: The City of Cherry Hills Village, State of Colorado.

**BASE BID**

| Item # | Description             | Estimated Quantity | Unit | Unit Cost | Cost Extended |
|--------|-------------------------|--------------------|------|-----------|---------------|
| 1      | Total Asphalt Placement | 709 Tons           | Ton  | 83.50     | 59,201.50     |
| 2      | Total Milling           | 3,355 sq yds       | sq   | 3.50      | 11,742.50     |
| 3      |                         |                    |      |           |               |
| 4      |                         |                    |      |           |               |
| 5      |                         |                    |      |           |               |
| 5      |                         |                    |      |           |               |

Total Base Bid 70,944.00

Seventy Thousand Nine Hundred Forty Four dollars and zero cents

(Total Base Bid Written in Words)

Bidder must also fill out Contract Section : Summary of Work below.

- 1. E. Jefferson Avenue
  - a. Milling, two (2) inch depth, estimated 3,000 square yards. Total \$10,500.00
  - b. Asphalt, two and one half (2.5) inch overlay, estimated 612 tons. Total \$5,102.00
  
- 2. Monroe Street
  - a. Milling four (4) inch depth, estimated 355 square yards. Total \$1,242.50
  - b. Asphalt, five (5) inch depth, estimated 97 tons. Total \$8,099.50
  
- Total Project Cost, Items 1 & 2 Total \$70,944.00

**Summary of Work Description :** The Contractor is responsible for all Traffic Control throughout the duration of the project. All areas to be milled will be pre-marked with white spray paint and identified to the Contractor prior to project start. Immediately following the milling portion of the project, the City will inspect the edges and bottoms that have been milled and determine if any additional milling will be required. If full depth failure occurs, before the milling equipment leaves the project, the Contractor will need to full depth mill the failed areas up to four inches or greater, and provide compacted bottom patching at unit bid prices up to 25 tons. If more than 25 tons of bottom patching is required a Change Order will be accepted.

**The City is Specifying an Asphaltic Mix Design for this project to be a (Grading SX) (75) PG 58 – 28. The City will allow up to a Twenty (20%) RAP in its Mix Design. The Contractor will be required to have all water valves, manhole covers, and any other utility structures in the streets located and adjusted to match the finished elevations (+0 inch to – ¼ inch) of the new asphaltic mats constructed surface. The Contractor is advised that many utility lids encountered within the City are not standard sized. The Contractor should inspect the sites to determine what materials / risers are needed for making these adjustments.**

**All work shall be performed between the hours of 7:00 am and 6:00 pm Monday through Friday per City Municipal Code. No work will be allowed on Saturday, Sunday, or Holidays unless approved in advance by the City.**

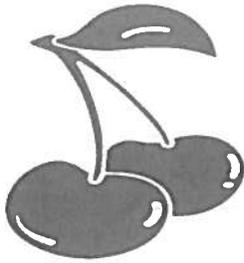
**All numbers above are estimates only. It is the Bidders responsibility to measure all areas outlined in the bid documents above, Form of Bid, Summary of Work.**

**A Pre Bid Tour of the Project Area may be scheduled forty eight (48) hours in advance by calling the Project Manager, Ralph Mason, at 303-591-4746.**

**The City does not recognize Mobilization, Re-Mobilization, or De-Mobilization as a bid line item.**

**There will be a NO WORK performed from August 1, 2016 to September 6, 2016.**

**This Project will be scheduled after the completion of the new curb and gutter installations on the north side of E. Jefferson Avenue and the east side of Monroe Street. The City is scheduling the concrete installations in March, April , or May, 2016.**



# CITY OF CHERRY HILLS VILLAGE

## INVITATION FOR BIDS

City of Cherry Hills Village Project No.2016- 001

**CONSTRUCTION CONTRACT  
FOR THE FOLLOWING PROJECT:**

**2016 Asphalt Mill and Overlay**

**Date:  
February 5, 2016**

**Prepared by City of Cherry Hills Village  
2450 East Quincy Avenue  
Cherry Hills Village, CO 80113  
303-789-2541**

**City of Cherry Hills Village Project No. 2016- 001**

**2016 Asphalt Mill and Overlay**

Prepared for and approved by:  
CITY OF CHERRY HILLS VILLAGE  
2450 East Quincy Avenue  
Cherry Hills Village, Colorado 80113  
303-789-2541

Ralph Mason

\_\_\_\_\_  
Project Manager

January 14, 2016

\_\_\_\_\_  
Date

Jay Goldie

\_\_\_\_\_  
Deputy City Manager

January 14, 2016

\_\_\_\_\_  
Date

Reviewed by:

Linda Michow

\_\_\_\_\_  
City Attorney

January 26, 2016

\_\_\_\_\_  
Date

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- III. BID FORM  
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- IV. NONCOLLUSION AFFIDAVIT OF PRIME BIDDER
- V. BIDDER'S CERTIFICATION
- VI. BID BOND

### EXHIBITS

- Exhibit A: Standard form of Construction Contract
- Exhibit B: General Conditions to the Construction Contract
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- Exhibit D: Form of Performance, Payment, Maintenance and Warranty Bond  
(to be completed upon award)
- Exhibit E: Contract Documents
  - A. NOTICE OF AWARD
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**(Final Design Plans/Specifications for Project No. 2016-001)**
  - I. Specifications
  - II. Reference Standards
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**I. BID NOTICE / INVITATION TO BID**

**CITY OF CHERRY HILLS VILLAGE, COLORADO  
BID NOTICE  
INVITATION TO BID  
City of Cherry Hills Village Project No. 2016- 001**

**Project Description:**

**1. East Jefferson Avenue from Colorado Blvd west to Monroe Street. Roto-mill and pave. Roto-mill both north and south shoulders (10' x 2,700') of Jefferson Ave. (2 inch depth), removing approximately 3,000 square yards of existing asphalt. Pave Jefferson Ave. (30' x 1,350') at 2.5 inches in depth, approximately 612 tons.**

**2. Monroe Street. Finish paving northeast shoulder, roto-mill and pave. Roto-mill recycled asphalt shoulder (10' x 320') at 4" inches depth, approximately 355 square yards. Pave shoulder at 5 inches depth, compacted to 4 inches, approximately 97 tons.**

**The contractor will need to provide all traffic control (flaggers, signage, cones, barrels, etc.) throughout the entire project. The City of Cherry Hills Village does not recognize traffic control or mobilization as a separate line item. This project will be scheduled after the completion of the new curb and gutter installations on the north side of East Jefferson Avenue and the east side of Monroe Street. Concrete installations to be scheduled March, April, or May, 2016.**

**There will be a NO WORK performed from August 1, 2016 to September 6, 2016.  
Please see Form of Bid : Summary of Work Description.**

**Project Manager: Ralph Mason  
Project Engineer: N/A**

**PUBLIC NOTICE IS HEREBY GIVEN** that there is on file with the City of Cherry Hills Village Contract Documents for City of Cherry Hills Village Project No. **2016-001** referenced above.

Sealed Bids will be accepted at the Cherry Hills Village City Center front desk at 2450 East Quincy Avenue, Cherry Hills Village, CO 80113, if actually received by **2:00 p.m. local time (City clock) on Tuesday, the 1<sup>st</sup> of March, 2016**, for construction of the project referenced above. Additional information regarding this Project may be accessed at [www.RockyMountainBidSystem.com](http://www.RockyMountainBidSystem.com).

**Such Bids as are received will be publicly opened and read aloud in the Council Chambers of the Cherry Hills Village City Center Building at 2:05 p.m. local time on the above-stated date.**

Each Bid shall be made on the Form of Bid provided in the bid packet and no Bidder may withdraw his Bid for a period of ninety (90) days from and after the date set for opening of bids. Each Bid must be accompanied, in a sealed envelope, by a Bid Bond on an approved form in an amount equal to ten percent (10%) of the Bid price, made payable to the City of Cherry Hills Village, which shall be considered as liquidated damages and shall be forfeited to the City if said Bid is accepted and the Bidder fails to execute the Contract Documents section within ten (10) calendar days after the Award by the City.

The work herein provided for shall be done under written Contract with the contractor chosen by the City as deemed to be in the best interests of the City. Upon review of Bid prices, the City may be required to add or delete portions of Work from this Project.

Preference is hereby given to materials, supplies, and provisions produced or manufactured in Colorado, quality being equal to articles offered by competitors outside of the State. In accordance with C.R.S. § 8-17-101 and the General Conditions applicable to the work, Colorado labor shall be employed to perform at least eighty percent (80%) of the work.

In accordance with Article 19 of Title 8, C.R.S., the City shall apply a comparable percentage disadvantage to each bid received from a Bidder who is not a resident bidder of the State of Colorado (non-resident Bidder) and who is from a state that provides a percentage bidding preference to resident bidders of the non-resident Bidder's state. Any Bidder may obtain additional information regarding the bid preference from the City's Contract Administrator or from the web site maintained by the Colorado Department of Personnel. The bid preference shall not be applied to any work that receives federal moneys. The bid preference required by Article 19 of Title 8, C.R.S. shall be suspended if such requirement would contravene any treaty, law, agreement or regulation of the United States, or would cause denial of federal moneys or preclude the ability of the City to access federal moneys that would otherwise be available.

The successful Bidder will be required to furnish, as part of the Contract, insurance certificates in the amount specified in the General Conditions, a Performance, Payment, Maintenance and Warranty Bond in an amount equal to one-hundred percent (100%) of the Contract Sum, said bond to be issued by a responsible corporate surety approved by the City, and which shall guarantee the faithful performance of the Construction Contract and the terms and conditions therein contained and shall guarantee the prompt payment of all materials and labor, and protect and save harmless the City from claims and damages of any kind caused by the operations of the Contractor.

Cherry Hills Village uses the Rocky Mountain E-Purchasing System (RMEPS) at [www.RockyMountainBidSystem.com](http://www.RockyMountainBidSystem.com) to distribute official copies of the Bid Documents for use in preparing Bids. Bidders will be required to register with the website to download the Bid proposal documents and Addenda. If you experience problems with the RMEPS website, please call 1-800-677-1997, extension 214 or 221, for assistance. There is no charge by RMEPS for this service. Bidders are required to acknowledge all Addenda with their Bid and are encouraged to view the Addenda posted on RMEPS prior to submitting a Bid.

The City reserves the right to waive informalities or irregularities and to reject any or all Bids. Capitalized terms have the meaning assigned in the General Conditions.

## II. INSTRUCTIONS TO BIDDERS

### PART 1 - DEFINED TERMS

1.01 Terms defined in the General Conditions to the Construction Contract shall carry their defined meaning throughout this Invitation for Bids.

1.02 "Addenda" or "Addendum" means an addition or modification to this Invitation for Bids issued by the City pursuant to Part 5 of these Instructions to Bidders.

1.03 "Bidder" means a person or entity responding to this Request for Bids.

1.04 "Bid Security" means an amount of security filed with a bid in the form and amount required by paragraph 7.01 of these Instructions to Bidders.

1.05 "Construction Contract" means the City's standard form of construction contract, which is included as **Exhibit A** to this Bid Packet.

1.06 "General Conditions" means the standard conditions to the City's Construction Contract, which are included as **Exhibit B** to this Bid Packet.

1.07 "Invitation for Bids" or "IFB" means these **108** pages compiled for bidding on City of Cherry Hills Village Project No. **2016-001** dated **February 5, 2016**, together with **Exhibit C** (Special Conditions to Construction Contract) and **Exhibit F** (Specifications), both of which are attachments to this IFB and are incorporated herein by reference.

1.08 "Successful Bidder" means the lowest, qualified, responsible Bidder to whom the City (on the basis of the City's evaluations as hereinafter provided) makes an award.

### PART 2 - COPIES OF CONTRACT DOCUMENTS

2.01 Complete copies of the Contract Documents for use in preparing bids may be obtained from the Rocky Mountain E-Purchasing System (RMEPS) at [www.RockyMountainBidSystem.com](http://www.RockyMountainBidSystem.com), as set forth in this IFB. Should you experience any problems in downloading the Contract Documents, please contact the City's Contract Administrator at 303-783-2741.

2.02 The City, in making copies of Contract Documents available on the above terms, does so only for the purpose of obtaining bids on the work and does not confer a license or grant for any other use.

2.03 Contract Documents not obtained from the City through RMEPS may be incomplete or inaccurate.

### PART 3 - QUALIFICATIONS OF BIDDERS

3.01 All Bidders must complete this IFB as a whole, submitting a signed **Non-Collusion Affidavit of Prime Bidder** (Section IV of this IFB), a signed **Bidder's Certification** (Section V of this IFB), and a **Bid Bond** (Section VI of this IFB).

3.02 In addition, all Bidders must be prepared to submit, within five (5) days of the City's request, written evidence of their qualifications to perform the work. Bidders may be required to submit evidence, including supplemental documentation requested by the City, that they have a practical knowledge of the

particular Work bid upon, and that they have the financial resources to complete the proposed Work.

3.03 In determining the Bidder's qualifications, the following factors will be considered: (a) work previously completed by the Bidder, (b) plant and equipment available to be used in this Work, (c) recent financial statement relative to resources, including cash and bank credits available, (d) surety company that has indicated its willingness to bond the Bidder, (e) statement of material on hand and available for this work, (f) whether the Bidder maintains a permanent place of business, and (g) whether the Bidder has appropriate technical experience. Each Bidder may be required to show that it has handled former work so that no just claims are pending against such work. No bid will be accepted from a Bidder who is engaged on any work that would impair his ability to perform or finance this Work.

3.04 Evidence of a Bidder's qualification to do business in the State of Colorado may be required.

3.05 The Bidder will be required to establish to the satisfaction of the City the reliability and responsibility of all proposed subcontractors and suppliers pursuant to the criteria set forth in these Instructions. Prior to the award of the Construction Contract, the City will notify the Bidder in writing if the City has reasonable objection to any such proposed subcontractor. In this event, the Bidder may, at his option, (1) withdraw his bid, or (2) submit a substitute acceptable to the City with an adjustment in the bid to cover any difference in cost. The City may, at its discretion, accept the adjusted bid or may disqualify the Bidder. In the event of either withdrawal or disqualification, the Bid Security shall be returned to the Bidder.

#### PART 4 - EXAMINATION OF CONTRACT DOCUMENTS AND SITE

4.01 Before submitting a bid, each Bidder should (a) examine the Contract Documents thoroughly; (b) visit the site or sites to familiarize himself with local conditions that may, in any manner, affect cost, progress or performance of the Work; (c) familiarize himself with federal, state, and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.

4.02 Upon request, the City will provide each Bidder access to the site or sites to conduct such investigations and tests as each Bidder deems necessary for submission of its bid.

4.03 Site access will be limited to normal working hours unless otherwise provided by the Project Manager.

4.04 If a meeting with City Staff or consultant is desired, prospective Bidders must contact the Project Manager at least forty-eight (48) hours prior to the time they would like an appointment to review the project, Monday through Thursday. City Staff will comply with such requests on a time-available basis only.

#### PART 5 - INTERPRETATIONS

All questions regarding the meaning or intent of the Contract Documents shall be submitted in writing to Ralph Mason, Project Manager, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, CO 80113. Any inquiry received seven (7) or more days prior to the date fixed for the opening of bids will be given consideration. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications shall be without legal effect. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda which, if issued, will be posted at [www.RockyMountainBidSystem.com](http://www.RockyMountainBidSystem.com). Prior to the date fixed for the opening of Bids, however, it will be the Bidder's responsibility to verify with the Project Engineer that all Addenda have been received.

All Addenda so issued shall become part of the Contract Documents, and all Bidders shall be bound by such addenda, whether or not received by the Bidder.

#### PART 6 - BASIS FOR EVALUATION OF BIDS

In addition to the qualifications discussed in Part 3 above, the following criteria will be considered in the evaluation and award of the Bid. The Construction Contract shall be awarded to the lowest responsible and responsive Bidder meeting the bid specifications unless the City determines that the public interest would be better served by accepting a higher bid. In determining whether the public interest would be better served by accepting a bid other than the lowest bid, the following factors shall be considered:

1. The Bidder's skill, ability, and capacity to perform the personal services or to furnish the materials, equipment or supplies required;
2. Whether the Bidder can perform the services or furnish the materials, equipment or supplies promptly, or within the time period specified, without delay or interference;
3. The Bidder's character, integrity, reputation, judgment, experience and efficiency;
4. The quality of the Bidder's performance of previous contracts with the City and/or with other local governmental entities within the State of Colorado;
5. The Bidder's previous and current compliance with statutes, ordinances and rules relating to the purchase;
6. The sufficiency of the Bidder's financial resources necessary for the performance of the purchase agreement;
7. The Bidder's ability to provide future maintenance or service;
8. The number and nature of any conditions attached to the bid;

The City reserves the right to reject all bids when it determines that such action is in the public interest.

#### PART 7 - BID SECURITY

7.01 Each bid must be accompanied by security in the amount of ten percent (10%) of the maximum price bid in the form of the bid bond included with the Contract Documents.

7.02 If the Successful Bidder fails to execute and deliver the Construction Contract, furnish the required Performance, Payment, Maintenance and Warranty Bond, furnish the required evidence of insurance, or satisfy all conditions precedent to execution of the Construction Contract **within ten (10) days of the date of Notice of Award**, Owner may cancel or terminate the Notice of Award and the Bid Security of that Bidder shall be forfeited to the City, not as a penalty, but as liquidated damages to compensate the City for the cost of delay and also as an estimate of the difference between the Successful Bidder's bid and that of the next lowest acceptable bid. The Bid Security of any Bidder whom the City believes to have a reasonable chance of receiving the award may be retained by the City (a) until seven (7) days after the effective date of the Construction Contract or (b) until the bids expire, whichever is earlier.

## PART 8 - CONTRACT TIME

The number of days within which the project is to be completed (the Contract Time) will be finally set forth in Part 1 of the Construction Contract. At this time, it is estimated **the Contract Time will be Twenty (20) working days (not including weekends, holidays, or inclement weather) from the Notice to Proceed.**

## PART 9 - LIQUIDATED DAMAGES

Provisions for liquidated damages are set forth in the Construction Contract and other Contract Documents.

## PART 10 - SUBSTITUTE MATERIAL AND EQUIPMENT

The Construction Contract, if awarded, will be on the basis of material and equipment described in the Specifications, without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by the Contractor if acceptable to the Project Manager, the procedure for submittal of any such application by the Contractor and consideration by the Project Manager is set forth in the General Conditions.

## PART 11 – FORM OF BID

11.01 This Bid Packet contains a complete set of forms and a sample contract for the convenience and reference of Bidders. Additional copies may be obtained from Rocky Mountain E-Purchasing System (RMEPS) at [www.RockyMountainBidSystem.com](http://www.RockyMountainBidSystem.com).

11.02 All forms must be completed in ink and legible to the City. Whether forms submitted to the City are legible shall be determined by the City in its sole and absolute discretion.

11.03 For corporations, the Bidder's Certification must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested to by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

11.04 For partnerships, the Bidder's Certification must be executed in the partnership name and signed by a partner, whose title must appear under the signature. The official address of the partnership must be shown below the signature.

11.05 For joint ventures, the Bidder's Certification shall be signed by each participant in the joint venture or by an authorized agent of each participant, and accompanied by evidence of authority to sign.

11.06 The names of all persons signing the Bidder's Certification must also be legibly printed or typed below the signature. A bid by a person who affixes to his signature the word "president," "secretary," "agent," or other designation without disclosing his principal may be held to be the bid of the individual signing. When requested by the City, evidence of the authority of the person signing shall be furnished.

11.07 The full name of each person or company interested in the bid shall be listed on the Bidder's Certification.

11.08 The Bidder's Certification shall contain an acknowledgment of receipt of all addenda (the numbers

of which shall be filled in.

11.09 No alterations in bids, or in the printed forms - by erasures, interpolations, or otherwise - will be acceptable unless each such alteration is signed or initialed by the Bidder. If initialed, the City may require the Bidder to identify an alteration so initialed. No alteration in any bid, or in any form submitted as part of a bid, shall be made after the bid has been submitted.

11.10 The address to which communications regarding the bid are to be directed must be shown.

11.11 All prices must be written in words and expressed in figures. The unit price items in the Bid Form are intended to cover all items of work to be done and material to be furnished to fully complete the work in accordance with the Contract Documents. The cost of appurtenant items of work, material, and equipment not listed separately, not shown on the drawings or not specified as necessary to complete the work in accordance with the Contract Documents shall be considered as included in the unit price bid.

11.12 Bids should be made on each separate item of work shown in this Bid Packet, with reasonable relation to the probable cost of doing the work included in such item. The City reserves the right to reject any bid in case an item or items thereof are obviously unbalanced or appear to be so unbalanced as to affect adversely an interest of the City.

11.13 The quantities provided by the City in Part IV of this Bid Packet, the Bid Form, are approximate and are given only for use in comparing bids and to indicate approximately the total amount of the Construction Contract. The City does not expressly or by implication represent that the actual amounts of work will correspond therewith, but does call particular attention to the uncertainty in the quantities of the Work involved that cannot be predicted in advance. The Work under certain items may be materially greater or less than those predicted in this Bid Packet, as may be necessary in the judgment of the Project Manager to complete the Work contemplated in the Construction Contract. An increase or decrease in the quantity for any item shall not be regarded as grounds for a decrease or increase in the unit prices, except as may be set forth in the Contract Documents.

## PART 12- SUBMISSION OF BIDS

12.01 Each bid shall be accompanied by the Bid Security and other required documents.

12.02 Each Bid must be submitted in ink or typewritten and placed in a sealed envelope with the following information on the outside: the Bidder's name, address, the word "BID", and the identity of the Project labeled as "City of Cherry Hills Village Project No. 2016 - 001. If the Bid is mailed, the mailing envelope must have the Bidder's name, address, and the following words on the outside:

**"BID AND BID SECURITY FOR CITY OF CHERRY HILLS VILLAGE PROJECT NO. 2016-001".**

Bids shall be submitted in bound form to:

Ralph Mason, Right-of-way Project Manager  
City of Cherry Hills Village  
2450 East Quincy Avenue  
Cherry Hills Village, CO 80113

Submittals will be accepted if *actually received* by the City until **2:00 P.M.** local time on the **1<sup>st</sup> day of March, 2016**, as determined by the City's clock.

12.03 Bids shall be submitted prior to the time and date set for receipt of bids in this IFB, or the modified

time and date as indicated by Addendum. Bids received after the time and date set for receipt of bids will be returned unopened. Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids.

12.04 Oral, telephone, or telegraph bids are invalid and will not receive consideration. No Bidder may submit more than one bid. Multiple bids under different names will not be accepted from one firm or association. Evidence of collusion among Bidders shall be grounds for exclusion of any Bidder who is a participant in any such collusion.

12.05 All information submitted to the City by the Bidder is a public record, and may be subject to disclosure under the Colorado Open Records Act, Colorado Revised Statute § 24-72-101, et seq. The Bidder shall clearly identify any portion(s) of its bid that it believes constitutes trade secrets, privileged information, and/or confidential commercial, financial, geological or geophysical data which may not be subject to disclosure under the Colorado Open Records Act.

12.06 To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Bidder certifies that at the time of bid submission it does not knowingly employ or contract with an illegal alien who will perform work under its bid, and that the Bidder will participate in the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration, or the employment verification program administered by the Colorado Department of Labor and Employment in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under its bid.

12.07 Bids that are not completed in the form and manner required by this IFB are subject to immediate rejection in the discretion of the City of Cherry Hills Village.

**12.08 The submission of a bid constitutes Bidder's representation that he has complied with every requirement of this IFB and that the Contract Documents, as provided in this IFB, are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work. Further, the submission of a bid constitutes a Bidder's acceptance of all of the terms and conditions of the City's form of Construction Contract, and its General Conditions, included with this Bid Packet. In addition, by submitting a bid, Bidder accepts all of the terms and conditions set forth in the Special Conditions, included as Exhibit C to this IFB. By submitting a bid, Bidder is agreeing to execute the Construction Contract in substantially the same form as presented immediately following Bidder's receipt of the City's notice of award of this Construction Contract. A request for changes or modifications to the City's form of Construction Contract or General Conditions may result in a disqualification of the Bidder.**

#### PART 13 - MODIFICATION AND WITHDRAWAL OF BIDS

13.01 Bids submitted early may be modified or withdrawn by notice to the party receiving bids at the place and prior to the time designated for receipt of bids. Such notice shall be in writing and signed by the Bidder or by email, if permitted by the Contract Administrator. If by email, signed written confirmation of the change by the Bidder must have been mailed and postmarked on or before the date and time set for receipt of bids. Modifications or changes shall be so worded as not to reveal the amount of the original bid. Bids may also be modified or withdrawn in person by the Bidder or an authorized representative provided he can prove his identity and authority. Withdrawn bids may be resubmitted up to the time designated for the receipt of bids provided that they are then fully in conformance with these Instructions to Bidders and the Bid Security is in an amount sufficient for the bid as modified or resubmitted.

13.02 If within twenty-four (24) hours after bids are opened, any Bidder files a duly signed, written notice with the City and promptly thereafter demonstrates to the reasonable satisfaction of the City that there was a material and substantial mistake in the preparation of his bid, that Bidder may withdraw his bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work.

#### PART 14 - OPENING OF BIDS

Bids will be publicly opened, read aloud and tabulated by the Contract Administrator or other City representative(s) at the location noted above. Bids will be acted upon by the City Manager, or City Council (if required), within ninety (90) days from the opening of the bids. An abstract of the amounts of the bids and major alternates will be made available after the opening of the bids.

#### PART 15 - BIDS TO REMAIN OPEN

Bids shall remain open until the time specified on page one of these Instructions after the date of the bid opening, but the City will, under other provisions stated in these Instructions or may in its sole discretion, release any bid and return the Bid Security prior to that date.

#### PART 16 - AWARD OF CONTRACT OR CONTRACTS

16.01 The City reserves the right and discretion to reject any and all bids, to waive any and all informalities and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive or conditional bids. Discrepancies between words and figures will be resolved in favor of the words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof shall be resolved in favor of the correct sum. Your attention is called to the fact that bids that are not completed in the form and manner required by this IFB are subject to immediate rejection in the discretion of the City.

16.02 In evaluating bids, the City shall consider the qualifications of the Bidders, and whether or not the bids comply with the prescribed requirements. The City reserves the right to reject the bid of any Bidder who does not pass any such evaluation to the City's satisfaction. The City may accept bids in any order or combination and may award each section of the Work to different Bidders.

16.03 The bid of any Bidder that is in arrears to the City upon debt of contract or that is a defaulter, as surety or otherwise, upon any obligation to the City may be rejected.

16.04 If the Construction Contract is to be awarded, it will be awarded to the lowest responsible Bidder whose evaluation by the City indicates to the City that the award will be in the best interests of the City.

16.05 The Successful Bidder shall furnish the City with a proposed schedule of construction and estimated monthly payments within ten (10) days of the date of the Notice of Award.

#### PART 17 – PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND

The Contract Documents set forth Owner's requirements as to the Performance, Payment, Maintenance and Warranty Bond. When the Successful Bidder delivers the executed Construction Contract to the City, it shall be accompanied by the required Performance, Payment, Maintenance and Warranty Bond in the form attached as **Exhibit D** to this IFB. Said bond shall be issued by a responsible surety approved by the City and shall guarantee the Successful Bidder's faithful performance of the Construction Contract, including but not limited to all warranty and guarantee provisions. Accompanying the bond form shall be

a Power of Attorney authorizing the attorney in fact to bind the surety company, and the form shall be certified to include the date of the Bond.

#### PART 18 - SIGNING OF CONTRACT

When the City gives a Notice of Award to the Successful Bidder, it will be accompanied by counterparts of the Construction Contract and all other Contract Documents. The Successful Bidder shall execute the Construction Contract and deliver it, together with evidence of insurance and the Performance, Payment, Maintenance and Warranty Bond, to the City **within ten (10) days of the date of the Notice of Award.** Failure to do so will be adequate and just cause for the annulment or cancellation of the awards, and in such case the Bid Security shall be forfeited to the City.

#### PART 19 - SALES AND USE TAXES

19.01 This Project is being undertaken directly by the City. Therefore, as a governmental entity, no state or other State-collected sales or use tax shall be due on construction materials used in this Project. These materials may be subject to sales and use taxes imposed by other taxing authorities.

19.02 Within ten (10) days from the date of the Notice of Award, the Successful Bidder shall deliver to the City three (3) copies of the completed and executed Contractor Application for Exemption Certificate with the approval of the Colorado Department of Revenue affixed (Department of Revenue Form Number 172), if requested by the City. These certificates will serve as an indication to the City that the Successful Bidder has acquired the necessary exemption for the state and other state collected sales and use taxes. The Successful Bidder shall make the same requirement, as contained above, of any subcontractors on the Project.

19.03 All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and kept available for inspection by the City for three (3) years after the completion of the Project.

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

#### PART 20 - INSURANCE REQUIREMENTS

20.01 The Successful Bidder shall carry the insurance specified in the Construction Contract and/or Contract Documents, and shall submit proof of such insurance when he delivers the executed Construction Contract to the City of Cherry Hills Village. The City must be named as an additional insured on the specified liability insurance policies and certificates of insurance. Insurance certificates required for this project shall be sent or delivered to **Ralph Mason, Project Manager, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113.**

## PART 21 – PERMITS AND REGULATIONS

The Successful Bidder shall be required to comply with all applicable permits and regulations to perform construction activities associated with the project. Permits from the City will be issued on a no-fee basis. The Successful Bidder will be responsible for all fees related to required permits not issued by the City.

Usual permit requirements include:

- Right of Way Permit.
- C.D.O.T. Right-of-Way Use Permit and associated Notice to Proceed, if applicable.
- Grading, Erosion and Sediment Control (GESC) Permit and applicable BMP's
- Floodplain Development Permit (FPDP), if applicable.
- State of Colorado Water Quality Permits (S.W.M.P. and/or Dewatering Permits), if applicable.
- State of Colorado Air Quality Permits, if applicable.

**III. FORM OF BID**

Bidder: \_\_\_\_\_

City of Cherry Hills Village Project No. **2016-001**

This Bid is dated \_\_\_\_\_, 20\_\_\_\_

To: The City of Cherry Hills Village, State of Colorado.

**BASE BID**

| Item # | Description             | Estimated Quantity | Unit | Unit Cost | Cost Extended |
|--------|-------------------------|--------------------|------|-----------|---------------|
| 1      | Total Asphalt Placement | 709 Tons           |      |           |               |
| 2      | Total Milling           | 3,355 sq yds       |      |           |               |
| 3      |                         |                    |      |           |               |
| 4      |                         |                    |      |           |               |
| 5      |                         |                    |      |           |               |
| 5      |                         |                    |      |           |               |

Total Base Bid \_\_\_\_\_

(Total Base Bid Written in Words)

**Bidder must also fill out Contract Section : Summary of Work below.**

- 1. E. Jefferson Avenue
  - a. Milling, two (2) inch depth, estimated 3,000 square yards. Total \$ \_\_\_\_\_
  - b. Asphalt, two and one half (2.5) inch overlay, estimated 612 tons. Total \$ \_\_\_\_\_
  
- 2. Monroe Street
  - a. Milling four (4) inch depth, estimated 355 square yards. Total \$ \_\_\_\_\_
  - b. Asphalt, five (5) inch depth, estimated 97 tons. Total \$ \_\_\_\_\_

Total Project Cost, Items 1 & 2 Total \$ \_\_\_\_\_

**Summary of Work Description : The Contractor is responsible for all Traffic Control throughout the duration of the project. All areas to be milled will be pre-marked with white spray paint and identified to the Contractor prior to project start. Immediately following the milling portion of the project, the City will inspect the edges and bottoms that have been milled and determine if any additional milling will be required. If full depth failure occurs, before the milling equipment leaves the project, the Contractor will need to full depth mill the failed areas up to four inches or greater, and provide compacted bottom patching at unit bid prices up to 25 tons. If more than 25 tons of bottom patching is required a Change Order will be accepted.**

**The City is Specifying an Asphaltic Mix Design for this project to be a (Grading SX) (75) PG 58 – 28. The City will allow up to a Twenty (20%) RAP in its Mix Design. The Contractor will be required to have all water valves, manhole covers, and any other utility structures in the streets located and adjusted to match the finished elevations (+0 inch to – ¼ inch) of the new asphaltic mats constructed surface. The Contractor is advised that many utility lids encountered within the City are not standard sized. The Contractor should inspect the sites to determine what materials / risers are needed for making these adjustments.**

**All work shall be performed between the hours of 7:00 am and 6:00 pm Monday through Friday per City Municipal Code. No work will be allowed on Saturday, Sunday, or Holidays unless approved in advance by the City.**

**All numbers above are estimates only. It is the Bidders responsibility to measure all areas outlined in the bid documents above, Form of Bid, Summary of Work.**

**A Pre Bid Tour of the Project Area may be scheduled forty eight (48) hours in advance by calling the Project Manager, Ralph Mason, at 303-591-4746.**

**The City does not recognize Mobilization, Re-Mobilization, or De-Mobilization as a bid line item.**

**There will be a NO WORK performed from August 1, 2016 to September 6, 2016.**

**This Project will be scheduled after the completion of the new curb and gutter installations on the north side of E. Jefferson Avenue and the east side of Monroe Street. The City is scheduling the concrete installations in March, April , or May, 2016.**

**IV. NONCOLLUSION AFFIDAVIT OF PRIME BIDDER**  
**(Complete and submit attached to your bid)**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that:

- (1) He is the \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached bid (the "Bid");
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Bidder nor any of its officers, partner, owners agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Construction Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Construction Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other Bidder, or to secure through the collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Cherry Hills Village or persons interested in the proposed Construction Contract; and
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signed:

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

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, as \_\_\_\_\_,  
(Affiant) (title)  
of \_\_\_\_\_, a \_\_\_\_\_, organized  
(Bidder) (corporation or partnership)

pursuant to the laws of the State of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

**V. BIDDER'S CERTIFICATION (Complete and submit attached to your bid)**

To: City of Cherry Hills Village, Colorado (hereinafter called "CITY").

From: \_\_\_\_\_ (hereinafter "Bidder"),  
organized and existing under the laws of the State of \_\_\_\_\_ doing business  
as (a corporation), (a partnership), (an individual).

The Bidder, in compliance with the City's Invitation for Bids and Instructions to Bidders, hereby proposes to perform all work in strict accordance with the Contract Documents within the time set forth therein, and at the prices stated on the included Bid Form as totaled herein (the "Bid").

By submission of this Bidder's Certification, Bidder certifies, and in the case of a joint venture each party thereto certifies as to his own organization, that the Bid has been arrived at independently, without consultation, communication, or agreement as to any matters relating to this Bid with any other Bidder or with any competitor.

The undersigned, having thoroughly inspected the existing conditions in the Project area affecting the cost of the Work and having thoroughly examined all of the Contract Documents, together with all other forms, attachments, and information required or otherwise submitted with this Bid, hereby offers to furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services including utility and transportation services and to perform and complete all work required for:

**City of Cherry Hills Village Project No. 2016-001**

**Project Description:**

**1. East Jefferson Avenue from Colorado Boulevard west to Monroe Street. Roto-mill and pave. Roto-mill both north and south shoulders (10' x 2,700') of Jefferson Avenue (2 inch depth), removing approximately 3,000 square yards of existing asphalt. Pave Jefferson Avenue (30' x 1,350') at 2.5 inches in depth, approximately 612 tons.**

**2. Monroe Street. Finish paving northeast shoulder, roto-mill and pave. Roto-mill recycled asphalt shoulder at 4 inches depth, approximately 355 square yards. Pave shoulder at 5 inches depth, compacted to 4 inches, approximately 97 tons.**

**The Contractor will need to provide all Traffic Control (flaggers, signage, cones, barrels, etc.) throughout the entire duration of the project. The City of Cherry Hills Village does not recognize traffic control or mobilization as a separate line item.**

**This Project will be scheduled after the completion of the new curb and gutter installations on the north side of E. Jefferson Avenue and the east side of Monroe Street. Concrete installations to be scheduled March, April, or May 2016.**

**There will be a No Work Timeframe from August 1, 2016 to September 6, 2016.**

It is understood by the Bidder that should the cost of the Bid exceed budgeted funds, the City reserves the right to reject any or all bids, or portions of work bid, or to use any of the methods stated in the Instructions to Bidders to obtain the most advantageous bid price. Bidders must bid all items, additive schedules, alternatives, and supplementary unit price schedule as contained in the Form of Bid.

The Bid is based on subcontracting certain major portions of the work to subcontractors as listed below:

| <u>Item No.</u> | <u>Subcontractor</u> | <u>License Number</u> |
|-----------------|----------------------|-----------------------|
| _____           | _____                | _____                 |
| _____           | _____                | _____                 |
| _____           | _____                | _____                 |

(Add additional names on separate sheet, if necessary.)

In addition, by submission of this Bid and this Bidder's Certification, Bidder certifies as follows:

1. Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding.
2. The Bidder agrees that this Bid shall be good and will not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving bids. If written notice of the acceptance of this Bid is mailed or otherwise delivered to the undersigned within this period, or at any time thereafter before this Bid is withdrawn, the undersigned agrees to execute and deliver a Construction Contract in the prescribed form and furnish the required surety bond within ten (10) days after the Construction Contract is presented to him for signature.
3. As required by the Instructions to Bidders, attached hereto is the **Non-Collusion Affidavit of Prime Bidder**, submitted as proof that the undersigned has not colluded with any person in respect to this Bid or any other bid or the submitting of bids for the Construction Contract for which this Bid is submitted.
4. The Bidder is submitting, or will submit upon request, such additional proof as the City may require that he can qualify in accordance with these Contract Documents with this Bid.
5. To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Bidder certifies that at the time of Bid submission it does not knowingly employ or contract with an illegal alien and that Bidder will participate in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration, or the employment verification program administered by the Colorado Department of Labor and Employment in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under the Construction Contract.
6. Bidder agrees to execute the Construction Contract, including its General Conditions, in the form presented in the Bid Packet.

The undersigned Bidder hereby agrees to be ready and to appear at the office of the City's Contract Administrator to execute the Construction Contract in conformity with his Bid and also to have ready and to furnish at that time the attached Performance, Payment, Maintenance and Warranty Bond each in an amount not less than the full amount of the attached Bid Form.

The \_\_\_\_\_, a corporation of the State of \_\_\_\_\_, is hereby offered as surety on said bond. If such surety is not approved by the City, another and satisfactory surety company shall be furnished.

Enclosed herewith is Bid Security, as defined in the attached Instructions to Bidders, in the amount of \_\_\_\_\_, which Bid Security the undersigned Bidder agrees is to be paid to and become the property of the City, as liquidated damages, and not as a penalty, to compensate the City for actual costs, delay and the difference between this Bid and the next lowest acceptable bid, should this Bid be accepted and the Construction Contract awarded this Bidder and should he fail to enter into the Construction Contract in

the form prescribed or fail to furnish the required Performance, Payment, Maintenance and Warranty Bond within ten (10) days as stipulated.

The undersigned Bidder acknowledges receipt of the following addenda:

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Initial by Bidder \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Initial by Bidder \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Initial by Bidder \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_ Initial by Bidder \_\_\_\_\_

The undersigned Bidder certifies that he and each of his subcontractors possess an adequate supply of workers qualified and equipment satisfactory to perform the Work specified in the Contract Documents; that there is no existing or impending dispute between it and any labor organization; and that it is prepared to comply fully with the provisions contained in the Contract Documents.

This Bid is submitted upon the declaration that neither I (we) nor, to the best of my (our) knowledge, none of the members of my (our) firm or company have either otherwise taken any action in restraint of free competitive bidding in connection with this Bid.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of Bidder:

If an Individual: \_\_\_\_\_

doing business as \_\_\_\_\_

If a Partnership: \_\_\_\_\_

by \_\_\_\_\_, General Partner.

If a Corporation: \_\_\_\_\_

a \_\_\_\_\_, Corporation

by \_\_\_\_\_, President.

Attest:

\_\_\_\_\_  
Secretary

[Corporate Seal]

Business Address of Bidder \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number of Bidder \_\_\_\_\_

Email of Bidder \_\_\_\_\_

**VI. BID BOND (Complete and submit with your bid)**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto the City of Cherry Hills Village, Colorado, as Owner, in the penal sum of \_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

THE CONDITION of this obligation is such that whereas the Principal has submitted to the City of Cherry Hills Village, Colorado, the accompanying bid (the "Bid"), which is hereby made a part hereof, to enter into a contract for the construction of the following described project: City of Cherry Hills Village Project No. **2016-001**, consisting of the following:

**1. East Jefferson Avenue from Colorado Blvd west to Monroe Street. Roto-mill and pave. Roto-mill both north and south shoulders (10' x 2,700') of Jefferson Avenue (2 inch depth), removing approximately 3,000 square yards of existing asphalt. Pave Jefferson Avenue (30' x 1,350') at 2.5 inches in depth, approximately 612 tons.**

**2. Monroe Street. Finish paving northeast shoulder, roto-mill and pave. Roto-mill recycled asphalt shoulder (10' x 320') at 4 inches depth, approximately 355 square yards. Pave shoulder at 5 inches depth, compacted to 4 inches, approximately 97 tons.**

**The contractor will need to provide all traffic control (flaggers, signage, cones, barrels, etc.) throughout the entire project. The City of Cherry Hills Village does not recognize traffic control or mobilization as a separate line item.**

**This Project will be scheduled after the completion of the new curb and gutter installations on the north side of E. Jefferson Avenue and east side of Monroe Street. Concrete installations to be scheduled March, April, or May 2016.**

**There will be a No Work Timeframe from August 1, 2016 to September 6, 2016.**

AND WHEREAS, the Owner, as a condition for receiving said Bid, requires the Principal to deposit with the Owner a Bid Security equivalent to not less than ten percent (10%) of the amount of said Bid,

NOW, THEREFORE,

(a) If said Bid shall be rejected; or in the alternative,

(b) If said Bid shall be accepted and the Principal shall execute and deliver a contract (properly completed in accordance with said Bid) and shall furnish a Performance, Payment, Maintenance and Warranty Bond upon the forms prescribed by the Owner for the faithful performance of said contract; and for the payment of all persons performing labor or furnishing materials in connection therewith; and shall in all other respects perform the agreement created by the acceptance of said Bid; or in the alternative,

(c) If the Principal shall pay to the City, as liquidated damages, and not as a penalty, to compensate the City for actual costs and delay the difference in amount between the Principal's Bid and that of the next lowest acceptable Bidder, then this obligation shall be void, otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bids; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year set forth above.

PRINCIPAL

SURETY

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

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

Attorney in Fact

Give local address and phone number if different than above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Seal)

(Seal)

NOTE: Surety companies executing bonds must be authorized to transact business in the State of Colorado and be acceptable to the City of Cherry Hills Village.

INSTRUCTIONS

1. The full firm name and residence of each individual party to the bond must be inserted in the first paragraph.
2. If the principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are partners composing the partnership (to be named), and all partners must execute the bond as individuals.
3. The state of incorporation of each corporate party to the bond must be inserted in the first paragraph and the bond must be executed under the corporate seal of said party attested by its secretary or other authorized officer.
4. Power of attorney must accompany this bond when signed by other than an officer of either the principal or surety.

**EXHIBIT A: STANDARD FORM OF CONSTRUCTION CONTRACT**



# CITY OF CHERRY HILLS VILLAGE

City of Cherry Hills Village Project No. **2016-001**

**CONSTRUCTION CONTRACT  
FOR THE FOLLOWING PROJECT:  
2016 Asphalt Mill and Overlay**

This Construction Contract ("Contract"), effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made and entered into by \_\_\_\_\_ and \_\_\_\_\_ between \_\_\_\_\_ (hereinafter, "Contractor"), a(n) corporation/limited liability company/partnership/ joint venture/individual [**CHOOSE ONE**] organized pursuant to the laws of the State of \_\_\_\_\_ and having a principal office address of \_\_\_\_\_ and the **CITY OF CHERRY HILLS VILLAGE** (hereinafter, "City" or "Owner"), a home-rule municipal corporation of the State of Colorado, having an address of 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113 (collectively, the City and Contractor are referred to herein as the "Parties").

In consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

## **PART 1 – WORK; TIME**

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

1.02 The Contractor agrees to undertake the performance of the Work **within one hundred and eighty (180) days** following the Notice of Award and agrees that the Work will be completed within **twenty (20) working days (holidays, weekends, and inclement weather excluded)** of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

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

## **PART 2 – CONTRACT PRICE AND PAYMENT**

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Form of Bid, not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

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

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

2.05 The Parties understand and acknowledge that the City of Cherry Hills Village is subject to Article X § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of the funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Cherry Hills Village and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

## **PART 3 – CONTRACTOR'S REPRESENTATIONS**

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

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

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

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

(d) Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with any illegal aliens to perform work under this Contract. By entering into this Contract, Contractor certifies as of the date of

this Contract that has confirmed the employment eligibility of all employees who are newly hired for employment and who will perform work under the public contract for services through participation in the e-verify program or department program. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Contract, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages otherwise provided by this Contract.

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

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

#### **PART 4 - CONTRACT DOCUMENTS**

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

|   |        |
|---|--------|
| Invitation for Bids                                 | Other: |
| Instructions to Bidders                             |        |
| Bid Bond  |        |
| Bid Form  |        |
| Notice of Award                                     |        |
| Notice to Proceed                                   |        |
| Construction Contract                               |        |
| Construction Drawings                               |        |
| Specifications                                      |        |
| Performance, Payment, Maintenance and Warranty Bond |        |
| General Conditions, including table of contents     |        |
| Special Conditions                                  |        |
| Addendum  |        |
| Change Orders                                       |        |
| Insurance Certificates                              |        |
| Tax-Exempt Certificates                             |        |

In the event of an inconsistency between any provisions of the Contract Documents, the more specific

provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both Parties subsequent to the date of this Contract as set forth on page 1 hereof shall govern the original Contract Documents.

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

## **PART 5 - PROJECT MANAGER**

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

Name: Ralph Mason  
Address: 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113  
Telephone: 303- 591- 4746  
Email: rmason@cherryhillsvillage.com

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

## **PART 6 - ASSIGNMENT**

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

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

## **PART 7 - GOVERNING LAW AND VENUE**

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City of Cherry Hills Village.

7.02 This Construction Contract shall be deemed entered into in Arapahoe County, State of Colorado, as the City is located in said county. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by

alternative dispute resolution or litigation, shall be proper only in Arapahoe County.

## **PART 8 - LIQUIDATED DAMAGES**

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the applicable amount set forth in the General Conditions for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance, Payment, Maintenance and Warranty Bond shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

## **PART 9 - MODIFICATIONS**

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

## **PART 10 - CONTINGENCY**

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

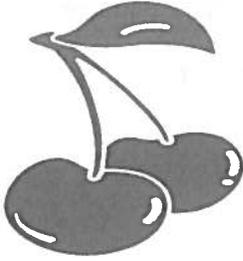
The person or persons signing and executing this Construction Contract on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Construction Contract and to validly and legally bind such Party to all the terms, performances and provisions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

No officer or employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Contract.

**INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO THE PUBLIC WORKS DEPARTMENT, CITY OF CHERRY HILLS VILLAGE, ATTENTION: RALPH MASON, PROJECT MANAGER**



**EXHIBIT B: GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT**



# CITY OF CHERRY HILLS VILLAGE

## GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT

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## ARTICLE 1

### GENERAL PROVISIONS

#### **1.1**            DEFINITIONS

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

1.1.2    “Bidding Documents” means the Notice to Bidders; Request for Proposals; Invitation to Bid; Instructions to Bidders; Bid Proposal; Bid Schedule; and Bid Bond, as applicable.

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

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

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

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

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

1.1.8    “Contract Documents” means the Construction Contract, the Conditions of the Contract (General, Special, Supplementary and other Conditions, as applicable), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all other documents listed in the Contract, including the Bidding Documents, the Notice of Award, Notice to Proceed; Performance, Payment, Maintenance and Warranty Bond; Certificates of Insurance; and Tax-Exempt Certificates. Nothing contained in the Contract Documents creates any contractual relationship between the Owner any subcontractor, sub-subcontractor, or supplier of equipment or materials (except as provided in paragraph 5.3 hereof).

1.1.9    “Contract Sum” means the amount stated in paragraph 2.01 of the Construction Contract and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

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

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

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

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

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

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

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

1.1.17 "Modification" means (1) a written amendment to the Construction Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Order for a Minor Change in the Work approved by the Owner pursuant to paragraph 7.4.

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

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

1.1.20 "Owner" means the person or entity identified as such in the Construction Contract or an authorized representative thereof. The term "City of Cherry Hills Village" or "City" may be used interchangeably with the term "Owner".

1.1.21 "Project" means the total construction of which the Work performed under the Construction Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

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

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

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

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

1.1.26 "Substantial Completion" means the stage in the progress of the Work when the Work (or designated portion thereof that the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended use as more fully explained in paragraph 9.8.

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

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

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

## **1.2 EXECUTION, CORRELATION AND INTENT**

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

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

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

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

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

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

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

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

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

### **1.3 OWNERSHIP AND USE OF DOCUMENTS**

1.3.1 The Drawings, Specifications, and other similar or related documents and copies thereof are furnished to the Contractor for the purpose of performing the Work and are, and shall remain, the property of the Owner. The Contractor may retain one (1) record set. Neither the Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents, and Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). All copies of such documents shall be returned to the Owner upon completion of the Work. The Drawings, Specifications, and other similar or related documents and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyright or other reserved rights.

## **ARTICLE 2**

### **OWNER**

#### **2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

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

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

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

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

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

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

## **2.2 OWNER'S RIGHT TO STOP THE WORK**

2.2.1 If the Contractor fails to correct defective Work as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor, or disregards the instructions of the Project Manager or Owner when based on the requirements of the Contract Documents, the Owner or the Project Manager, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner and the Project Manager to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## **2.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven (7) day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under paragraph 2.2.1 hereof, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation and additional services and expenses made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

## ARTICLE 3

### CONTRACTOR

#### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

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

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

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

#### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

The Contractor shall review any specified construction or installation procedure, including those recommended by manufacturers, and shall advise the Owner if the specified procedure deviates from good construction practice or if following the procedure will affect any warranties, and may propose any alternative procedure which the Contractor will warrant.

3.2.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a

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

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

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

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

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

### **3.3 LABOR AND MATERIALS**

3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities,

transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.1.1 Colorado labor shall be employed to perform at least eighty percent (80) of the Work. "Colorado labor," as used in this Article, means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, religion, creed, national origin, sex, age, or handicap.

3.3.1.2 Preference is hereby given to materials, supplies, and provisions produced or manufactured in Colorado, quality being equal to articles offered by competitors outside the State.

3.3.1.3 The Owner shall waive the 80% requirement set forth in this Article if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the Work and if compliance with the 80% requirement would create an undue burden that would substantially prevent the Work from proceeding to completion. Should the Owner, in its discretion and following a review of the available evidence, proceed to issue a waiver of the 80% requirement, notice of such waiver shall be posted on the Owner's website at [www.centennialcolorado.com](http://www.centennialcolorado.com). The Owner shall not impose contractual damages on the Contractor for any delay in the Work due to the Owner's compliance with the waiver process contemplated by this subsection 3.3.1.3.

3.3.1.4 In accordance with C.R.S. § 8-17-107, nothing in this Article applies to any Work that receives federal moneys. The Colorado labor requirement set forth in this Article shall be suspended if such requirement would contravene any treaty, law, agreement or regulation of the United States, or would cause denial of federal moneys or preclude the ability of the Owner to access federal moneys that would otherwise be available.

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

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

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

#### **3.4 TRAFFIC CONTROL**

3.4.1 The Contractor shall be responsible for maintenance, control, and the safeguarding of traffic affected by the Work as further outlined herein, and as may otherwise be provided in the Contract Documents.

3.4.2 During construction, the Contractor shall provide for the safety of the workmen and for the safe and expeditious movement of traffic and pedestrians through the Site by erecting and maintaining all necessary signs, barricades, or other traffic safety devices. He shall also provide and maintain, in a safe condition, temporary approaches or crossings at intersections with trails, roads, streets, businesses,

parking lots, residences, garages, and farms unless this requirement is waived by the Owner, through the Project Manager. The Contractor shall also have a Certified Traffic Control Supervisor (“TCS”) responsible for traffic control. The TCS shall be on Site at all times when traffic control is in place or as agreed by the Owner through the Project Manager.

3.4.2.1 Before commencing with construction, the Contractor shall submit to the Owner (1) the name of the certified TCS, (2) a detailed traffic control plan for approval, including no parking requirements, and (3) an access maintenance plan. Details in the plans will include, but not be limited to: hours of Work; placement of signs and barricades; use of traffic control devices such as cones, barriers, and barricades; use of traffic control devices such as signal control, temporary striping, maintenance of detours, dust abatement, and length of lane closure tapers. In general, the traffic control/access maintenance plan(s) shall cover all the various phases of the Work.

3.4.2.2 The access maintenance plan shall be developed by the Contractor and coordinated with, and based on the requirement of any affected property owners and tenants. Prior to commencing any Work that affects access to a property, the access maintenance plan must be signed by the property owner and submitted to the Owner. The access maintenance plan shall include documentation of this coordination, including approval of the access maintenance plan by signature of each affected owner and tenant. Should the Contractor be unable to obtain approval and signatures, documentation of the efforts made to obtain said approval and signatures must be submitted. The Contractor shall maintain continuous access through the Project for pedestrians, bicyclists, motorists, and disabled persons. All cost incidentals to the maintenance of access shall not be paid separately but shall be included in the Contract Sum.

3.4.2.3 The Contractor shall implement and maintain the approved traffic control/access maintenance plan throughout prosecution of the Work. The Contractor is solely responsible for claims, damages, losses, etc., arising or resulting from Contractor's failure to adhere to and maintain the traffic control plan as approved. It is understood that the traffic control plan's primary purpose is to foster the safe travel of the public while construction is in progress. It is not intended to specifically address construction traffic on Site. The Contractor is solely responsible for safety measures on the Site.

3.4.2.4 The Owner, through the Project Manager, may provide Project signs to the Contractor. The Contractor shall provide and place appropriate supplementary information and erect project signs at locations to be designated by the Project Manager. These advisory signs, if any, shall be installed at least seven (7) consecutive days prior to beginning of construction. Any other traffic control signs/devices shall be installed seventy-two (72) hours prior to starting construction. Cost for additional information and erection of advisory signs are considered incidental to the Traffic Control bid item and costs for such shall be included in the Traffic Control bid item, if Traffic Control is a separately stated item in the Form of Bid. All costs associated with traffic control shall be included in the Contract Sum. Traffic control devices that are no longer necessary shall be removed from the Site within seventy-two (72) hours.

3.4.2.5 The Contractor will not be permitted to have construction equipment or materials in the lanes open to traffic at any time unless permitted by Owner. If the Owner, through the Project Manager, waives the above condition, the Contractor must provide a flag person. The Contractor shall remove and reset all construction signs prior to construction. Any damaged signs shall be replaced in kind by the Contractor.

3.4.2.6 The Contractor is cautioned that all personal vehicle and construction equipment parking will be prohibited where it conflicts with safety, access, or the flow of traffic.

3.4.3 The Contractor will furnish signs, barricades and temporary markings that may be necessary. The barricades shall conform to the *Manual of Uniform Traffic Control Devices* (“MUTCD”) requirements.

3.4.4 Streets may be closed to through traffic only after the City has approved such closure and all requisite permits for work in a public way have been obtained. Street closures shall be made in such a manner as to provide for maximum public safety and public convenience. They shall be opened to through traffic at such time as the Work has been completed, or as the City or appropriate governmental agency with jurisdiction over such roadway may direct.

3.4.5 The City will make all necessary adjustments to traffic signals and traffic signal activators on City rights-of-way at no cost to the Contractor. The Contractor, as required by Contractor's construction schedule and with approval of the Project Manager, will cover or remove existing signs or signals that interfere with, or conflict with construction signing. Upon completion of the Project, the Contractor will reset all such signs.

3.4.6 Detours shall be the sole responsibility of the Contractor unless otherwise provided in the Contract Documents. Detours such as side street crossings, temporary bridges over freshly placed concrete, utilization of one (1) or more lanes of the construction area for maintenance of traffic, and such related facilities for the maintenance of traffic shall be the responsibility of the Contractor, the costs for which shall be included in the appropriate unit price or lump sum portion of the Contract Sum, as applicable. Detour plans must be submitted and approved in writing by the City through the Project Manager as part of the traffic control/access maintenance plan.

3.4.7 Local traffic shall be provided access to private properties at all times, except during some urgent stages of construction when it is impracticable to carry on the construction and maintain traffic simultaneously, such as for the placing of asphalt concrete pavement, deep sewer excavations which prohibit safe travel of vehicular traffic, or other similar circumstances.

3.4.8 Emergency traffic such as police, fire, and disaster units shall be provided reasonable access at all times.

3.4.9 The Contractor shall take every precaution to protect pedestrian and vehicular traffic.

3.4.10 Where parking is a hazard to through traffic or to the construction Work, it shall be restricted either entirely or during the time when it creates a hazard. Signs for this purpose will be initially furnished and placed by the Contractor. The Contractor shall be responsible for and shall maintain the signs if they are used on any street that is directly or indirectly involved in the construction Work.

3.4.11 The Contractor shall furnish at his own expense all flagmen who may be needed.

### **3.5 WARRANTY**

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

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

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

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

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

3.5.6 Within one (1) year after the date of final acceptance of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Contractor shall make all needed repairs arising out of defective workmanship or materials, or both, which in the judgment of the Owner shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to the Contractor or his agent, the Contractor shall neglect to make, or undertake with due diligence to make the aforesaid repairs, the Owner is hereby authorized to make such repairs at the Contractor's expense. In case of an emergency, the Contractor will be notified and shall correct and make repairs within the necessary time constraints. Failure of the Contractor to respond to the notification shall result in the Owner making the necessary repairs at the Contractor's expense. This obligation shall survive termination of the Contract.

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

### **3.6 TAXES**

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

3.6.2 Prior to City's issuance of the Notice to Proceed and start of Work, if requested by the City, the Contractor shall deliver to the Project Manager three (3) copies of the completed and executed "Contractor Application for Exemption Certificate" with the approval of the Department of Revenue, State of Colorado, affixed (Department of Revenue Form No. 172). These certificates will serve as an indication to the Owner that the Contractor has acquired the necessary exemption for State and other State-collected sales taxes. The Contractor also agrees to make the same requirement, as contained above, of the material suppliers and subcontractors on this project.

3.6.3 All books and records pertaining to the Project that will allow the accurate determination of any tax due must be retained and be kept available for inspection by the City for three (3) years after the completion of the Project.

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

### **3.7 PERMITS, FEES AND NOTICES**

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall obtain any necessary building permit and applicable inspections and shall secure and pay for all other permits and

governmental fees, licenses and inspections by other jurisdictions necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required.

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

3.7.3 It is the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes or in the exercise of due care should observe that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Manager in writing, and any suggested changes shall be made to the Owner. The Contractor shall notify the Project Manager of all conflicts between the Drawings and Specifications and any laws, ordinances, rules, regulations, or restrictions that come to the Contractor's attention or should have come to his attention in the exercise of due care.

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

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

### 3.8 ALLOWANCES

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

3.8.2 Unless otherwise provided in the Contract Documents:

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

### 3.9

#### SUPERINTENDENT

3.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

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

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

### 3.10

#### CONTRACTOR'S CONSTRUCTION SCHEDULE

3.10.1 A preconstruction conference shall be scheduled at the time the Notice of Award is issued. The Contractor, at the preconstruction conference, shall prepare and submit for the Owner's review and approval a Contractor's construction schedule for the Work, in such form and detail as Owner may require and a traffic control plan as required by paragraph 3.4. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to the Project Manager with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to the Owner for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Schedule.

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

3.10.3 The Contractor shall conform to the most recent schedules.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

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

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

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

### **3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

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

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

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

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's or Project Manager's approval of Shop Drawings, Product Data,

Samples, or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

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

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

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

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

3.12.12 Throughout the progress of construction, the Contractor shall maintain a careful up-to-date record of all changes on the plans and drawings during actual construction. Upon completion of Work, and prior to acceptance by the Owner, the Contractor shall file with the Project Manager one (1) set of complete drawings with all changes and Contractor's field construction notes neatly and legibly recorded thereon. Such drawings shall indicate in part the exact routing, if changed from drawing location, of Underground Utilities, condenser water lines, fuel oil tanks and lines, fire protection lines and any other major buried utility lines, and routing of conduit runs which are buried or concealed in concrete slabs. Such information may be used to prepare record drawings for the Owner.

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

### **3.13 USE OF SITE**

3.13.1 The Contractor shall confine his construction operations to the immediate vicinity of the location shown on the plans and shall use due care in placing construction tools, equipment, excavated materials, materials and equipment for installation and supplies, so as to cause the least possible damage to property and interference with traffic. The placing of such tools, equipment, and materials shall be subject to the approval of the Project Manager. If it is necessary or desirable that the Contractor use land outside the Owner's right-of-way or other appropriate permit or easement(s), the Contractor shall obtain consent from, and shall execute a written agreement with, the owner of any such land, as well as tenants and/or occupants of such property if required. The Contractor shall be solely responsible for all associated costs, including clean-up and restoration. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the

performance of the Work. Should any claim be made by any such owner, tenant or occupant because of the performance of the Work, the Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. The Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the Owner, the Project Manager, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner, occupant or tenant against Owner, the Project Manager, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

### **3.14 CUTTING AND PATCHING OF WORK**

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

3.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering such work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate contractor except with the prior written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

### **3.15 CLEANING UP**

3.15.1 The Contractor at all times shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Project, as well as all his tools, construction equipment, machinery and surplus materials. The Contractor shall leave the site clean and ready for use or occupancy by the Owner at Substantial Completion of the Work. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

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

### **3.16 COMMUNICATIONS**

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

### **3.17 ROYALTIES AND PATENTS**

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

3.17.2 If the Contractor uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Contractor or his Surety shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under the Contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

3.17.3 The Contractor shall pay all royalty and license fees.

### **3.18 INDEMNIFICATION**

3.18.1 The Contractor agrees to indemnify and hold harmless the Owner, the Project Manager, and their officers, employees, consultants, agents and insurers, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor, any Subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any Subcontractor, or which arise out of any workers' compensation claim of any employee of the Contractor or of any employee of any Subcontractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

3.18.2 In any and all claims against the Owner or Project Manager, or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of the Contractor, any Subcontractor, any supplier to the Contractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 3.18.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, or any such Subcontractor, supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The indemnity set forth in this paragraph 3.18 shall also cover the City's defense costs, in the event that the City, in its sole discretion elects to provide its own defense. The City retains the right to disapprove counsel, if any, selected by Contractor to fulfill the forgoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain at its own expense any additional insurance that it deems necessary for the City's protection in the performance of the Construction Contract.

3.18.4 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in this paragraph 3.18, will survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

3.18.5 RESERVED

**3.19 ATTORNEYS FEES**

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

**3.20 RESERVED**

**ARTICLE 4**

**ADMINISTRATION OF THE CONTRACT**

**4.1 PROJECT MANAGER**

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

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

**4.2 PROJECT MANAGER'S ADMINISTRATION OF THE CONTRACT**

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

**4.2.2 RESERVED**

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

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

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

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

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

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

4.2.9 The Project Manager will prepare Change Orders in accordance with Article 7, and will have authority to order Minor Changes in the Work as provided in paragraph 7.4.1. All Change Orders, Construction Change Directives, and Field Directives shall require the approval of Owner in writing to be binding on Owner.

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

### 4.3 CLAIMS AND DISPUTES

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

#### 4.3.2 RESERVED

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

4.3.4 Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as may be agreed to in writing by the Owner.

4.3.5 Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 Failure of the Work to comply with the requirements of the Contract Documents;
- .3 Terms of special warranties required by the Contract Documents; or
- .4 Faulty or defective Work appearing after Substantial Completion.

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

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

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

4.3.8 Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary. Such claims shall be subject to Paragraph 8.3.

4.3.9 Injury or damage to person or property. Subject to the Parties' obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient

detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in paragraphs 4.3.7 or 4.3.8.

#### **4.4           RESOLUTION OF CLAIMS AND DISPUTES**

4.4.1 The Project Manager will review all claims by the Contractor and take one (1) or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the Contractor, (2) submit a schedule to the Contractor indicating when the Owner expects to take action, (3) reject the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the Owner, or (5) suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

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

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

4.4.4 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Project Manager, the Project Manager will notify the Contractor in writing that the Project Manager's decision will be made within ten (10) days, which decision shall be considered advisory only and not binding in the event of litigation with respect to the claim. Upon expiration of such time period, the Project Manager will render to the parties the Owner's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

### **ARTICLE 5**

#### **SUBCONTRACTORS**

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

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

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

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

substitution unless the Contractor has acted promptly and responsively in submitting names as required by paragraph 5.2.1.

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

5.1.5 RESERVED

## **5.2 SUBCONTRACTUAL RELATIONS**

5.2.1 By an appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this paragraph 5.2, and, upon written request of the subcontractor, identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

## **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

## ARTICLE 6

### **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule as requested by the Owner. If the Contractor claims additional cost because of any such revisions, the Contractor shall make such claim as provided elsewhere in the Contract Documents. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

#### **6.2 MUTUAL RESPONSIBILITY**

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

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

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

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

6.2.5 Should the Contractor cause damage to the work or property of any separate contractor, or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or

otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, employees, and agents, to the full extent as agreed to under paragraph 3.18.

### **6.3 OWNER'S RIGHT TO CLEAN UP**

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

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 CHANGES**

7.1.1 Changes in the Work may be accomplished after execution of the Construction Contract, and without invalidating the Construction Contract, only by Change Order, Construction Change Directive, or Order for a Minor Change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement between the Owner and the Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an Order for a Minor Change in the Work may be issued by the Project Manager alone.

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

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

- .1 The term "substantial inequity" shall be construed to apply only to the following circumstances: (1) when the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or (2) when a major item of work is increased in excess of one hundred and twenty five percent (125%) or decreased below seventy five percent (75%) of the original contract quantity. A major item is defined to be any item having an original contract value in excess of ten percent (10%) of the original contract amount
- .2 Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed.

#### **7.2 CHANGE ORDERS**

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

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

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

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

### **7.3 CONSTRUCTION CHANGE DIRECTIVES**

7.3.1 A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Construction Contract, order changes in the Work within the general scope of the Construction Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in paragraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Contractor and ten

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

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

7.3.7 Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

#### **7.4 MINOR CHANGES IN THE WORK**

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

## **ARTICLE 8**

### **TIME**

#### **8.1 DATE OF COMMENCEMENT OF THE WORK**

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

#### **8.2 PROGRESS AND COMPLETION**

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

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

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

#### **8.3 DELAYS AND EXTENSIONS OF TIME**

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

8.3.1.1 Any delay within the control of the Contractor or within the control of any subcontractor, agent or supplier thereof (including, without limitation, delay within the joint control of the Contractor or one (1) or more of his subcontractors, agents or suppliers) shall be the sole responsibility of the Contractor, and the Contractor shall not be entitled to any extension of time or to any increase in the Contract Sum as the result of any such delay.

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

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

Contract Sum for each day of such delay as specified in the Contract Documents.

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

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

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

#### **8.4 LIQUIDATED DAMAGES**

Time is of the essence of the Contract. In the event that the Contractor fails to achieve Substantial Completion of the Work within the Contract Time or fails to meet any other time requirement set forth in the Contract, after due allowance for any time extensions granted by Owner, the Contractor shall be liable to Owner for Liquidated Damages, and not as a penalty, in the amount set forth in the table below. For each and every calendar day that Work shall remain incomplete after the Contract Time as adjusted by duly executed Change Order, the sum per calendar day shown in the following table, unless otherwise specified in the Bid, may be deducted from monies due to or to become due to the Contractor or Owner may take action to collect such Liquidated Damages from the Contractor or its Surety. This sum is fixed and agreed upon between the parties because the actual loss to Owner and to the public caused by delay in completion will be extremely difficult to determine.

All punch list items (required by paragraph 9.8.2) must be completed within thirty (30) days of Substantial Completion or Liquidated Damages as provided herein will be assessed.

Permitting the Contractor to continue and finish the Work or any part of it after the Contract Time, or after the date to which the Contract Time may have been extended, will in no way operate as a waiver on the part of Owner of any of its rights under the Contract.

| LIQUIDATED DAMAGES                            |                     |   |
|---|---------------------|---|
| Original Contract Amount<br>From More than \$ | To and Including \$ | Liquidated Damagers per<br>Calendar Day (\$)* |
| 0   | 150,000             | 500.00  |
| 150,000                                       | 250,000             | 600.00  |
| 250,000                                       | 500,000             | 800.00  |
| 500,000                                       | 1,000,000           | 1,400.00                                      |
| 1,000,000                                     | 2,000,000           | 2,000.00                                      |
| 2,000,000                                     | 4,000,000           | 3,300.00                                      |
| 4,000,000                                     | 10,000,000          | 3,900.00                                      |
| 10,000,000                                    | -----               | **  |

\*The per day liquidated damages shall be the amount set forth in this table, or in the Standard Specifications for Road and Bridge Construction as published by the Colorado Department of Transportation controlling as of the date on which the Contract is mutually executed by the Contractor and Owner, whichever is higher.

\*\*3,900.00 plus 300.00 per each additional 1,000,000 contract amount or part thereof over 10,000,000.

## ARTICLE 9

### PAYMENTS AND COMPLETION

#### **9.1 CONTRACT SUM**

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

#### **9.2 SCHEDULE OF VALUES**

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

#### **9.3 APPLICATIONS FOR PAYMENT**

9.3.1 At least ten (10) days before the date for each progress payment established in the Construction Contract, the Contractor shall submit to the Project Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the Project Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

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

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

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

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

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

## **9.4 CERTIFICATES FOR PAYMENT**

9.4.1 The Project Manager will, within ten (10) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor in writing his reasons for withholding a certificate in whole or in part as provided in paragraph 9.5.1.

9.4.2 No Certificate for Payment shall be issued unless it appears to the Project Manager that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, but without in any way waiving any of Owner's rights or claims under the Contract Documents, the quality of the Work is in accordance with the Contract Documents and that all certificates required under the Contract Documents have been furnished in proper form. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

9.5.1 The Project Manager may decline to certify payment and may withhold his certificate in whole or in part, to the extent reasonably necessary to protect the Owner, if in his opinion he is unable to make the determinations as provided in paragraph 9.4.2. If the Project Manager is unable to make such determinations as provided in paragraph 9.4.2 and to certify payment in the amount of the application, he will notify the Contractor as provided in paragraph 9.4.1. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which he is able to make such determinations. The Project Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to maintain accurate and up-to-date as-built drawings.

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

## 9.6

### PROGRESS PAYMENTS

9.6.1 After the Project Manager has issued a Certificate for Payment, the Owner shall make payment in a timely manner not to exceed forty five (45) days from the time the Project Manager issued the Certificate for Payment. The Owner may refuse to make payment on any Certificate for Payment for any default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8. The Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

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

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

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

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

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

### 9.6.7 RETAINAGE

9.6.7.1 In addition to any amounts withheld from payment pursuant to any other provision in this Construction Contract, Owner shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

- .1 Owner shall retain five percent (5%) of each progress payment to a maximum of five percent (5%) of the Contract Sum.
- .2 In no event shall the amount retained be reduced to less than five percent (5%) of the Contract Sum until after final acceptance of the Project by the Owner.

## 9.7

### FAILURE OF PAYMENT

9.7.1 If the Project Manager does not issue a Certificate for Payment, through no fault of the Contractor, within ten (10) days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Construction Contract, including, but not limited to those defaults set forth in Clauses 9.5.1.1 through 9.5.1.8, pay the Contractor within forty five (45) days after the date established in the Contract Documents any amount certified by the Project Manager, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the

Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

## **9.8 SUBSTANTIAL COMPLETION**

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

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

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Project Manager, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

## **9.9 PARTIAL OCCUPANCY OR USE**

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless of whether the Contract Time has expired (hereinafter sometimes referred to as "partial occupancy"). Such partial occupancy may commence whether or not the applicable portion of the Work is Substantially Complete.

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

9.9.3 In the event of partial occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such

building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. Similar provisions shall be made where the improvements or structures are not buildings so that the Owner may use or occupy such portions of the structure or improvement.

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

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

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

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

## **9.10 FINAL COMPLETION AND FINAL PAYMENT**

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Project Manager will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Construction Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Project Manager's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in paragraph 9.10.2 have been fulfilled. Final Payment is also subject to all City Charter and City Code requirements. Warranties required by the Contract Documents shall commence on the date that the Project Manager issues a final Certificate of Payment to the Owner.

9.10.2 Neither the final payment nor the remaining retained percentage shall become due until the

Contractor submits to the Project Manager:

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

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

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

9.10.2.4 If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Project Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Project Manager, and without terminating the Construction Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any special warranties required by the Contract Documents, or

- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Project Manager and Owner.

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

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

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

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

#### **10.2 SAFETY OF PERSONS AND PROPERTY**

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

- .1 all persons involved in or affected by the Work;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors or sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, ditches, fences, gates, private property, and utilities not designated for removal, relocation or replacement in the course of construction.
- .4 The Contractor shall take all measures necessary to mitigate the impact of weather so that the Project may continue on schedule. In no event shall the Owner be liable for extra costs incurred on materials and any part of the Work due to the Contractor's failing to take all measures necessary to protect the Work from weather and the Contractor shall not be entitled to such claims. Also, no extension of the Contract Time shall be allowed if the Contractor is able to proceed with other Work related to the Project.

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

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

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

10.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

### **10.3            EMERGENCIES**

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

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

10.4.1 When the use of explosives, driving or removal of piles, wrecking, excavation work or other similarly potentially dangerous work is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care so as not to endanger life or property and shall carry on such activities under the supervision of properly qualified personnel, such potentially dangerous work shall not be undertaken unless and until the City Manager has authorized same.

10.4.2 Detonation of explosives by the Contract shall be by permit authorized by Owner. The following information must be submitted to the City Manager or to his or her designee thereof at least thirty (30) days prior to the detonation of explosives:

- .1        A graphic plan showing locations of proposed explosive use and improvements

(including structures, roadways, utilities, etc.) on the property, surrounding land uses, and improvements on adjacent properties within a distance equal to 1000 feet plus the maximum distance of vibration as specified in the report described below.

- .2 A geotechnical report prepared by Colorado-registered professional engineer describing the geology of the area and the impacts of explosive use in the area, including wave attenuation and travel distance and potential impacts on improvements in the area.
- .3 An analysis of alternatives to explosives, including safety, time, and monetary comparisons of the alternatives.
- .4 The Contractor shall ensure that audible signals warning persons of danger will be given before detonation of explosives.

As a condition of permitting the detonation of explosives as part of the Work, the Developer or Contractor shall submit to the City Manager or to his or her designee thereof a certificate of insurance for coverage of detonation of explosives in the minimum following amounts: \$2,000,000 for property damage, each accident; and \$2,000,000 for public liability, bodily injury, single limit or equivalent, each accident. Owner shall be named as an additional insured on the insurance policy.

10.4.3 The Contractor shall be fully responsible for, and shall save and hold Owner harmless from, any and all damages, claims, and for the defense of any actions against the Owner resulting from the prosecution of such Work in connection with or arising out of the Construction Contract.

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

10.4.5 All explosives shall be stored in a secure manner and all storage places shall be marked clearly "EXPLOSIVES - KEEP OFF" and shall be in the care of competent watchmen at all times. The Contractor shall also be required to obtain any permits which may be required by the South Metro Fire Rescue Authority or other fire district having jurisdiction.

## **10.5 UNDERGROUND UTILITIES**

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

Utilities to be crossed or that may otherwise affect their means and methods for constructing the Project prior to beginning any construction on the Project.

## ARTICLE 11

### INSURANCE REQUIREMENTS

#### 11.1 CONTRACTOR'S INSURANCE

The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the Contract Documents, including but not limited to Paragraphs 3.13, 3.17 and 3.18 hereof, in addition to any other insurance requirements imposed by the Contract Documents or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

11.1.1 Workers' Compensation Insurance. The Contractors shall procure and maintain, at its own expense, valid Workers' Compensation Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or signed certificate of insurance shall be on file with the Owner at all times. Evidence of qualified self-insurance status may be substituted for the Workers' Compensation Insurance requirements of this paragraph.

11.1.1.1 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intention of non-renewal to the Owner.

11.1.1.2 Limits of liability shall be in conformance with the statutory requirements of the Workers' Compensation Laws of the State of Colorado.

11.1.2 Comprehensive General Liability Insurance. The Contractor shall carry and maintain, at its own expense, Comprehensive General Liability Insurance throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.2.1 The policy shall be appropriately endorsed to give all named parties a minimum of thirty (30) days notice of cancellation or intention to non-renew coverage or any material change or restriction of coverage.

11.1.2.2 Limits of liability shall be a minimum of One Million Dollars (\$1,000,000) each occurrence; Bodily Injury and Property Damage combined, Two Million Dollars (\$2,000,000) aggregate.

11.1.2.3 The following coverages shall be included in the policy:

- .1 Premises, operations and elevators, including work let or sublet, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
- .2 Products and completed operations.
- .3 Broad form blanket contractual liability with all exclusions deleted.
- .4 Personal injury liability.

- .5 Explosions, collapse, and underground hazards.
- .6 Broad form property damage endorsement.
- .7 Incidental malpractice.
- .8 Independent contractors.

11.1.2.4 The products and completed operations coverage shall be maintained in effect for a period of six (6) years after the date of final acceptance of the Work.

11.1.3 Comprehensive Automobile Liability Insurance. The Contractor shall carry and maintain, at its own expense, Comprehensive Automobile Liability Insurance. A copy of a certificate of insurance shall be on file with the Owner at all times. The policy shall contain a severability of interests' provision.

11.1.3.1 The policy shall cover all owned or leased vehicles operated by the insured as well as coverage for all non-owned or hired vehicles used by the insured in the course of his operations.

11.1.3.2 The policy shall be appropriately endorsed to give a minimum of thirty (30) days notice of cancellation or intent to non-renew to Owner.

11.1.3.3 The limits of liability shall be a minimum of One Million Dollars (\$1,000,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) per person.

11.1.4 Umbrella/Excess Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Umbrella (excess) Liability policy throughout the entire term of its obligations to the Owner. A copy of the policy or a signed certificate of insurance shall be on file with the Owner at all times.

11.1.4.1 Policy shall be in excess of all underlying insurance including employer's liability.

11.1.4.2 Policy shall not contain any exclusions for hazards, or contractual hazards.

11.1.4.3 Limits of liability shall be a minimum of Two Million Dollars (\$2,000,000) in the aggregate.

11.1.5 Owner's Liability Insurance. The Contractor shall carry and maintain, at its own expense, an Owner's Liability policy in the name of the Owner.

11.1.5.1 Limits of liability shall be a minimum of Two Million Dollars (\$2,000,000) in the aggregate.

## **11.2 ADDITIONAL NAMED INSURED**

11.2.1 The Owner shall be named as an additional insured under the Contractor's Automobile, Commercial General, and Umbrella Liability coverages, and the Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor's Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims made by the City.

## **11.3 BUILDER'S RISK/PROPERTY INSURANCE**

11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Such insurance shall be in a company or companies against which the

Owner has no reasonable objection.

This insurance shall include the interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and be in the form of "all risk" insurance for physical loss or damage with all exclusions deleted. If not covered under all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

11.3.1.1 The form of policy for this coverage shall be "Completed Value". The coverage under this policy shall include contemplated work and work in progress.

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

#### **11.4           GENERAL REQUIREMENTS**

11.4.1 The Contractor shall file two (2) certified copies of all policies with the Project Manager before exposure to loss may occur. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The Owner reserves the right to request and receive a certified copy of any policy at any time, and any and all endorsements to said policy.

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

- .1 Underwriter shall have no right of recovery or subrogation against the Owner, it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

11.4.3 Additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All liability insurance and builder's risk/property insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorneys' fees.

11.4.4 The Contractor shall be solely responsible for ensuring that all subcontractors or suppliers obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the

minimum coverages required under the Contract Documents.

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

11.4.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to this Construction Contract shall be upon the Contractor until said property has been finally accepted by Owner.

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

11.4.8 The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor to provide written notice to the Owner within two (2) days of the cancellation of or substantive change to any of the policies required herein and failure to do so shall constitute a breach of the Contract.**

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

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

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

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

## ARTICLE 12

### **UNCOVERING AND CORRECTION OF WORK**

#### **12.1 UNCOVERING OF WORK**

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

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

#### **12.2 CORRECTION OF WORK**

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

12.2.2 In addition to the Contractor's obligations under Paragraph 3.5, if, within one (1) year after the Date of Substantial Completion of the Work or designated portion thereof or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work and termination of the Construction Contract. The Owner shall give such notice promptly after discovery of the condition by the Owner.

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

12.2.4 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4.

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

all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof, or under law or in equity. The establishment of the time period of one (1) year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

### **12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

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

## **ARTICLE 13**

### **MISCELLANEOUS PROVISIONS**

#### **13.1 GOVERNING LAW**

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

#### **13.2 SUCCESSORS AND ASSIGNS**

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

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

### **13.3 WRITTEN NOTICE**

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

### **13.4 CLAIMS FOR DAMAGES**

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

### **13.5 PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND**

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

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

### **13.6 RIGHTS AND REMEDIES**

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

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

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

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

### **13.7 TESTS AND INSPECTIONS**

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

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

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

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

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

### **13.8 LITIGATION AND WORK PROGRESS**

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

### **13.9 EQUAL EMPLOYMENT OPPORTUNITY**

13.9.1 In connection with the execution of this Construction Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, handicap, or national origin, if otherwise qualified. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off

or termination, rates of pay or other forms of compensation; and selection for training including apprenticeship.

### **13.10 COMMERCIAL DRIVER'S LICENSE SUBSTANCE SCREENING**

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

## **ARTICLE 14**

### **TERMINATION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE CONTRACTOR**

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

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

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

#### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

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

- .1 refuses or fails to supply, in a timely manner, enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors or suppliers for materials, equipment, or labor in

- accordance with the respective agreements between the Contractor and the subcontractors or suppliers;
- .3 disregards laws, ordinances, rules, regulations, or orders of the City or other governmental entity having jurisdiction;
  - .4 disregards the instructions of Owner when such instructions are based on the requirements of the Contract Documents;
  - .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
  - .6 otherwise does not fully comply with the Contract Documents.

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

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

14.2.3 When the Owner terminates the Construction Contract for one (1) of the reasons stated in paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

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

14.2.6 In the event of termination pursuant to paragraph 14.2.5, Owner shall pay as the sole amount due to Contractor in connection with the Construction Contract, (i) sums due for Work properly executed in accordance with Contract Documents to date, including allowable profit and overhead (except retainage sums shall not be paid prior to one hundred twenty (120) days following the date of termination); (ii) reasonable cost of demobilization and cancellation charges; and as additional and special consideration for this provision; (iii) a profit for underperformed work equal to one-half percent (0.5%) of the cost of the Work actually performed to date.

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

**14.3****SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

14.3.2 The rights and remedies of Owner under this Paragraph 14.3 shall be non-exclusive, and shall be in addition to all the other remedies available to Owner at law or in equity.

**EXHIBIT C: SPECIAL CONDITIONS TO THE CONSTRUCTION CONTRACT**

The Special Conditions for this project consist of the following:

There will be NO WORK performed from August 1, 2016 to September 6, 2016.

This Project will be scheduled after the completion of the new curb and gutter installations on the north side of E. Jefferson Avenue and the east side of Monroe Street. Concrete installations will be scheduled in March, April, or May of 2016.

**Note: the Special Conditions are available for download at Rocky Mountain E-Purchasing System (RMEPS) at [www.RockyMountainBidSystem.com](http://www.RockyMountainBidSystem.com) and are incorporated herein by reference.**

**EXHIBIT D: FORM OF PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND (to be completed upon award)**

**PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_, as Principal, herein called Contractor, and \_\_\_\_\_, as surety, herein called Surety, are hereby held and firmly bound to the City of Cherry Hills Village, Colorado, as Obligee, herein called Owner or City, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment of which the Contractor and Surety bind themselves as well as their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor and Owner have entered into a written construction contract dated the \_\_\_ day of \_\_\_\_\_ 20\_\_ (the "Contract"), for the construction and completion of \_\_\_\_\_ (City of Cherry hills Village Project No. \_\_\_\_\_), which Contract is by reference made a part hereof.

WHEREAS, Contractor and Surety are jointly and severally liable under the provisions of this bond and action against either or both may proceed without prior action against the other, and both may be joined in one action.

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST. The Contractor shall: (1) faithfully perform all requirements and obligations of the Contract, specifically including all extended warranty or guarantee provisions, and other applicable law, and satisfy all claims and demands incurred for the same; (ii) fully indemnify and hold harmless the City from all costs and damages which the City may incur in making good any default of the Contractor under the Contract.

SECOND. The Contractor shall protect, defend, indemnify and save harmless the City and its officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims losses, damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including, in part, the loss of use, resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Contractor, or its employees, servants, agents, subcontractors or suppliers, or anyone else under the Contractor's direction and control (regardless of whether or not cause in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services called for by the Contract (the "Work"), or from conditions created by the performance or non-performance of the Work.

Whenever Contractor shall be, and is declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the City elects, upon determination by the City and the Surety jointly of the lowest

responsible bidder, arrange for a contract between such bidder and the City, and make available as work progresses (even though there should be a default or a default or a succession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph of this bond. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by the City to Contractor under the Contract and any amendments thereto, less the amount properly paid by the City to Contractor; or

3. Complete or cause to be completed any repairs or other work required to be completed under the applicable two (2) year warranty period.

THIRD. The Contractor shall pay all persons, firms and corporations, all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment used or rented in the performance of the Work described in the Contract subject, however, to the following conditions.

1. A claimant is defined as one having a direct Contract with the Contractor, or with a Subcontractor of the Contractor for labor material or both, used or reasonably required for use in performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Contractor and Surety hereby jointly and severally agree with the City that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's Work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be due the claimant, and have execution thereon. The City shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless claimant, other than one having a direct Contract with the Contractor, shall have given written notice to any two of the following: the Contractor, the City, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the Work or labor was done or performed. Such notice shall be served by mailing same by registered mail or certified, postage prepaid, in an envelope addressed to the Contractor, City, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.
  - b. After expiration of six (6) months following the date on which Contractor ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

- c. Unless claimant brings such action in a state court of competent jurisdiction in and for Arapahoe County, Colorado, or such other county in which the Work (as described in the Contract) is to be completed, and not elsewhere.

FOURTH. The Contractor and Surety shall guarantee and warrant that all Work shall remain in good order and repair for a period of **one (1) year** from date of final acceptance from all causes arising from defective workmanship and materials, and shall make all repairs arising from said causes during such period without further compensation, and shall further guarantee that all areas within the public rights-of-way affected by the Work shall remain in good order and repair without further compensation from the City for a period of **one (1) year** from and after final acceptance of the Work by the City. The determination of the necessity for the repair or replacement of any Work or areas within public rights-of-way shall rest entirely with the City, and the City's decision upon the matter shall be final and obligatory upon the Contractor, subject to judicial review pursuant to applicable law.

The Surety hereby waives the right to special notification of any alterations, omissions or reductions, extra or additional work, extensions of time, Change Orders, Field Orders, or any other act or acts of the City or its authorized agents under the terms of the Contract; and failure to notify Surety of such shall in no way relieve Surety of its obligations under this bond.

Further, the Surety shall pay to the City all costs and attorney fees necessary to enforce the provisions of the bond provisions contained herein.

Unless prohibited by law, an action on this bond may be brought by the City or any person entitled to the benefits of this bond at any time within three (3) years from the date on which final payment under the Contract falls due.

Upon full compliance with all the obligations of the Contract, the City shall release this bond, in writing. This bond shall remain in effect until released by the City or the City consents in writing to acceptance of a substitute bond.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL (CONTRACTOR)

SURETY

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Name of Company)

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

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

Address:

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOTE: Surety companies executing bonds must be authorized to transact business in the State of Colorado and be acceptable to the City of Cherry Hills Village.

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute the bond, certified to include the date of the bond.)

**EXHIBIT E: CONTRACT FORMS**

- A. NOTICE OF AWARD
- B. NOTICE TO PROCEED
- C. SHOP DRAWING TRANSMITTAL FORM
- D. FORM OF CHANGE ORDER
- E. APPLICATION FOR PAYMENT
- F. FORM OF PARTIAL WAIVER OF LIEN
- G. FORM OF FINAL WAIVER OF LIEN
- H. CERTIFICATE OF SUBSTANTIAL COMPLETION
- I. CERTIFICATE OF FINAL COMPLETION
- J. CERTIFICATE OF PARTIAL ACCEPTANCE

|  |  |                            |
|--|--|----------------------------|
| <br>CITY OF<br>CHERRY HILLS VILLAGE | <b>NOTICE OF AWARD</b>                         |                            |
| City Project No.:<br>2016-001  | Project Name:<br>2016 Asphalt Mill and Overlay | Date:<br>Date of this form |
| To (Contractor): Enter Contractors Full Name   |  |                            |
| Description of Work: Enter brief description of the project  |  |                            |

The City of Cherry Hills Village, Colorado (“City”) has considered the Bid submitted by you for the above-described Work in response to its Invitation for Bids dated Enter a Date.

You are hereby notified that your Bid has been accepted for items in the amount of \$Enter Total Contract Amount. (“Contract Sum”)

You are required by the IFB and Contract Documents to execute the Construction Contract and furnish the required Contractor’s Performance, Payment, Maintenance and Warranty Bond and provide the required Certificates of Insurance and other insurance documentation as required by the General Conditions on or before Enter Date, in accordance with the Contract Documents.

If you fail to execute said Contract, to furnish said Bond, or to file with required insurance documentation on or before the above stated date, said City will be entitled to consider all your rights arising out of the City’s acceptance of your Bid Security as abandoned, resulting in the forfeiture of your Bid Bond. The City will be entitled to such other rights as may be granted by law.

Capitalized terms used herein and not otherwise defined shall have the definitions assigned in the Contract Documents.

You are required to return an acknowledged copy of this Notice of Award to the City.

Dated this Day day of Month, 201Year.

City of Cherry Hills Village  
County of Arapahoe, State of Colorado

\_\_\_\_\_  
Project Manager

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged:

CONTRACTOR \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY \_\_\_\_\_

|   |  |                                    |
|---|--|------------------------------------|
|  <p>CITY OF<br/>CHERRY HILLS VILLAGE</p> | <h2>NOTICE OF PROCEED</h2>                             |                                    |
| <p>City Project No.:<br/>2016-001</p>   | <p>Project Name:<br/>2016 Asphalt Mill and Overlay</p> | <p>Date:<br/>Date of this form</p> |
| <p>To (Contractor): <u>Enter Contractors Full Name</u></p>  |  |                                    |
| <p>Description of Work: <u>Enter brief description of the project</u></p>   |  |                                    |

You are hereby notified to commence Work in accordance with the Construction Contract dated Enter Contract Date, on Enter Date of NTP, and you are to complete the Work within Enter Number of Days for Work from Contract consecutive calendar days after the date of this Notice to Proceed ("Contract Time"). Therefore, the date for completed Work is Enter Date for Completion of Work.

Capitalized terms used herein and not otherwise defined shall have the definitions assigned in the Contract Documents.

City of Cherry Hills Village,  
County of Arapahoe, State of Colorado

\_\_\_\_\_  
Project Manager

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged:

CONTRACTOR \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY \_\_\_\_\_

|   |  |                            |
|---|--|----------------------------|
|  <p>CITY OF<br/>CHERRY HILLS VILLAGE</p> | <h2>SHOP DRAWING<br/>TRANSMITTAL FORM</h2> |                            |
| City Project No.:<br>Enter Project #  | Project Name:<br>Enter Project Name        | Date:<br>Date of this form |

TO: \_\_\_\_\_ Transmittal Number: \_\_\_\_\_  
 \_\_\_\_\_ 1<sup>st</sup> submittal  Resubmittal   
 \_\_\_\_\_ (Previous Transmittal # \_\_\_\_\_)

Description of Equipment: Enter Description of Equipment

Manufacturer: Enter Name of Manufacturer

As stated in the Contract Documents, the undersigned Contractor's submission of these Shop Drawings or samples shall constitute a representation to the City that the Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalogue numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed and coordinated each Shop Drawing or sample with the requirements of the Work, the General Conditions to Construction Contract, and the Contract Documents and he represents to the City that item(s) described by these Shop Drawings do comply with the requirements of the Contract Documents. The undersigned Contractor certified that the Equipment included in this submittal complies with the latest requirements of the Occupational Health and Safety Act of 1970 including any standards or regulations established by the U.S. Secretary of Labor in administration of said Act.

Capitalized terms used herein and not otherwise defined shall have the definitions assigned in the Contract Documents.

\_\_\_\_\_  
 (Authorized Signature of Contractor)

\_\_\_\_\_  
 (Contractor Name)

\*\*\*\*\*

(THIS SPACE FOR CITY USE ONLY)

The above drawings are returned with action as designated below:

- A No Exception Taken
- B Make Corrections Noted and Resubmit Corrected Copies
- C Revise and Resubmit
- D Rejected
- E Submit Specified Item

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

|   |                                     |   |
|---|-------------------------------------|---|
|  <p>CITY OF<br/>CHERRY HILLS VILLAGE</p> | <h2>CHANGE ORDER</h2>               |   |
| City Project No.:<br>Enter Project #  | Project Name:<br>Enter Project Name | Change Order No.:<br>Enter Change Order # |
| To (Contractor):<br>Enter Name of Contractor  |                                     | City Contract No.:<br>Enter Contract #    |
| Description of Original Contract Work:<br>Enter Description of Work   |                                     | Date:<br>Date of this form                |

It is hereby mutually agreed that when this Change Order has been signed by the contracting parties, the following described changes shall be executed by the Contractor without changing the terms of the Contract, except as herein stipulated and agreed.

Contractor agrees to furnish all Materials and labor and to perform all Work required to complete the above described changes in accordance with the requirements for similar Work covered by the Contract, except as otherwise stipulated herein, for the following considerations:

| <i>CHANGE TO CONTRACT SUM</i>  | AMOUNT /<br>DATED / AVG |
|--|-------------------------|
| Original CONTRACT SUM  | \$                      |
| Current CONTRACT SUM adjusted by Change Orders _____ thru _____                          | \$                      |
| The CONTRACT SUM due to this Change Order will be (Increased) (Decreased) (Unchanged) by | \$                      |
| The new CONTRACT SUM including this Change Order will be                                 | \$                      |
| <i>CHANGE TO CONTRACT TIME</i>   |                         |
| Current CONTRACT Completion Date   |                         |
| CONTRACT TIME will be (Increased)(Decreased)(Unchanged) by this number of Calendar days  |                         |
| The DATE for completion of all WORK (Amended Contract Time) will be                      |                         |

**RECOMMENDED FOR ACCEPTANCE:**

PROJECT MANAGER

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**ACCEPTED:**

CONTRACTOR:

\_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF CHERRY HILLS VILLAGE:

BY: \_\_\_\_\_

Deputy City Manager

DATE: \_\_\_\_\_



CITY OF  
CHERRY HILLS VILLAGE

## APPLICATION FOR PAYMENT

|  |  |   |
|--|--|---|
| City Project No.:<br>Enter Project #     | Project Name:<br>Enter Project Name                  | Period Ending:<br>Enter Date            |
| Contractor:<br>Enter Name of Contractor  |  | Application No.:<br>Enter Application # |
| Page 1 of <u>Enter # of Pages</u>        | Date:<br>Enter Date                                  | City Contract No.:<br>Enter Contract #  |
| Original Contract Sum:<br>\$Enter Amount | Approved Changer Order Adjustment:<br>\$Enter Amount | Current Contract Sum:<br>\$Enter Amount |

| SUMMARY OF CONTRACT  | AMOUNT    |
|--|-----------|
| 1. Total accumulated Work on original Contract to date                             | \$        |
| 2. Extra work by approved Change Order to date                                     | \$        |
| 3. Materials stored  | \$        |
| 4. Total accumulated work to date (Items 1 through 3)                              | \$        |
| 5. Less: Retainage of five percent (5%) up to a maximum 5% of current Contract Sum | \$        |
| 6. Net amount earned to date   | \$        |
| 7. Less: Amount of previous payment  | \$        |
| <b>BALANCE DUE THIS REQUEST</b>  | <b>\$</b> |

The undersigned Contractor certifies to the best of his knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents; that all amounts have been paid by him/her for Work for which previous Applications for Payment were issued and payments received from the City; and that current payment shown herein is now due.

\_\_\_\_\_ BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
CONTRACTOR

In accordance with the Contract Documents, based on on-site observation and the data comprising the above application, the Project Manager certifies that the Work has progressed to the point indicated; that to the best of his/her knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment of the Amount Certified below.

**AMOUNT APPROVED FOR PAYMENT \$** \_\_\_\_\_

\_\_\_\_\_ DATE: \_\_\_\_\_  
PROJECT MANAGER

\_\_\_\_\_ DATE: \_\_\_\_\_  
DEPUTY CITY MANAGER





CITY OF  
CHERRY HILLS VILLAGE

## PARTIAL WAIVER OF LIEN

City Project No.:  
Enter Project #

Project Name:  
Enter Project Name

To All Whom it May Concern:

WHEREAS, the undersigned has been employed by (A) \_\_\_\_\_ to furnish labor and materials for (B) \_\_\_\_\_ work, under a contract (C) \_\_\_\_\_ for the improvement of the premises described as (D) \_\_\_\_\_ in the City of Cherry Hills Village, County of Arapahoe, State of Colorado, of which the City of Cherry Hills Village is the owner.

NOW, THEREFORE, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for and in consideration of the sum of (E) \_\_\_\_\_ Dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release to the extent only of the aforesaid amount, any lien rights to, or claim of lien with respect to and on said above-described premises, the improvements thereon, and on the monies or other considerations due or to become due from the City, by virtue of said contract, on account of labor, service, materials, fixtures, apparatus or machinery furnished by the undersigned to or for the above-described premises, but only to the extent of the payment aforesaid.

(F) \_\_\_\_\_  
(Name of sole ownership, corporation or partnership)

(Affix corporate

\_\_\_\_\_  
(Signature of Authorized Representative)

SEAL here)

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

### INSTRUCTIONS FOR PARTIAL WAIVER

- (A) Name person or firm with whom you agreed to furnish either labor, or services, or materials, or both.
- (B) Fill in nature and extent of work; strike the word labor or the word materials if not in your contract.
- (C) If you have more than one contract on the same premises, describe the contract by number if available, date and extent of work.
- (D) Furnish an accurate enough description of the improvement and location of the premises so that it can be distinguished from any other property.
- (E) Amount shown should be the amount actually received on that date.
- (F) If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

|   |  |
|---|--|
|  <p style="text-align: center;">CITY OF<br/>CHERRY HILLS VILLAGE</p> | <h2 style="margin: 0;">FINAL WAIVER OF LIEN</h2> |
| <p>City Project No.:<br/>Enter Project #</p>  | <p>Project Name:<br/>Enter Project Name</p>      |

To All Whom it May Concern:

WHEREAS, the undersigned has been employed by (A) \_\_\_\_\_ to furnish labor and materials for (B) \_\_\_\_\_ work, under a contract (C) \_\_\_\_\_ for the improvement of the premises described as (D) \_\_\_\_\_ in the City of Cherry Hills Village County of Arapahoe, State of Colorado, of which the City of City of Cherry Hills Village is the owner.

NOW, THEREFORE, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for and in consideration of the sum of (E) \_\_\_\_\_ Dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release to the extent only of the aforesaid amount, any lien rights to, or claim of lien with respect to and on said above-described premises, the improvements thereon, and on the monies or other considerations due or to become due from the City, by virtue of said contract, on account of labor, service, materials, fixtures, apparatus or machinery furnished by the undersigned to or for the above-described premises, but only to the extent of the payment aforesaid.

(F) \_\_\_\_\_  
(Name of sole ownership, corporation or partnership)

(Affix corporate

\_\_\_\_\_  
(Signature of Authorized Representative)

SEAL here)

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

### INSTRUCTIONS FOR FINAL WAIVER

- (A) Name person or firm with whom you agreed to furnish either labor, or services, or materials, or both.
- (B) Fill in nature and extent of work; strike the word labor or the word materials if not in your contract.
- (C) If you have more than one contract on the same premises, describe the contract by number if available, date and extent of work.
- (D) Furnish an accurate enough description of the improvement and location of the premises so that it can be distinguished from any other property.
- (E) Amount shown should be the amount actually received on that date.
- (F) If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.







## **EXHIBIT F: SPECIFICATIONS**

The Specifications for this Project shall be the following:

**I. Asphalt Cement Cost Adjustments:** If requested by the Contractor as required herein, Contract price adjustments will be made to reflect increases or decreases in the price of asphalt cement from that in effect during the month in which bids were received for the Contract. If the Contractor wishes to include this asphalt cement cost adjustment in its Contract with the City, it shall specify on the attached form that the asphalt cement adjustment will apply to the Contract.

After bids are submitted, the Contractor will not be given any other opportunity to accept or reject this adjustment. If the Contractor fails to indicate a choice or fails to submit the form prior to bid opening the price adjustment will not apply to the Contract. If the asphalt cement cost adjustment is accepted by the Contractor, the adjustment will be made in accordance with the following criteria, which shall be included in the Contract:

1. Price adjustments will be based on the asphalt cement price index established by CDOT on the first working day of each month. The index will be the spot price per barrel of Western Canadian Select (WCS) as published on [http://www.encana.com/doing\\_business/crudeoilpricing/index.html](http://www.encana.com/doing_business/crudeoilpricing/index.html) for the first working day of the month. The index from this source will be converted to US Dollars using the currency converter at <http://finance.yahoo.com/currency> by converting the posted price of Canadian Dollars per cubic meter of WCS on Encana.com to US Dollars per cubic meter. A conversion factor of 0.89 cubic meter per ton will be used to convert the posted price from cubic meter to tons. The converted index number will be posted on the CDOT website at:

<http://www.dot.state.co.us/DesignSupport/Construction/Asphalt%20Cement%20Cost%20Adjustment/Asphalt%20Cement%20Cost%20Adjustment%20Index.htm>

2. The Price will be locked in when the Notice to Proceed is issued by the City:

Payment will only be made for PG Binders that have been supplied without a fixed price from the supplier as indicated on the Affidavit of PG Binder Price(s) Form (attached). The Contractor shall submit the completed and signed form to the City at the Pre-Construction Conference for the project. A price adjustment will be made only when the asphalt cement price index varies by more than 10 percent from the asphalt cement price index at the time of bid. Price adjustments may be either positive or negative dollar amounts.

|   |                          |                                  |
|---|--------------------------|----------------------------------|
| <b>City of Cherry Hills Village<br/> CONTRACTOR'S ACCEPTANCE OR<br/> REJECTION OF ASPHALT CEMENT<br/> COST ADJUSTMENT</b> | Contractor's Name        |                                  |
|   | Contractor's Code Number | Prequalification Expiration Date |
| <b>Proposal for Project No. 2016-001, 2016 Asphalt Mill and Overlay</b>   |                          |                                  |

Bidders have the option to accept the asphalt cement cost adjustments when bidding on the Cherry Hills Village Street Improvement Programs Asphalt Overlay and Milling Project. To accept the asphalt cement cost adjustment provision and make it a part of the Contract, the bidder must fill in an "X" next to "YES" below. To reject the asphalt cement cost adjustment, the bidder must fill in an "X" next to "NO" below. The asphalt cement cost adjustment will not be applied to contracts with bidders who mark "NO". If neither line is marked, the City will assume the bidder rejects asphalt cement cost adjustment for this project. After bids are submitted, bidders will not be given any other opportunity to accept or reject the asphalt cement cost adjustment. The form must be submitted with the bid.

Mark only one line with an X:

\_\_\_\_\_ YES, I choose to accept asphalt cement cost adjustments for this project.

\_\_\_\_\_ NO, I choose not to accept asphalt cement cost adjustments for this project.

(If neither line is marked, the default is "NO, I choose not to accept asphalt cement cost adjustments for this project.")

|              |   |
|--------------|---|
| Company Name | By (Signature)  |
| Address      | Print Name  |
| County       | NOTE: This document must be signed in ink by an individual with legal authority to bind the Contractor. |

**CITY OF CHERRY HILLS VILLAGE  
Affidavit of PG Asphalt Binder Price(s)**

Place a check in the box and note each grade designation for PG Asphalt Binder that has a fixed price.

PG -

PG -

PG -

Place a check in the box and note each grade designation for PG Asphalt Binder that does NOT have a fixed price.

PG -

PG -

PG -

*The undersigned is duly authorized to certify statement above on behalf of the company*

*The undersigned hereby certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the information submitted accurately reflects the cost for PG Asphalt.*

**CONTRACTOR**

By:

(Name and Title)

Date:

Attach the appropriate documentation showing the current data for the date of the bid as outlined above

## **II. REFERENCE STANDARDS**

### **PART 1 - SUMMARY**

#### 1.1 SUMMARY:

##### 1.1.1 WORK INCLUDED:

- A. This Section contains a summary of industry-accepted and recognized standards published by trade associations, government, and institutional organizations which are referred to in the various sections of these specifications or elsewhere in the Contract Documents.
- B. Standards listed herein are included in the Contract Documents by this reference, and become a part of the Contract Documents to the same extent as though included in their entirety unless specific limitations are noted in the individual Specifications.
- C. Listings of reference standards include name and address of the organization publishing the standard, plus the full name and designator of each of the standards referenced herein.
- D. If a publication date or edition number is listed with the reference standard, that publication date or edition number shall apply; otherwise, the publication date of the edition number in effect at the Contract Date shall apply.
- E. Inclusion of reference standards herein does not make the Director or Public Works Director an agent of the publishing agency, nor does it obligate the Director or Public Works Director to perform inspections required by or enforce rules or regulations contained in the reference standards.

#### 1.2 REFERENCES:

1.2.1 RELATED DOCUMENTS: General Conditions, Supplementary Conditions, and applicable provisions of other Division 1 sections apply to this section.

1.2.2 PRECEDENCE OF REQUIREMENTS: In the event of a conflict between the requirements of a published reference standard and the specific requirements of the general conditions, supplementary conditions, or other Contract Documents, or between one reference standard and another reference standard, the more stringent requirements shall take precedence.

### **PART 2 - PRODUCTS**

(Not Used)

## **PART 3 - EXECUTION**

### **3.1.1 AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)**

444 North Capital Street NW, Suite 225, Washington, DC 20001

- M103 -- Mild to medium strength carbon-steel castings for general application
- M105 -- Gray iron castings
- M111 -- Zinc (Hot-Galvanized) coatings on products fabricated from rolled, pressed, and forged steel shapes, plates, bar, and strip
- M183 -- Structural steel
- T166 -- Bulk specific gravity of compacted bituminous mixtures

### **3.1.2 AMERICAN CONCRETE INSTITUTE (ACI)**

P.O. Box 19150, Redford Station, Detroit, MI 48219  
(313) 372-9800

- ACI 211.1 -- Standard practice for selecting proportions for normal, heavyweight, and mass concrete
- ACI 211.2 -- Standard practice for selecting proportions for structural lightweight concrete
- ACI 301 -- Specifications for structural concrete for buildings
- ACI 304 -- Recommended practice for measuring, mixing, transporting, and placing concrete
- ACI 304.2R -- Placing concrete by pumping methods
- ACI 305R -- Hot weather concreting
- ACI 306R -- Cold weather concreting
- ACI 315 -- Details and detailing of concrete reinforcement
- ACI 318 -- Building codes requirements for reinforced concrete  
Note: Reference to ACI 318 may be limited by more stringent requirements of local building code
- ACI 347 -- Recommended practice for concrete formwork
- ACI SP-66 -- ACI detailing manual (synopsis)

### **3.1.9 AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)**

1916 Race Street, Philadelphia, PA 19103  
(215) 299-5585

- ASTM A27 -- Specification for steel castings, carbon, for general application
- ASTM A36 -- Standard specification for structural steel
- ASTM A48 -- Specification for gray iron castings
- ASTM A53 -- Specification for pipe, steel, black and hot-dipped, zinc-coated, welded and seamless
- ASTM A82 -- Specifications for steel wire, plain, for concrete reinforcement.
- ASTM A120 -- Specification for pipe, steel, black and hot-dipped zinc-coated (galvanized) welded and seamless, for ordinary uses
- ASTM A123 -- Specification for zinc (hot dipped-galvanized) coatings on iron and steel products
- ASTM A185 -- Specifications for steel welded wire, fabric, plain, for concrete reinforcement
- ASTM A283 -- Specification for low and intermediate tensile strength carbon steel plates, shapes, and bars
- ASTM A307 -- Specification for carbon steel externally threaded standard fasteners

- ASTM A325 -- Specification for high-strength bolts for structural steel joints
- ASTM A366 -- Specification for steel, carbon, cold-rolled sheet, commercial quality
- ASTM A416 -- Specification for uncoated seven-wire stress-relieved steel strand for pre-stressed concrete
- ASTM A421 -- Specification for uncoated stress-relieved wire for pre-stressed concrete
- ASTM A446 -- Specification for steel sheet, zinc-coated (galvanized) by the hot-dip process, structural (physical) quality
- ASTM A490 -- Specification for heat-treated, steel structural bolts, 150 ksi (1035 mpa) tensile strength
- ASTM A500 -- Specification for cold-formed welded and seamless carbon steel structural tubing in rounds and shapes
- ASTM A501 -- Specification for hot-formed welded and seamless carbon steel structural tubing
- ASTM A525 -- Specification for general requirements for steel sheet, zinc-coated (galvanized) by the hot-dip process
- ASTM A526 -- Specification for sheet steel, zinc-coated (galvanized) by the hot-dip process, commercial quality
- ASTM A536 -- Specification for ductile iron castings
- ASTM A568 -- Specification for general requirements for steel, carbon and high-strength low-alloy hot-rolled sheet and cold-rolled sheet
- ASTM A570 -- Specification for hot-rolled carbon steel sheet and strip, structural quality
- ASTM A572 -- Specification for high-strength low-alloy columbium-vanadium steels of structural quality
- ASTM A588 -- Specification for high-strength low-alloy structural steel with 50 ksi (345 Mpa) minimum yield point to 4 inches thick
- ASTM A611 -- Specification for steel, cold-rolled sheet, carbon, structural
- ASTM A615 -- Specification for deformed and plain billet-steel bars for concrete reinforcement
- ASTM A663 -- Specification for steel bars, carbon, merchant quality, mechanical properties
- ASTM A775 -- Specification for epoxy-coated reinforcing steel bars
- ASTM B32 -- Specification for solder metal
- ASTM B88 -- Specification for seamless copper water tube
- ASTM B209 -- Specification for aluminum and aluminum-alloy sheet and plate
- ASTM B221 -- Specification for aluminum-alloy extruded bars, rods, wire, shapes, and tubes
- ASTM C31 -- Methods of making and curing concrete test specimens in the field
- ASTM C33 -- Specification for concrete aggregates
- ASTM C36 -- Specification for gypsum wall board
- ASTM C39 -- Test method for compressive strength of cylindrical concrete specimens
- ASTM C42 -- Method of obtaining and testing drilled cores and sawed beams of concrete
- ASTM C67 -- Method of testing brick and structural clay tile
- ASTM C76 -- Specification for reinforced concrete culvert, storm drain, and sewer pipe
- ASTM C79 -- Test method for gypsum sheathing board
- ASTM C94 -- Specification for ready mixed concrete
- ASTM C109 -- Test method for compressive strength of hydraulic cement mortars (using 2-inch or 50 mm cube specimens)
- ASTM C110 -- Methods for physical testing of quicklime, hydrated lime, and limestone
- ASTM C136 -- Method for sieve analysis of fine and coarse aggregates
- ASTM C138 -- Test method for unit weight, yield, and air content ( gravimetric) of concrete
- ASTM C140 -- Method of sampling and testing concrete masonry units
- ASTM C143 -- Test method for slump or Portland cement concrete
- ASTM C144 -- Specification for aggregate for masonry mortar

ASTM C150 -- Specification for Portland cement  
 ASTM C171 -- Specification for sheet materials for curing concrete  
 ASTM C172 -- Method of sampling fresh concrete  
 ASTM C173 -- Test method for air content of freshly mixed concrete by the volumetric method  
 ASTM C207 -- Specification for hydrated lime for masonry purposes  
 ASTM C231 -- Test method for ----- content of freshly mixed concrete by the pressure method  
 ASTM C260 -- Specification for air entraining admixtures for concrete  
 ASTM C270 -- Specification for mortar for unit masonry  
 ASTM C309 -- Specification for liquid membrane-forming compounds for curing concrete  
 ASTM C330 -- Specification for lightweight aggregated for structural concrete  
 ASTM C425 -- Specification for compression joints for vitrified clay pipe and fittings  
 ASTM C476 -- Specification for grout for masonry  
 ASTM C478 -- Specification for precast reinforced concrete manhole sections  
 ASTM C494 -- Specification for chemical admixtures for concrete  
 ASTM C506 -- Specification for reinforced concrete arch culvert, storm drain, and sewer pipe  
 ASTM C507 -- Specification for reinforced concrete elliptical culvert, storm drain, or sewer pipe  
 ASTM C578 -- Specification for preformed, cellular polystyrene thermal insulation  
 ASTM C612 -- Specification for mineral fiber block and board thermal insulation  
 ASTM C630 -- Specification of water-resistant gypsum backing board  
 ASTM C641 -- Test method for staining materials in lightweight concrete aggregates  
 ASTM C645 -- Specification for non-load (axial) bearing steel studs, runners (track), and furring channels for screw application of gypsum board  
 ASTM C665 -- Specification for mineral fiber blanket thermal insulation for light frame construction and manufactured housing  
 ASTM C672 -- Test method for scaling resistance of concrete surfaces exposed to deicing chemicals  
 ASTM C700 -- Specification for vitrified clay pipe, extra strength, standard strength, and perforated  
 ASTM C726 -- Specification for mineral fiber and mineral fiber, rigid cellular, polyurethane composite roof insulation board  
 ASTM C803 -- Test method for penetration resistance of hardened concrete  
 ASTM C805 -- Test method for rebound number of hardened concrete  
 ASTM C828 -- Recommended practice for low-pressure air test of vitrified clay pipe lines  
 ASTM C834 -- Specification for latex sealing compounds  
 ASTM C920 -- Specification for elastomeric joint sealants  
 ASTM C936 -- Specification for solid concrete interlocking paving units  
 ASTM D41 -- Specification for asphalt primer used in roofing and waterproofing  
 ASTM D312 -- Specification for asphalt used in roofing  
 ASTM D422 -- Test method for particle size analysis of soils  
 ASTM D448 -- Specification for standard sizes of coarse aggregate for highway construction  
 ASTM D698 -- Test method for moisture density relations of soils and soil-aggregate mixtures using 5.5-lb. rammer and 12 inch drop  
 ASTM D1188-- Test method for bulk specific gravity and density of compacted bituminous mixtures using paraffin-coated specimens  
 ASTM D1227-- Specification for emulsified asphalt used as a protective coating for built-up roofing  
 ASTM D1556-- Test method for density of soil in place by the sand-cone method  
 ASTM D1557-- Method for moisture density relations of soils and soil-aggregate mixtures using 10-lb. rammer and 18 inch drop

- ASTM D1559-- Test method for resistance to plastic flow of bituminous mixtures using marshal apparatus
- ASTM D1667-- Specification for flexible cellular materials - vinyl chloride polymers and copolymers (closed-cell vinyl)
- ASTM D1751-- Specification for preformed expansion joint fillers for concrete paving and structural construction (non-extruding and resilient bituminous types)
- ASTM D1752-- Specification for preformed sponge rubber and cork expansion joint fillers for concrete paving and structural construction
- ASTM D1784-- Specification for rigid poly (vinyl chloride) (PVC) compounds and chlorinated poly (vinyl chloride) (CPVC) compounds
- ASTM D1785-- Specification for poly (vinyl chloride) (PVC) pipe, schedules 40, 80 and 120
- ASTM D2000-- Classification for rubber products in automotive applications
- ASTM D2167-- Test method for density of soil in place by the rubber-balloon method
- ASTM D2172-- Test method for quantitative extraction of bitumen from bituminous paving mixtures
- ASTM D2178-- Specification for asphalt glass (felt) used in roofing and waterproofing
- ASTM D2216-- Method for laboratory determination of water (moisture) content of soil, rock, and soil-aggregate mixtures
- ASTM D2241-- Specification for poly (vinyl chloride) (PVC) plastic pipe (SDR-PR)
- ASTM D2287-- Specification for nonrigid vinyl chloride polymer and copolymer molding and extrusion compounds
- ASTM D2487-- Test method for classification of soils for engineering purposes
- ASTM D2564-- Specification for solvent cements for poly (vinyl chloride) (PVC) plastic pipe and fittings
- ASTM D2729-- Specification for poly (vinyl chloride) (PVC) sewer pipe and fittings
- ASTM D2855-- Recommended practice for making solvent cemented joints with poly (vinyl chloride) (PVC) pipe and fittings
- ASTM D2898-- Accelerated weathering of fire-retardant-treated wood for fire testing
- ASTM D2922-- Test method for density of soil and soil-aggregate in place by nuclear method
- ASTM D2950-- Test method for density of bituminous concrete in place by nuclear method
- ASTM D3017-- Test method for moisture content of soil and soil-aggregate in place by nuclear methods (shallow depth)
- ASTM D3034-- Specification for type PSM poly (vinyl chloride) (PVC) sewer pipe and fittings
- ASTM D3909-- Specification for asphalt roll roofing (glass mat) surfaced with mineral granules
- ASTM D4253-- Test method for maximum index density of soils using a vibratory table
- ASTM D4254-- Test methods for minimum index density of soils and calculation of relative density
- ASTM D4318-- Test method for liquid limit, plastic limit, plasticity index of soils
- ASTM D4397-- Specification for polyethylene sheeting for construction, industrial, and agricultural applications
- ASTM E84 -- Test method for surface burning characteristics of building materials
- ASTM E96 -- Test methods for water vapor transmission of materials
- ASTM E136 -- Test method for behavior of materials in a vertical tube furnace at 750oC
- ASTM E283 -- Test method for rate of air leakage through exterior windows, curtain walls, and doors
- ASTM E329 -- Recommended practice for inspection and testing agencies for concrete, steel, and bituminous materials as used in construction
- ASTM E331 -- Test method for water penetration of exterior windows, curtain walls, and doors by uniform static air pressure difference
- ASTM E605 -- Test method for thickness and density of sprayed fire-resistive material applied to structural members

- ASTM E759 -- Test method for effect of deflection of sprayed fire-resistive material applied to structural members
- ASTM E760 -- Test method for effect of impact on bonding of sprayed fire-resistive material applied to structural members
- ASTM E761 -- Test method for compressive strength of sprayed fire-resistive material applied to structural members
- ASTM E859 -- Test method for air erosion of sprayed fire-resistive material applied to structural members
- ASTM F567 -- Practice for installation of chain link fence
- ASTM F679 -- Specification for poly (vinyl chloride) (PVC) large diameter plastic gravity sewer pipe and fittings

3.1.3 AMERICAN WATER WORKS ASSOCIATION (AWWA):

6666 W. Quincy Ave., Denver, CO 80235

(303)794-7711

Specifications and Test Methods Specifically Referenced Herein.

3.1.4 COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)

4201 E. Arkansas Avenue, Denver, CO 80222

(303)757-9011

Standard Specification for Road and Bridge Construction, 1991 Edition. (Brown Book)

3.1.5 PORTLAND CEMENT ASSOCIATION (PCA)

5420 Old Orchard Road, Skokie, IL 60077

(312)966-6200

Design and Control of Concrete Admixtures.

3.1.6 DENVER WATER DEPARTMENT

1600 West 12th Avenue, Denver, CO 80254

(303)628-6000

Engineering Standards

### **III. TEMPORARY FACILITIES AND CONTROLS**

#### **PART 1 - GENERAL**

##### **1.1 SUMMARY:**

###### **1.1.1 WORK INCLUDED:**

Provide temporary utilities and miscellaneous temporary facilities required during construction, including installation, maintenance, and removal upon completion of the work.

##### **1.2 REFERENCES:**

###### **1.2.1 RELATED DOCUMENTS:**

Contract Document # 00500, and applicable provisions of other Division 1 sections apply to this section.

#### **PART 2 - PRODUCTS**

##### **2.1 TEMPORARY CONSTRUCTION FACILITIES:**

###### **2.1.1 STORAGE STRUCTURES:**

If necessary, provides enclosed, weather tight storage facilities for materials and equipment, which require protection from the elements.

###### **2.1.2 SANITARY FACILITIES:**

Provide temporary toilet facilities for duration of work, for use by any and all employees engaged in the work. Comply with requirements of applicable codes, regulations, laws, and ordinances.

###### **2.1.3 TRAFFIC BARRICADES/SIGNS:**

- A. Provide barricades and signs as may be specified elsewhere within certain sections of the specifications, and as may be required by local code or authority and as required to maintain safety of workplace.
- B. Maintain barricades, bulkheads, and other protective facilities in good condition throughout the term of the work. Remove at completion of the work and replace or repair all work damaged thereby. Repair or replace on a daily basis safety facilities or devices damaged or removed during the course of the work.
- C. No other signs or advertising will be permitted on the job site.

##### **2.3 OTHER TEMPORARY SERVICES:**

###### **2.3.1 CLEANING:**

- A. Provide daily sweeping and cleanup of dust, debris, litter, trash containers, and other items required to maintain a clean, orderly, and accessible site. Hauling of debris is required daily as a minimum.
- B. Provide sweeping or cleaning of adjacent streets and walkways as required to prevent accumulation of mud, dust, or soil thereon from construction traffic and personnel.

## **PART 3 - EXECUTION**

### **3.1 MAINTENANCE OF TEMPORARY FACILITIES:**

#### **3.1.1 TEMPORARY STRUCTURES:**

Maintain temporary offices, storage facilities, sanitary facilities, fire protection facilities, trailers, fences, barricades, and other structures in a neat, orderly appearance for the duration of the work.

#### **3.1.2 REMOVAL OF TEMPORARY FACILITIES:**

Remove temporary facilities and structures from the site as soon as practicable or when no longer required by the Contractor or subcontractors. Restore areas occupied by temporary facilities to like new condition, or to match surrounding areas.

## **PART 4 - MEASUREMENT AND PAYMENT**

### **4.1 SUMMARY**

- 4.1.1 No payment will be made directly for temporary facilities and controls, but will be considered as subsidiary obligation of the Contractor under the bid item requiring this work.

## RECORD OF PROCEEDINGS

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, April 19, 2016 at 6:30 p.m.  
At the Village Center

Mayor Laura Christman called the meeting to order at 6:30 p.m.

**ROLL CALL**

Mayor Laura Christman, Councilors Mark Griffin, Earl Hoellen, Alex Brown, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on roll call. Also present were Interim City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Finance Director Karen Proctor, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, and City Clerk Laura Smith.

Absent: none

**PLEDGE OF ALLEGIANCE**

Jack Furman, Colin Armould and Campbell Karofsky from the 6<sup>th</sup> grade basketball and lacrosse teams at St. Mary's Academy led the Council in the pledge of allegiance.

**AUDIENCE PARTICIPATION PERIOD**

None

**CONSENT AGENDA**

Councilor VanderWerf commended staff on a successful audit.

Mayor Pro Tem A. Brown moved, seconded by Councilor Hoellen to approve the following items on the Consent Agenda:

- a. Approval of Minutes – April 1, 2016
- b. Approval of Minutes – April 5, 2016
- c. 2015 Audited Financial Statements
- d. City Manager Agreement Approval and Ratification of Mayor's Signature

The motion passed unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

**Contract for Services with PLM Asphalt and Concrete Inc. for the 2016 Asphalt Mill and Overlay Project**

Interim City Manager/Director Goldie explained that these street improvement contracts were more convoluted than normal because the City was working with Englewood on

the chip seal of Clarkson Street and with Denver First Church on the paving of Monroe Street.

Mayor Christman asked about the contingency that staff was asking Council to approve.

Interim City Manager/Director Goldie replied that the contingency was under the control of staff to use for change orders, and that the contractors did not control and were not necessarily aware of the contingency.

Councilor Griffin moved, seconded by Councilor VanderWerf to approve the contract for services with PLM Asphalt and Concrete Inc. in the amount of \$61,602.00 plus a 10% contingency for a total maximum expenditure of \$67,762.20 and authorize the expenditure of these funds.

The motion passed unanimously.

Contract for Services with Foothills Paving and Maintenance Inc. for the 2016 Chip Seal and Cape Seal Project

Councilor Gallagher asked about the chip seal over asphalt.

Interim City Manager/Director Goldie replied that the City normally used a chip seal over asphalt, but that Englewood preferred a slurry seal so the City would use a slurry seal for Clarkson Street. He explained that the City used chip seal because it took less time to dry than slurry seal. He noted the dry time would not be as much of an issue on Clarkson Street as for smaller residential streets because the larger street allowed staff more ability to move traffic and work in sections.

Councilor Gallagher asked about the material that was used on the City's trails.

Interim City Manager/Director Goldie replied that was micro seal.

Mayor Christman asked about the striping of a bike lane on Clarkson Street.

Interim City Manager/Director Goldie replied that Englewood was still working on securing funding from DRCOG for that project.

Councilor Gallagher asked if the street improvement would even out some of the bumps and undulations in Clarkson Street.

Interim City Manager/Director Goldie replied that staff was working on those issues on the City's side of Clarkson Street separately. He noted that this project would expand some of the shoulders slightly to maintain straight lines.

Councilor VanderWerf expressed pleasure that staff had not simply recommended the lowest bid as that had resulted in difficulties in the past.

Interim City Manager/Director Goldie agreed and noted that staff maintained an open dialogue with A-1 Chipseal. He explained the issue had been aesthetic only and staff continued to work with the contractor to rectify the odd striping.

Councilor Griffin noted that the chip seal was a good product but was rough on kids who fell while riding their bikes in the street.

Interim City Manager/Director Goldie agreed and noted that staff used the ¼" chip to try to minimize those types of issues.

## RECORD OF PROCEEDINGS

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Councilor Gallagher asked about the timeframe for these street improvement projects.

Interim City Manager/Director Goldie replied they would be completed this season.

Mayor Pro Tem A. Brown moved, seconded by Councilor Griffin to approve the contract for services with Foothills Paving and Maintenance Inc. in the amount of \$254,621.36 plus a 10% contingency for a total maximum expenditure of \$280,083.50 and authorize the expenditure of these funds.

The motion passed unanimously.

### Intergovernmental Agreement with Arapahoe County for a 24 Hour Ballot Drop-Off Box

City Clerk Smith explained that Arapahoe County had offered to install a 24 hour ballot box at the Village Center. The box would be located outside of the Village Center and be secured to concrete. The box would be monitored by 24 hour video surveillance recording system. The County would be responsible for all installation and maintenance of the ballot box and video surveillance system. The County would fund the entire cost for obtaining, installing and maintaining the ballot box and video surveillance system. The County would work with City staff to determine the best location for the ballot box and video surveillance system. The County is required by State Statute to run the video surveillance system from 60 days prior to and 30 days following an election. She noted that currently the City receives ballot boxes from the County for elections run by the County, including coordinated elections with the City. Ballots boxes are kept under City staff observation during business hours, and secured in a locked office after business hours. Additionally staff is required to be present on the Saturday before elections and from 7am to 7pm on Election Day in order to receive ballots. The installation of the 24 hour ballot box would remove the requirement for extra staff time on the Saturday before elections and early and late hours on Election Day, as well as increase convenience for Village residents and other Arapahoe County voters by extending the hours during which ballots may be dropped off throughout an election. Staff contacted other municipalities that have 24 hour ballot boxes. The City of Aurora reported that they have had no issues with their box. It is only open during election time and the slot is just big enough for a ballot so they do not often get other things put into the box. The County comes out at least once a day during elections to collect ballots and returns any bills or other mail to the City as necessary. Voters are very appreciative of the box. The City of Englewood and City of Centennial also reported great success and no problems with their 24 hour ballot boxes. If approved, staff will work with the County to install the ballot box and video surveillance system in time for the primary election.

Councilor K. Brown asked about relocating the box in the future if and when a new Village Center was constructed.

Councilor Hoellen agreed that the language was not clear in the Intergovernmental Agreement (IGA).

City Attorney Michow noted that staff had worked with the County on that language and was not concerned.

Councilor K. Brown asked if any of the other 24 hour ballot boxes had experienced issues with "smash and grab".

City Clerk Smith replied she was not aware of any issues.

|  |   |                                |
|--|---|--------------------------------|
| <br>CITY OF<br>CHERRY HILLS VILLAGE | <h2>CHANGE ORDER</h2>                             |                                |
| City Project No.:<br>Project # 2016-001  | Project Name:<br>2016 Asphalt Milling and Overlay | Change Order No.:<br>#001      |
| To (Contractor):<br>PLM Asphalt and Concrete, Inc.   |   | City Contract No.:<br>2016-001 |
| Description of Original Contract Work:<br>2016 Asphalt Milling and Overlay   |   | Date:<br>May 17, 2016          |

It is hereby mutually agreed that when this Change Order has been signed by the contracting parties, the following described changes shall be executed by the Contractor without changing the terms of the Contract, except as herein stipulated and agreed.

**Monroe Street Milling and Paving**

Contractor agrees to furnish all Materials and labor and to perform all Work required to complete the above described changes in accordance with the requirements for similar Work covered by the Contract, except as otherwise stipulated herein, for the following considerations:

| <i>CHANGE TO CONTRACT SUM</i>                                       | AMOUNT /<br>DATED / AVG |
|---|-------------------------|
| Original CONTRACT SUM   | \$61,602.00             |
| Current CONTRACT SUM adjusted by Change Orders 0 thru 0             | \$61,602.00             |
| The CONTRACT SUM due to this Change Order will be (Increased) by    | \$9,342.00              |
| The new CONTRACT SUM including this Change Order will be            | \$70,944.00             |
| <i>CHANGE TO CONTRACT TIME</i>                                      |                         |
| Current CONTRACT Completion Date                                    | 120 days                |
| CONTRACT TIME will be (Unchanged) by this number of Calendar days   | 0                       |
| The DATE for completion of all WORK (Amended Contract Time) will be | 120 days                |

**RECOMMENDED FOR ACCEPTANCE:**

PROJECT MANAGER

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**ACCEPTED:**

CONTRACTOR:

\_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF CHERRY HILLS VILLAGE:

BY: \_\_\_\_\_,

Deputy City Manager

DATE: \_\_\_\_\_

**CHERRY HILLS VILLAGE  
COLORADO**

2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113  
www.cherryhillsvillage.com

Village Center  
Telephone 303-789-2541  
FAX 303-761-9386

ITEM: 8b

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**MEMORANDUM**

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**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** JAY GOLDIE, INTERIM CITY MANAGER/DIRECTOR OF PUBLIC WORKS

**SUBJECT:** CONTRACT FOR SERVICES WITH THOUTT BROTHERS CONCRETE CONTRACTORS INC. FOR THE 2016 STREET IMPROVEMENT CONCRETE REPLACEMENT PROJECT

**DATE:** MARCH 15, 2016

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On March 1, 2016 the City accepted bids for the 2016 Street Improvement Program's Concrete Replacement Project. The 2016 Concrete Project consists of the removal and installation of +/- 400 yards of concrete. Exhibit A outlines the streets that are scheduled for concrete replacement in 2016. This year's project includes the improvement of the drainage at Quincy west of University in addition to normal curb and gutter replacement. The bids were solicited through the Rocky Mountain Online Bid System. The following bids were received:

| <u>Company</u>          | <u>Bid Amount</u>                    |
|-------------------------|--------------------------------------|
| Thoutt Bros. Concrete   | \$197,745                            |
| Chavez Services, LLC    | \$229,291 (Excludes Traffic Control) |
| PLM Asphalt             | \$298,753                            |
| Silva Construction Inc. | \$307,990                            |
| CEI Construction Inc.   | \$389,400                            |
| KECI Colorado           | \$601,300                            |

Thoutt Brothers Concrete was the low bid for the 2016 project and the contractor that staff is recommending to City Council for approval. The City has used Thoutt Brothers in the past including the 2011, 2012, 2013 and 2014 projects. Thoutt Brothers has produced a quality product in the past and are familiar with the City's expectations and requirements.

A portion of the 2016 Concrete CIP includes improvements on Monroe Street adjacent to the Denver First Church (Item 3 on the bid sheet). For the initial contract approval with Thoutt Brothers Concrete, the Monroe Street portion of the work will be excluded. Staff is requesting approval of the Contract for Services with Thoutt Brothers Concrete in the amount of \$159,745.00 plus a 10% contingency for a not to

exceed amount of \$175,720.00. If City Council approves an amendment to the Monroe Street Agreement in the future the expenditure of funds from the remaining escrow account related to this street will later be added as a change order. Additionally, there are some paving costs associated with Monroe Street that will be contracted for separately outside of the Asphalt Paving Contract that City Council will see in the near future. These additional costs on Monroe Street will be a pass through with no additional funding required by the City.

There is a total of \$650,000.00 in the 2016 combined CIP funds. Once the final details are worked out for the Asphalt and Chipseal contracts staff will be bringing forward to Council a total of \$632,331.00 of proposed CIP projects, which includes Concrete. Additionally, staff has applied for a Safe Routes to School grant that if awarded would further offset the cost of the improvements being proposed at the University Quincy intersection. Regardless of the outcome of that process the total for all of the Capital Improvement Projects will be within budget for 2016.

**STAFF RECOMMENDATION**

Staff recommends that City Council approve contract items 1, 1a, 2, 4 and 5 with Thoutt Brothers Concrete Inc. in the amount of \$159,745.00 plus a 10% contingency for a total maximum expenditure of \$175,720.00 and authorize the expenditure of funds for this project.

**RECOMMENDED MOTION**

"I move to approve the contract for services with Thoutt Brothers Concrete Contractors Inc. in the amount of \$159,745.00 plus a 10% contingency for a total maximum expenditure of \$175,720.00 and authorize the expenditure of these funds."

**ATTACHMENTS**

- Exhibit A: Description of Concrete Project Areas
- Exhibit B: Contract for Services with Thoutt Brothers Concrete

## Exhibit A

### Project Description:

**Item # 1. University Avenue and Quincy Avenue intersection cross pan. Demo existing asphalt roadway and adjoining curb and gutters, and sidewalks, on all four corners. Installation at this intersection will include a fifty (50) foot by eight (8) foot by ten (10) inch thick cross pan, on Quincy Avenue running from south to north, on the west side of the intersection, per engineer design. The supporting curb and gutters, and sidewalks will need to be constructed to match / support the new cross pan. Approximately thirty (30) cubic yards of new concrete installation is expected. This site will also include the new installation of a chase drain approximately 100 feet north of the new cross pan on University Avenue per engineer design. The chase drain will be in an eighteen (18) inch setback from the University curb and gutter, at a 45 degree angle, and include three 8 inch high by 18 inch wide chase drains under the existing sidewalk. Approximately three (3) cubic yards of concrete installation needed for the chase drain. All four corners at this intersection will need to be constructed at CDOT ADA standards with trunkcated domes. All concrete installed at this intersection will need to be High Early for rapid set and meet 4,000 psi by 24 hours. All supporting asphalt at this location will need to be performed by the contractor, approximately twenty (20) tons. This projects (Item # 1) timeframe will be in the early summer months (June or July) when the three surrounding schools are on summer break. The goal is to complete this project over a two day weekend (start 7:00 pm Friday and end by 4:00 am Monday) re-opening all roadways. The City will provide all follow landscape repairs in support of this project.**

**Item # 1 a. University Avenue and Quincy Avenue intersection cross pan, supporting curb and gutter, sidewalks, west side ADA ramps, chase drain, and east side ADA ramps (north and south). Traffic control for the demo and new installation will include a daytime and nighttime road closure and detours of Quincy Avenue on the west side of the intersection. The traffic control plan will include periodic single lane closures of both south bound and north bound University Blvd, slow lane. It will be the responsibility of the Contractor to secure all State Highway (CDOT) Right of Way Permits. There will be a Traffic Control Plan submitted with the contract. Please see Form of Bid, Summary of Work for more Traffic Control information. Item # 1a, will be the only portion of this contract that will be open as a line item for traffic control bidding.**

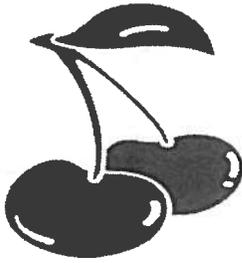
**Item # 2. E. Jefferson Avenue, curb and gutter, and valley pan. New installation of approximately twelve hundred (1,200) feet of two and a half (2.5) foot curb and gutter, and approximately one hundred (100) feet of three (3) foot valley pan, following existing grade. This installation will start at the intersection of E. Jefferson Avenue and S. Colorado Blvd and go west, on the north side of E. Jefferson to S. Monroe Street. The curb and gutter will transition into valley pan to match the existing landscape and grade, draining into an existing storm sewer drop grate. The City will provide all the follow up asphalt and landscape repairs in support of this project. The City estimates approximately 60 cubic yards of new concrete installation at this site. This projects (Item # 2) timeframe will be in the months of March, April, or May 2016, ahead of scheduled asphalt paving overlay.**

**Item # 3. S. Monroe Street, curb and gutter, driveway, valley pan, and flatwork. New installation of approximately four hundred and seventy (470) feet of new two and a half (2.5) foot curb and gutter following existing grade. This installation will start at the intersection of E. Jefferson Ave. and S. Monroe Street and go north on the east side of Monroe Street to Denver First Church driveway entrance. The City estimates approximately 22 cubic yards of new concrete for this portion of installation. This installation will include the flatwork from the back of the newly constructed curb head on Monroe Street to the back of the existing curb head of the Denver First Church parking lot.**

**This flatwork will be four hundred and seventy (470) feet, by eight (8) feet, by four (4) inches in depth. The City estimates approximately 50 cubic yards of new concrete for this portion of the installation. This installation will include new construction of a twenty eight (28) foot wide (length will be determined at time of installation) and eight (8) inch thick driveway curb cut on the south end of Monroe Street into the Denver First Church parking lot. The City estimates approximately 6 cubic yards of new concrete for this portion of installation. This installation will include new construction of a three (3) foot wide valley pan running south approximately twenty (20) feet from the new driveway curb cut to existing storm sewer grate. The City estimates approximately 2 cubic yards of concrete for this portion of installation. Total estimated new concrete for Item # 3 is approximately 80 cubic yards of concrete. The City will provide all follow up asphalt and landscape repairs in support of this project. This projects (Item # 3) timeframe will be in the months of March, April, or May 2016, ahead of scheduled asphalt paving overlay.**

**Item # 4. Highway 285 Hampden Avenue, Highway 177 University Blvd, and Highway 88 Belleview Avenue. Removal and replacement of approximately fifteen hundred (1,500) feet of sidewalk (varies from 6 to 10 feet wide) at four (4) inches depth. Total estimated new concrete for Item #4 is 170 cubic yards. Many portions of Item # 4 are not easily assessable from the adjoining State Highway. This project will require single lane closures (slow lane) on all three State Highways. It will be the Contractors responsibility to secure all needed State Highway Right of Way Permits, provide a State Certified Traffic Control Supervisor (TCS), State Certified Flaggers, all traffic control devices, and work within the guidelines and timeframes of the State Highway Permits. A Pre Bid Tour is strongly recommended. The Contractor is responsible for ALL LANDSCAPE and IRRIGATION repairs at this project. The City will provide any follow up asphalt repairs at this project if needed. The timeframe for this project (Item #4) is open for the duration of the Contract.**

**Item # 5. Covington Lane, Covington Court, and Jackson Street. Removal and replacement of approximately nine hundred (900) feet of three and a half (3.5) feet of mountable curb and gutter. The City estimates approximately 60 cubic yards of replacement at this project. The City will provide all routine follow up asphalt and landscape repairs at this project. ALL IRRIGATION and egregious landscape damage (sidewalk or driveway damage) will be the responsibility of the Contractor for repair. The timeframe for this project (Item # 5) will be March, April, or May 2016, ahead of Chip Sealing overlay.**

*STANDARD FORM OF CONSTRUCTION CONTRACT*

# CITY OF CHERRY HILLS VILLAGE

City of Cherry Hills Village Project No. 2016-003

**CONSTRUCTION CONTRACT  
FOR THE FOLLOWING PROJECT:**

**2016 Concrete Replacement and New Installation**

This Construction Contract (“Contract”), effective this 15<sup>th</sup> day of March, 2016, is made and entered into by and between Thoutt Bros. Concrete, Inc. (hereinafter, “Contractor”), a(n) corporation organized pursuant to the laws of the State of Colorado and having a principal office address of 5460 Tennyson Street, Denver, CO 80212 and the **CITY OF CHERRY HILLS VILLAGE** (hereinafter, “City” or “Owner”), a home-rule municipal corporation of the State of Colorado, having an address of 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113 (collectively, the City and Contractor are referred to herein as the “Parties”).

In consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

**PART 1 – WORK; TIME**

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

1.02 The Contractor agrees to undertake the performance of the Work within **One Hundred and Twenty (120)** days following the Notice of Award and agrees that the Work will be completed within **Ninety (90)** working days (**weekends, holidays, and inclement weather not included**) of the date of the Notice to Proceed unless the contract time is extended by the City as provided in the Contract Documents.

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

**PART 2 – CONTRACT PRICE AND PAYMENT**

2.01 The City shall pay the Contractor for performance of the Work in accordance with the Contract Documents the amount(s) shown on Contractor's Form of Bid (Excluding bid item #3 S. Monroe Street), not to exceed one hundred fifty nine thousand seven hundred forty five Dollars (\$159,745.00).

2.02 The City shall make payments as set forth in Article 9 of the General Conditions, subject to the City's obligation to retain a portion of the payments until final completion and acceptance by the City of all Work included in the Contract Documents.

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

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

2.05 The Parties understand and acknowledge that the City of Cherry Hills Village is subject to Article X § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of the funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Cherry Hills Village and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

### **PART 3 – CONTRACTOR'S REPRESENTATIONS**

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

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

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

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

(d) Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with any illegal aliens to perform work under this Contract. By entering into this Contract, Contractor certifies as of the date of this Contract that has confirmed the employment eligibility of all employees who are newly hired for employment and who will perform work under the public contract for services through participation in the e-verify program or department program. The Contractor is prohibited from using either the e-verify

program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Contract, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages otherwise provided by this Contract.

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

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

#### **PART 4 - CONTRACT DOCUMENTS**

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

- |   |        |
|---|--------|
| Invitation for Bids                                 | Other: |
| Instructions to Bidders                             |        |
| Bid Bond  |        |
| Bid Form  |        |
| Notice of Award                                     |        |
| Notice to Proceed                                   |        |
| Construction Contract                               |        |
| Construction Drawings                               |        |
| Specifications                                      |        |
| Performance, Payment, Maintenance and Warranty Bond |        |
| General Conditions, including table of contents     |        |
| Special Conditions                                  |        |
| Addendum  |        |
| Change Orders                                       |        |
| Insurance Certificates                              |        |
| Tax-Exempt Certificates                             |        |

In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions, and written addenda, change orders, or other modifications approved in writing by both Parties subsequent to the date of this Contract as set forth on page 1 hereof shall govern the original Contract Documents.

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

## **PART 5 - PROJECT MANAGER**

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

Name: Ralph Mason  
Address: 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113  
Telephone: 303-591-4746  
Email: rmason@cherryhillsvillage.com

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

## **PART 6 - ASSIGNMENT**

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

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

## **PART 7 - GOVERNING LAW AND VENUE**

7.01 This Construction Contract shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City of Cherry Hills Village.

7.02 This Construction Contract shall be deemed entered into in Arapahoe County, State of Colorado, as the City is located in said county. The location for settlement of any and all claims, controversies and disputes arising out of or related to this Construction Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in Arapahoe County.

## **PART 8 - LIQUIDATED DAMAGES**

8.01 The City and the Contractor recognize that time is of the essence in this Construction Contract and that the City will suffer financial loss if the Work is not substantially completed within the time specified in paragraph 1.02 above, plus any extensions thereof allowed by the City by written Change Order. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work is not substantially complete on time. Accordingly, rather than requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the applicable amount set forth in the General Conditions for each day that expires after the time specified in paragraph 1.02 until the Work is complete. It is agreed that this is a reasonable estimate of the damages likely to be suffered by the City for late completion of the Work. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on the Performance, Payment, Maintenance and Warranty Bond shall pay such damages. In addition, and at the City's option, the City may withhold all or any part of such liquidated damages from any payment due the Contractor.

#### **PART 9 - MODIFICATIONS**

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

#### **PART 10 - CONTINGENCY**

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

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

No officer or employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Contract.

INSURANCE CERTIFICATES REQUIRED BY THE GENERAL CONDITIONS OF THIS CONTRACT SHALL BE SENT TO THE PUBLIC WORKS DEPARTMENT, CITY OF CHERRY HILLS VILLAGE, ATTENTION: RALPH MASON, PROJECT MANAGER



**III. FORM OF BID**

Bidder: Thoutt Bros. Concrete Contractors, Inc.

City of Cherry Hills Village Project No. **2016-003**

This Bid is dated March 1, 2016

To: The City of Cherry Hills Village, State of Colorado.

**BASE BID**

| Item # | Description                              | Estimated Quantity | Unit | Unit Cost | Cost Extended |
|--------|--|--------------------|------|-----------|---------------|
| 1      | University and Quincy Intersection       | 33cy High Early    |      | 515.00    | 16,995.00     |
| 1 a    | University and Quincy Installation       | Traffic Control    |      | 5,000.00  | 5,000.00      |
| 2      | E. Jefferson Avenue                      | 60 cy              |      | 475.00    | 28,500.00     |
| 3      | S. Monroc Street                         | 80 cy              |      | 475.00    | 38,000.00     |
| 4      | Hampden, University, Belleview           | 170 cy             |      | 475.00    | 80,750.00     |
| 5      | Covington Ln, Covington Ct, & Jackson St | 60 cy              |      | 475.00    | 28,500.00     |
| 6      |  |                    |      |           |               |

Total Base Bid 197,745.00

**Summary of Work**

The City of Cherry Hills Village reserves the right to delete portions or quantities of this Bid / Project at any time.

The above quantities are estimates only. It is the Contractors responsibility to view the proposed construction project sites at their discretion prior to bidding. A City representative can be available Tuesday thru Friday for a Pre-Bid project tour per appointment. Appointments must be scheduled 48 hours in advance. Contact Project Manager, Ralph Mason, 303-591-4746 for appointments.

The City does not recognize Mobilization, Re-mobilization, or De-mobilization as a line item.

The City does not recognize Tear Out / Demo of concrete, asphalt, or sub-grade as a line item.

The City does not recognize Traffic Control as a line item except as expressly allowed herein.

Portions of this these Projects (Items # 1 and # 4) will require single lane closures, intersection closure, detours, and timeframe restrictions on State Highways. It will be the Contractors responsibility to secure all needed State Right of Way Permits, provide a State Certified Traffic Control Supervisor (TCS), State Certified Flaggers, all traffic control devices, and work within the guidelines and timeframes of the State Highway Permits.

On Item # 1 a. A Traffic Control Plan will be submitted with this Contract. Item # 1a, will be the only portion of this contract that will be open as a line item for traffic control bidding. A Pre-Bid project tour is strongly recommended for this phase of project bidding.

Mayor Pro Tem A. Brown indicated that the lot configuration was highly unusual and that was driving the design challenges that resulted in the request. He stated that development in the floodplain was reserved for the most serious and compelling cases and design preference was not justification for a permit. He acknowledged that the nature of the lot was frustrating.

City Attorney Michow clarified for the record that staff's report and the correspondence provided by Mr. Foster would be made part of the record. She advised that Council provide specific findings of fact with respect to their motion for approval or denial.

Councilor K. Brown moved, seconded by Councilor Hoellen, to deny the floodplain permit development application for 1530 East Oxford Lane based on the findings in Table 1 of the March 15, 2016 staff memorandum and findings by Council that floodplain development permits must meet a very high standard of hardship, the belief that the challenges with this lot are based on the attributes of the lot more than the City's Code, and that the desired plan does not rise to the level of an exceptional hardship as required by the Code.

The motion passed 5 to 1.

Contract for Services with Thoutt Brothers Concrete Contractors Inc. for the 2016 Street Improvement Concrete Replacement Project

Interim City Manager/Director Goldie presented a contract with Thoutt Brothers Concrete Contractors for the 2016 street improvement concrete replacement project. He explained that the City had received six bids for the project. Thoutt Brothers Concrete was the low bid for the 2016 project and the contractor that staff was recommending to City Council for approval. The City had used Thoutt Brothers in the past including the 2011, 2012, 2013 and 2014 projects. Thoutt Brothers had produced a quality product in the past and were familiar with the City's expectations and requirements. Staff was requesting approval of the Contract for Services with Thoutt Brothers Concrete in the amount of \$159,745.00 plus a 10% contingency for a not to exceed amount of \$175,720.00. A portion of the 2016 Concrete Replacement Project included improvements on Monroe Street adjacent to the Denver First Church, but this was not included in this initial contract with Thoutt Brothers. A separate contract for the Monroe Street portion of the Project would be brought to Council at a future date. The cost of the Monroe Street work would be a pass through with no additional funding required by the City.

Councilor Griffin asked about the work that would be done at the intersection of Quincy and University.

Interim City Manager/Director Goldie replied that there were issues with drainage from St. Mary's going west along Quincy to Greenwood Gulch that City staff had been studying for several years. Staff had decided that the best solution would be to keep the drainage water moving north into Greenwood Gulch by redoing the pan across Quincy on the west side of University. He explained that the water would end up in the same place. He noted that the pan could cause a slight slowing in traffic at the intersection because of the additional dip. He explained that the work would be done during one weekend when staff would close the intersection. He noted this would be when school was out and that staff would use signage and letters to notify residents of the project.

Councilor VanderWerf asked about the sidewalks in the City.

Interim City Manager/Director Goldie explained that the City was responsible for maintaining all of the sidewalks along the state highways located in the City. He indicated that staff was replacing individual sidewalk panels as necessary.

Public Works Project and Right-of-Way Manager Mason added that some sidewalk panels on University were over 35 years old and still functional, while some panels on Belleview lasted 10 years or less.

Interim City Manager/Director Goldie explained that the lifetime of the sidewalk panels varied due to several factors, one of which was the newer concrete was not allowed to have the same additives as the old concrete for environmental reasons.

Councilor VanderWerf moved, seconded by Councilor Griffin to approve the contract for services with Thoutt Brothers Concrete Contractors Inc. in the amount of \$159,745.00 plus a 10% contingency for a total maximum expenditure of \$175,720.00 and authorize the expenditure of these funds.

The motion passed unanimously.

## **REPORTS**

### **Mayor's Report**

None

### **Members of City Council**

Councilor Gallagher reported that Parks, Trails and Recreation Commissioner Colleen Dougherty had resigned from the Commission. He added that a landscape design firm for John Meade Park had been chosen and their timeframe was to bid construction documents one year from now, before which they would conduct three to four open houses and the City would go through the floodplain development permit process.

Councilor Griffin reported that the March meeting of the BOAA had been cancelled. He expressed concern over the mail theft issue described in the Police Department's monthly report.

Mayor Pro Tem A. Brown agreed that it was a serious issue and that his mail carrier had recommended that people don't raise their mailbox flags and that the post office would check each box regardless of flag position. He added that the Police Department was doing everything they could to solve the issue.

Councilor K. Brown noted that there was a US Post Office mail box at Quincy and Meade that residents could use instead of putting outgoing mail in their individual mail boxes. She suggested including that information in the Village Crier.

Councilor A. Brown reported that residents were experiencing increased frequency of Quincy traffic blocking the Cherryvale intersection. He thanked the Police Department for installing a "Don't Block" sign, but explained the dangerous situation of cars pulling onto the trail to turn left without checking for trail users first. He indicated the Police Department would be monitoring the intersection. He reported that no headway was being made with CDOT for the new traffic light on Belleview and the \$100,000 budgeted in the Capital Budget for the project would likely not be used this year. He noted that he would be interested in hearing from staff on the possibility of raising chickens and beekeeping on the City's smaller lots.

|  |                                 |                                |
|--|---------------------------------|--------------------------------|
| <br>CITY OF<br>CHERRY HILLS VILLAGE | <b>CHANGE ORDER</b>             |                                |
| City Project No.:<br>2016-003  | Project Name:<br>2016- Concrete | Change Order No.:<br>#001      |
| To (Contractor):<br>Thoutt Bros. Concrete Contractors Inc.   |                                 | City Contract No.:<br>2016-003 |
| Description of Original Contract Work:<br>Monroe Street Concrete   |                                 | Date:<br>May 17,2016           |

It is hereby mutually agreed that when this Change Order has been signed by the contracting parties, the following described changes shall be executed by the Contractor without changing the terms of the Contract, except as herein stipulated and agreed.

**Monroe Street Concrete Item # 3 on original bid**

Contractor agrees to furnish all Materials and labor and to perform all Work required to complete the above described changes in accordance with the requirements for similar Work covered by the Contract, except as otherwise stipulated herein, for the following considerations:

| <i>CHANGE TO CONTRACT SUM</i>   | AMOUNT /<br>DATED / AVG |
|---|-------------------------|
| Original CONTRACT SUM   | \$159,745.00            |
| Current CONTRACT SUM adjusted by Change Orders <u>  0  </u> thru <u>  0  </u> | \$159,745.00            |
| The CONTRACT SUM due to this Change Order will be (Increased)by               | \$38,000.00             |
| The new CONTRACT SUM including this Change Order will be                      | \$197,745.00            |
| <i>CHANGE TO CONTRACT TIME</i>  | 0                       |
| Current CONTRACT Completion Date  | 10-22-16                |
| CONTRACT TIME will be (Unchanged) by this number of Calendar days             | 0                       |
| The DATE for completion of all WORK (Amended Contract Time) will be           | 10-22-16                |

**RECOMMENDED FOR ACCEPTANCE:**

PROJECT MANAGER

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**ACCEPTED:**

CONTRACTOR:  
\_\_\_\_\_

CITY OF CHERRY HILLS VILLAGE:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Deputy City Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CHERRY HILLS VILLAGE  
COLORADO

2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113  
www.cherryhillsvillage.com

Village Center  
Telephone 303-789-2541  
FAX 303-761-9386

ITEM: 7a

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MEMORANDUM

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**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** CITY CLERK LAURA SMITH; ACCOUNTING CLERK/VILLAGE CRIER EDITOR  
JESSICA SAGER

**SUBJECT:** CANDIDATE PROFILES IN THE VILLAGE CRIER

**DATE:** JUNE 7, 2016

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**Issue:**

Staff is seeking direction from Council regarding the publication of candidate profiles in the Village Crier.

**Background:**

It has been the City's historical practice to publish information about City candidates in the Village Crier for municipal elections. At the April 5, 2016 Council meeting staff presented information on other cities' policies for publishing candidate information and suggested a new Candidate Profile format and instructions for publication of candidate information in the Village Crier (see Exhibit A for staff's memorandum and Exhibit B for Council minutes).

Since the April 5, 2016 meeting staff has worked with Councilors Hoellen and K. Brown to revise the new Candidate Profile format and instructions (Exhibit C). Staff is seeking direction from Council on this revised format.

**Proposed Motion:**

"I move to approve the Candidate Profile format and instructions included as Exhibit C to the June 7, 2016 staff memorandum."

**Attached:**

Exhibit A – April 5, 2016 Staff Memorandum

Exhibit B – April 5, 2016 City Council Meeting Minutes

Exhibit C – Proposed Revised Candidate Profile Format and Instructions

CHERRY HILLS VILLAGE  
COLORADO2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113  
www.cherryhillsvillage.comVillage Center  
Telephone 303-789-2541  
FAX 303-761-9386

ITEM: 8c

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**MEMORANDUM**

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**TO:** HONORABLE MAYOR CHRISTMAN AND MEMBERS OF THE CITY COUNCIL

**FROM:** CITY CLERK LAURA SMITH

**SUBJECT:** CANDIDATE FORUM POLICY AND CANDIDATE PROFILE INFORMATION

**DATE:** APRIL 5, 2016

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**Issue:**

Staff is seeking direction from Council regarding the Candidate Forum Policy and publication of candidate profile information in the Village Crier.

**Background:***Candidate Forum Policy*

At the October 7, 2014 Council meeting, Council discussed holding a candidate forum for the 2014 regular municipal election (see Exhibit A for minutes). At the April 21, 2015 Council meeting, Council approved the Candidate Forum Policy (Exhibit B). The minutes from that meeting are not attached to this staff memorandum because the policy was not discussed prior to the motion for approval. The April 21, 2015 staff memorandum states:

Candidate Forum Policy – This policy replaced the existing Elections Issues Public Comment Policy. It was drafted to clarify the City's position that, in order to comply with State regulations regarding the use of public funds during elections, the City will not be involved with any campaign, debate, forum or other candidate activities.

The adopted Policy states:

Cherry Hills Village does not contribute, directly or indirectly, to any campaign involving the nomination, retention, or election of any person to any public office. The Village does not sponsor debates, forums, or other candidate activities that would require the payment of Village funds, expenditure of staff time, or use of Village facilities. Notwithstanding the foregoing, the Village will provide information to, and

answer questions from, potential and announced candidates for office, and provide information to Village residents about the time, place, and manner of Village elections.

At the March 15, 2016 Council meeting staff asked for direction from Council regarding the Candidate Forum Policy. Council determined that the Candidate Forum Policy did not need to be amended but that clarification should be added to the City's Meeting Room Policy (see Exhibit C for amended policy). Because the Meeting Room Policy is an administrative policy Council does not need to approve this amendment with a resolution.

Staff has since researched if other municipalities are involved in candidate forums:

Arvada – Candidate forum has been held in Council Chambers, hosted/moderated by the League of Women Voters and other community groups.

Aurora – Candidate forum is held in Council Chambers, hosted/moderated by the League of Women Voters and other community groups.

Centennial – City does not host/is not involved in candidate forums.

Commerce City – League of Women Voters facilitates/moderates candidate forum, held in Council Chambers, school board candidates invited to participate, uses community groups as conduits.

Englewood - Candidate forum has been held in Council Chambers, hosted/moderated by the League of Women Voters and other community groups.

Greenwood Village – City does not host/is not involved in candidate forums. Forums are often hosted by the League of Women Voters or, in 2015, the Villager Newspaper.

Lakewood – City does not host/is not involved in candidate forums.

Sheridan – City does not host/is not involved in candidate forums.

*Candidate Profile Information in the Village Crier*

It has been the City's historical practice to publish information about City candidates in the Village Crier for municipal elections. Exhibit D contains the questionnaire prepared by staff and completed by candidates for past elections.

During the 2014 municipal election there was controversy surrounding the publication of candidate information in the Village Crier. Staff has since researched how other municipalities handle this issue:

Arvada – Leaves it to the media/outside organizations. City puts candidates' names, contact information, candidate affidavit & FCPA reports on city website.

Aurora – Bio sheet published on city website. City TV services division allows candidates to purchase TV time. Local newspaper publishes its own information.

Centennial – City publishes candidate photo, name, position running for, and affidavit/FCPA forms on website.

Commerce City – City provides questionnaire, published on city website (Exhibit E). City also provides opportunity to video record and post on city website, scripted by communications staff so questions are all the same.

Englewood – Candidates are asked for a candidate bio with specific guidelines/parameters (Exhibit F). Bios are included verbatim in the city newspaper, which is mailed to every resident and available on the city website.

Greenwood Village – List of candidates and photos published in city newsletter, notice of election on website, press release with notice of election but no photos. Candidate questionnaire: most of the info is not public, only name, address, phone number(s), and current/previous terms on city boards, which is only given out upon request (usually to press). (Exhibit G)

Lakewood – City provides questionnaire, published in city newsletter and on city website. (Exhibit H)

Sheridan – No candidate info sheet. Candidates are invited to write a short article in the city newsletter but they rarely do. The city doesn't have many guidelines/parameters, no word limit. Candidate names are put on city website along with other election info (type of election etc.).

Based on the idea that Village residents find candidate information helpful but that the City's procedure needs to be adjusted to make the process more equitable, staff has worked with City Attorney Michow on new instructions for candidate profiles (Exhibit I).

*Fair Campaign Practices Act*

Once an event that triggers the application of the FCPA has occurred, the City, its elected and appointed officials and employees acting in their official capacities are prohibited from making:

“any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity make any donation to any other person for the purpose of making an independent expenditure, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against [the ballot question or issue].”.

There are, however, certain exceptions to this prohibition including expenditure of public money “to dispense a factual summary”.

**Discussion:**

Use of City resources for a candidate forum and publication of candidate information in a City publication is at the discretion of Council. The most conservative option to avoid FCPA complaints is to not use City resources for these activities. The other consideration is the community expectation of the City’s responsibility to provide information about candidates.

Staff has identified three options for candidate information in the Village Crier and is seeking Council direction:

1. Continue to use the candidate information form from past elections (Exhibit D)
2. Use the proposed candidate profile form going forward (Exhibit I)
3. Not publish any candidate information in the Village Crier

**Attached:**

Exhibit A – October 7, 2014 City Council Meeting Minutes

Exhibit B – Candidate Forum Policy

Exhibit C – Revised Meeting Room Policy

Exhibit D – 2014 Candidate Bio for Village Crier

Exhibit E – Commerce City

Exhibit F – Englewood

Exhibit G – Greenwood Village

Exhibit H – Lakewood

Exhibit I – Proposed Candidate Profile for Village Crier

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**RECORD OF PROCEEDINGS**

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The motion passed unanimously.

**Application for Modification of Premises by Splendido LLC DBA Pino's at 1400 East Hampden Avenue Suite 140**

City Clerk Smith presented the application for a modification of premises for the liquor license held by Splendido LLC DBA Pino's at 1400 E. Hampden Avenue Suite 130. She explained that the applicant was planning to expand into adjacent Suite 140, formerly occupied by the wine shop Vino Vino. She noted that staff found the application to be complete and had no concerns with the modification. She indicated that a public hearing was not required and that staff recommended approval of the application.

Mayor Pro Tem A. Brown asked what regulations pertained to modification of premises applications.

City Clerk Smith explained that the City Code does not contain requirements for applications for modification of premises of liquor licenses and that Section 47-302 of the Colorado Liquor Code outlines factors to be taken into consideration by the licensing authority when considering an application for a modification of premises:

- The reasonable requirements of the neighborhood and the desires of the inhabitants
- The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement
  - Staff has confirmed that the new area of former Suite 130 is included in the restaurant's lease (see Exhibit A for application including the lease).
- Compliance with the applicable zoning laws of the municipality
  - Staff has confirmed that combination of the two suites is allowed by the Development Agreement approved for the shopping center. The applicant has an active building permit for the expansion.
- Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary
  - Staff has confirmed that the property is not within 500 feet of any private or public school.

Councilor Gallagher moved, seconded by Councilor Griffin to approve the application for a modification of premises for the Hotel & Restaurant Liquor License held by Splendido LLC DBA Pino's at 1400 East Hampden Avenue Suite 140 in the City of Cherry Hills Village.

The motion passed unanimously.

**Candidate Forum Policy and Candidate Profile Information**

City Clerk Smith explained that staff was seeking direction from Council regarding candidate forums and candidate information in City publications for City elections. She noted that at the March 15, 2016 Council meeting staff asked for direction from Council regarding the Candidate Forum Policy. Council determined that the Candidate Forum Policy did not need to be amended but that clarification should be added to the City's Meeting Room Policy, which staff had since done. During the study session Council questioned the difference between candidate forums and candidate information in City publications. Use of City resources for a candidate forum and publication of candidate information in a City publication was at the discretion of Council. The most conservative option to avoid Fair Campaign Practices Act (FCPA) complaints was to not use City resources for these activities. The other consideration was the community expectation of the City's responsibility to provide information about candidates. The City has

traditionally published candidate information in the Village Crier but has not traditionally hosted a candidate forum. Staff researched other Denver Metro Area municipalities and found a wide range of approaches to these issues. Staff identified three options for candidate information in the Village Crier and is seeking Council direction: continue to use the candidate information form from past elections, use the proposed candidate profile form going forward, or not publish any candidate information in the Village Crier.

Mayor Pro Tem A. Brown noted that there was not much consistency in the way other municipalities handled these issue.

Councilor K. Brown noted that other municipalities did not host candidate forums but did make their facilities available. She asked about the City's current policy.

City Clerk Smith explained that currently the City's Candidate Forum Policy and Meeting Room Policy prohibited use of City facilities with the intent to advance any political candidate or campaign.

Councilor K. Brown indicated that she supported the City not having a specific role in candidate forums, but she was unsure about the use of City facilities for a candidate forum if an organization such as the League of Women Voters wished to host one at a City facility. She suggested that the wide range of approaches to candidate information in city publications likely stemmed from some communities having had issues and others not having had issues yet, and therefore did not necessarily lend the Council any assistance in their decision making on this matter. She indicated that disseminating candidate information in the Crier was a service to the community and supported a fair and equitable policy for doing so. She noted that staff's proposed candidate profile instructions were a good start and that the policy could be further improved by being more clear and precise.

Councilor Hoellen agreed and advised that the instructions held some assumptions that should be clarified.

Councilor Gallagher agreed that including candidate information in the Crier was valuable to City residents.

Councilor VanderWerf agreed and supported staff's proposed candidate profile form. She supported the word limit, lack of leading questions, and printing verbatim, but indicated that the City should reserve the right to edit if the submission was inappropriate.

Councilor K. Brown suggested that staff contact the candidate to revise their profile if necessary rather than having staff revise the profile.

Mayor Pro Tem A. Brown expressed concern with candidates making false statements and questioned if the City should allow that in a City publication.

Councilor Hoellen supported publishing candidate profiles verbatim and only reserving the right to edit inappropriate words. He noted that Council could respond to correct any misconceptions.

Councilor K. Brown suggested including a note similar to the one Lakewood used that stated that candidate profiles were not edited, etc. and to make that very clear to the candidates.

Councilor Hoellen commented that the City should encourage the involvement of its citizens on City Council, Boards and Commissions, and that one way to do this would

be to facilitate candidate forums by making its facilities available for such use, provided that candidates or host organizations pay the City on a full cost recovery basis for use of City resources in order to avoid FCPA issues.

Councilor K. Brown agreed.

Mayor Pro Tem A. Brown noted that Council's options were to not publish any information, publish only basic information, or publish a verbatim profile. He asked about the 500 word limit.

City Clerk Smith explained that staff had based the word limit on a half-page in the Crier.

Councilor K. Brown suggested that staff include size and resolution recommendations for candidate photos in the instructions. She suggested that staff have the candidates revise their profiles if needed due to an FCPA violation, rather than staff revising the profile.

Councilor Hoellen noted that he had more detailed suggestions for the instructions.

Mayor Pro Tem A. Brown indicated that tonight's discussion was to direct staff on whether or not to publish candidate information in the Crier.

Councilor Hoellen supported the proposed candidate profile.

Councilor Griffin noted that this was for City Council candidates only and should be indicated as such.

Mayor Pro Tem A. Brown asked staff to make Council's suggested revisions and bring the candidate profile instructions back for further review.

Councilor K. Brown suggested that staff review past candidate profiles to approximate the word limit.

Councilor Hoellen agreed.

Councilor Gallagher asked about font size and formatting.

City Clerk Smith replied that formatting was done by the City's publisher.

Councilor Hoellen suggested including a mockup of what the candidate profile would look like with the profile instructions.

Councilor K. Brown agreed.

## **REPORTS**

### **Mayor's Report**

None

### **Members of City Council**

Councilor Gallagher reported on the sad passing of resident Eva Slattery. He also encouraged the City to allow hens in all Zone Districts, although not roosters.

**Cherry Hills Village City Council Candidates  
Candidate Profile for the Village Crier**

**Instructions:**

- Deadline: We STRONGLY encourage you to submit your Candidate Profile by Monday, September 12, 2016 to allow time for any necessary revisions. The LAST day Candidate Profiles will be accepted, including any required corrections, is Monday September 19, 2016 at 4:30 p.m. NO EXCEPTIONS.
- If you choose not to submit a Candidate Profile by the 4:30 p.m. deadline on September 19, 2016, or you do not return your profile with necessary revisions by the 4:30 p.m. deadline on September 19, 2016, only your name, the position you are running for, your address, and your photo (if submitted) will be published.
- Complete the information below and submit this document in Microsoft Word to City Clerk Laura Smith at [lsmith@cherryhillsvillage.com](mailto:lsmith@cherryhillsvillage.com). Your **Information from the Candidate** section will extend onto a second page. Handwritten documents will not be accepted.
- Please submit a digital photo of yourself for publication along with your Candidate Profile by the deadline (see above). We recommend a photo of at least 2" by 2.5" and 300dpi resolution.
- Your Candidate Profile will be published VERBATIM as submitted. City staff will NOT make any editorial or grammatical revisions.
- If your Candidate Profile contains any inappropriate language it will be returned to you with an explanation to allow you the opportunity to correct and resubmit by the 4:30 p.m. deadline on Monday September 19, 2016.
- Your Candidate Profile may NOT include any references to any ballot issues on the November ballot in order to avoid conflicts with the Fair Campaign Practices Act. If your Candidate Profile contains any content that would create a violation with the Fair Campaign Practices Act or other applicable laws it will be returned to you with an explanation to allow you the opportunity to correct and resubmit by the 4:30 p.m. deadline on Monday September 19, 2016.
- City staff will format your Candidate Profile so that each profile is one half page in the Village Crier. If the formatting you submit does not fit onto one half page your Profile will be returned to you with an explanation to allow you the opportunity to correct and resubmit by the 4:30 p.m. deadline on Monday September 19, 2016.
- The 500 word limit for the **Information from the Candidate** section will be STRICTLY enforced. Any words you include beyond the 500 limit will be removed and no other editorial or grammatical revisions will be made.
- Candidate Profiles will be published in the October issue of the Village Crier. The order of Candidate Profiles in this issue will be by position. All Mayoral Candidate Profiles will be published first, followed by Council District 1, then Council District 3, and finally Council District 5. If there are multiple candidates for a position then the Candidate Profiles will be published alphabetically by last name within that position group.

**Candidate Profile**

**Name:** \_\_\_\_\_

**Position running for:** \_\_\_\_\_

**Address:** \_\_\_\_\_ Cherry Hills Village, CO 80\_\_\_\_\_

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

**E-Mail:** \_\_\_\_\_

**Number of years resident of Colorado:** \_\_\_\_\_

**Number of years resident of Cherry Hills Village:** \_\_\_\_\_

**Information from the Candidate (Word limit = 500):**



TO: Honorable Mayor Christman and City Council

CC: Jim Thorsen, City Manager

FROM: Linda Michow, City Attorney

DATE: June 7, 2016

SUBJECT: Council Bill No. 5, Series 2016: Amending Section 16-2-40  
Concerning Procedures for Text Amendments and Rezoning of  
Property

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**ISSUE:**

Section 16-2-40 of the Municipal Code sets forth the process for initiating a zoning map amendment (rezoning of property) and amendments to Chapter 16 (text amendment). Council Bill No. 5 proposes amendments to Section 16-2-40 to clarify the distinction between rezoning of property and text amendments, and to change the notice requirements to be consistent with current City practice.

**BACKGROUND:**

Chapter 16 of the City of Cherry Hills Village Municipal Code governs zoning and regulates the development of land within the Village. As a home rule municipality, the City has broad legislative authority to adopt zoning regulations.

In accordance with Colorado Revised Statutes, C.R.S. § 31-23-204, a municipality may adopt and amend zoning regulations and zoning district boundaries, provided however, "no such regulation, restriction, or boundary shall become effective until after a public hearing [is held] thereon at which parties in interest and citizens have an opportunity to be heard" ... and "at least fifteen days' notice of the time and place of such hearing is published in an official paper or a paper of general circulation in such municipality."

In all respects, the City follows state statute regarding the process for rezoning of property and amending the City's zoning regulations. Section 16-2-40, titled "Amendments", incorporates the state requirement for public hearing and newspaper publication of the public hearing, and also provides enhanced notice requirements by mandating individualized mailed notice to adjacent property owners sent via certified mail, return receipt requested, and posting of the property subject to rezoning. Under Section 16-2-40(c), "evidence of mailed notice must be provided at the public hearing in

the form of signed return receipts from each affected property owner.” Notably, the notice requirements set forth in Section 16-2-40(c) apply to conditional use permits (see Section 16-18-60) and expanded use permits (see Section 16-20-40). It is City staff’s opinion that requiring an applicant to present evidence of signed return receipts is problematic and overly burdensome as an applicant cannot guarantee that a mailed notice will be signed for and picked up by the intended recipient. Moreover, it is not clear in Section 16-2-40 whether failure to meet this requirement is a jurisdictional prerequisite to conducting the public hearing on the scheduled application. Finally, it has not been the City’s practice to receive signed return receipts from adjacent property owners.

For these reasons, City staff is proposing amendments to Section 16-2-40 to:

- Maintain the requirement for certified mailing;
- Remove the requirement for return receipts and for evidence of signed return receipts; and
- Add delivery of mailed notice by regular U.S. mail.

In addition, staff has identified and proposes other “clean-up” changes in Section 16-2-40 to better differentiate between zoning map amendments (rezoning) and amendments to Chapter 16 (text amendments). All of the proposed changes are presented in Council Bill No. 5 for consideration by City Council.

#### **RECOMMENDATION:**

City staff recommends City Council approve on first reading Council Bill No. 5, Series 2016, subject to further discussion and revision as City Council may deem appropriate. Council Bill No. 5 maintains the City’s policy of providing enhanced notice requirements for zoning applications and encouraging community input.

#### **PROPOSED MOTION:**

***“I MOVE TO APPROVE COUNCIL BILL 5, SERIES 2016, AMENDING SECTION 16-2-40 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE CONCERNING PROCEDURES FOR TEXT AMENDMENTS AND REZONING OF PROPERTY ON FIRST READING”***

#### **ATTACHMENTS:**

Exhibit A - Council Bill No. 5, Series 2016

Exhibit B - Section 16-2-40 – Legislative Version with proposed changes shown in strike through (deletions) and underline (additions).

COUNCIL BILL NO. 5  
SERIES OF 2016

INTRODUCED BY: \_\_\_\_\_  
SECONDED BY: \_\_\_\_\_

**A BILL FOR AN ORDINANCE  
OF THE CITY OF CHERRY HILLS VILLAGE  
AMENDING SECTION 16-2-40 OF CHAPTER 16 OF THE MUNICIPAL CODE CONCERNING  
PROCEDURES FOR TEXT AMENDMENTS AND REZONING OF PROPERTY**

WHEREAS, the City of Cherry Hills Village ("City" or "Village") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its Home Rule Charter and Title 31, Article 23 of the Colorado Revised Statutes, the City is authorized to adopt regulations governing the development of property within the boundaries of the City to further the health, safety and welfare of the citizens of the community; and

WHEREAS, the City Council has adopted zoning and land use regulations codified in Chapter 16 of the Cherry Hills Village Municipal Code, and has adopted an official zoning map for the City; and

WHEREAS, in accordance with Section 16-2-40 of the Municipal Code, the City Council desires to modify and update the procedures for amending the zoning map and making "text" changes to Chapter; and

WHEREAS, the Planning and Zoning Commission has considered such amendments and has recommended approval of the same to City Council; and

WHEREAS, the City Council conducted a duly noticed public hearing to consider the proposed amendments as set forth in this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

**Section 1.** Section 16-2-40 of the Cherry Hills Village Municipal Code, entitled "Amendments", is hereby repealed and reenacted to read as follows:

**Sec. 16-2-40. Amendments.**

(a) Amendments to Zoning Map and Text Amendments. Amendments to this Chapter or any section thereof (a text amendment) may be initiated by the City Council or by the Planning and Zoning Commission. Amendments to the official zoning map for a specific parcel, lot or property (a rezoning) may be initiated by application from any person owning property in the City or by City Council by making application therefor on such a form as the Planning and Zoning Commission may prescribe.

(1) Rezoning Application. A rezoning application shall be filed with the Community Development Department, together with payment of the applicable fee. The following application materials are required for an application for rezoning:

a. Description of the land area to be rezoned and the requested new classification, along with a sketch, to scale, showing the boundaries of the area requested to be rezoned, along with the existing zoning on all adjacent sides of the area.

b. A statement of justification for the rezoning, including discussion of such of the following conditions as are applicable:

1. Change in area conditions;
2. Error in original zoning;
3. Conformance to the Master Plan for the area; and
4. Suitability of the site to the proposed use.

c. Description and sketches, if available, of structures or uses proposed if rezoning is granted, along with a description of uses within two hundred (200) feet of the boundary of the proposed area of change, in all directions, and the effect of the proposed use upon the adjacent areas.

d. Time schedule for any contemplated new construction or uses.

(2) Text Amendment Application. The City Council may amend any provision of this Chapter in its sole legislative discretion, subject to the limitations of the Colorado statutes that affect home rule municipalities and the Colorado and United States Constitutions.

(b) Referral to Planning and Zoning Commission. All applications for text amendments and rezonings shall be referred to and considered by the Planning and Zoning Commission at a duly noticed meeting. The Planning and Zoning Commission shall examine the rezoning proposal or text amendment and its conformity to the intent of this Chapter and to the City's master plan. A recommendation shall then be made to the City Council, along with reasons therefor.

(c) City Council Public hearing process.

(1) The City Council shall hold a public hearing before any rezoning or text amendment is enacted by the City Council. Public notice of the time and place of such public hearing shall be published at least fifteen (15) days prior thereto, in one (1) newspaper with general circulation in the City and describing generally the matters involved in the proposed text amendment or rezoning.

(2) For rezonings, in addition to newspaper publication, the applicant shall send written notices of the public hearing to all property owners contiguous to, including across any street from, any portion of the subject property. Said notice must contain a typewritten identical copy of that notice required to be posted in the Village Center, and shall be mailed by certified mail and regular U.S. mail at least fifteen (15) days prior to the scheduled public hearing. In addition, any proposed rezoning must be advertised by a posted notice at least two (2) feet by three (3) feet in size and with a caption "NOTICE OF PUBLIC HEARING" or similar language, with each letter of the caption at least two (2) inches in height, containing the same data as above, posted continuously for at least fifteen (15) days prior to the hearing and located on the subject property in a conspicuous location clearly visible from an adjoining roadway, if practical.

(d) Enactment. Such an amendment to be enacted shall receive the affirmative vote of the majority of the membership of the entire City Council.

(e) Certification of the amendment. If an amendment should receive the required vote for adoption by the City Council, a certified copy of the amendment shall then be filed with the City Clerk. Rezoning shall be documented on the City's official zoning map.

**Section 2. Severability.** If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

**Section 3. Effective Date.** This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. \_\_\_\_\_, Series 2016, by the City Council of the City of Cherry Hills Village, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Laura Christman, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura Smith, City Clerk

\_\_\_\_\_  
Linda C. Michow, City Attorney

Published in *The Villager*  
Published: \_\_\_\_\_  
Legal #: \_\_\_\_\_

**SECTION 16-2-40  
LEGISLATIVE VERSION WITH TRACK CHANGES**

Section 16-2-40. Amendments.

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~~(a) Amendments to Zoning Map and Text Amendments~~Initiation. In addition to amendments Amendments to this Chapter or any section thereof (a text amendment) may be initiated by the City Council or by the Planning and Zoning Commission, ~~amendments to this Chapter or any section thereof, or to~~Amendments to the official zoning map for a specific parcel, lot or property (a rezoning), may be initiated by application from any person owning property in the City or by City Council by making application therefor on such a form as the Planning and Zoning Commission may prescribe.

(1) Rezoning Application. A rezoning application shall be filed with the Community Development Department, together with payment of the applicable fee.

The following application materials are required for an application for rezoning, which shall include all of the following information, if applicable, in addition to such other data as the Planning and Zoning Commission may require:

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~~(1a.)~~ Description of the land area to be rezoned and the requested new classification, along with a sketch, to scale, showing the boundaries of the area requested to be rezoned, along with the existing zoning on all adjacent sides of the area.

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~~(2b.)~~ A statement of justification for the rezoning, including discussion of such of the following conditions as are applicable:

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- 1a. Change in area conditions;
- b2. Error in original zoning;
- e3. Conformance to the Master Plan for the area; and
- d4. Suitability of the site to the proposed use.

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~~(3c.)~~ Description and sketches, if available, of structures or uses proposed if rezoning is granted, along with a description of uses within two hundred (200) feet of the boundary of the proposed area of change, in all directions, and the effect of the proposed use upon the adjacent areas.

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~~(4d.)~~ Time schedule for any contemplated new construction or uses.

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~~The application shall be filed with the City Clerk, together with payment of the applicable fee.~~

(2) Text Amendment Application. The City Council may amend any provision of this Chapter in its sole legislative discretion, subject to the limitations of the Colorado statutes that affect home rule municipalities and the Colorado and United States Constitutions.

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(b) Referral to Planning and Zoning Commission. All applications for text amendments and rezonings zoning changes shall be referred to and considered by referred by the City Clerk to the Planning and Zoning Commission at a duly noticed meeting. ~~The Planning and Zoning~~

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**SECTION 16-2-40  
LEGISLATIVE VERSION WITH TRACK CHANGES**

~~Commission may, at its discretion and upon a vote of a majority of the Commission, hold a public hearing preceded by public notice thereof as provided in Subsection (c) below. The Planning and Zoning Commission shall in all cases examine the rezoning proposal or text amendment and its conformity to the intent of this Chapter and to the City's master plan. A recommendation shall then be made to the City Council, along with reasons therefor. The Planning and Zoning Commission may adopt reasonable rules and regulations for the conduct of its affairs consistent with the provisions of this Chapter.~~

**Comment [LM1]:** This is not required by state law, and adds confusion about the process and when a public hearing is required.

(c) City Council Public hearing process.

**Comment [LM2]:** This statement appears misplaced. It is addressed in Chapter 2 dealing with planning commission.

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~~(1) The City Council shall hold a public hearing before any rezoning or text amendment is enacted by the City Council. a public hearing shall be held. Public notice of the time and place of such public hearing which shall be published at least fifteen (15) days prior thereto, in at least one (1) newspaper with general circulation in the City and describing generally the matters involved in the proposed text amendment or rezoning.~~

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~~(2) For rezonings, it is the responsibility of in addition to newspaper publication, the applicant shall to send written notices, by certified mail, return receipt requested, of the public hearing to all property owners contiguous to, including across any street from, any portion of the subject applicant's property. Said notice must contain a typewritten identical copy of that notice required to be posted in the Village Center, and shall be mailed by certified mail and regular U.S. mail at least fifteen (15) days prior to the scheduled public hearing. Evidence of such mailing will be provided at the public hearing in the form of signed return receipts from each affected property owner. In addition, any proposed rezoning amendment to the map shall must be advertised by a posted notice at least two (2) feet by three (3) feet in size and with a caption "NOTICE OF PUBLIC HEARING" or similar language, with each letter of the caption at least two (2) inches in height, containing the same data as above, posted continuously for at least fifteen (15) days prior to the hearing and located on the subject property site, if practical, in a conspicuous location clearly visible from an adjoining roadway, if practical.~~

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**Comment [LM3]:** Council had discussed including additional notice options, however, the certified mail option is standard for other applications, such as BOA variances. I deleted the sentence regarding signed returned receipts.

~~(d) Enactment. Such an amendment to be enacted shall receive the affirmative vote of the majority of the membership of the entire City Council.~~

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~~(e) Certification of the amendment. If an amendment should receive the required vote for adoption by the City Council, a certified copy of the amendment shall then be filed with the City Clerk. Rezonings shall be documented on the City's official zoning map.~~

**CHERRY HILLS VILLAGE  
COLORADO**

2450 E. Quincy Avenue  
Cherry Hills Village, CO 80113  
www.cherryhillsvillage.com

Village Center  
Telephone 303-789-2541  
FAX 303-761-9386

ITEM: 9d(iii)

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**MEMORANDUM**

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**TO:** HONORABLE MAYOR CHISTMAN AND MEMBERS OF THE CITY  
COUNCIL

**FROM:** LAURA SMITH, CITY CLERK

**SUBJECT:** PUBLIC ART COMMISSION MEMBER TERM

**DATE:** JUNE 7, 2016

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**ISSUE**

Public Art Commissioner Doug Smooke's first full term ends July 19, 2016.

**DISCUSSION**

Staff is seeking direction from Council on the reappointment of Doug Smooke to the Public Art Commission (PAC). A recruitment process is not triggered for Mr. Smooke as he has only served one full term so far. He has indicated his desire to continue serving. If Council is in agreement, staff will return with a resolution to reappoint Mr. Smooke for Council's consideration.